

IN THE MATTER OF THE ARBITRATION

OPINION AND AWARD

BETWEEN

Impasse/Contract Arbitration

Law Enforcement Labor Services, Inc., Local #142

And

Three Rivers Park District

BMS case No. 16-PN-0659

APPEARANCES

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JURISDICTION

In accordance with the Public Employment Relations Act, as amended, this impasse/contract arbitration case was submitted to Joseph L. Daly, Arbitrator, on June 23, 2016, at the Three Rivers Park Administrative Center, Plymouth, Minnesota. Post-hearing briefs were received by the arbitrator on July 19, 2016. The decision was rendered August 16, 2016.

ISSUES AT IMPASSE

The State of Minnesota, Bureau of Mediation Services, certified to the arbitrator the following issue at impasse in the dispute: Wages: by what amount, if any, should the wage/salary schedule be increased for 2016 (Article 12)?

Union's Final Position: Increase Employee wages by a 3.0% general wage increase for 2016.

Park District's Final Position: Employees in classifications covered by this Agreement will receive a 1% increase to their wage rates effective January 1, 2016.

INTRODUCTION

This interest arbitration involves the Three Rivers Park District Police Officers. As of June 24, 2016, there were 11 members in LELS Local #142. The parties are presently covered by Collective Bargaining Agreement which expires on December 31, 2016, and has a wage reopener for 2016.

The wage reopener in the Collective Bargaining Agreement states:

12.11 The parties agree to meet and negotiate during the term of this Agreement on the general increase, if any, applicable to bargaining unit members for 2016. These reopened negotiations will be limited to the issue of a general adjustment and will not include proposals to alter the structure of the existing pay plan or terms and conditions of employment.

The parties participated in negotiations and mediation but were unable to resolve the 2016 wage issue. On March 17, 2016, the Commissioner of the Minnesota Bureau of Mediation Services certified one issue – Wages 2016—at impasse. The parties submitted their final positions. The arbitration hearing occurred on June 23, 2016.

In making determinations in interest/contract arbitrations “[a]rbitrators typically consider: 1. Internal pay equity; 2. External market comparisons; 3. Employer ability to pay; 4. Cost of living and purchasing power; 5. Other economic factors such as geographical differential, turnover, retention rates. A further factor used by some arbitrators is past bargaining history.” *See Cook County Hospital and Care Center Association*, BMS Case No. 12-HN-0429 (Joseph Daly).

A. Pay Equity

Minnesota Statute §179A.16, subd. 17 in relevant part provides: “[T]he arbitrator ... shall continue the statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of those operations.”

The Minnesota State Legislature has established the Pay Equity Act standards that interest arbitrators must use when resolving wage and salary issues. This Act states:

In all interest arbitration involving a class other than a balance class held under sections 179A.01 and 179.25, the arbitrator shall consider the equitable compensation relationship standards established under this section [471.992] and standards established under 471.993, together with other standards appropriate to an interest arbitration. The arbitrator shall consider both the results of a job

evaluation study and employee objections to the study. Minn. Stat. §471.992 subd. 2 (2010).

The Park District is currently in compliance with the Pay Equity Act. Union exhibit #6. During the arbitration hearing, the Park District agreed that the union's proposal would not cause noncompliance of the Pay Equity Act.

B. Internal Equity

When reviewing the history of interest arbitrations in the state of Minnesota, it has been typical for arbitrators to give greater weight to internal comparisons. See, *Minnesota Teamsters Local 32*, BMS 08-PN-0349 (Joseph L. Daly 2009); *Dakota County Attorney's Association*, BMS 96-PN-57 (Steven F. Deffort 1996).

Three Rivers Park District contends that internal pay equity favors the adoption of the park district's final position. The District argues that there has been a commitment to and a strong history of consistent internal general increases along with evidence presented of such a commitment and history. The District contends that it has a long standing, well established internal wage pattern that places a high priority on maintaining equality in compensation for all employees in similar workgroups, organized and non-organized, throughout the park district. Cost of Living adjustments have been consistent between groups over time, and all non-union employees have received the same salary schedule this year with a 1% wage increase. The District contends that this priority is designed to maintain equality in wages and compensation across similar workgroups and responsibility levels and to maintain compliance with the Pay Equity Act; and to provide a sustainable framework for salary increases and healthcare commitments over time. The District further contends that this internal pay equity has almost complete consistency for the last 10 years. Three Rivers Park District Police Officers are categorized at a responsibility level of 7 on a 15-level scale. Further, the District points out that among level-7 employees, every single park police officer, except one, earns above the maximum salary on the 2015 annual salary schedule. The annual salary earned by 10 out of 11 park police officers is \$70, 250.16 or higher.

The Union has not argued that park police officers are improperly classified as level 7 employees. Arbitrators, urges the district, have rejected these types of changes to salary

structures that are not part of labor negotiations or would change the fundamental bargaining relationship if pressured to increase salaries for other groups of employees.

