

IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

Law Enforcement Labor Services, Inc.
Local 214

Union

-and-

BMS Case No. 12-PN-1040

Washington County, Minnesota

Employer

ARBITRATOR: Christine D. Ver Ploeg

DATE & PLACE OF HEARING: November 9, 2012
Washington County Government Center
Stillwater, Minnesota

DATE OF RECEIPT OF POST-HEARING BRIEFS: December 6, 2012

DATE OF AWARD: December 28, 2012

ADVOCATES:

For the Employer

Frank Madden
Madden Galanter Hansen, LLP
505 North Highway 169, Suite 295
Plymouth, MN 55441-6444

For the Union

Kimberley Peyton Sobieck, Business Agent
LELS
327 York Ave.
St. Paul, Minnesota 55130-4039

INTRODUCTION

This interest arbitration has been conducted pursuant to Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. Secs. 179A.01 – 179A.30. Law Enforcement Labor Services, Inc., Local 214 (hereinafter the Union) is the exclusive representative of Deputies and Sergeants who are employed by the Washington County Sheriff's Department (hereinafter Employer). As of June 28, 2012, there were 86 members in LELS Local 214; 59 are deputies; 13 are deputy-investigators; and 14 are sergeants.

The parties are presently covered by a collective bargaining agreement that expired on December 31, 2011, and continues by operation of law. The parties participated in negotiations and mediation and have agreed on all but the following items. Members of this bargaining unit are "essential employees" who cannot strike but who have the right to request interest arbitration upon reaching impasse. Minnesota Public Employment Labor Relations Act, §179A.01 - 179A.25. They have done so here, and the parties agree that these matters are now properly before this arbitrator.

ISSUES

The Minnesota Bureau of Mediation has certified a number of issues to binding interest arbitration pursuant to Minn. Stat. § 179A.16, subd. 7. The following 9 issues remain to be determined.

1. Compensation, Article 12.1 – General Adjustment 2012, If Any
2. Compensation, Article 12.1 – General Adjustment 2013, If Any
3. Compensation, Article 12.1 – Wage Structure and Progression?
4. Pay Plan, Appendix – Plan Structure and Progression 2012
5. Pay Plan, Appendix – Plan Structure and Progression 2013
6. Insurance – Article 13.4- Continuation or Elimination of Flex Credits?
7. Clothing Allowance – Article 15.1 – Amount of Employer Contribution 2012?
8. Clothing Allowance – Article 15.1 – Amount of Employer Contribution 2013?
9. Clothing Allowance – New – Stipend for Special Assignment

The parties and this arbitrator met for a hearing on these matters on November 9, 2012. The parties then submitted post-hearing briefs which were received on December 6, 2012. At that time the record was closed.

ANALYSIS

Generally

The two primary bases for decision in any interest arbitration are:

(1) Determining what the parties would likely have negotiated had they been able to reach agreement at the bargaining table or, in the case of essential employees, to settle a strike. Although this determination is speculative, arbitrators understand that to award wages and benefits different than the parties would, or could, otherwise have negotiated risks undermining the collective bargaining process and provoking yet more interest arbitration.

(2) Seeking to avoid awards that significantly alter a bargaining unit's relative standing, whether internal or external, unless there are compelling reasons to do so.

These comparisons in turn entail a two-fold analysis. First, arbitrators consider an employer's ability to pay. This issue is self evident: it serves no purpose to issue an award that an employer cannot fund and thus could never agree to in collective bargaining. However, a simple assertion of financial crisis does not alone warrant freezing wages and other benefits. It is not unusual for employers to claim financial exigency, and when they do so arbitrators closely scrutinize that claim.

Notwithstanding such scrutiny, it is important to note that recent years have seen significant economic challenges that are obvious to all. No arena has escaped economic hardship: global, national, personal, public and private sectors. The economic climate—past, present and into the foreseeable future—has played a major role in this award.

If the evidence demonstrates that at least some financial improvement is possible and warranted, arbitrators next consider the comparability data. This step requires the arbitrator to evaluate the parties' proposals in two contexts: (1) considering the wages, benefits, and other cost items this employer gives to its other employee groups (internal comparables); and (2) considering what comparable employers provide to similar employees (external data).

Applying interest arbitration standards to Washington County and these bargaining unit employees

A. Economic Factors

The issues now to be decided are economic issues, and as such it has been appropriate to consider the County's overall financial health. The Union argues that the County can afford to fund its proposals for these employees, and the evidence demonstrates that is true. However, it is also true that the County's financial situation is more alarming than the Union has acknowledged.

