

IN THE MATTER OF ARBITRATION

City of Albert Lea,
Albert Lea, MN

BMS Case No.: 13-PN-0331
(Police Officers)

and

Minnesota Public Employees Association
Roseville, MN

Re: Interest Arbitration

ARBITRATOR:

John J. Flagler

DATES AND PLACE OF HEARING:

August 27, 2013
Albert Lea City Hall
221 E. Clark St.
Albert Lea, MN 56007

**POSTMARK DATE OF
POST-HEARING BRIEFS:**

September 13, 2013

APPEARANCES:

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INTRODUCTION - Summary of the Parties Positions

At issue here is the Amount of the General Increase for the year 2013, and it is purely economic. MNPEA seeks a 2% general increase plus a 1.5% market adjustment increase, both retroactive to January 1, 2013. The Union contends that in total, this 3.5% increase barely closed the gap between Union Members here and those working for other city departments in their region, and that by one measure, Union Member are more than *twelve percent* behind in wages, and this stark contrast must surely outweigh any other relevant factor.

The City points out that the 1.75% offered exactly matches its payment increase to all other units. However, even the internal equity standard shows at least a willingness by the City to voluntarily break free from strict pattern increases across City bargaining units when fairness requires it, counters the Union.

While a 2% general cost of living increase does little to compensate Union Members for years of zero increases despite significant inflation, it is adequate. The improving economy has granted the City sufficient money within even its established 2013 Budget to fund these ongoing expenses. Further, the City has almost \$900,000 more in its General Fund than even the City's policy required, so the City without a doubt, has the ability to pay this increase.

MNPEA asks the Arbitrator here to grant its full request, a 2% general increase plus a 1.5% market adjustment, for a total of 3.5% increase to the Union Members for the current year 2013. The City insists that the 1.75% increase is fair given the historical reliance on internal equity.

There are four well-established factors that interest arbitrators apply:

- 1) the employer's ability to pay;
- 2) internal equity;
- 3) external or market comparisons, and
- 4) other economic or non-economic factors.

Union Argument on the Employer's Ability to Pay

The City, has the ability to pay MNPEA's proposed two percent general increase for the calendar and contract year 2013, retroactive to January 1, 2013, and a two percent general increase for the calendar and contract year 2013. This is a total increase of 3.5%. MNPEA calculates that this increase will cost the City, about \$70,000 in 2013.¹ The City's proposal, and therefore presumably the cost it budgeted for 2013, was a 1.75% increase, or roughly \$35,000. This money is available within ongoing operations, is to be distinguished from an increase simply from Reserves. This is why the City can only plead to the Arbitrator's sense of "fiscal prudence.

The City has a practice of overestimating its expenses to ensure that it does not overrun its Budget, but leaves ample room within the Police Department budget to pay for this increase. In 2010, the City spent \$131,674 less on total Police Department Salaries, including management salaries, hourly officer wages, overtime, taxes and compensated benefits, than it had budgeted. In 2011, it spent \$143,773 less than it budgeted on Salaries. In the first half of 2012, the City was tracking to spend \$307,085 less than it budgeted for that year. The City, it is assumed, created its 2013 budget with the same conservative estimates. Presumably the City budgeted for its own proposed increase, so the remaining increase of \$35,000 is well within the City's three year average overestimation of \$194,177.33.

Further, the City has money left over in 2013 in its Police Department allocation because it did not hire as many management staff as budgeted. An error in the City Budget regards a double-allocation of City Director of Public Safety in both the Fire Department and Police Departments, Director Dwaine Winkels testified that the City had allocated money for a Deputy

¹ Union Exhibit 6, p.24 Based on the city's 2013 budget of \$1,875,390 in Police Department Wages (Line 102) and \$125,000 in Overtime (Line 103) in 2012, for a total hourly employee cost of \$2,000,390. A 3.5% increase on 2012 wages and overtime calculates to \$70,013.65. As argued at the hearing, this OVERESTIMATES the actual cost because the Police Department Sergeants are also hourly employees included in these two line items.

Director of Public Safety, but it has not yet hired one. Director Winkels testified that after giving “some” money to the Captain and Lieutenants as “stipends,” approximately \$14,000 remained in the Salaried police department budget.