The District further contends that there is consistency in and commitment to excellent healthcare benefits. The Park District spends \$3.9M on healthcare benefits for its employees, which are provided consistently for all employees across all four workgroups. The cost of healthcare premiums has risen at a rate higher than 10% for the last three years and these premiums have been born almost entirely by the Park District.

The Park District's commitment to pay equity across organizational units and responsibility levels, consistent with pay equity statutory requirements and its commitment to maintenance of excellent healthcare benefits justifies adoption of its final position of 1% wage increase for 2016.

With regard to internal equity, the Union sees the matter quite differently. The union points out that the only relevant evidence, i.e. nonunion employee wage increases of 1% for 2016, cannot be accurately characterized as a determinative internal pattern. Citing Arbitrator Richard Anderson in *LELS and Anoka County*, BMS 07-PN-0661 (2007), Arbitrator Anderson wrote:

I am also not convinced that, as in the situation herein where the largest group by far is non-union, the same wage increase imposed on the non-union employees is carte blanche to impose on all represented groups. To do so would virtually eliminate any need to ever negotiate wages.

The Union contends from an historical perspective, it appears that all three unions receive the same wage increases as unrepresented employees. But that appearance is deceiving. For examples, in 2013 unrepresented employees, sergeants, and maintenance received a 2% wage increase to the top step, while police officers received a 2% wage increase only to step 6-10. In 2014, the Union points out that unrepresented employees and sergeants received a 2% increase to the top step, while police officers and maintenance received a 2% increase to all steps. Then again in 2015, unrepresented employees received 1.5% increase while the unionized employees received 2%. Further, in 2016, unrepresented employees at the lowest level on the Park District Salary Schedule received a \$2,000/year increase in starting pay. Finally, contends the Union, several unrepresented employees at the top levels of the Park District Salary Schedule received gross salaries in excess of the maximum they were eligible to receive through merit and general

wage increases from at least 2011-2015. Two unrepresented employees received wages in excess of the maximum authorized by the Salary Schedule.

The Union also contends that any internal pattern is further weakened by the effect of the four different wage structures utilized by the four employee groups. The police officers utilize a step system; longevity was rolled into their step system in 2004. The sergeants use a range system and move through that system on a merit basis. They also receive a lump sum longevity payment at the end of the year. The maintenance employees utilize a step system and receive lump sum longevity payment at the end of the year. The unrepresented employees use a range system and move through that system on a merit basis. The significance of these differing wage structures is simply one of mathematics: a general wage increase means more, or less, depending on what it is applied to. For example, general wage increases applied to base wages and not to lump sum longevity.

In summary, contends the Union, evidence submitted by the Union establishes that no historical or current internal pattern exists for 2016 wage increases in the park district. Further even if an internal pattern did exist, [which the union contends it does not] the arbitrator is not beholden to that pattern. Arbitrator William Martin wrote:

While internal comparisons are important, they should not be controlling in every case. To do so would not be to elevate negotiation as principles of PELRA require. Rather it would permit employers to dictate wage increases whenever the union has for some period of time agreed to employer internal patterns. PELRA does not intend to replace negotiation with interest arbitration, but neither does in intend to use interest arbitration to freeze patterns set initially by employers. *LELS and City of Mendota Heights*, BMS Case No. 01-PN-968 (Martin 2001).

C. External Market Comparisons

The Park District contends that the park police rate work in a substantially different manner from traditional municipal police departments, both in terms of agency structure and the work performed by park police officers.

As to structure, the park district was created by the Minnesota state legislature in 1957 as a result of enabling legislation enacted in 1955 by the state legislature. *See* Minn. Stat. §398.01; *see also* Minn. Stat. §§383B.68-73. Its charge is “to acquire, develop and maintain large park reserves in regional parks and trails for the citizens of suburban Hennepin County, and the metro area and the state.” The park district is the only one of its kind that spans all of Hennepin County besides the city of Minneapolis, in addition to some land in Ramsey, Dakota, Scott and

Carver counties. As a result, contends the park district, it does not have easy municipal comparators. It spans a large geographic area that includes the areas that represent the diversity of the state of Minnesota rather than mirroring any one municipal area.

In addition, the park district and its park police officers engage in different work than traditional municipal police departments. As Superintendent Carlson testified at the arbitration hearing, at the direction of the Three Rivers Park District Board, the park district has made a series of deliberate efforts since 2014 to move away from enforcement efforts and to work on resource preservation and customer service efforts. The primary task now of the park police officers are customer service, a high contact mindset, crime deterrence, and education. Park police officers focus on ordinance enforcement rather than statutory enforcement. They are specifically instructed not to duplicate services provided by other municipal police departments. They do not patrol during the night when parks are closed. They do not patrol in several of the outlying counties. Superintendent Carlson testified that the over-arching goal of the park district's police officers is to provide public service and interact with the public, and protect the park district's resources. The park police officers are at their most helpful when providing services relating to land management, pollution, and civilian education. The park district contends that this means the tasks assigned to park police officers are different than those assigned to municipal police officers, including limited responsibilities related to serious crime situations. The increase in visitors to the park district has made the park safer, because busier areas prevent lower-visibility issues such as graffiti and damage to property. It also means that park police officers work with maintenance and other workers to maintain facilities and provide services to visitors. Chief Hugo McPhee, while not disputing that park police are required to be licensed peace officers in the state of Minnesota, testified that the park district provides different training as a result of the specific environment such as training for "woody" environments, training on child endangerment and lost persons, and skills building in water and recreation. Chief McPhee and Superintendent Carlson both testified that because of the shifting nature of park police officer's responsibility, the stricter patrol time, the assistance of other law enforcement agencies, the park district police officers have very different duties than a traditional police force. As a result the park district has selected six external comparables it believes are most comparable in terms of the nature of the agency and the work performed by the agency at large. Those comparables focus on natural resources or parks and recreation law enforcement.