Minnesota's Public Employment Relations Act directs arbitrators in interest arbitrations to consider "obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations." Minn. Stat. Sec 179A.16, subd. 7. In this case the County, like virtually all public sector employers in Minnesota, faces extraordinary economic stresses and has been forced to undertake painful steps to maintain mandated services and stay within its budget.

Union position: The Union argues that the County has the ability to pay the total estimated cost of Union's proposals. Its unassigned fund balance available for spending is \$55,076,524, while the estimated cost of the Union's proposals is miniscule, far less than one percent. In 2011, City assets exceeded liabilities by \$367.6 million; a net increase of 7%. That same year expenses were lower than in 2010, by 2%.

In 2010, when the County granted 0% wage increases, the County's fund balance was 61%, even though the State Auditor recommends 35 to 50%. In short, the County has the ability to pay the Union's proposals. Moreover, after two years of 0% general wage increases, the County should do so.

County position: the County argues that it has been hit hard by the stagnant national economy and the State's budget deficits. The County has a declining tax base from which to increase revenues as well as dwindling state aid which affects the County's ability to maintain services. Since 2008, state aid to the County has been reduced by \$11.6 million. In 2011, County Program Aid was reduced by \$2.1 million and an additional \$2.1 million of market value homestead credits paid to the County was reduced. This funding was part of the County's operating funds, and these cuts directly impact the financial resources available to it. The future

of state aid to counties is uncertain. The State is facing a significant budget shortfall for its next biennium and the State will likely again look to cuts in both County Program Aid and Local Government Aid as a way to solve its budget shortfall.

In addition to the reduction in state aid, other forms of County revenue – including interest earnings and recording revenue – have been adversely affected by the recession and the slow economic recovery. This reduction in state aid and other revenues has affected the County's abilities to provide services to its citizens, at a time of even more need.

Discussion: While it is evident that the County could fund the Union proposals, those proposals cannot be considered in a vacuum but must be weighed in the context of its overall economic picture. The County offered compelling evidence that the reduction in state aid has significantly increased its reliance on property taxes to fund County services. Currently, more than 50% of the County's funding is generated through property tax revenues. Since 2009, the County has experienced four straight years of declining property values and new construction has plunged by nearly 80%. The impact of this declining tax base has meant that County taxes have risen significantly to generate the same County levy as in previous years. And this comes at a time when businesses and property owners are seeing their property values and incomes continue to fall. The average residential market value of single and multi-family homes in the County has declined by 24% in recent years. More than 1,000 properties have fallen into mortgage foreclosure each year since 2008. Nearly 300 property owners have filed tax petitions to contest the value of their commercial or residential property each year since 2010. Those properties have a total value of more than \$2.2 billion.

The County has taken painful steps to address these ongoing economic pressures. In 2008 the County implemented a soft-hiring freeze and it has actively managed vacancies created by resignations and retirements. In 2009 and 2010, the County eliminated 39 positions through vacancies, and then made additional staff reductions in 2012. The County also made mid-year budget reductions in operating costs and non-critical services, evaluated contracts with vendors, delayed capital projects and eliminated a few programs.

The Union argues that its position would cost less than 1% of the unassigned fund balance and stressed there was a 46% increase in the County's fund balance from 2010 to 2011. However, most of this increase was from a \$40 million bond sale during the year to fund capital improvement projects. Overall, revenues have decreased from 2010 by \$7.1 million. Moreover,

the State Auditor does not recommend that counties use fund balances to pay for on-going costs. Ongoing costs should match ongoing revenue; using a finite source of one-time money to pay ongoing costs is not sustainable.

Finally, the State's Pay Equity mandates cannot be ignored. The County has offered credible evidence that the Union's position would place the County dangerously close to non-compliance with the Act. The minimum requirement to pass the statistical analysis test is an underpayment ratio of 80%. Under the Union's position, the County would be at 81.98% for an underpayment ratio for 2012 and 2013. Failure to maintain full implementation with the Act would subject the County to significant penalties.

In short, although the Union has demonstrated that the County does have the ability to fund these discrete proposals, the County has offered persuasive evidence that it continues to confront significant financial pressures. This award has been premised upon the understanding that the County must be financially responsible and its expenditures must be sustainable.

B. Internal Comparisons

Parties present evidence of "internal comparability"--evidence of the terms and conditions of employment an employer provides its other employee groups--to demonstrate that the bargaining unit now in interest arbitration is or is not being treated equitably by comparison. As noted above, an interest arbitrator must try to determine what agreements the parties would have struck for themselves if they had been able to do so. In making that determination evidence of the wages and benefits negotiated by the County's other employee groups is generally very relevant.

