

IN THE MATTER OF ARBITRATION)	INTEREST ARBITRATION
)	
between)	
)	Emergency Communications
Ramsey County, St. Paul,)	Center Dispatchers and
Minnesota)	Telecommunicators
)	
-and-)	
)	BMS Case No. 15-PN-916
Law Enforcement Labor)	
Services, Local No. 349,)	
St. Paul, Minnesota)	June 8, 2016
)))	

APPEARANCES

For Ramsey County, St. Paul, Minnesota

Becky Wodziak, Labor Relations Manager
Emily Chmel, Human Resources Generalist
Scott A. Williams, Emergency Communications Center Director
Ryan O'Connor, Policy and Planning Director
Nancie Pass, Emergency Communications Center Deputy Director
Ben Reber, Labor Relations Specialist, City of St. Paul

For Law Enforcement Labor Services, Local No. 349, St. Paul, Minnesota

Kim Sobieck, Staff Attorney
Jim Roberts, Business Agent
Doug Biehn, Business Agent
Kevin McGrath, Business Agent
Leanna Nelson, President
Lisa Zumwalde, Vice President
Dana Edgell, Steward
Peter Madland, Steward

JURISDICTION OF ARBITRATOR

Law Enforcement Law Services, Local No. 349, St. Paul, Minnesota (hereinafter "LELS" or "Union") is the exclusive representative for Emergency Communications Center Dispatchers and Telecommunicators which includes the job classifications of

Public Safety Dispatcher and 911 Telecommunicator employed by Ramsey County, St. Paul, Minnesota (hereinafter "Ramsey," "Employer" or "County"). There are 67-74 bargaining unit members in this essential unit.

County Public Safety Dispatchers and 911 Telecommunicators serve the Emergency Communications Center ("ECC") which is a Public Safety Answering Point providing 911 emergency call answering and dispatch services. These employees receive and dispatch emergency calls for fire and police services for the County Sheriff's Office, all of the suburban police and fire departments which includes: Arden Hills, Falcon Heights, Gem Lake, Lauderdale, Little Canada, Maplewood, Moundsview, New Brighton, North Oaks, North St. Paul, Roseville, Shoreview, Vadnais Heights, White Bear Township and the City of St. Paul Police and Fire Departments.

The County and LELS (hereinafter referred to as the "Parties") are signatories to an expired collective bargaining agreement that was effective January 1, 2012 to December 31, 2014, and continues in effect by operation of law.

The Parties entered into negotiations for a successor three year 2015-2017 collective bargaining agreement. The Parties were unable to during bargaining and mediation to resolve all of their outstanding issues. As a result, on August 12, 2015, the Minnesota Bureau of Mediation Services ("BMS") received a

written request from the Union to submit the unresolved issues to conventional interest arbitration. On August 21, 2015, the BMS determined that the following items were certified for conventional interest arbitration pursuant to Minn. Stat. § 179A.16, subd. 2 and Minn. Rule 5510.2930:

NO.	SUBJECT	DESCRIPTION
1.	Call Back Time	Should the language in 13.2 be modified and if so, how? - Article 13.2
2.	Wages	What, if any, should be the general wage increase for 2015? - Article 26
3.	Wages	What, if any, should be the general wage increase for 2016? - Article 26
4.	Wages	What, if any, should be the general wage increase for 2017? - Article 26
5.	Salary Plan	What should be the salary schedule for 2015? - Article 26B
6.	Salary Plan	What should be the salary schedule for 2016? - Article 26B
7.	Salary Plan	What should be the salary schedule for 2017? - Article 26B
8.	Salary Plan	How should employees progress through the salary schedule in 2015? - Article 26B
9.	Salary Plan	How should employees progress through the salary schedule in 2016? - Article 26B
10.	Salary Plan	How should employees progress through the salary schedule in 2017? - Article 26B

11. Work Schedules Premium Pay Should there be an increase in the weekend differential pay? - Article 15.5
12. Wages Should there be an increase in the employer match to deferred compensation? - Article 26.5
13. Overtime Should the language in 12.6 and 12.7 for overtime liquidation be changed? - Articles 12.6 and 12.7

The Arbitrator, Richard J. Miller, was selected by the Employer and Union (collectively referred to as the "Parties") from a panel submitted by the BMS. A hearing in the matter convened on April 27, 2016, at 9:00 a.m. at the BMS offices, St. Paul, Minnesota. The Parties were afforded full and ample opportunity to present evidence and arguments in support of their respective positions.