They do similar work, have similar duties, and are most helpful in assessing the type of work performed by the Three Rivers District park police officers. They include Washington County, Minneapolis Park Board, Anoka County, Department of Natural Resources and Hennepin County. Each of these five agencies share a focus on natural resources or parks and recreation law enforcement.

Organization	Monthly Salary Minimum	Monthly Salary Maximum	Annual Salary Minimum	Annual Salary Maximum	Longevity Minimum (annual)	Longevity Maximum Annual
Washington County	\$4,243.20	5,995.60	\$50,918.40	\$71,947.20		
Minneapolis Parks Board	\$4,674.80	\$5,966.13	\$56,095.94	\$71,596.72	\$422 (8 years)	\$8,178 (26 years)
<i>Three Rivers Park District</i>	\$3,949.36	\$5,895.35	\$47,392.32	\$70,744.20	\$0	\$0
Anoka County	\$3,681.60	\$5,874.27	\$44,179.20	\$70,491.20	\$960 (5 years)	\$3,600 (20 years)
Department of Natural Resources*	\$4,482.25	\$5,910.75	\$53,787.00	\$70,929.00	\$0	\$0
Hennepin County	\$4,170.40	\$5,709.60	\$50,044.80	\$68,515.20	\$400 (5 years)	\$1,200 (18 years)

*DNR data previously supplied was 2015. Data present in table reflects 2016 data effective July1, 2016.

Within this grouping, even without any increase in wages for 2016, the Park District is well within the median salary in both minimums and maximums, and especially in regard to maximum wages, which is most relevant given that all but one of the Park Police Officers earn within \$500 of the monthly salary maximum. As a result the 1% wage increase proposed by the Park district is appropriate and entirely in line with maintaining a competitive wage with these agencies.

The Union disagrees with the external comparability evidence the park district has chosen. External market comparisons demonstrate whether the employees are underpaid relative to their peers. Many are not. Much arbitral precedent has affirmed choosing the correct comparables. External comparisons are very important considerations when ascertaining a reasonable wage increase. The question of which agencies should comprise the external market comparison group for purpose of wage analysis is a question that should be left to the bargaining

process. In other words, if either party desires to change the comparison group, it should be negotiated at the bargaining table, contends the Union.

In this case the Stanton 5 and 6 are appropriate market comparison group. The parties have historically relied on Stanton 5 and 6 cities in negotiating wage increases, and arbitral precedent establishes the Stanton 5 and 6 cities as the appropriate external comparison group. The Union presented evidence at the arbitration hearing of the parties' historical reliance upon the Stanton 5 and 6 cities in negotiating wage increases for park police officers. See *LELS and Suburban Hennepin Regional Park District, Plymouth, Minnesota*, BMS Case No. 09-PN-858 (Kircher 2004); *LELS and Suburban Hennepin Regional Park District*, BMS Case No. 02-PN-1427 (VerPloug 2003). Further, contends the Union, the employer itself has relied upon the Stanton 5 and 6 cities, even without the union's urging. In 2008 the employer commissioned a wage study using Stanton 5 and 6 cities in order to determine whether the employees were competitively paid or underpaid within the comparable external market. The study revealed that park district police officers were underpaid relative to their peers.

The Park District contends that the Stanton 5 and 6 group metro counties are not analogous to the park district because they are not given the park district's unique focus on natural resources, which distinguishes their respective duties. Further, the Union selects one particular type of DNR Conservation Officer (the Special Investigations Officer) rather than conservation officers as a whole, whose salaries are more appropriate in the chart provided by the park district.

The District further argues that the Union confuses the issue by comparing salaries, which include some longevity pay, and others, which do not, without distinguishing between types of pay. The Union's external market comparables should be rejected says the District. External market comparisons are most helpful when they compare salaries that contain analogous information. The park district, at the request of the Union, rolled longevity pay into salary several years ago and does not deal with longevity pay separately. As a result, the type of salary comparisons suggested by the union, i.e. Stanton 5 and 6, are simply no longer comparable.

