

IN THE MATTER OF ARBITRATION)	INTEREST ARBITRATION
)	
between)	
)	Sheriff Essential Unit
Dodge County, Mantorville,)	
Minnesota)	
-and -)	BMS Case No. 06-PN-0874
)	
Law Enforcement Labor Services,)	
Inc., Local Union No. 240)	September 29, 2006
)))	

APPEARANCES

For Dodge County

Susan K. Hansen, Attorney, Frank Madden & Associates, Plymouth, Minnesota
 Lisa Hager, Employee Relations Director
 Gary Thompson, Sheriff

For Law Enforcement Labor Services, Inc., Local Union No. 240

Dennis O. Kiesow, Business Agent
 Jeremy Gunderson, Steward
 Jeff Brumfield, Steward

JURISDICTION OF ARBITRATOR

Law Enforcement Labor Services, Inc., Local Union No. 240 (hereinafter referred to as the "Union" or "LELS") is the certified bargaining representative for all essential licensed employees hired by Dodge County (hereinafter referred to as the "County" or "Employer") in the County Sheriff's Department ("Department") in the classifications of Deputy, Sergeant and Investigator. This essential unit at impasse includes 21 employees or 11% of the County's total work force.

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The Parties are signatories to an expired Collective Bargaining Agreement which endured from January 1, 2004 through December 31, 2005.

The Parties entered into negotiations for a successor collective bargaining agreement. The Parties negotiated and mediated to no success. As a result, on April 11, 2006, the Bureau of Mediation Services (BMS) received a written request from the Union to submit the unresolved issues to conventional interest arbitration. On April 18, 2006, the BMS determined that the following issues were certified for arbitration pursuant to M.S. 179A.16, subd. 2 and Minn. Rule 5510.2930:

1. Duration - Length of Agreement (1 to 3 years) - Art. XXVI
2. Wages - Level of Wages 2006 - Appendix A
3. Wages - Level of Wages 2007, if Awarded - Appendix A
4. Wages - Level of Wages 2008, if Awarded - Appendix A
5. Clothing Allowance - Level of Employer Contribution and Plan Structure - Art. XVII
6. Court time and Call Back - Minimum Compensation - Art. XV
7. Shift Differential - Amount of Differential and Applicable Hours, if Any - (New)
8. Longevity - Amount of Longevity Pay, if Any - (New)
9. Field Training Officer Pay - Amount of Differential Pay, if Any - (New)

10. Wages 2006 - Modification to Wage Schedule Structure, if Any - Appendix A
11. Retroactivity - Retroactivity of Wages to January 1, 2006 - Appendix A
12. Union Security - Payment of Stewards for Negotiations - Article VI, Sec. 6.2
13. Discipline - Removal of Disciplinary Notices After 18 Months - Article X, Sec. 10.3
14. Hours of Work - Calculation of Compensatory Time in Hours Worked for Purposes of Computing Overtime - Article XIV, Sec. 14.2
15. Paid Time Off - Eligibility for Paid Retiree Health Insurance Benefits - Art. XXI, Sec. 21.1c

The Parties selected Richard John Miller to be the sole arbitrator from a panel submitted by the Minnesota Bureau of Mediation Services ("BMS"). A hearing in the matter convened on August 31, 2006, at 10:00 a.m. in the County Courthouse, 22 Sixth Street East, Mantorville Minnesota. The Parties were afforded full opportunity to present evidence and arguments in support of their respective positions. Pursuant to the statute and the agreement of the Parties, post hearing briefs were timely submitted by the Parties on September 19, 2006, and received by the Arbitrator on September 21, 2006, after which the record was considered closed.

All fifteen issues remain unresolved and will be discussed in the order they were presented at the hearing.

**Issue One: Duration - Length of Agreement
(1 to 3 years) - Art. XXVI**

POSITION OF THE PARTIES

The Union proposes a two year contract effective January 1, 2006 through December 31, 2007. The County proposes a three year agreement effective January 1, 2006 through December 31, 2008.

AWARD

A two year contract effective January 1, 2006 through December 31, 2007.

RATIONALE

While it is true that the County has negotiated three year contracts with all other bargaining units at the County, including Teamsters 320 Courthouse unit, Teamsters 320 Human Services unit, Teamsters 320 Dispatchers unit, IUOE Local 49 Highway unit and IUOE Local 49 Environmental Facility unit not all of these unit contracts endure during the same three period. For example, Teamsters 320 Dispatchers unit and IUOE Local 49 Highway unit have three year contracts for 2005-2007, while the other three units have three year contracts for 2006-2008. Thus, there is no consistent pattern with regard to effective or ending dates among all of the organized units.