The Parties agreed to keep the record open until May 2, 2016, in order for the Union to submit some corrected exhibits that were introduced during the hearing. The Parties' counsel then elected to file electronically post hearing briefs, with receipt by the Arbitrator no later than May 16, 2016. The post hearing briefs were submitted in accordance with that deadline date. The Arbitrator then exchanged the post hearing briefs electronically to the Parties' counsel on that day, after which the record was considered closed.

Prior to the start of the hearing, the Union agreed to drop Issues Numbers 8-10 (2015-2017 salary step progression). The

Parties agreed to resolve Issue 11 (weekend differential pay - increase of \$.05 per hour, effective January 1, 2016) and Issue 12 (deferred compensation - increase by \$5.00 per month, effective January 1, 2017). Finally, both Parties submitted identical positions on Issue Numbers 2-4 (2015-2017 general wage increase - 2% for 2015, 2.5% for 2016 and 2.6% for 2017). Therefore, only Issue Numbers 1, 5-7 and 13 remain for decision by the Arbitrator.

The Parties agree that the most important issues before the Arbitrator pertain to whether County Public Safety Dispatchers and 911 Telecommunicators are entitled to a "market adjustment" for any of the three years of the new contract term. This importance warrants addressing these economic issues first, followed by the language items at issue.

ISSUE FIVE: SALARY PLAN - WHAT SHOULD BE THE SALARY SCHEDULE FOR 2015? - ARTICLE 26B

ISSUE SIX: SALARY PLAN - WHAT SHOULD BE THE SALARY SCHEDULE FOR 2016? - ARTICLE 26B

ISSUE SEVEN: SALARY PLAN - WHAT SHOULD BE THE SALARY SCHEDULE FOR 2017? - ARTICLE 26B

POSITION OF THE PARTIES

The Union proposes that the 2015 market adjustment should be 2.9% effective January 1, 2015, or an equivalent amount of 8.7% spread out over the three-year duration of the contract, in addition to the general wage increase of 2.0% for 2015.

The Union proposes that the 2016 market adjustment should be 2.9% effective January 1, 2016, or an equivalent amount of 5.8% spread out over 2016 and 2017, in addition to the general wage increase of 2.5% for 2016.

The Union proposes that the 2017 market adjustment should be 2.9% effective January 1, 2017, in addition to the general wage increase of 2.6% for 2017.

The Employer proposes no market adjustments for employees, with only 2015-2017 general wage increases of 2% for 2015, 2.5% for 2016 and 2.6% for 2017.

AWARD

No market adjustments for 2015 or 2016. For 2017 there shall be a market adjustment of 2.0%, effective January 1, 2017, in addition to the general wage increase of 2.6% for 2017.

RATIONALE

Among the most recognized factors considered in interest arbitration are the employer's ability to pay the union's requested economic items, internal comparability, external comparability, and other economic and non-economic factors.

The Minnesota's Public Employment Labor Relations Act defines the employer's ability to pay to include the "...statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations."

(M.S. 179A.16 Subd.7). Thus, the financial constraints of a public jurisdiction must be considered by interest arbitrators. Public employers need to make astute financial decisions that allow their financial resources to be used in the most efficient and effective manner, including maintaining an appropriate unassigned fund balance.