The Union contends that Stanton 5 and 6 cities are the appropriate market comparable because of the close geographic proximity to the park district. The park district's jurisdiction entwines and abuts many of the Stanton 5 and 6 cities. This results in the park district police

officers working side-by-side with the police officers employed by the Stanton 5 and 6 cities. Additionally, the employer's position description for park police officers establishes 13 "essential duties and responsibilities," which expressly include the duty to "provide mutual aid and assistance to other law enforcement agencies, as requested." The employer's own internal documents establish "active partnerships" with Stanton 5 and 6 cities, such as Plymouth, St. Louis Park, and Hopkins. The park district's inextricable presence among the Stanton 5 and 6 cities warrants the continued use of those cities as an appropriate comparable group for purposes of external wage analysis.

The Union's position for a 3% increase should be awarded, contends the Union, because the District's position will result in the bargaining unit's further loss in ranking among Stanton 5 and 6 comparable groups. The District's position for a 1% increase will result in the further loss in ranking for the bargaining unit. In 2016, the average increase in top wages among police officers in Stanton 5 and 6 group 2.75% resulting in an average top wage of \$6,751.11/month. If the District's position for a 1% increase is awarded the top wage of a park district police officer will be \$5,954.30/month, over \$855 per month below the market average. This is a downward departure from the bargaining unit's historical relationship with the Stanton 5 and 6 average. In 2008, the top wage of a park district police officer was only \$407.20 per month below average. In eight years, the gap between the park district officer's wage and the average market wage has more than doubled from 7.69% below average in 2008 to 14.52% below average today.

Awarding the District's position for a 1% increase, contends the Union, will further exacerbate this inequity in wages and fly in the face of arbitrator's general preference to award wage increases that do not result in a bargaining unit losing ground in its ranking among comparable agencies.

The Union strongly contends that the District's comparison group consisting of Washington County, the Minneapolis Park Board, Anoka County, Department of Natural Resources and Hennepin County is inaccurate and arbitrary. The District lists the wage of a Washington County Sheriffs Deputy at \$71,947.20 per year or \$5,995.60 per month. The Union notes that this figure is the 2015 wage, not the wage for the year 2016, which is the year in question in this arbitration. Although the Washington County deputies have not settled a contract for the year 2016, the county's last offer to the bargaining unit was to increase top

wages to \$6,365 per month. Based on this figure, the park district officers will still be \$410.70 below Washington County deputies should the park district's position be awarded.

Similarly, the District lists the top wage of the Hennepin County Deputy as \$68,515.20 per year or \$5,709.60 per month. Again, this is the wage for the year 2015 and not the relevant year in question. The county's last offer to the Hennepin County deputies bargaining unit was to increase top wages to \$5,852 per month in 2016.

The District's listed wage for Anoka County deputies is again inaccurate. The wage listed is \$70,491.20 per year or \$5,874.27 per month. This is the wage for the year 2015 and not for the 2016. The wage for 2016 is unknown because the parties have certified the issue to arbitrators. The wage listed for the Minneapolis Park Police is simply inaccurate, no matter what year's wage it purports to illustrate. The employer's comparison lists the top wage as \$71,596.72 per year or \$5,966.39 per month. This is not possible because the top wage for the Minneapolis Park Police was \$6,545 per month as recently as year 2014. Finally, the District reports a monthly wage of \$5,766.33 for the Department of Natural Resources, but does not indicate which DNR position is used in the comparison or what years' wage is being reported. The Union contends that this figure is highly unreliable, lacking both context and the ability to be verified as accurate. The Union can verify the monthly pay for DNR Special Investigations Officer, a position for which top pay is contractually established as \$6,523 per month in the year 2016. Because nearly all of the District's wage figures are inaccurate, its wage comparisons should be dismissed.

The Union also contends that the District's comparison is arbitrary. The park district superintendent testified that the three county agencies in its comparison were chosen as external market comparables because each of the counties have "natural resources," or "parks and recreation" type components within its sheriffs department operations. However, the District offered no evidence to support this assertion, such as assignment descriptions, lists of duties, etc. other than unfounded testimony. Even assuming what the park district superintendent testified is true, the remaining metro-area counties the District chose to exclude for its comparison (Dakota County, Carver County, Scott County, and Ramsey County) all have park and natural resource functions within each of its sheriffs departments. For example, the official website of the Dakota County Sheriff's Office describes the duties of deputies assigned to the Parks, Lakes and Trails as follows: "The Parks, Lakes, and Trails unit is comprised of one sergeant, two deputies, and

up to 16 park rangers. The unit is part of the patrol division and responsible for areas that require specialized patrol services.” The top wage for a deputy performing these duties in Dakota County is \$7,390 per month in 2016 or \$1,435.70 per month greater than top wage of a park district police officer based on this employer’s position. The conclusion that can be drawn from this information is that, when it comes from wages, county law enforcement agencies do not make any distinction between traditional patrol duties and deputies whose assignments include parks and natural resource functions.

