

In the Matter of the Interest Arbitration Between

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The City of Blaine, Minnesota

And

**BMS Case #16-PN-0637**

Law Enforcement Labor Services, Inc.

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**Before:** Arbitrator Harley M. Ogata

**Date and Place of Hearing:**

August 10, 2016  
Blaine City Hall

**Date of Submission of Briefs:**

August 31, 2016

**Advocates:**

**For the City:**

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**For the Union:**

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The City of Blaine (the City) and the Law Enforcement Labor Services, Inc. (the Union) reached impasse over a number of issues in the collective bargaining agreement covering the licensed police officers represented by the Union. The parties selected the undersigned arbitrator from a list provided by the Minnesota Bureau of Mediation Services to resolve the impasse through interest arbitration. The arbitrator conducted a hearing on August 10, 2016, at which time both parties submitted testimony and other evidence each felt relevant to its position on each issue. The parties had a full opportunity to examine and cross examine witnesses and object to documents submitted.

Nine issues were certified under Minnesota law to be decided in this interest arbitration:

- |                           |   |
|---------------------------|---|
| 1. Duration               | Length of contract                              |
| 2. Wages 2016             | Amount of general increase for 2016             |
| 3. Wages 2017             | Amount of general increase for 2017             |
| 4. Wage Schedule          | Should the schedule be modified and how?        |
| 5. Wage Schedule          | Should a second tier plan be added to schedule? |
| 6. Health Insurance       | Employer contribution to cafeteria plan in 2016 |
| 7. Health Insurance       | Employer contribution to cafeteria plan in 2017 |
| 8. Detective Differential | Amount of increase, if any, for 2016?           |
| 9. D.O.G. Allowance       | Amount of clothing allowance, if any?           |

## **Issue 1.**

### **Duration Length of contract**

### **Position of the Parties**

The City seeks a one-year contract ending December 31, 2016. The Union requests a two-year contract ending December 31, 2017.

### **Award**

The arbitrator awards the City's position. The contract will be for a one-year duration, ending December 31, 2016.

### **Discussion**

In the interest of bringing some labor stability to this workplace, the arbitrator made every effort to award a two-year contract to the parties. For the following reasons, the arbitrator instead awards a one-year contract.

First, the health insurance increase or decrease for the second year of a two-year contract is unknown at this time. The parties need time to get the information needed to properly bargain this issue in the context of a whole agreement. The Union recognizes this dilemma and requests a reopener for these contributions only, or an award that increases contributions in 2016 and maintains that amount in the second year. This problem is further exacerbated by the distinct possibility that the City may change providers in 2017.

Second, internal and external wage comparisons are incomplete for 2017. There are no settlements for any of the bargaining units for the City for 2017, making an internal comparison not possible. Only 12 of the 23 entities in the former Stanton V have settled for 2017. The Union wanted to add more cities based on the City's "last offer" in bargaining, thus bolstering the number of comparable cities. The arbitrator agrees with the City that this would be improper because anything can happen in the course of bargaining, including up and down movement on the wage scale in the end game of negotiations.

Accordingly, the City's position is awarded on this issue and this contract will be in effect from January 1, 2016 through December 31, 2016.

## **Issue 2**

### **Wages 2016            Amount of general increase for 2016**

#### **Position of the Parties**

The City requests a 2% general wage adjustment for 2016. The Union stands at 3%.

#### **Award**

The arbitrator awards the Union's position of a 3% general wage adjustment for 2016.

#### **Discussion**

The parties are in agreement on the factors that the arbitrator must weigh in making a wage adjustment decision. Those factors include an employer's

ability to pay, internal wage comparisons, external wage comparisons, and other economic factors.

### **Ability to pay**

The parties are in general agreement that the City has the ability to pay if either proposal is awarded.

### **Internal Comparisons**

#### **Pay equity**

The parties advanced arguments at hearing and in their briefs regarding the pay equity act to support their respective proposals. Minnesota law requires:

In all interest arbitration involving a class other than a balanced class held under sections 179A.01 to 179A.25, the arbitrator shall consider the equitable compensation relationship standards established under this section [471.992] and the standards established under section 471.993, together with other standards established together with other standards appropriate to interest arbitration. The arbitrator shall consider both the results of a job evaluation study and any employee objections.

Minn. Stat. Sec. 471.992, Subd. 2 (2016).

In its brief, the Union essentially took the position that an award of either party's wage proposal would not put the City out of compliance with the act. The City did not take a contrary position.