Further, the City overall is doing much better financially than many of its peer cities. City Manager Adams in his 2013 Budget introductory letter to the Mayor and City Council, states:

“We have responded well to the recent economic recession and will continue to look at effective ways to maintain quality services. We have been able to take a balanced approach through increased revenues and service cuts in meeting the City’s Mission Statement ‘to deliver exceptional services that enhance the quality of life for current and future generations.’”

The City increased its overall tax levy revenue by 4.5%, or \$236,292. The City increased its General Fund levy by \$138,596 and the City added a full-time Firefighter position. Local Government Aid, the City’s second largest source of revenue, has stabilized since about 2010.

In sum, tax levy revenue is up, LGA revenue is stable, and there is money available within the City’s current-year budgeted expenses for this increase to have a negligible impact on the overall 2012 Budget.

The City highlights that it has already increased its total tax levy by \$236,292, a 4.52% increase, implying that the citizens of Albert Lea have been taxed enough. The Union has not stated that the wage increase must come out of new taxes, only that the City has successfully raised a significant amount of new revenue. Furthermore, MNPEA is asking for only a 3.5% increase, a full percent less than the new money the City has available to it. The City has made no claims as to the City’s taxing capacity. Perhaps even with a 4.52% tax increase, the citizens of Albert Lea still experience a lower tax rate than the surrounding communities.

The City pleads poverty because of a problem with the Water and Sewer Fund regarding the \$71,000 tax levy the City voluntarily waived for the Watershed District as those funds are not

fungible. It should not be considered during this analysis.

The City notes that it will need to spend \$88 million over the next five years on capital needs. However, the City does not state how it will fund those capital projects, and the Arbitrator should not be influenced by their size. It may be that the City is completing payments on previous projects and so it has those funds newly available to service new debt obligations. If the cost of those projects do not come out of the General Fund from which Union Member wages are drawn, they have little impact. Since the City did not specify what those projects are, they should not be considered.

The City argues that current reserves and General fund balances cannot be used to fund ongoing operating expenses. In support, the City cites to three recent arbitration decisions. Were it true that the only method of funding these increase were the General Fund balance, it is plain that the General Fund would eventually be depleted. However, that conclusion can only be drawn if the General Fund balance was achieved through one-time funding. That is not the case here. The argument simply ignores the reality of annual budgeting processes.

MNPEA's focus on the General Fund balance is only to highlight that the City increased the General Fund balance in 2013 meaning that the City has more revenue than it has expenses. In 2013, the General Fund balance is \$8,137,509, an increase on \$1.27 million of 2012. The City achieved such a substantial balance partially on the backs of its employees, who have received less than market rate wage adjustments over the last several years. To follow the City's pattern is to continue that trend. The General Fund Reserve bridges the gap between what the City owes now and the next time the City is allowed to set its budget. MNPEA's full wage increase would reduce the General Fund by, at most, \$35,000 because the City already budgeted for on-half of MNPEA's request. Even after funding MNPEA's full request, the City will still have 55.7% of budgeted expenditures available of Reserves.

Even taking the City's scenario of forever funding MNPEA's increase out of the Reserves, the argument fails. The City has a policy of keeping at least 50% of General Fund budgeted expenditures available in the Reserves. At the beginning of the year, the City has \$898,789 *more than* 50% of the General Fund budgeted expenditures in its Reserves. Assuming the City can budget for its proposed increase of 1.75%, the City has sufficient Reserves *now* to fund this additional \$35,000 increase for over 25 years without dipping into the range recommended by the State of Minnesota as an adequate level of Reserves (generally 35% - 50%).

The City presents only meager evidence of why it would have difficulty in increasing its Revenue to cover these costs. The City points to a 1.8% drop in City population implying that means a lower tax base. The argument proves nothing because the City does not tax individuals. It taxes property, and the land underneath the City has not gone anywhere.

The City points to ten-year trend of lower Local Government Aid (LGA) from the State of Minnesota. However, the City must concede LGA funds have "leveled off".

City Argument on Financing

MNPEA argues a narrow definition of the financing effects for the proposed increases "without bankrupting the City". In contrast, the City is using the statutory consideration that focuses on the "obligation of public employers to efficiently manage and conduct their operation within the legal limitations surrounding the financing of these operations". Minn.Stat.Sec. 179A.16, subd. 7.