The Union also contends that the shift in the employer’s policing philosophy does not justify lower wages for these police officers. Director of Public Safety Hugo McPhee offered “crime data per year” suggesting that lower crime levels justify the park district’s position on wages and its rejection of Stanton 5 and 6 comparison group. On the other hand, the Union’s evidence demonstrates that this testimony is merely anecdotal. The statistics from the Uniform Crime Report (a publication of the Minnesota Department of Public Safety) indicate that five arrests were made for Part 1 crimes committed in the park district in 2014. Part 1 crimes consist of murder, rape, aggravated assault, robbery, burglary, larceny, motor vehicle theft, arson, human trafficking, commercial sex acts, involuntary servitude, and cargo theft. 198 arrests were made for Part 2 crimes. Part 2 crimes consist of “less serious” crimes and include other assaults, fraud, stolen property crimes, vandalism, weapons crimes, prostitution and commercialized vice, various sex offences, drug crimes, disorderly conduct, driving while under the influence, and any number of other criminal offences. In total 203 arrests were made by park district police officers within the jurisdiction of the park district in 2014.

Publicly available data regarding the number of arrests made per officer in the 2014 contradict the employer’s assertion that park district police perform law enforcement duties at lesser frequency than “traditional” law enforcement agencies. For example, the city of North St. Paul has 11 patrol officers who made a total of 157 arrests in 2014. This averages out to about 14 arrests per officer. The city of Champlin has 13 police officers and made a total of 308 arrests in the year 2014. This averages out to be 23 arrests per officer. The city of Mendota Heights has 10 patrol officers and made 130 arrests, averaging out to 13 arrests per officer. The city of Northfield has 15 patrol officers and made 283 arrests in 2014, averaging nearly 19 arrests per officer. The city of Plymouth has 38 patrol officers and made 988 arrests in 2014 for a total 26

arrests per officer. Finally, the city of Golden Valley has 22 patrol officers and made 270 arrests in 2014 for a total of approximately 12 arrests per officer.

In comparison, the park district patrol officers are 11 in total. Based on the 203 arrests made in the year 2014, there were 18.45 arrests made per officer by the park district patrol officers. Rather than demonstrate the modest crime levels and arrest rates within the park district, this data demonstrates that park police are performing “traditional” law enforcement duties at the same frequency as other “traditional” law enforcement agencies, and in some cases are actually making more arrests per officer. This is further evidence that the park police are under paid relative to their Stanton 5 and 6 counterparts.

The union contends that this arbitrator should not conclude that park district police officers are less deserving of competitive wages simply because their training includes a focus on the niche, hybrid needs of the park district. The fact that park district officers are now more skilled in the areas of friendly, education-oriented interactions with the public is worthy of praise. But it does not warrant a complete dismantling of their ability to earn competitive wages as police officers. If anything, more law enforcement agencies, including Stanton 5 and 6 cities, could benefit from a shift to community-oriented policing practices. The fact that the employer’s philosophical shift has included changes to the police officers’ image does not take away from the core law enforcement duties and responsibilities of the park district police officers. It is undisputed that park district police officers must still be licensed police officers and maintain POST-licensure; must still carry a firearm and respond to emergency situations; must still enforce state laws and park ordinances; must still make arrests; must still provide proactive patrol of park district property; and must still ensure the safety and well-being of park visitors. A change of officers’ uniforms and placing greater emphasis on communication interactions with the public do not take away from the core law enforcement responsibilities of the park district police officers. There has been no significant departure from the officers’ fundamental law enforcement role that should preclude them from earning a fair and competitive wage, let alone justify a rejection of the Stanton 5 and 6 cities as the appropriate external market comparison group for this bargaining unit.

The most central question to this arbitration is the question of which agencies comprise the appropriate external market comparison group of the park district police officers. The Union contends that arbitral precedent requires the continued use of the Stanton 5 and 6 cities as the

comparable group, because the employer did not bargain the change in the composition of the group. The District has the burden to demonstrate a change is necessary and that its solution is the best. The District failed to meet this burden. It did not present any compelling evidence that would justify a departure from the Stanton 5 and 6 comparison. Because the wages of the park district police officer are below the average wage of the Stanton 5 and 6 cities, the Union's position of 3% general increase should be awarded.

D. Attraction and retention

Attraction and retention of employees are a component of the external market comparison. The evidence demonstrates that metro area law enforcement agencies have an attraction problem and its not going away. There is a shrinking pool of applicants. The evidence demonstrates that many metro cities and counties have faced the realities of the external market and the shrinking pool of candidates. They have significantly increased their wages above their respective internal wage patterns. For example, Columbia Heights, Lino Lakes, Plymouth, Roseville, Stillwater and South St. Paul recently instituted significant market adjustments to base wages and to longevity for their police officers. Deputy wages in Carver County, Scott County and Washington County increased by 4.5%, 6% and 6.2% in 2016. These wage adjustments will leave the park district police officer wages in the proverbial "dust" when it comes to attraction and retention of qualified candidates. The fact is the park district has not faced a recruitment problem because it has not advertised for a park police officer position since prior to 2009-2010. The District's good fortune should not bar consideration of the undisputed evidence of a serious growing attraction and retention issue in the metro area.