However, Washington County does not present a compelling case for granting decisive weight to internal comparisons. 69.4% of the County's workforce have reached agreement or otherwise been subjected to the same wage package. Those employees are: AFSCME Exempt employees, AFSCME Non-Exempt employees, Assistant Attorney Association and IUOE Local 49, plus non-union employees. It is noteworthy that those employees are on a minimum/maximum wage plan while these bargaining unit employees are currently on a step schedule. Although the County proposes to place these employees on the same wage plan, the Union strenuously resists that proposal. Thus, at this time the County's evidence of internal comparisons grounded in a minimum/maximum plan is not entirely comparable to the Sergeants' and Deputies' current step schedule.

C. External Comparisons

The Union submits that Washington County's seven external comparable counties are: Anoka, Carver, Dakota, Hennepin, Olmsted, Ramsey and Scott. The County disagrees with the addition of Ramsey and Hennepin, and asserts that St. Louis County should be included. Regardless of the addition or exclusion of these counties, no strong external pattern exists for wage increases in 2012 or 2013. Among the external comparables, only Scott County has a fully ratified contract for 2012 and/or 2013, and Scott County is not truly comparable.¹

The Union argues that without external comparable guidance for 2012 and 2013, the Union's external comparables for 2010 and 2011 present a compelling reason to grant the Union's request for 1.5% wage increases in 2012 and 2013. In 2010, the Union was 2.5% below the market average. Due to the second year of 0% wage increases, in 2011, the Union then dropped to 3% below the market. The Union submits that it is not speculative to conclude that two more years of 0% wage increases will inevitably lead to the Union dropping even farther below market average.

By contrast the County demonstrated that it is not accurate that LELS employees have received three straight years of no general increase. The Sergeant classification received a 1.5% general wage increase in 2011 as a result of Washington County and Law Enforcement Labor Services, Inc., BMS Case No. 11-PN-0209 (Lundberg, 2011). No other employee classification at the County received a general wage increase in 2011. In addition, the classifications of Sergeant, Patrol Officer Deputy Sheriff and Patrol Officer Investigator all received step movement in 2011. No other employee classification at the County received step movement or range movement in 2011.

Issues 1 and 2: – Compensation, Article 12.1 – General Adjustment 201 and 2013, If Any

County Position:

0.0% Effective 2012

0.0% Effective 2013

Union Position

1.5% Effective 2012

1.5% Effective 2013

Award

0.5% Effective 2012

0.5% Effective 2013

Discussion

The preceding discussion has set forth the premises upon which this wage award has been based. Those premises are: the County continues to face significant financial pressures which will extend well into the foreseeable future, and there are few internal or external comparisons that provide clear guidance on these unresolved issues.

Thus, this wage award is the product of a balancing all of the cost proposals now at issue. For reasons explained below, the County's proposed change in these employees' wage structure and progression is not adopted. Thus, these employees are left with their current step structure which is of significant benefit to them. Maintenance of this current step structure, with its ongoing compounding effect, perpetuates greater cost for the County at a time of austerity. It is also relevant that this is not a bargaining unit that is top heavy with members at top pay. Members are spread throughout the current steps and will continue to enjoy this progression plus this improvement in their wages.

Issue 3: Compensation, Article 12.1 – Wage Structure and Progression?County Position:

The County proposes to add the following language as Article 12.9:

For 2012 and 2013, employees below the maximum of the salary range who would have been eligible for an increase based on the 2011 salary schedule shall receive an increase of 1.5% on the employee's anniversary

¹ Scott County's wage increase was 0% for both years. Scott County's 0% and 0% is best explained by the fact that their wages were 9.8% and 9.5% over the external market average for 2010 and 2011. Thus, Scott County's 0% and 0% is not a compelling comparison.

date, not to exceed the range maximum. Employees who are at the maximum of the salary range in 2012, shall receive a 1.5% non-base lump sum payment on their anniversary date based on their regular annual salary. Employees who are at the maximum of the salary range in 2013, shall receive a 2.0% non-base lump sum payment on their anniversary date based on their regular annual salary.

Union Position

No Change

Award

No change

Discussion

The Employer has proposed to change this bargaining unit's wage structure and wage progression by converting from the current step system to a minimum and maximum plan structure, with movement on one's yearly anniversary date per contemporaneous negotiations. This is a significant change. The County notes that this minimum and maximum structure is already implemented for the balance of the County's workforce. It has highlighted the many benefits it asserts will accrue to these employees. The County also notes that the Union always has the option of negotiating increased wage percentages for future contracts.

I have considered the County's evidence and argument but find that it does not overcome this bargaining unit's long standing step structure. Despite the County's examples of ways by which bargaining unit employees might be advantaged by conversion to this new minimum /maximum plan, the Union also cites many ways by which they are disadvantaged. Arbitration is not an appropriate setting for awarding a change of this magnitude.