The Employer does not dispute that its current financial condition is good and could easily pay for all of the economic items sought by the Union, if so awarded by the Arbitrator. Specifically, the County's estimate for the Union's proposal for three years (agreed upon wage increases and 2.9% market adjustment each year) is \$735,000 and \$725,000 (agreed upon wage increases and if 8.7% is spread out over the three years). The estimated cost of the Employer's proposed salary package is \$321,000 (agreed upon wage increases). Thus, the cost of the Union's least expensive wage proposal is more than \$400,000 over the amount that the ECC has budgeted.

The County has a positive unassigned fund balance, which according to the 2014 Comprehensive Financial Report was \$79,564,043. This amount is well within the State Auditor's recommendation that public employers adopt sound fund balance policies, with the amount of the unreserved fund balance in the general and special revenue funds as of the end of the calendar year on December 31 be approximately 35% to 50% of fund

operating revenues or no less than five months of the operating expenditures.

The County has maintained a triple A bond rating for five consecutive years and currently has a triple A rating from both Moody's and Standard and Poor's rating agencies.

To the County's credit, it has achieved this financial health by exercising strong financial discipline, which includes a willingness to make difficult budget decisions and has carefully managed its expenditures and lived within its means. The County's responsible budget practices have combined modest tax levy increases with gradual increases in expenditures, notwithstanding the fact that the County has a much heavier reliance on property taxes than other counties in the metro area because approximately 25% of the property within the County is tax exempt. Despite these challenges, the County has demonstrated a long-standing commitment to efficiently manage and conduct the County's operations within its legal and fiscal limitations.

While the County's levy and the budgets for the ECC for 2015, 2016 and 2017 have already been approved by the County Board, there is no evidence that the County cannot afford to pay a 2% market adjustment, effective January 1, 2017. This modest market adjustment in comparison to the 8.7% being sought by the Union will not adversely affect the County's effort to efficiently

manage and conduct the County's operations within its legal and fiscal limitations.

Another factor considered in interest arbitration is internal comparability. At first blush, with over 90% of all represented employees in the County agreeing to the wage agreement reached between the Parties (2015-2017 general wage increase - 2% for 2015, 2.5% for 2016 and 2.6% for 2017), one could assume that the wage pattern has been established, which would prohibit the Union from receiving a market adjustment.

The establishment of a wage pattern would be consistent with arbitrator's rulings in other cases outside the jurisdiction of the County, which generally use internal consistency as the paramount factor in deciding both economic and non-economic issues. First impressions, however, do not govern this case.

The County 911 Telecommunicators and Public Safety Dispatchers work in an environment unlike any other - they work literally side-by-side, performing the same job duties and responsibilities, and subject to the same job expectations, as St. Paul Public Safety Dispatchers and 911 Telecommunicators. However, the St. Paul employees are paid substantially more than County 911 Telecommunicators and Public Safety Dispatchers and work under a separate collective bargaining agreement negotiated by the St. Paul Police Federation.

The differences between the County employees working at the ECC and St. Paul employees are the product of an agreement that was made in 2005, when the ECC was established under a Joint Powers Agreement. At the time of the ECC merger, St. Paul employees were "grandfathered" into their terms and conditions of employment. The St. Paul employees were permitted to remain City employees, represented by the St. Paul Police Federation. The Joint Powers Agreement set up an arrangement whereby the City employees would retain their rights and benefits but, over time, all of the City employees would be replaced by County employees. Since 2005, all new employees hired under the ECC's Joint Powers Agreement are County employees. There will never be another City employee added at the ECC. When the merger began, there were seventy-one City employees working as Supervisors, Dispatchers and Telecommunicators; today there are only thirty-two left at the ECC.

