

**IN THE MATTER OF ARBITRATION
BETWEEN**

LAW ENFORCEMENT LABOR SERVICES, INC.

Union,

and

CITY OF NEW HOPE,

Employer

**ARBITRATION DECISION AND
AWARD**

BMS Case No. 07-PN-0695

Arbitrator:

Andrea Mitau Kircher

Date and Place of Hearing:

July 18, 2007
City of New Hope, Minnesota

Date Record Closed:

August 8, 2007

Date of Award:

September 4, 2007

APPEARANCES

For the Union:

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For the Employer:

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INTRODUCTION

Law Enforcement Labor Services, Inc. (“Union”) is the certified bargaining representative for all the eligible employees in the job classification, Police Officer, employed by the City of New Hope (“Employer” or “City”). The collective bargaining agreement (“Contract”) covering these employees was effective from January 1, 2005 through December

31, 2006. The Employer and the Union met for negotiation and subsequently, mediation, but they were unable to agree upon all of the terms for a successor contract.

The parties petitioned the Bureau of Mediation Services for interest arbitration. The Bureau certified four issues for arbitration, and the parties duly submitted their final positions. By a letter dated March 30, 2007, the parties notified the undersigned that she had been selected as the neutral arbitrator.

A hearing was conducted on July 18, 2007 at the offices of the New Hope Fire Department, New Hope, Minnesota. At the hearing, the arbitrator accepted exhibits into the record, witnesses were sworn, and their testimony was subject to cross-examination. Post-hearing briefs were submitted August 1, 2007. The City's brief was received August 2, but the Post Office returned the Union's brief for lack of sufficient postage and the Union resent it to the arbitrator. The record closed on August 8 when the arbitrator received the Union's brief.

ISSUES

The Bureau certified the following issues for arbitration:

1. Uniform – What is the Amount and Method of Compensation? – Art. 19
2. Post Retirement Health Care Savings Plan (PRHCS) – How Much Sick Leave Shall Employees Contribute? – Memorandum of Agreement
3. Paid Leave – Personal Leave for all New Hires – Appendix B, Art. B-IX
4. Specialty Pay – What shall Employees Receive for Performing Special Duties? – Appendix A

INTRODUCTION

Because interest arbitration is not designed to supplant collective bargaining, but to encourage it, an arbitrator's decision should be compatible with the contract the parties themselves might have reached, had they been able to negotiate successfully all of the contractual provisions in dispute. To achieve this goal, the arbitrator has considered insofar as possible, external market comparisons, internal compensation relationships, ability to pay,

bargaining history, and applicable statutes, as well as evidence and arguments submitted by the parties.

Issue One – Uniform – What is the amount and method of compensation? – Art. 19

Article XIX – UNIFORMS

The Employer shall provide required uniform and equipment items. Effective August 1, 1985 the City will resume the responsibility for the maintenance of uniforms worn by Police Officers and plain clothes officers. The City will determine the standards of appearance it wishes to uphold and promulgate a cleaning and pressing frequency to complement the established standard.

UNION POSITION

The Union argues that the current system, Employer provided uniform and equipment, should be changed. The Union proposes that the Employer provide each Police Officer with a uniform and equipment allowance instead. The dollar amount of the allowance proposed by the Union is \$650.00 per employee for 2007, to be increased to \$685.00 per annum in 2008. The Union estimates that the total cost of its request is an additional \$117.00 per employee, or a total of \$2,325.00.

EMPLOYER POSITION

The Employer argues that the current system is sufficient to meet the needs of the Police Officers and that a significant change in the system, such as that proposed by the Union, should be negotiated at the bargaining table, not instituted by an arbitrator. The Employer maintains that the Union has not established a compelling reason for change in a system that has worked reasonably well since 1985.

DISCUSSION

On this issue, the Union seeks to change the status quo, and thus has the burden of presenting evidence of a compelling need for change. The Union's request for an annual

uniform allowance to replace the current method of equipping its members is based on several arguments.

A. The Current System

The Union argues essentially, that the current system should be changed, because it is inefficient and contributes to morale problems. The Union presented a written list and testimony of Police Union President, Officer David Friskney, about numerous instances where Police Officers purchased uniform items and equipment they believed were necessary to the job which management did not provide, either in whole or in part. For example, the City provides one pair of shoes per season. Officers purchased a second pair, in an effort to avoid foot fungus, which is aggravated by wet shoes. Officers also purchased a different kind of cold weather hat that doesn't fall off; Taser holsters; a mini flashlight; a second pair of handcuffs; a second badge (one for the jacket and one for the shirt); turtle neck shirts, rather than a shirt to be worn with a tie (turtle necks are allowed, but not provided). No socks are provided, and Officers wear blue or black only for work. Officers want a pager for court appearances, which is not provided. Officers also purchased duty bags, clipboards and citation holders on their own, which they believe are necessary and are not provided by the City.

