In the Matter of the Interest Arbitration Between

The County of Anoka, Minnesota

And **BMS Case #16-PN-0461**

Law Enforcement Labor Services, Inc.

Before: Arbitrator Harley M. Ogata

Date and Place of Hearing:

September 14, 2016
Anoka County Sheriff's office

Date of Submission of Briefs:

October 7, 2016

Advocates:

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The County of Anoka (County) and the Law Enforcement Labor Services, Inc. (the Union) reached impasse over a number of issues in the collective bargaining agreement covering the licensed deputy sheriffs 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 September 14, 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. The hearing record closed on October 7, 2016 upon the parties' submission of briefs.

The Commissioner of the Minnesota Bureau of Mediation Services certified 11 issues that remained at impasse and are properly before this arbitrator. The issues are:

1. Duration - Length of contract - Article 29

2. Wages 2016 - Amount of general increase, if any for 2016 - Article 23 and Compensation Plan

3. Merit Pay 2016 - Amount of merit increase for 2016? - Article 23 and Compensation Plan

4. Market adjustment 2016 - Amount of market adjustment, if any for 2016 - New provision

5. Wages 2017 - Amount of general increase, if any for 2017.

6. Merit Pay 2017 - Amount of merit increase, if any for 2017

7. Market adjustment 2017 - Amount of market adjustment, if any for 2017 - New provision

8. Step structure - Whether to change the starting step, the number of steps and/or amounts within the step system - Article 23 and Compensation Plan.

9. Pay Range 2016 - Amount of adjustment to pay range minimums and maximums, if any for 2016 - Article 23 and Compensation Plan

10. Pay Range 2017 - Amount of adjustment to pay range minimums and maximums, if any for 2017 - Article 23 and Compensation Plan

11. Letter Agreement - Should the Performance Based Range evaluation standards in the Letter of Agreement continue?

Issue 1

Duration - Length of contract

Position of the parties

The County seeks a one year contract ending December 31, 2016. The Union seeks a two year contract ending December 31, 2017.

Award

The arbitrator awards the Union's position. The contract in question will be for a two year duration beginning January 1, 2016 and ending December 31, 2017.

Discussion

The arbitrator notes that a one year contract would place the parties right back into bargaining a successor agreement that would be due in two months. In the interest of stable labor relations, a two year contract is awarded here. The arbitrator notes that there are no compelling reasons not to go to two years.

The economic forecast for the next year (2017) is no more undiscernible than most years when parties face collective bargaining for the future. There are no compelling issues outstanding internally that bring great unknowns to this table (like health insurance upheavals).

It is true that there is not a significant internal pattern that can be ascertained for the County in the second (or first) year. As will be discussed later, this is a case where external factors take precedence in this award. There are sufficient data externally to make a rational judgment looking forward to 2017.

Issues 2, 4, 5, and 7

2. Wages 2016 - Amount of general increase, if any for 2016 - Article 23 and Compensation Plan.

The County's position is for a zero percent general wage increase in 2016. The Union proposes a 2.5% increase.

4. Market adjustment 2016 - Amount of market adjustment, if any for 2016 - New provision.

The County proposes a zero percent market adjustment. The Union proposes a $1.50 market adjustment increase.

5. Wages 2017 - Amount of general increase, if any for 2017 - Article 23 and Compensation Plan.

The County proposes a zero percent general wage increase for 2017. The Union proposes a 2.75% general wage adjustment.

7. Market adjustment 2017 - Amount of market adjustment, if any for 2017 - New provision

The County proposes no market adjustment for 2017. The Union withdrew its proposal for a market increase in 2017.

Award

The arbitrator awards the County's position on Issues 2 and 5 resulting in a zero percent general wage increase for 2016 and 2017. The arbitrator awards a 2.5% market adjustment for 2016 and again in 2017 under issues 4 and 7.

Discussion

Under the Minnesota Pay Equity Act, arbitrators must consider:

> 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 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).

The parties agree that the arbitrator should consider four primary factors in making wage decisions in arbitration under the relevant statutory provisions: Internal wage comparisons, external wage comparisons, ability to pay and other economic considerations including the cost of living.