Thus, this merger of the ECC workforce is significant as it was known that the wages of the City employees were outliers in the labor market for these employees, and it was an accepted fact that the City employees would all be replaced eventually through attrition by County Telecommunicators and Public Safety Dispatchers. The fact remains, however, in 2005, when the County set the wage for Telecommunicators, the differential between their wage and that of St. Paul Telecommunicators was

10.9%. With the County's internal wage pattern of 2% for 2015, that differential will drop to 12.4% in 2015. By 2017, under the County's internal wage pattern, the differential will increase to 15%. In terms of dollars, County Telecommunicators earned \$544.95 per month less than St. Paul Telecommunicators at top step. By 2017, under the County's internal wage pattern, County Telecommunicators will earn approximately \$736.67 per month less than St. Paul Telecommunicators. Again, for the exact same work in the exact same physical location.

Like the County Telecommunicators, the County Dispatchers work side-by-side with the St. Paul Dispatchers, under the same job requirements and expectations, but at a significantly lesser wage. Prior to the April 2015 reclassification in which 17 Dispatchers (Grade 21) were reclassified to Public Safety Dispatchers (Grade 22), effective April 25, 2015, St. Paul Police Dispatchers would earn \$641.33 per month more than County Dispatchers, even with the County's 2% general wage increase for 2015. After the reclassification, the disparity will narrow but it still will be significant—\$440.27 per month, or 7.7% differential for 2015. By 2017 that pay differential will increase to 8.5%, unless a market adjustment is granted.

The pay disparity with St. Paul Fire Dispatchers is even greater. Prior to the April 2015 reclassification, St. Paul Fire Dispatcher's wage was \$1,027.87 per month more than County

Dispatchers, even with the County's 2% general wage increase in 2015. After the reclassification, the disparity narrows but it remains significant--\$826.80 per month for 2015. By 2017, without any market adjustments, the pay differential will increase from 13.6% to 14.3%.

In 2007, the County set the wage for Dispatchers and utilized St. Paul Police Dispatcher wages as reference. The differential between the Dispatchers wage and that of St. Paul Dispatchers was 11.1%.

External comparables, like internal comparables establish that County Telecommunicators and Dispatchers are significantly underpaid. In two recent arbitrations dealing with Ramsey County Commanders and Deputies, the external comparables used were the counties of Anoka, Carver, Dakota (Dakota Communications Center), Hennepin, Scott, and Washington, and the cities of Minneapolis and St. Paul. Generally, counties are compared to counties, and cities to cities for purposes of external comparables. However, in this case, the County states it relies on the City of Minneapolis to determine appropriate comparisons. Additionally, the wages for the Telecommunicators and Dispatchers were originally established through a process that included comparison to the City of St. Paul. Therefore, the appropriate external market is comprised of the six metro counties and the cities of Minneapolis and St Paul and not the

PSAP salary survey introduced by the Employer, which includes public and private entities. The County submitted no evidence and made no substantive arguments in support of these entities. The available external comparables for the position of Telecommunicators are limited since some counties and cities have two-stage dispatching centers like Ramsey County but do not have a separate Telecommunicators job classification. The current contract for the Minneapolis 911 Operators and Dispatchers contains wage schedules for both classifications, and are a fair external comparable. While it is true that approximately 18 months ago, Minneapolis eliminated the 911 Operator classification, the Minneapolis 911 Operator wages are useful to the external market analysis given that the salaries were established for the position by the City for the years 2014-2016. Ramsey County Telecommunicators wages will be 8.5% below that of Minneapolis 911 Operator salary for 2015. Therefore, a market adjustment is mandated to bring the County Telecommunicators to a comparable level with Minneapolis 911 Operator wages.

In 2014 the County Dispatchers were 5.1% below the external market. Even with the 2% wage increase for 2015, the Dispatcher's wages (which include the newly reclassified Dispatchers) will drop as it relates to the external marketplace.

While it is difficult to find a true apple-to-apple comparison, Hennepin County and Scott County were the only other two-stage dispatch centers. In 2014, Ramsey County Dispatchers wages were only 1% below that of Hennepin County Dispatchers. Under the agreed upon wage increases that percentage will increase to 3.4% in 2015 and 2016. Similarly, in 2014, Ramsey County Dispatchers wages were 3.2% below Scott County. Under the agreed upon wage increases that percentage will increase to 4.1% for 2015 and 7.2% for 2016.