Chief of Police, Gary Link, explained that some of these items were not provided in the past and are provided now, and that the City has insufficient funds for other requests. Chief Link believes the uniforms and equipment are replaced and maintained as needed. Officer Friskney testified about instances of supervisors denying Officers' requests. These individuals did not testify, and Officer Friskney did not provide names of Officers.¹ Explanations of specific incidents were not part of the evidence or were sketchy at best. The Chief believes that discussion of these issues would best be resolved through a labor/management committee.

¹ The Union was concerned about singling out individuals for unwanted managerial attention.

Union members had not recently participated in these meetings. The Union argues that the best solution would be a cash clothing and equipment allowance similar to that paid the Sergeants.

B. Internal Equity and Bargaining History.

The City's Sergeant Unit, composed of employees who supervise the Police Officers, had an annual uniform allowance of \$650.00 for its members in 2006, which is likely to be continued, if not increased.² The Union argues that there is no good reason why the Police Officers should be treated differently. This is essentially a claim that internal compensation relationships are unfair. The Employer counters by arguing that these two groups of employees are dissimilar in their behavior and requests for uniforms and equipment. Chief Link stated that Sergeants are part of the management team that sets standards, and contrary to the conduct of some Officers, the Sergeants have never resisted keeping their uniforms and equipment up to minimum standards.³ Chief Link claimed that supervisors thought a clothing allowance would lead to further resistance to minimum uniform standards.⁴ Despite the paucity of evidence presented by the Employer on this point⁵, the Union did not claim that the Chief's statement about resistance to meeting minimum standards in the past was untrue. When two groups behave differently, there is a rationale for treating them differently. Although it is not clear that resistance to meeting minimum uniform standards would be increased by instituting a clothing allowance, the evidence does not provide a clear or compelling reason for the change sought.

The Employer invokes bargaining history to support its position. These two groups of employees have been compensated differently for uniforms and equipment since the 1980's. The

² The Sergeant's Contract for 2007 and 2008 is not yet final.

³ Testimony ("T.") of Chief Link.

⁴ T., Chief Link.

⁵ The facts underlying the Employer's rationale, such as names, and specific dates of incidents where Officers were reluctant to keep their uniforms to the required minimum standards were not part of the record, and the Employer presented no first person testimony about the alleged incidents.

Union has persistently asked for a cash uniform allowance payment system in the intervening years and neither negotiated nor arbitrated contracts have provided this benefit. Bargaining history presents no unique reasons why a change should be made this year. So if a change in the system for providing uniforms and equipment were to be instituted, it must be based on a rationale other than bargaining history or internal equity.

C. External Comparables and Cost of Change.

As a proponent of change, the Union has the burden of establishing a compelling reason for including the new system in the Contract, and the Union looks to external comparables. Fifteen of twenty-five Stanton VI Cities use a cash uniform allowance for Police Officers such as that sought by the Union.⁶ The average dollar amount to which the parties have agreed in these cities for 2007 is \$721.24. The Union's demand for \$650.00 is within the range of reasonableness in terms of both dollar amount and the fact that more than half of the comparable cities have agreed to the benefit over the years. But once this matter is in arbitration, the arbitrator must be persuaded that there is a compelling need for a structural change before awarding one. The Employer is not so out of step with comparable jurisdictions to merit arbitral intervention.

D. Conclusion

Both the current uniform compensation system and the differences of opinion between the Union and the Employer as to the need for certain items appear to be long-standing irritants for Union members. One reasonable solution to the problems cited would be to institute a uniform and equipment cash allowance, as demanded by the Union. But for an arbitrator to intervene and change the compensation system outside the give and take of the bargaining

⁶ The Employer cites the status of comparable cities as follows: Nine of the cities provide uniforms, ten provide a uniform allowance and six are not settled for 2007. It is not clear how many of the six had uniform allowances in 2006, which would make it quite likely that they would have the same provision for 2007.

process would interfere with normal negotiations and hamper the collective bargaining relationship of the parties. As well stated by Arbitrator Wallin:

...[C]hange [in a collective bargaining contract] usually comes about in negotiations as a *quid pro quo* for some other concession....Absent...strong evidence in support of innovative or structural change, demands of this nature should ordinarily be rejected by arbitrators and left to the parties to resolve in future rounds of collective bargaining negotiations.

LELS and City of Plymouth, BMS Case No. 95-PN-1559 (Wallin, 1996) at 4-5.

The problems alleged by the Union, while understood and acknowledged, do not meet the level of proof needed for an arbitrator to institute change in the longstanding negotiated system in the Contract. A change in compensation structure is better left to the parties who are knowledgeable about the circumstances surrounding the negotiations, and where the Union might trade some other advantage for this desired improvement in Article 19.