There is little doubt that the City's interpretation of this factor is correct. Since 2008, the traditional "ability to pay" concept includes considerations well beyond the question of whether an award would bankrupt the employer. The City offered two recent arbitration awards in support of this interpretation. The fact that this interpretation receives little discussion in 2013 as opposed to the extensive attention it received in arbitration awards from 2008-2010 reveals the

extent to which this matter has been conclusively resolved by interest arbitrators in Minnesota. In contrast, the Union did not point to one arbitration award in support of its arguments on this factor.

These arbitration awards also provide a discussion on the fact that the economy is showing signs of improving but is not fully recovered. There is also no serious dispute that cities lag behind the private sector in recovery given the need for cities to rely on property taxes as a primary revenue source. Property taxes are based on prior year home valuations which have yet recovered from their recession lows. Cities can be viewed as “last in and last out“ of a recession.

ANALYSIS AND AWARD:

Of these four economic determinants traditionally relied upon by interest arbitrators, the greatest weight historically has been given to internal comparisons. The reason for such deference has been clearly summarized by the late Frank Elkouri, whose passing last month was noted by the Chronicles of the National Academy of Arbitrators. No other source has been more frequently cited by arbitrators than the “bible” of arbitration by Frank and Edna Elkouri, ‘How Arbitration Works’.²

The Elkouris summarized the general consensus among interest arbitrators on the centrality of internal comparisons as the key wage determinant, by stating:

Where there is a well-established internal pattern among the bargaining units in a city or county, the internal pattern shall prevail unless adherence to the internal pattern results in unacceptable wage level relationships between the unit at bar and its external comparable.³

I have consistently focused attention on internal equity since my very first interest arbitrations, again cited by the Elkouris,⁴ where I referred to the solid basis of research showing that employees at all levels-both in private as in public employment-are far more concerned with

² Fifth Ed. BNA Books on Arbitration, Washington, DC (1989)

³ Id.ab.p 1 &2 quoting City of West Bend 100KA 1118, 1121 (Vernon 1993)

⁴ Des Moines Transit Co 38LA 666,671 (Flagler 1962)

the wages paid to others in the same employing unit than in the wage paid to those in the same jobs but with separate employers.

In like vein, I more recently wrote in a police officer's interest arbitration that:

- Patrol officers in Edina tend to care more about what their city pays its firefighters than what the City of Brainerd pays its patrol officers... This generalization holds because employees at all levels know that wage variation between different public jurisdictions arise for a wide host of reasons – differences in tax base, existing public indebtedness, incomes of local taxpayers, fire and rest estate insurance rates, and the like. Public employees have some knowledge of how these factors operate in their own communities, but little about others...

Recognizing that these many differences between and among communities operate to cause variances in compensation for comparable work leads employees within the same political jurisdictions to expect that the same wage determinants will produce more comparable results within the same taxing authority than with distant communities.

Taking all these considerations forward into the instant case, I find myself in complete agreement with Arbitrator, Gil Vernon who opines that,

'this arbitrator's approach is to first determine if there is an internal pattern for the contract years in question and also determine if historically there has been an internal pattern of the same percentage increase. If this is the case, then this should prevail unless adherence to the internal pattern results in an unreasonable and unacceptable relationship. He went on to state that "the internal pattern is important enough that some external wage disparity is acceptable. There is, and always has been, some variance and range in the salaries of similar employees in similar communities. op.cit.

The facts concerning internal equity among and within different classifications of Albert Lea City employees are not disputable. The same percentage increase promised in these proceedings for its police officers, is exactly the same as that will be received by all other employees, regardless of classification or bargaining unit status

According to Vernon and most other interest arbitrators, where internal equity is so firmly entrenched within a particular jurisdiction, it should prevail – save and except where adherence to such internal pattern results in an unreasonable disparity with a truly comparable external comparison group.

This review, accordingly, now proceeds to examine the competing external comparison samples submitted to determine whether or not the compensation of Albert Lea police officers is so unreasonably low and out of step with those in similar communities as to warrant an exception from primary reliance on internal equity to resolve the instant wage dispute. The comparison groups opted for are as follows:

MNPEA

Rochester, Mankato, Winona,
Winona, Austin, Northfield.
Willmar, Red Wing, Hutchinson,
Marshall, New Ulm, Worthington,
St. Peter, Fairmont, Waseca

City of Albert Lea

Austin, Owatonna, Faribault,
Winona, Red Wing, Mankato,
Fairmont, Waseca, Northfield,
New Ulm

The question of which of these sample comparison groups is the more appropriate can be identified as the more “representative” of its constituent units. The process of identifying the quality of representativeness requires as preliminary that “outliers”, or clearly non-representative units be removed from the sample.