However, the City made a number of arguments on this issue. In its hearing brief, the City forcefully argued why a recent arbitral decision concerning predicted pay, the pay report and its validity as indicator of internal wage comparables is not a valid comparison tool under these facts. Ramsey County

and LELS, BMS Case No. 16 PN-0020 (Lundberg) 2016. The Union argued that Lundberg's award is a valid tool and would support its position by comparing apples with apples in eliminating health insurance from the analysis. The arbitrator finds the cited decision to be inapposite to the instant case and that other indicators are more compelling.

In that case, the arbitrator found a compelling reason to grant a 3.2% increase on top of the general wage adjustment. First, the general wage adjustment awarded in that case was the employer's proposal. The increase granted was modest, but more in line with a great majority of the other units in that jurisdiction. Then, the arbitrator found that there were compelling reasons to give an equity or market rate adjustment. He found that the wages in the unit were the lowest in the proper external comparison group and lower than the predicted pay for the position within the employer's internal comparison.

Having already found for the employer on the general wage increases (which were comparable to the rest of the settled units within the employer's jurisdiction), the arbitrator made a market adjustment using the predicted pay shortage amount as the basis for the amount of award.

Pretty much none of that applies in the instant case. The arbitrator does not read the decision to call for a straight predicted pay analysis in making wage adjustments and finds no compelling circumstances here under which to use that rationale analytically.

## **Internal wage comparisons**

In establishing a one-year wage increase, this arbitrator finds that where, as here, all the other bargaining units have settled for a general wage adjustment of 3%, the same adjustment should be made in this interest arbitration, unless there are compelling reasons to deviate.

The City argues that there are five compelling reasons to deviate:

1. A wage pattern at the City should not be established by looking at a one year general increase.
2. The City's recent bargaining history shows there is not strong pattern bargaining.
3. The members of the present bargaining unit received greater increases than the other City employee groups in 2014 and 2015.
4. In comparing top pay, the police officers have received considerably greater increases than the other groups at the City since 2012.
5. The three percent (3%) general increase applicable to the Police Sergeant bargaining unit is not all "new money", but rather is reflective of the Police Sergeants giving up a prior economic benefit.

The City does not address these arguments individually, but the arbitrator will respond to each of the arguments otherwise made by the City in making its case that there are compelling reasons to deviate from the pattern.

First, it argues that a wage pattern should not be established by looking at one year only. Its position is that the Union had better increases than other bargaining units in the last two years of adjustments (2014, 2015).

In support of its argument, it charted how the "vast majority" of employees in the unit actually would receive .9% more than the Police Sergeants and 1.5% more than the public works units over the last three years (2014 - 2016) if the

arbitrator awards the City's position. If the arbitrator awards the Union's position, the City argues that the increases would be 1% more than the above.

This is where making internal comparisons can sometimes be difficult, especially where, as here, different units spread the pot available to them in different ways. If every unit simply took a straight across the board increase, percentage comparisons are more useful. This is further exacerbated by the City arguing that the arbitrator should compare the highest percentage gainers in the unit with the general increases in the other units over the last three years. The City could have used a figure based on its calculation of the percentage increase allocable to the entire police unit over three years. Such a calculation was undoubtedly done in bargaining and would have been more helpful here.

Where the parties agree to put the money each year is partly what separates collective bargaining units from non-bargaining units. To use only the highest percentage gainers as your comparison group makes a good point, but it's not the whole picture. This is true even where, as here, the clear majority of the employees meet that criteria.

The arbitrator agrees with the City that there has not been a strong system of pattern bargaining in the City. The City argues that it would be wrong, therefore, to apply that principle here. The arbitrator disagrees under these limited facts. The arbitrator is influenced by the fact that this is an award only covering one year and the year is almost over. Basically, this is a placeholder award and will require the parties to begin bargaining a successor agreement

right away. This award is a bridge to that end and awarding a 3% general increase serves that purpose, especially considering the rest of the award and the fact that the other bargaining units settled for a general increase in the same amount.

### **External comparisons**

The parties are in general agreement as to the comparison group to be applied here, although the Union made a case that it should be compared to Coon Rapids more heavily than the other members of the former Stanton V.

The arbitrator finds that the Stanton V consortium is a valid comparison group for this unit and that the Coon Rapids analysis does not change the arbitrator's viewpoint on how to apply the external comparables in this matter.

In a straight numbers analysis, the Stanton V settlements in 2016 averaged out to approximately 2.5%. External comparisons are very valid especially where the parties agree as to the comparison group as a baseline. In this regard, the City would have to accede to a minimum 2.5% general wage adjustment.