The foregoing evidence as it relates to both internal and external comparables clearly establishes that a market adjustment is justified in this case. The 2% market adjustment, effective January 1, 2017 is fair and prudent to both Parties and the citizens of Ramsey County. It also does not take the County out of compliance with the Pay Equity Act, which requires that interest arbitrators "...consider the equitable compensation relationship standards established in this section and under section 471.993, together with other standards appropriate to interest arbitration." Minn. Stat. 471.992, subd 2. Because the Telecommunicator is a female dominated class, this standard also applies in the instant case and was considered by the Arbitrator.

As to the last factor considered in interest arbitration, the Arbitrator is not a leader in awarding a market adjustment

but rather a follower. The County Commander Union and Ramsey County arbitrated their respective 2015-2017 contracts. Ramsey County v. LELS, BMS No. 16-PN-0020 (Lundberg 2016). The County Deputies and Ramsey County also arbitrated their respective 2015-2017 contracts. Ramsey County v. LELS, BMS No. 15-PN-0673 (Lundberg 2016). Those arbitrations involved the exact same issue as the instant arbitration, namely wages and market adjustments.

In Ramsey County Commanders, Arbitrator James Lundberg acknowledged the internal wage pattern of 2%, 2.5%, and 2.6% for 2015-2017, but found compelling evidence to justify a market adjustment of 3.2% for 2015. The compelling evidence was comprised of data leading to the conclusion that "the wages of the Sheriff's Commanders bargaining unit are too low." Id., p. 11. In making his conclusion, Arbitrator Lundberg noted the significant pay disparity between St. Paul Commanders and Ramsey County Commanders.

In Ramsey County Deputies, Arbitrator Lundberg concluded that there was "compelling evidence that supports a wage award somewhat greater than the internal wage settlement pattern." Id., p. 16. The Arbitrator cited the drop in ranking amongst the Deputies' external comparables, the drop to 4.7% below market average, and the likelihood that the situation would continue and worsen under the County's wage proposal.

Arbitrator Lundberg awarded a market increase of 3.2%, spread over the three years of the contract.

Like the Ramsey County Commanders and Deputies, the Ramsey County wages for Telecommunicators and Dispatchers are below the external market and will continue to decrease under the agreed upon wage increases for 2015-2017. Like the Commanders and Deputies, the wages for Telecommunicators and Dispatchers are appropriately compared to St. Paul wages. However, unlike the Commanders and Deputies, County Telecommunicators and Dispatchers work side-by-side with St. Paul employees who perform the exact same job functions in the exact same dispatch center. Thus, the argument for a market adjustments for County Telecommunicators and Dispatchers is at least as strong, if not stronger, than in the Commander and Deputy arbitrations, and justifies the market adjustment of 2.0% for 2017, effective January 1, 2017.

ISSUE ONE: CALL BACK TIME - SHOULD THE LANGUAGE IN 13.2 BE MODIFIED AND IF SO, HOW? - ARTICLE 13.2

POSITION OF THE PARTIES

The Employer's position is that the current language in Article 13.2 should not be changed. This language reads:

13.2 In an emergency situation, an employee who is called to duty during scheduled off-duty time shall receive a minimum of four (4) hours' compensatory time off. An extension or early report to a regularly scheduled shift for duty does not qualify the employee for the four (4) hour minimum.

The Union proposes a language change in Article 13.2 by eliminating the wording for call back "In an emergency situation."

AWARD

The County's position is sustained.

RATIONALE

It is universally held in interest arbitration that the party proposing any language change, including adding to, subtracting from or modifying in any way bears the burden of proof showing the need for this change. The Union is proposing to eliminate the current call-back contract language pertaining to the first four words in Article 13.2 - "In an emergency situation."