AWARD

The Employer's position is awarded.

Issue Two: Post Retirement Health Care Savings Plan (PRHCS) – How Much Sick Leave Shall Employees Contribute? – Memorandum of Agreement

POSITIONS OF THE PARTIES

The City proposes to retain the language of the current Memorandum of Agreement, which provides in pertinent part:

All eligible members will contribute 16 hours sick leave per year, valued at their wage as of July 1 of the current year. (Sick leave accrual is reduced from 96 hours to 80 hours per year.)

The Union proposes to modify this language:

All eligible members will contribute 24 ~~16~~ hours sick leave per year, valued at their wage as of July 1 of the current year. (Sick leave accrual is reduced from 96 hours to ~~80~~ 72 hours per year.)

DISCUSSION

The Union claims that the number of hours of sick leave its members can contribute to their Post Retirement Health Care Savings Plan (“PRHCSP”) should be increased from 16 to 24 hours per year. It argues that investing more sick leave hours in the PRHCSP merely allows the members to receive part of their contractual severance benefit ahead of retirement. The Union maintains that the demands of police work result in their members retiring earlier than other City employees do. Increasing Police Officers’ ability to save for pre-Medicare retirement health care is an important benefit. The Union claims the cost would be only \$2,060.80 over two years.

The Employer argues that the existing funding toward employees’ PRHCSP should not be changed, and that the parties’ bargaining history, internal comparison data and the Officers’ rate of sick leave usage support this position. Further, it explains that the Union’s costing data significantly understates the costs of its proposal by using the 2006 minimum wage rate. When the actual rates of pay of eligible Officers are used to calculate costs, the real cost of the Union’s proposal is \$11,364.60 per year, an increase of \$3,788.20 over current costs.

Police Officers accrue 80 hours of sick leave per year, but the average sick leave usage per year in 2006 was 91.22 hours.⁷ Thus, some Officers begin using more sick leave than the annual accrual rate. This leads to a loss of productivity from the Employer’s perspective. The Employer seeks to reduce the amount of leave time in order to increase productivity and offered a trade-off to the Union during negotiations. The City wanted to include an incentive where an employee who utilizes less sick leave during the course of the year would become eligible for an increase in sick leave funding toward the PHRCSP. This proposal was not accepted, and the specifics were not made clear at the hearing.

⁷ Employer Exhibit 27.

The City also points out that Officers who leave in good standing are paid one-third of their accumulated sick leave not to exceed 240 hours of accumulated sick leave. Under the Union's proposal, 24 hours of sick leave per year could be more generous than the existing severance pay benefit.

The Police Supervisor Unit, the only other unit with a similar plan, has 16 hours of sick leave funding per year toward the PRHCSP; the Police Officers have had 16 hours of funding consistently in their Contract since 2001, according to Employer Exhibit 32. The Union has not established that there has been any change in circumstances over the years supporting the change sought other than a desire for improved benefits. Nor is it apparent why its members should gain one-third more funding for their retirement plan than the members of the Sergeant's Unit who supervise them. The Union has not established a compelling reason for the Arbitrator to award the increase requested.

AWARD

The Employer's position is awarded.

Issue Three: Paid Leave – Personal Leave for all New Hires – Appendix B, Article B-IX

This item has been long contested between the parties, and the City is the party seeking change. The current language is:

Appendix B, Article B-IX.1.

Effective January 1, 1995, all employees may make an irrevocable election to participate in the Personal Leave Plan in accordance with the City's Personnel Rules and Regulations.

The City seeks a change that would affect new employees, but not current employees. It seeks to add to the above provision: "Effective January 1, 2007, Personal Leave will be granted to all new hires." The personal leave plan is spelled out in Appendix B.

DISCUSSION

Currently, new Police Officers have an option to select the personal leave program or the old sick leave and vacation leave plans favored by the Union. The City offered the personal leave plan with incentives to encourage participation, and all its new employees other than the two LELS bargaining units are now covered by the personal leave plan. The Employers' statistics indicate that 70% of the total work force is covered by the personal leave plan.⁸ Of the Police Officers, only one of its 20 members has selected the personal leave plan favored by the City. The City's argument that internal consistency supports its position is accurate.

The bargaining history of the personal leave plan strongly weighs against the arbitral change the City seeks, however. In 1994, a variant of this issue was raised and was eventually arbitrated. The sick leave conversion proposal and the personal leave proposed by the City were not awarded. After the 1994 award, the City and the Union agreed to allow new employees the choice between the personal leave plan and the sick leave and vacation leave plans. Arbitrators have had two subsequent opportunities to address this issue, both in 1997 and 1999, and both declined to disturb the existing language allowing employees a choice of plan. Apparently, there have been no further Contract arbitrations since 1999, and the situation has remained stable.