E. Cost of living and other economic factors

The Union contends that its wage increase proposal should be awarded to ensure the wages of the bargaining unit maintain pace with the increases in the cost of living. The Consumer Price Index (CPI) is used as an indicator of inflation, as an escalator of income payments. The CPI for the Midwest increased by 0.8% in last 12 months. This modest increase was greatly effected by lower gasoline prices. Looking beyond gas prices, one can see evidence of increasing costs of everyday life. Shelter costs have risen 2.7% over the last year, and medical care has increased 3.8%. Excluding food and energy, the CPI rose by 1.8% over this last year. The CPI has not been the only guiding factor used by the parties in determining wage increases. And it should not be a determinative factor in this decision.

F. Ability to pay

The cost of the Union's proposal is approximately \$15,364.56. The difference between the park district's 1% proposal and the union's 3% proposal is \$11,172.64.

According to the 2015 Comprehensive Annual Financial Report, the unassigned and available balance of unrestricted funds for the Three Rivers Park District is \$13,549,802. The cost of the Union's position is approximately 0.01% of this balance. The employer's assets exceeded this liability by \$200,147,451 in 2015.

Another indicator of the employer's financial health is its bond rating of Aaa from Moody's and AAA from Fitch. In 2014 ended with a \$736,000 surplus yielding a general fund unrestricted balance of \$17.7M.

The park district contends that while the \$11,172.64 is relatively small, given the park district's focus on and commitment to internal pay equity, it is most appropriate to evaluate the union's wage proposals not only as they affect the budget for the 11 park police officers, but as that wage proposal might affect the entire workforce. While the union's proposed increase might seem minor in the context of the 11 employees, it would prohibitive if scaled to all workers, including the maintenance and sergeants group whose wage negotiations are pending. The park district would need to evaluate the wages of the rest of the approximately 360 employees of the park district and thus will be looking at a cost in the park district of more than half million dollars, not the \$15,000 indicated by Union exhibit 1. It would increase the park district's budget by \$524,353.92 if all 360 employees of the park district received a 3% increase in 2016. As a result, a 3% wage increase would need to be offset by other measures, which may require property tax increases, fee increases to use the park, or healthcare offsets for employees. The park district's large fund balance is used to cover operations costs, such as payroll, and also contingencies, such as emergencies like a large uptick in healthcare costs or lower than projects tax revenue. In summary, the park district contends that other economic factors favor the adoption of the park district's final proposal of 1% general wage increase for Union employees. First, neither turnover nor retention is an issue. Second, the cost of living is not an issue. Third, to the extent that matters, the only agency reflecting the geographic diversity of the Three Rivers Park District is the DNR with whom the park district is more than comparative in terms of wages. Fourth, the parties have not arbitrated since 2005. With the change in the philosophy and focus, the history of using Stanton 5 and 6 as a comparable group is not relevant to the

present dispute. The substantial shift in focus of the work of the park district police officers calls for a completely comparable group. All of the above factors call for the adoption of the park district's final position of 1% wage increase for 2016.

DECISION AND RATIONALE

The critical considerations in this matter are: 1) internal pay equity and 2) external market comparisons. There is no question that the employer has the ability to pay these 11 police officers. While the CPI may provide some guidance to what constitutes a reasonable wage increase, it is not the only factor taken into consideration. In the past the CPI has not been the only guiding factor used by the parties in determining wage increases. The CPI should never be the only factor in making such a determination. The employer has the ability to pay an extra \$15,364.56 to these 11 officers. The difference between the park district's 1% proposal and the union's 3% proposal is \$11,172.64. Retention is not considered in this decision since the employer has not advertised for a park police officer position since prior to 2009-2010. Since then, the economy has become stronger and there is evidence that the economy will not falter in 2016-2017. See *Ramsey County and Law Enforcement Labor Services*, BMS Case No. 15-PN-916 (Miller 2016).

Internal Equity

Superintendent Carlson testified that the park district typically looks at the cost of living adjustments and consistently applies across the board raises based on this analysis. Superintendent Carlson testified that in 2016, the park district set the cost of living adjustment for non-organized park district employees at 1%. He also testified that per its practice of internal consistency he recommended to the Three Rivers Park District commissioners that the three other organizational units, the park district police officers, the patrol sergeants, the maintenance workers also receive 1% to maintain internal consistency. The patrol sergeants and the maintenance workers are awaiting the outcome of this arbitration to decide whether to proceed. Superintendent Carlson testified that the park district's ability to maintain internal consistency will largely depend on the outcome.

The park district has endeavored to keep all adjustments in line with the Consumer Price Index and across work groups and has maintained almost complete consistency for the last 10

years. This has been intentional and is part of a strategy to treat all employees fairly and consistently.

The Union agrees that arbitrators typically look to internal wage patterns as a key factor in determining an appropriate wage. But the Union argues that the Three Rivers Park District does not have an internal pattern for the 2016 wage increase. Neither the police sergeants nor the Teamster maintenance works have settled contracts for 2016. The only relevant evidence is the non-union employee wage increase of 1% for 2016. This, the Union argues, cannot be accurately characterized as a determinative internal pattern. The union contends that the argument that internal equity demands the application of a wage increase given to unrepresented employees must be rejected. Arbitrator Anderson wrote in *LELS v. Anoka County*, BMS 07-PN-0661 (2007):

I am also not convinced that, as in the situation herein where the largest group by far is non-union, the same wage increase imposed on the non-union employees is carte blanche to impose on all represented groups. To do so would virtually eliminate any need to ever negotiate wages. *Id.* at 27.