The Union has not met its burden of proof for the elimination of this contract language in Article 13.2. The Union has not proved by any standard of evidence that this language has caused any problems, issues or grievances as to its intended meaning in the application or administration of this entire call-back provision. Thus, it would appear that the County has not been arbitrary, capricious or discriminatory in its interpretation as to what constitutes "in an emergency situation." Until there is proof that this proposed language change has caused some problems, there is no valid reason to change any language in Article 13.2.

The fact that St. Paul Public Safety Dispatchers and 911 Telecommunicators do not have the emergency situation call-back proviso in their contract does not override the fact that the Union has not proved that this proviso has caused any problems in its administration and application of call-backs under Article 13.2, which contract language was voluntarily negotiated between the Parties.

Further, the Union noted that the 2012-2014 contract for this bargaining unit and the 2012-2014 contract for the ECC Shift Supervisors who supervise County Public Safety Dispatchers and 911 Telecommunicators both contained the emergency situation call-back proviso. That call-back proviso was removed in the supervisor's 2015-2017 contract. Why this callback proviso was removed is not known but, in any event, was removed through voluntary negotiations where trade-offs are common to achieve contract language modifications. In this case, the Parties were unfortunately unable to mutually agree to any changes in Article 13.2.

ISSUE THIRTEEN: OVERTIME - SHOULD THE LANGUAGE IN 12.6 AND 12.7 FOR OVERTIME LIQUIDATION BE CHANGED? - ARTICLES 12.6 and 12.7

POSITION OF THE PARTIES

The Employer's position is that there should be no change to the overtime liquidation language in Articles 12.6 and 12.7. This language reads:

12.6 When staffing permits, overtime will be liquidated under the following procedures:

- (1) Supervisors may order liquidation of overtime in excess of eighty (80) hours on twenty-four (24) hours notice to the employee.
- (2) Liquidation of compensatory time for those employees with eighty (80) hours or less accumulated overtime will be scheduled by the department only at a time agreeable to the employee.

12.7 Payment shall be made semi-annually on June 15 and December 15. To be eligible, all employees must request overtime payment by May 1 and November 1, and payment will thereafter be made in equal distribution to all employees requesting payment.

The Union proposes to change the contract language in Article 12.6 and 12.7 so that liquidation of compensatory time shall be made by the employee on a pay period by pay period basis. The employee needs to give the Employer notice of this request one (1) pay period prior to the pay out.

AWARD

The County's position is sustained.

RATIONALE

Employees have the option to receive pay or to bank compensatory hours when they work overtime under Articles 12.6 and 12.7. Under the current contract language, compensatory hours can be cashed out only if the supervisor approves and only twice per year. The Union's position is for a change in Articles 12.6 and 12.7 to allow an employee the discretion of

when to liquidate overtime (compensatory hours earned from overtime) on a pay period by pay period basis rather than solely when the Employer decides to do so.

Currently, compensatory time is liquidated in two ways. There is a biannual liquidation on June 15 and December 15 of each year, with supervisors having the ability to liquidate compensatory time banks that exceed eighty hours, after providing the employee with twenty-four hours of notice. It would be highly imprudent to radically change the method by which compensatory time is liquidated, from a method that provides biannual liquidation or liquidation at the supervisor's discretion, to a method that is entirely determined by each individual employee since the Union's proposed changes have the potential to have adverse, short-term budget consequences on the County. Such a change should be negotiated between the Parties to enable them to balance the needs of the facility with the desires of the employees.

As noted previously, the Union bears the burden of proof showing the need for this change. The Union has not met its burden. The Union offered no evidence related to the need for or advisability of this change in contract language.

The primary justification provided by the Union was language in the supervisor's contract which for 2015-2017 was changed to the language being proposed by the Union in this

case. It is always preferable for the Parties to negotiate any significant changes to contract provisions through the give-and-take in negotiations that results in a voluntary settlement.

The Parties are to be complemented on their professional conduct at the hearing and the comprehensiveness of their oral presentations and their written post hearing briefs.

Richard John Miller

Dated June 8, 2016, at Maple Grove, Minnesota.