Finally, granting the Union's request for a 3% general wage adjustment will not do anything to its relative ranking within the former Stanton V. The City concedes this point in its post hearing brief at page 7. In fact, the parties agree that awarding either of the party's final positions would not change relative ranking in the group (City by City), which renders this analysis somewhat moot.

## **Recruitment and Retention**

The evidence is clear to the arbitrator that the City has a recruitment problem. The evidence shows that the City had 160 applicants for police officers in 2011, 121 applicants in 2015, and only 58 applicants in 2016, none of whom were hired. By this arbitrator's definition, this is a recruitment problem. This problem was exacerbated by bargaining in the last few years, which tended to favor the high volume of long-term employees over the low numbers of newer employees. This tended to elongate the scale, keeping newer employee wages low and high end wages competitive.

Conversely, the City does not appear to have a retention problem. With the wage scale as it is, once you get to three years, wages begin to be more competitive.

Other economic factors do not appear to affect this analysis either way. In the end, external wage comparisons suggest a 2.5% increase, while internal comparisons indicate a wage increase of 3% as discussed above. The arbitrator is mindful of the fact that this is a one-year award that expires in three months. With so little time remaining, the internal comparisons are given strong weight, notwithstanding the City's cogent arguments to the contrary.

### **Issue 3**

<b>Wages 2017</b>	<b>Amount of general increase for 2017</b>
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## **Position of the Parties**

The City seeks no increase in the second year. The Union seeks a 3.5% increase.

## **Award**

Neither party's position is awarded.

## **Discussion**

The arbitrator's ruling that this will be a one-year contract renders moot an award on any term for 2017.

## **Issue 4**

### **Wage Schedule Should the schedule be modified and how?**

#### **Position of the Parties**

The Union seeks a change in the schedule by increasing steps 4, 5, and 8 by 1% and adding 3% steps at 12 and 16 years under a schedule it submitted. The City opposes this change.

#### **Award**

There will be no change in the schedule.

#### **Discussion**

As indicated earlier, this award is basically a place holder award that will allow the parties to return to bargaining. This is the type of change that is better

suited to change via collective bargaining, not arbitral imposition. This type of change is rarely awarded in an arbitration decision, absent compelling reasons.

The union requests a schedule that would add 1% at current steps 4, 5, and 8 and add two new steps at 12 and 16 at a 3% adjustment.

This proposal shows why arbitrators are so reluctant to change wage schedules through arbitration. There is nothing in the record that would indicate how much this would cost in 2016. Even if there was information on the record regarding costing, the parties would then be arguing over numbers, costs, etc. These arguments are more suitable to collective bargaining, not arbitration. Finally, adding anything to the schedule would bring the costs well over the 3% general adjustment already awarded, bringing this unit out of parity with the other internal comparison units.

## **Issue 5**

### **Wage Schedule Should a second tier plan be added to the schedule?**

#### **Position of the Parties**

The City seeks to add a second tier to the schedule. The Union is opposed.

#### **Award**

No second tier will be added to the wage schedule.

## **Discussion**

The City seeks to add a second tier to the wage schedule. As proposed, it would not apply to any of the current employees. The second tier would smooth out the schedule such that steps would be more incremental with no large or small bumps. As indicated in the last issue, this is the type of change that is better suited to collective bargaining and not arbitral imposition, absent very compelling reasons. The employer's reasons, while thoughtful, are not of the overwhelming nature that would lead this arbitrator to disregard normal arbitration standards.

## **Issue 6**

### **Health Insurance Employer contribution to cafeteria plan in 2016**

#### **Position of the Parties**

The City proposes an increase in contributions to the cafeteria plan of \$30 per month. The Union seeks a contribution of \$100.

#### **Award**

The arbitrator awards an increase in contributions to the cafeteria plan of \$70.

## **Discussion**

The City and Union have negotiated a cafeteria plan for its employees. Health insurance is one benefit that can be run through the plan, but there are

many others as well. Health insurance tends to dominate contributions into such plans, so increases in insurances often cause a desire to increase contributions from the employer to the plan.

Here, the City had an average increase of \$140 across the board to its health insurance plans for 2016. It proposes a \$30 increase in contributions to the plan. None of the other bargaining units have settled this issue, but the City has imposed the \$30 increase on its largest employee group, which are the nonunion employees.