Other than the inconvenience of administering two separate plans, there is no evidence of harm arising from the fact that the Union members have overwhelmingly chosen the traditional sick leave and vacation leave plans rather than the personal leave plan. Because the proposed change would only affect newly hired Police Officers, the City will still need to administer the traditional plan for the current Officers, so the change sought is unlikely to improve the problems of administrative inconvenience to a significant degree. The Union believes that the traditional plan, which offers longer term employees more sick leave, is more advantageous for Police

⁸ Employer Exhibit 42.

Officers who have physically demanding jobs. The Director of Administration for the City, Sherry Draper, testified that she believes that new hires are not having the opportunity to make a fair assessment of the advantages of the City's personal leave plan, which contains improvements for newer employees in a number of areas. She explains the advantages to the new hires, but after the employees meet with Union members, they choose the "Union plan".⁹ Although this may lead to some frustration, these facts are merely evidence that the City and the Union differ about the advantages and disadvantages of the City's proposed personal leave package. Despite Ms. Draper's concerns, newly hired Police Officers are likely to become long term employees in the fullness of time, and may be glad they chose the leave package that appears to offer a greater advantage to long term Union members.

The Union cites the general rule in interest arbitration: "[T]he party proposing to change an existing provision or provisions, or to otherwise add new language to a collective bargaining agreement, bears the burden of proof to demonstrate through clear and convincing evidence, the need for such a change." Minnesota Teamsters Public and Law Enforcement Employees Union local 320 v. Anoka County, BMS 91-PN-917 (Fogelberg, 1991). The City has not demonstrated the need for the change it seeks. Because the parties once reached a compromise on this subject that is working well, I join the previous arbitrators in concluding that maintaining the status quo on this issue is most reasonable. The principles of interest arbitration suggest that the City's proposal is more suitable for resolution at the bargaining table than through arbitration.

AWARD

The Union position is awarded.

⁹ T., Draper.

Issue Four: Specialty Pay – Appendix A

POSITIONS OF THE PARTIES

According to the Contract, the parties have agreed that the City will pay differentials for three types of special duties. The relevant portion of Appendix A provides:

Employees classified or assigned by the EMPLOYER to the following job classification or position will receive \$200.00 per month or \$200.00 prorated for less than a full month in addition to their regular wage rate: Investigator (Detective), Canine Officer, School Liaison Officer.

The Employer argues for no increase. The Union seeks \$215.00 for 2007 and \$230.00 for 2008.

DISCUSSION

The Employer argues there should be no increase for 2007 because it perceives a pattern of increases occurring every three years, and the current rate of specialty pay has only been in effect for two years. It cites 1991, 1992 and 1993, as well as the years 2001, 2002 and 2003 as examples of this historical pattern of specialty pay remaining constant for three years.

Unfortunately for this theory, the Employer's Exhibit 46 demonstrates that no such pattern exists for any other three year period from 1988 to the present. The City also argues that no significant duties responsibilities, workload and training requirements have substantially changed, so no increase in the differential is necessary.

Both parties cite external comparison data, which are somewhat inconclusive. Other Stanton Group VI jurisdictions, for example, either do not have canine officers, or they compensate them differently. Only one comparable city pays its Canine Officer Specialty pay, and this city pays a \$242.00 differential. An average is not statistically meaningful for Canine Officers. As to School Liaison Officers, 12 of 29 cities provide a differential, but some of the School Officers are paid on a nine or ten month basis.¹⁰ The Employer then adds pay for the

¹⁰ Employer Exhibit 49 shows at least the City of New Brighton and the City of Savage in this category.

three types of specialties and lists an average of all three specialties in each of the jurisdictions for 2007.¹¹ According to the data, the Investigators and the Canine Officer would lose ground as compared to the “average” differential in other jurisdictions if they received no increase for 2007, but not the School Officers.

The Employer has not established a good reason why the Investigators should fall behind average pay. In 2005, the last negotiated agreement, the parties agreed to a differential of \$200.00 per month. At that time, \$200.00 was \$6.23 below average pay of the Stanton Group VI Investigators, according to the Union exhibit. For 2007, \$200.00 is \$17.41 below average. To return specialty pay to its ranking among comparable jurisdictions in 2005, when the parties last reached agreement, a reasonable 2007 rate would be \$211.00, and taking into account anticipated inflation, an additional \$6.00 will be added for 2008.

AWARD

Appendix A shall be changed to reflect a monthly specialty pay differential of \$211.00 per month for 2007, and \$217.00 per month for 2008.

September 4, 2007

Andrea Mitau Kircher
Arbitrator

¹¹ Employer Exhibit 49