Ability to Pay

There is no contest here that the County has the ability to pay the Union's position at arbitration. However, the arbitrator agrees with the County that other considerations need to be considered.

The County argued that the economy is still so weak that no wage increase is justified in the interest of fiscal prudence. It cited two arbitration decisions from 2012 and 2013 to support its position. Economic conditions in 2106, while not robust, are much different than 2012-2013. For example, the economy was the number one topic in the Presidential race that year. The economy has hardly been discussed in this year's race. The increase awarded is within the County's ability to pay and prudent under the current economic conditions, given the wage disparities cited herein.

The County next made a strenuous argument that counties in Minnesota, and Anoka County in particular, have a strong need to toe the line on economic decisions at this time. It cites the lack of continued funding levels from the state while still being obligated to provide certain services at the same level as the reason for its levy increases in 2015 and 2016. The County ends this argument by stating that it has only budgeted for steps and a 2% increase in 2016 and that these fiscal decisions should be given great weight by the arbitrator, given the fiscal uncertainties the County is facing.

The arbitrator is sympathetic with this point but must also consider other factors in the decision-making process. First, the fact that the County did not budget for an increase in 2016 is not dispositive. If it were, that would obviate the need for collective bargaining or interest arbitration in the first place. Second, there might be other, compelling reasons to award an increase, considering the full record in this hearing. Third, the issues facing the County are no different than the issues facing any other county. The arguments made by the County were well made and on point on this issue. However, it never made any serious attempt to differentiate Anoka county from any other county.

Cost of Living and Other Economic Factors

The County correctly notes that this factor has historically been a lesser consideration in wage disputes. There is no compelling argument that has been presented under this issue that would alter the award herein.

Internal wage comparisons

At the time of the closing of this hearing, the only group within the County system that had a wage rate was the very large unrepresented, nonunion group that has wages imposed on it by the County. This arbitrator is not compelled by a comparison group consisting solely of nonunion employees, even where, as here, they make up 80% of the workforce. Otherwise, the County could simply impose a wage on its nonunion group early in every year and then claim maintenance of internal equity with the rest of the collective bargaining groups. The County needs to outline a compelling reason to keep an increase at that nonunion level, independent of an internal pattern argument.

The County's strongest argument in this regard concerns the deputies predicted pay relative to the other internal classes in the County. The deputies are $96.60 above predicted pay in accordance with the most recent pay equity report. The group is a male dominated class as that term is understood under the relevant statutes. Using predictive pay can be one factor to consider in making wage determinations, although it is not dispositive in and of itself. This factor favors the County's position on wages. The arbitrator will still look at many other factors in applying proper principles to a wage decision under these facts.

For example, the fact that there are no other bargaining units to make an internal comparison with, leads the arbitrator to rely more heavily on the external comparisons.

External Wage Comparisons

The parties have historically compared wages with Dakota, Scott, Ramsey and Washington counties. Only Scott County is unsettled for 2017 at this time. The County notes that if its position is awarded, it will result in a maximum pay at 10% below the average wages for the comparative group. It further states that this 90% underage is the "average historical mark."

The Union provided unrefuted evidence that the County was at 5.2% below the average top pay in 2014 and 5.7% below in 2015. There is no question that a zero percent increase in wages will move the county lower in the relative rankings in this group. Whether 10% is the "average historical mark" or not, there is no question that a 0% increase in 2016 and 2017 will drop the group well below their top pay rankings from the last two years and stick them firmly at the bottom.

The testimonies of Sheriff Stuart and Chief Deputy Miller were compelling on this point. Rather than give a cold statistical analysis, their testimony gave a “boots on the ground” accounting of what is happening in their labor market and how there is a great need for an increase in relative wages, not a decrease.

In the County system, the Sheriff is the elected “boss” when it comes to the Sheriff’s department. His Chief Deputy is next in line. By any measure, they are a part of the County management team. Indeed, Chief Deputy Halweg participated in the arbitration as part of the management team. Both testified unequivocally that sheriff wages needed to be increased.