The Union further argues that while from an historical perspective, it appears that all three unions receive the same wage increases as unrepresented employees, that appearance is deceiving. In 2013, unrepresented employees, sergeants, and maintenance received a 2% wage increase to the top step, while the police officers received a 2% wage increase to steps 6-10. In 2014 unrepresented employees and sergeants received a 2% increase to the top step, while the police officers and maintenance received a 2% wage increase to all steps. In 2015, unrepresented employees received 1.5% wage increase while the unionized employees received 2%. In 2016 unrepresented employees at the lowest level of the Park District Salary Schedule received a \$2000/year increase in starting pay. Finally, several unrepresented employees at the top levels of the Park District Salary Schedule received gross salaries in excess of the maximum they were eligible to receive through merit and general wage increases from at least 2011-2015. Two unrepresented employees received wages in excess of the maximum authorized by the salary schedules. See Post-hearing brief of Union at 4.

The Union also argues that any arguable internal pattern is further weakened by the effect of the four different wage structures utilized by the four employee groups. The police officers utilize a step system; longevity was rolled in to their step system in 2004. Sergeants utilize a range system and move through the system on a merit basis. They also receive a lump sum

longevity payment at the end of the year. The maintenance employees use a step system and receive a lump sum longevity payment at the end of the year. The unrepresented employees utilize a range system and move through that system on merit basis. In summary, evidence submitted by the union established that no historical internal pattern exists for 2016 wage increases in the park district. *Id.* at 4-5.

The Union also argues that if an internal pattern existed, the arbitrator is not beholden to that pattern. Citing Arbitrator William Martin in *LELS and City of Mendota Heights*, BMS 01-PN-968 (2001):

While internal comparisons are important, they should not be controlling in every case. To do so would not be to evaluate negotiation, as the principles of PELRA require. Rather it would let employers to dictate wage increases whenever the union has for some period of time agreed to employer internal patterns. PELRA does not intend to replace negotiation with interest arbitration, but neither does it intend to use interest arbitration to freeze patterns set initially by employers.

Internal consistency is typically given great weight by arbitrators. But it is not the be all and end all of comparisons. External comparisons can also play a critical role in determining a fair wage increase.

External Comparables

If a particular union is compared with external agencies doing the same or similar work and those external market comparisons demonstrate that the employees are underpaid relative to their peers, much arbitral precedent has affirmed the importance of such comparisons in determining appropriate awards for wages. Even if that award upsets the internal consistency. So, if the park district police officers are not paid fairly compared with the market of other comparable police departments then that factor has great weight in determining a possible wage increase.

The question is: which agencies should comprise the external market comparison group for the purpose of this wage analysis.

The Three Rivers Park District contends that the park district's unique focus on natural resources, parks and recreation make the work of the park district police officers distinguishable from other municipal law enforcement agencies. The park district contends that its police officers engage in very different work than traditional municipal police departments. Further, in recent years, the park district has made a series of deliberate efforts to move away from

enforcement efforts and toward resource preservation and customer service efforts. See Post-hearing brief of Three Rivers Park District at 11. The District also argues that now in 2016 the primary task of park police officers are customer service, a high contact mindset, crime deterrence, and education. Today park police officers focus on ordinance enforcement rather than statutory enforcement, are specifically instructed not to duplicate services provided by other municipal departments, do not patrol during the night when parks are closed, and do not patrol at several of the outlying counties. Basically as Superintendent Carlson testified, the over-arching goal of the park district's park police officers is to provide public service and interact with the public and protect the park district's resources. *Id.* at 11. Land management, pollution control and civilian education are quite different than the duties assigned to municipal police officers. The District contends that there are now limited responsibilities related to serious crime situations. *Id.* at 12. Park District Chief McPhee, while not disputing that park police officers are required to be licensed peace officers, testified that his officers now are being trained for the environment, child endangerment, lost persons and skills building in water and recreation. There is a shifting nature of park police officers' responsibilities. As a result, the park district has selected the five agencies that it believes are most comparable in terms of the nature of the agency and the work performed by the agency at large. Agencies that focus on natural resources or parks and recreation law enforcement. The district has chosen Washington County, Minneapolis Park Board, Anoka County, Department of Natural Resources, and Hennepin County because these agencies do similar work, have similar duties and are most helpful in assessing the type of work performed by the park police officers. The district contends that its policing philosophy has changed in recent years. It wants its officers to focus on natural resources, parks and recreation law enforcement not the traditional law enforcement of comparable local police agencies. The agencies it has chosen focus on natural resources, parks and recreation law enforcement. Both Chief McPhee and Superintendent Carlson testified that the mission and responsibilities of the park district police officers have significantly changed in the decade-plus since previous arbitrations these two parties have had. When the relevant external markets chosen by the park district are used as comparables, the park district is at or above the salary minimums and maximums of the five comparables it has chosen. Again, these agencies share a focus on natural resources, parks and recreation law enforcement.