In this instance, the City’s sample has the advantage not only of closely similar size, but also of geographical proximity – they are all located in Economic Development Region 10 Southeast. All are county seats, except Northfield.

By contrast, the MNPEA sample includes the non-representative City of Rochester which because of its size (107,630) alone, must be eliminated from any list of comparable communities.

Equally non-representative would be the average income level which in Rochester would run high as a consequence of its substantial population of health care professional at Mayo Medical Center and medical device suppliers.

Accepting, therefore, the City's external comparison group as the more representative, the data show that Albert Lea police would remain at the same 94% of like-situated communities in Economic Development Region 10 Southeast under the City's wage proposal. From this fact on relative position in this comparison group, the Union argues that such ranking proves that its members are paid 6% less than their peers.

This line of argument misstates the meaning of the wage relationship of City of Albert Lea police with their counterparts. The 94% ranking signifies that the wages of Albert Lea police officers stands at some 44% above the midpoint (50%) of the average wage in the cities listed, or 6% less than those of the highest ranked cities. Such a high ranking can only be read as eminently reasonable for a number of reasons.

A number of economic and historical facts undoubtedly were considered by the negotiators of prior collective bargaining agreements between the City of Albert Lea and the police union. The proposal by the City of a wage increase which preserves the high relative ranking of its police unit recognizes and adopts the results of these varying wage determinants.

The conclusion necessarily follows that the City's wage proposal is strongly supported by both internal and external comparable. All that remains to be considered in this review, therefore, are the factors of Other Economic or Non-Economic Factors.

In this regard, MNPEA argues that the City's wage proposal ignores the 0.25% additional adjustment given to the dispatchers' unit. The City correctly explains that the 0.25% adjustment was merely a restoration of wages the dispatchers had earlier forgone in order to help fund a police officer's job which would have ended otherwise.

The City pointed out that such a simple restoration of 'lost', i.e. donated wages could not, in any sense, be treated or defined as a new wage increase. The plain fact is that the police unit made no similar donation of its member's income and therefore have no justifiable claim to a comparable payback in these proceedings.

Finally, the Union contends that the City's 1.75% proposed wage increase for the current year of 2013, fails to adequately adjust for the erosion of real wages attributable to the rise in Cost of Living in the recent past years. In this connection the Union asserts that even with the wage increase of 1.75% proposed here by the City for 2013, its police officers will have lost some 6.9% in purchasing power since 2009.

The City argues the CPI figure cited by the Union do not accurately reflect the true picture of the impact of rising prices in the Albert Lea police officers real wages. The City point out that a major cause of the rise in cost of living was the effect of the most rapidly rising item in computation of the GPI – that of health care. The collective bargaining agreement contains an established employer contribution for health care insurance, adjustable yearly.

Because of this contractual hedge against highly inflationary health insurance costs, City police did not suffer the full effects of the rise in the "market basket" of prices which is the basis for calculation changes in the CPI.

Summary of Findings
and
Award

While the City may have the ability to fund the MNPEA wage proposal without adverse effect on its capacity to efficiently manage public services, this certainly is neither the only nor the most significant wage determinant in this case. As discussed earlier in this review, the City's proposal of 1.75% for the contract year 2013 exactly matches the wage increase received by all other union jurisdictions in Albert Lea.

The internal equity factor alone disposes this present Award firmly in the City's favor. This conclusion was indeed, further sealed in support of the 1.75% for year 2013 by consideration of the 94% wage ranking Albert Lea public sector workers enjoy among the appropriate representation group of comparable communities.

Finally, there was nothing in other economic factors, including the cost of living argument which could serve to change the array of the key comparables which virtually dictate that police officers subject to these proceedings be awarded the 1.75% received across the board for all eligible City employees.

AWARD:

1.75% for the contract year 2013

John J. Flagler
Arbitrator
Dated: October 3, 2013