They both cited a severe problem with recruitment, such that they were having a problem meeting the County’s need for law enforcement personnel. Currently there are nine vacancies in the department that they are trying fill. They both cited wages as being the issue, based on their real-life experience trying to fill positions. Sheriff Stuart testified unequivocally that he has a “recruitment problem” that is “hands down” attributable to wages that are not competitive. A ten percent vacancy rate that appears to be unable to be filled is an issue that should be shared and addressed by the County as well, before it becomes a public safety issue for the county.

Sheriff Stuart provided further testimony on the retention issue when he stated that he never thought the sheriff’s office would “become a training ground for cities like Fridley.” His testimony is further supported by the affidavits of the last six nonprobationary employees who left the sheriff’s office. Their attestations were uniform that they left for better pay and that the pay that they are now getting is significantly higher.

This arbitration will not result in the external wage disparity going away, but it will be one step toward that result. The rest is really up to parties and whether they can make a commitment toward that end through collective bargaining.

This award contains a zero percent increase in general wages, but includes a 2.5% increase in both years as a market adjustment. This is a perfect example of where a market adjustment needs to be made. It's clear that the salary range is not sufficient to attract qualified candidates for employment and there is a pattern of turnover that can be directly linked to established compensation levels. There will be a 2.5% increase across the board on the schedule (other than longevities) in both years of the contract.

Issues 3 and 6

Merit Pay in 2016 and 2017

Position of the Parties

The County proposes a 2% increase in 2016 and the same increase that will be implemented for the nonunion group in 2017. The Union proposes a 2% increase in 2016 and a 2% increase in 2017. In a language dispute, the County proposes that the increases be effective the first full pay period following January 1 of each year. The Union proposes that the effective date be January 1 of each year.

Award

There will be a 2% merit increase available in 2016. The language proposal of the County concerning the effective date is hereby adopted. There will be an additional 2% merit increase available in 2017, with the language of the County concerning effective date awarded. Finally, the County's language proposal concerning how a merit increase would be paid out if it is over the applicable range is rejected. The language in the contract will remain unchanged.

Discussion

The parties ended up in agreement on the amount of the merit increase in 2016. Both submitted 2% as their final positions for merit increase in 2016. The County's language proposal regarding the effective date of the increase is adopted here because it is the current language and no compelling reason to change was offered during the hearing process. This should be taken up in bargaining if the Union wants a change.

Similarly, the County's proposal on the language change to state that any amount of a merit increase that is above the applicable range top be paid as a lump sum is rejected. This is also a subject that should be changed through bargaining.

The County's position on the merit increase in 2017 was to defer to the amount that it will unilaterally set for its nonunion employees for that year. The County is currently in the budget process and that figure would be announced relatively soon. As stated earlier, what is imposed unilaterally on the nonunion group has minimal influence here. This 2% award would keep in step with amounts negotiated in 2014 and 2015.

Issue 8

Change the step structure

Position of the Parties

The County proposes to eliminate the first step. The Union wants no change in the contract.

Award

No Change.

Discussion

As stated previously, this arbitrator is reluctant to change language in a contract unless a party can show a compelling reason to do so. The County's reason for the change is to boost starting pay and help with the attraction problem. There are three problems with this proposal.

First, it doesn't address the retention issue identified by the Sheriff and others. Second, the 2.5% wage increase closes the starting pay gap from 83% of market average to 86% in 2016. The County's proposal would take the starting pay to 87%, but would do nothing in the second year. The award herein in the second year (which is less than two months away) would close the gap even further. Third, it does nothing to address the issue of hiring experienced deputies at a step other than at the bottom. The County has some discretion in this regard, given the testimony of Chief Deputy Halweg. Hallweg testified that steps two and three were inadequate to bring in some new recruits. Finally, this type of language change should be brought to the bargaining table where the County has failed to show a compelling need to enact it here.

Issues 9 and 10

Pay Range Adjustment

Position of the Parties

The County proposes no increase in the pay range maximum. The Union proposes an increase that would reflect the total amounts of general wage, merit and market adjustments.

Award

The maximum pay range will be increased by 4.5% in 2016 and 4.5% in 2017.

Discussion

The pay range maximum should accurately reflect the increases in pay for each year of the contract. To do otherwise would be to eventually turn the merit increases into a permanent bonus system, which would be a radical change in the contract. In this case, the increase of 2.5% in wages are inarguably an increase in each year of the contract. The merit pay increases arguably could not be included, since they are discretionary.