The Union disagrees with the choice of comparables the park district has made. Why? First, because historically the parties have relied on Stanton 5 and 6 cities as the appropriate external market comparison group. Arbitration precedent between these parties has established Stanton 5 and 6 as the comparable group between these parties. The employer did not attempt to bargain for a change in the comparison group. Second, Stanton 5 and 6 cities should remain as a comparison group because the park district police officers work in close geographic proximity to the officers in Stanton 5 and 6 cities. By using the employer's comparables, this bargaining unit will face loss in ranking among its historical comparable group. The Union contends that Stanton 5 and 6 cities should be used as the appropriate comparison group in this arbitration because Stanton 5 and 6 cities are established by arbitral precedent, geographic proximity and the basic essential duties and responsibilities. The position description, union exhibit #10A, is the same as it was in 2007. Its primary objective states "to provide for the public safety and for the protection of the park district properties and natural resources, to enforce, as applicable, park district ordinance and state laws, and to enhance park user experiences through assistance, information and education. As part of this the park district officer is still required to be a licensed police officer in this state of Minnesota and to work with firearms. The park district officer may be exposed to dangerous or hazardous situations."

The Union highlights that even using the employer's comparables the figures are inaccurate. For Washington County, the employer used the 2015 wage not the 2016 wage. For Hennepin County it also used the 2015, not the 2016 wage. For Anoka County, it again uses 2015 not the 2016 wage rate and for the Minneapolis Park Police, the District's comparison lists the top wage as \$5,966.39 per month yet this is not possible because the top wage for the Minneapolis Park Police was \$6,545 per month as recently as the year 2014. Post-hearing brief of Union at 12. Finally, the Union highlights that the \$5,766.33 for the Department of Natural Resources does not indicate which DNR position is used in the comparison or what year's wage is being reported. In other words, the union states that nearly all of the employer's wage figures are inaccurate for the external comparables it has chosen.

The Union also argues that the employer's comparison is arbitrary. Even assuming that their assertions are true related to the wages for the comparables that the employer's chosen, why did it exclude from its comparison Dakota County, Carver County, Scott County, and Ramsey County, all of which have park and natural resource functions within its sheriff's departments.

For example the top wage for a deputy performing similar functions as the park district officer is \$7,390 per month in 2016, or \$1,435.70 per month greater than the top wage of the park district police officer.

The Union also highlights that using the Uniform Crime Report, a publication of the Minnesota Department of Public Safety, shows that the crime levels in the Three Rivers Park District are substantial. Rather than demonstrate modest crime levels and arrest rates within the park district, the data demonstrated that park police are performing “traditional” law enforcement duties at the same frequency as other “traditional” law enforcement agencies, and in some cases are actually making more arrests per officer. This evidence shows that the park police are underpaid relative to their Stanton 5 and 6 counterparts.

The Union contends that the fact that park district officers are now more skilled in the areas of friendly, education-oriented interactions with the public while worthy of praise, does not warrant a complete dismantling of their ability to earn competitive wages. If anything, more law enforcement agencies could benefit from the shift to community-oriented policing practices. While it is true, there is a recent tendency within the entire law enforcement profession to focus more on policing practices that require to “get out” and interact with the public in more positive ways, it does not mean that the Three Rivers police officers have stopped being “traditional” police officers. It is undisputed that park district police officers must still be licensed police officers and maintain POST-licensure. They must still carry firearms and respond to emergency situations. They must still enforce state laws and park ordinances. They must still make arrests. They must still provide proactive patrol of park district property and they must still ensure the safety and well-being of park visitors. Neither a change in the color of the uniforms nor a greater emphasis on friendly interactions with the public change the core law enforcement responsibilities of the Three Rivers District Park police officers.

“As the union...asserted, the most central question to this arbitration is the question of which agencies comprise the appropriate external market comparison group....”

Arbitral precedent calls for the continued use of the Stanton 5 and 6 cities as the comparable group because the employer did not bargain a change to the composition of the group. The employer has the burden to demonstrate a change is necessary and that its solution is best. The employer failed to meet this burden. It did not present compelling evidence that would justify a departure from the historical comparables of Stanton 5 and 6 group.

Because the wages of the park district police officers are below the average wage of the Stanton 5 and 6 cities, the Union's position for a 3% general wage increase is awarded. Past bargaining history weighs in favor of the Union.

The fact that the Three Rivers Park District Police Officers now get a 3% wage increase for 2016 the other employees should get 3% increases simply to maintain internal consistency. The park district police officers were and would fall behind their external comparable group without this 3% increase. That may or may not be true with other groups employed by the Three Rivers Park District. While the District's attempt to maintain internal consistency is understandable, there are circumstances and times when a change is necessary for one particular unit due to external market comparable forces. This is one of those times for this specific group of employees.

August 16, 2016
Date

Joseph L. Daly
Arbitrator