Issues 4 and 5: Pay Plan, Appendix – Plan Structure and Progression 2012 and 2013

County Position:

The County's proposed Pay Plan, as set forth in the Appendix, has been premised upon adoption of its proposed plan structure and progression.

Union Position

No change

Award

No change

Discussion

For the reasons discussed above, the County's pay plan set forth in the Appendix is not adopted.

Issue 6: Insurance – Article 13.4- Continuation or Elimination of Flex Credits?County Position:

No change

Union Position

Add: the Employer shall increase its contribution health insurance retired employees in the same amount as that provided as flex credits to active employees.

Award

No change

Discussion

The current flex credit provision in Article 13 allows an employee to direct the County-provided flex credit amount towards his/her health insurance premium, life insurance, short term disability, deferred compensation, or take as cash. The Union has proposed to eliminate flex credits and either increase the County contribution toward health insurance premiums accordingly, or provide that retirees receive the flex credit amount as part of their County contribution. The County proposed no change to the contract.

The Union supports its position based in part on an argument that doing so is compelled by a 1991 settlement in the matter of Adennan et. al. v. Washington County, No. C3-901984 (Minn. App. 1991). In that settlement the County acknowledged it was obliged to

provide retiree healthcare insurance to certain employees. As of November 2012, the County is providing a retiree healthcare contribution for 403 retirees. In addition, there are currently 563 active employees who may qualify for retiree health insurance contributions upon their retirement.

This is not the proper forum for interpreting the terms of that legal settlement, and thus this award is based upon arbitral factors. Those factors are the cost implications of awarding the Union's proposal, which are potentially huge, and the internal data that overwhelmingly supports the County's position on this issue. No other bargaining unit has discontinued flex credits and added the flex credit dollars to the County's health insurance contribution. The County has maintained a uniform pattern of health insurance contributions and an essentially uniform pattern of flex credit payments among all of its bargaining units. No other bargaining unit has contract language providing that the County's health insurance contribution for retirees reflects the same amount as that provided as flex credit to active employees.

Issues 7 and 8: Clothing Allowance – Article 15.1 – Amount of Employer Contribution 2012 and 2013

County Position:

Maximum annual amount 2012: \$700

Maximum annual amount 2013: \$700

Union Position

Maximum annual amount 2012: \$730 for deputies; \$ 760 for sergeants

Maximum annual amount 2013: \$730 for deputies; \$ 760 for sergeants

Award

No change

Discussion

In the parties' 2011 arbitration the Union requested and was awarded an increase in bargaining unit members' clothing allowance. The Union submits that increase has been

inadequate to cover the added costs, especially now that employees can no longer wear their “old” style shirts. The Union also submits that it would be appropriate to compensate sergeants an additional amount in recognition of the added costs of adding chevrons to their shirts. By contrast, the County argues that the current amount is generous compared with that paid to comparable employees in other counties, and that the County has traditionally maintained the same clothing allowance amount for all members in the bargaining unit, regardless of their classifications.

I am persuaded that the current \$700 amount is not adequate, given the altered requirements for bargaining unit members coupled with the hefty costs of each of the required items. However, the evidence does not support breaking the traditional pattern of providing the same clothing allowance amount for all members of the bargaining unit.

Issue 9: Clothing Allowance – New – Stipend for Special Assignment?

County Position:

No change

Union Position

Art. 15.1: Maximum annual Employer contribution shall be as follows:

- a. 2010: \$625
2011: \$700
- b. Specialty uniform stipend of \$30 for each employee(s) with special assignment(s). Limited to one stipend per employee per year.

Award

No change

Discussion

There is no history of paying bargaining unit members, or any other employee, an additional clothing stipend for special assignments. Nor does the external comparison data support the Union’s proposal.

AWARD

1. Compensation, Article 12.1 – General Adjustment 2012, If Any
Award: 0.5%
2. Compensation, Article 12.1 – General Adjustment 2013, If Any
Award: 0.5%
3. Compensation, Article 12.1 – Wage Structure and Progression?
Award: No change
4. Pay Plan, Appendix – Plan Structure and Progression 2012
Award: No change
5. Pay Plan, Appendix – Plan Structure and Progression 2013
Award: No change
6. Insurance – Article 13.4- Continuation or Elimination of Flex Credits?
Award: No change
7. Clothing Allowance – Article 15.1 – Amount of Employer Contribution 2012?
Award: \$ 730
8. Clothing Allowance – Article 15.1 – Amount of Employer Contribution 2013?
Award: \$ 730
9. Clothing Allowance – New – Stipend for Special Assignment
Award: Not adopted

December 28, 2012



Christine D. Ver Ploeg