The Union provided unrefuted evidence that for the ten years since the Performance Based Range (except for 2013), the performance range maximum was increased by both general wage increases and merit pay potential increases. The County did not dispute this in its briefs.

Based on this finding, the maximum for the Performance Based Range will be increased by the 2.5% market adjustment and 2% for the merit increases granted herein for a total of a 4.5% increase in each year. Just to be clear, this increase in the range only reflects what has been awarded as wage and merit increases elsewhere in this award and does not result in any further costs to the County.

Issue 11

Letter of Agreement Concerning the Performance Based Evaluation Standards

Position of the Parties

The County is proposing to eliminate the Letter of Agreement from the contract. The Union opposes the change.

Award

The Union's position is awarded and the Letter of Agreement will remain in the contract.

Discussion

This is one of those head scratcher issues where an arbitrator wonders what is really going on. The County argues that it has adopted a new performance evaluation system that merely changes the language on the ratings system it desires to apply to all employees. The changes are relatively innocuous. The simple solution would be for the County to agree to send a new Letter of Agreement containing the new terms and include that letter in the contract. The fact that it has not or will not do this implicates there is more to this issue than meets the eye. This is commonly true with Letters of Agreement that are attached to contracts.

Interest arbitrators are reluctant to agree to changes in language because there could be unforeseen consequences. These issues are best left to the parties to negotiate.

Award

Issue 1. Duration - Length of contract - Article 29

The Union's position is awarded. There will be a two year contract beginning January 1, 2016 and ending December 31, 2017

Issue 2. Wages 2016 - Amount of general increase, if any for 2016 - Article 23 and Compensation Plan

The County's position is awarded. There will be a zero percent (0%) increase in general wages for 2016.

Issue 3. Merit Pay 2016 - Amount of merit increase for 2016? - Article 23 and Compensation Plan

The parties are in agreement on the merit pay issue for 2016. There will be up to a two percent (2%) performance based pay increase for those eligible in 2016. The County's language position is also awarded herein. The increase will be effective beginning the first full payroll period following January 1, 2016. Finally, the County's proposal to add language concerning how a merit increase would be paid out if it is over the top of the range is denied. The parties will continue under current language (which is silent on this issue).

Issue 4. Market adjustment 2016 - Amount of market adjustment, if any for 2016 - New provision

There will be a 2.5% across the board, market based adjustment for 2016, not including longevities.

Issue 5. Wages 2017 - Amount of general increase, if any for 2017.

The County's position is awarded. There will be a zero percent (0%) increase in general wages for 2017.

Issue 6. Merit Pay 2017 - Amount of merit increase, if any for 2017

There will be up to a two percent (2%) performance based pay increase for those eligible in 2017. The County's language position is also awarded herein. The increase will be effective beginning the first full payroll period following January 1, 2017. Finally, the County's proposal to add language concerning how a merit increase would be paid out if it is over the top of the range is denied. The

parties will continue under current language (which is silent on this issue).

Issue 7. Market adjustment 2017 - Amount of market adjustment, if any for 2017 - New provision

There will be a 2.5% across the board, market based adjustment for 2017, not including longevities.

Issue 8. Step structure - Whether to change the starting step, the number of steps and/or amounts within the step system - Article 23 and Compensation Plan.

The Union's position is awarded. The County's language proposal resulting in elimination of the first step is denied. Current language will continue.

Issue 9. Pay Range 2016 - Amount of adjustment to pay range minimums and maximums, if any for 2016 - Article 23 and Compensation Plan

The performance based range maximum is increased by 4.5% in 2016.

Issue 10. Pay Range 2017 - Amount of adjustment to pay range minimums and maximums, if any for 2017 - Article 23 and Compensation Plan

The performance based range maximum is increased by 4.5% in 2017.

Issue 11. Letter of Agreement - Should the Performance Based Range evaluation standards in the Letter of Agreement continue.

The Union's position is awarded and the Letter of Agreement will remain a part of the 2016-2017 contract.

Dated: November 7, 2016

Harley M. Ogata, Arbitrator