The arbitrator agrees that internal comparisons rule the day on health insurance contributions. However, there is no pattern in the City for 2016. The arbitrator gives very little weight to the argument made by the City that its imposed contribution on the nonunion employees provides the only comparable group and must be given great weight. This arbitrator will not establish a pattern solely on the amount that the City imposed on a group with no bargaining or other right to object or otherwise influence the outcome, absent compelling reasons. The fact that it is the only internal comparison to date is neither compelling nor persuasive. Discounting the nonunion group leaves no comparison group internally.

The City next argues that the arbitrator should look at the average increases over the last few years to determine an amount that would be consistent. Doing so leads to the conclusion that the City's \$30 proposal is the

same amount as that agreed to by the Union in the last two years. The problem with this argument is that the arbitrator doesn't have enough information to make a reasoned decision. In order to come to a rational decision, the total increase in premiums for 2014 and 2015 would have to be in the record. A raw number with nothing further fails to tell the whole story and is less than compelling.

The City argues that in practical effect, an award of an increase will cause tax issues for employees in the unit. To the extent that this is true, the consequences are minimal in comparison to not ordering an addition to the City's contribution.

The question here is how much of the increase was paid for by the City and the employees and how should the increase be split this year? This leads to the conclusion that the arbitrator should determine a fair amount on his own absent other helpful data. Under these circumstances, the arbitrator chooses to split the costs of the increase evenly between the City and the Union. The record indicates that the City's health insurance costs rose by an average of \$140 in 2016. Therefore, the award herein is for the City to increase its contribution to \$70 retroactive to January 1, 2016.

## **Issue 7**

### **Health Insurance Employer contribution to cafeteria plan in 2017**

#### **Position of the Parties**

The City proposes no increase in the plan contributions for 2017. The Union proposed either a reopener, or no further increase.

### **Award**

This issue is mooted out by the fact that this award only covers one year and does not apply to 2017.

### **Issue 8**

#### **Detective Differential    Amount of increase, if any, for 2016**

### **Position of the Parties**

The Union's position calls for a \$50 per month increase in the differential paid to detectives. The City's position is for no increase.

### **Award**

The City's position is awarded.

### **Discussion**

The arbitrator applies a similar analysis on this issue as was used on the two schedule changes proposed in Issues 4 and 5. The type of change, such as is being sought here, is better suited to the give and take of collective bargaining absent compelling reasons. The Union's proffered reasons are both fair and equitable, but they don't reach the level of compelling.

### **Issue 9**

#### **D.O.G clothing allowance.**

### **Position of the parties**

The Union proposes to add a uniform allowance of \$750 a year for those officers assigned to the Directed Operations Group (D.O.G). The City opposes the new proposal in its entirety.

### **Award**

The City's position is awarded.

### **Discussion**

To add a new provision to a contract, the arbitrator needs a very compelling reason to do so, over the objections of one of the parties. The Union provided testimony at the hearing in support of its position. The officer, Nate Hatanpa, gave a rational explanation of the need for the allowance. Further, he provided a good equitable argument for equal treatment with other personnel who have the allowance and do similar work for the City.

However, again, arbitrators are loathe to add new language to contracts absent some compelling circumstances. This is an issue that the parties need to take back to the table.

## Award

1. Duration                      Length of contract

**The City's position is awarded. There will be a one-year contract beginning January 1, 2016 and ending December 31, 2016.**

2. Wages 2016                      Amount of general increase for 2016

**The union's position is awarded. The general wage increase for 2016 will be 3%.**

3. Wages 2017                      Amount of general increase for 2017

**The one-year contract award makes this issue moot.**

4. Wage Schedule                      Should the schedule be modified and how

**The City's position is awarded. There will be no schedule modification as proposed by the Union.**

5. Wage Schedule                      Should a second tier plan be added to schedule?

**The Union's position is awarded. There will be no second tier added to the wage schedule.**

6. Health Insurance                      Employer contribution to cafeteria plan in 2016

**Neither position is awarded. There will be an increase in the City's contribution to the cafeteria plan of \$70 retroactive to the first of the year 2016.**

7. Health Insurance                      Employer contribution to cafeteria plan in 2017.

**The one-year contract award makes this issue moot.**

8. Detective Differential Amount of increase, if any, for 2016?

**The City's position is awarded. There will be no increase in differential paid to detectives.**

9. D.O.G. Allowance Amount of clothing allowance, if any?

**The City's position is awarded. There will be no D.O.G. uniform allowance added to the contract.**

Dated September 30, 2016

A handwritten signature in black ink, appearing to be "H. J. A.", written in a cursive style.

September 30, 2016