The Parties have negotiated both two and three year labor agreements. Since December 31, 1997, when LELS became the

exclusive representative, two of the four labor agreements negotiated by the Parties have been two year contracts. The recently expired agreement was a two year. A two year agreement will follow that pattern.

The availability of data is also a critical factor in this case. Evidence presented by the Parties show a lack of available data for 2008, both internally or externally. The County has only set wages for non-union employees for 2006. Three of six bargaining units have not settled for 2008. In addition, there is virtually no external data beyond 2007. Only one of Economic Region 10 Counties has negotiated agreements for 2008.

The recent increased changes in the CPI and fluctuations in energy costs have created a sense of uncertainty when entering into an agreement for 2008. This could explain why external data is lacking in other jurisdictions.

The Union's position for a two year contract is more reasonable than the County's position for a three year contract. As a result, Issue Four with regard to wages for 2008 is no longer before the Arbitrator.

Issue Two: Wages - Level of Wages 2006 - Appendix A

Issue Three: Wages - Level of Wages 2007, if Awarded - Appendix A

Issue Ten: Wages 2006 - Modification to Wage Schedule Structure, if Any - Appendix A

**Issue Eleven: Retroactivity - Retroactivity of Wages to
January 1, 2006 - Appendix A**

UNION POSITION

The Union is requesting the current 2005 wage schedule structure be maintained and the rates be increased by 4% effective January 1, 2006, and 4% effective January 1, 2007. In the event a wage schedule structure modification is awarded, the Union requests the 60 month step and the 120 month step be changed to a 48 month step and a 60 month step for Deputies. For Sergeants and Investigators the current 36 and 60 month steps should be moved to 12 and 24 month steps.

COUNTY POSITION

Upon receipt of the Arbitrator's award add to the wage schedule structure a new 48 month step for Deputies, Sergeants and Investigators, move the 36 month step for Sergeants and Investigators to a 24 month step, and to align the Sergeants' wage rate with the Investigators' wage rate at the 60 month step.

A 2.5% general wage increase for 2006 effective upon receipt of the Arbitrator's award. Effective January 1, 2007, a 2.5% general wage increase.

AWARD

Effective January 1, 2006, add to the wage schedule structure a new 48 month step for Deputies, Sergeants and

Investigators, move the 36 month step for Sergeants and Investigators to a 24 month step, and to align the Sergeants' wage rate with the Investigators' wage rate at the 60 month step.

Once the above wage structural change is made by the County, the County shall grant a 3.0% general wage increase for 2006 effective January 1, 2006. Effective January 1, 2007, the County shall grant a 2.80% general wage increase.

RATIONALE

The County proposed modifications to the current 2005 wage schedule structure. Generally, changes to an existing wage structure requires a substantial burden by the proposing party. Arbitrators generally do not make changes to an existing wage structure unless the proposing party can show a substantial benefit to the other party. In this case, the Employer has met this heavy burden. The Employer's proposal to add a new 48 month step for Deputies, Sergeants and Investigators will provide these employees with the opportunity for step advancements at 4 years instead of 5 years. The new 48 month step is calculated as one-half the difference between the 36 month step and the 60 month step. The movement of Sergeants and Investigators from the 36 month step down to a 24 month step will provide these employees with the opportunity for step advancement at 2 years instead of 3 years. Finally, the alignment of the Sergeants' wage rate with

the Investigators' wage rate at the 60 month step by increasing the Sergeants' wage rate is fair and reasonable because both job classifications are evaluated equally at C-43 pursuant to the County's job evaluation system. This will benefit the four Sergeants.

Internal settlements among the jurisdiction's organized bargaining units are an important consideration, as required by the Minnesota Local Government Pay Equity Act ("LGPEA"). The LGPEA provides that "[i]n interest arbitration involving a class other than a balanced class...the arbitrator shall consider the equitable compensation relationship standards established by this section...together with other standards appropriate to interest arbitration." Minn. Stat. § 471.992 Sub. 2 (2004). The legislature has charged the Department of Employee Relations ("DOER") with the responsibility of ensuring compliance with the LGPEA. Minn. Stat. § 471.9981 (2004).

The evidence establishes that the County since at least 1989 has no history of a consistent wage increase pattern among organized County bargaining units and also non-union employees. In fact, this same inconsistency exists for those units that have settled for 2006 and 2007. For example, Teamsters 320 Dispatchers received an approximate 3% wage increase in 2006 (effective March 1), while other units (except IUOE Local 49

Environmental Facility unit and some in the IUOE Local 49 Highway unit) received lesser increases. Non-union employees only received 2% for 2006.

The same inconsistent pattern occurs in 2007 among County employees with IUOE Local 49 Highway unit employees receiving wage increases between 3-3.4%, Dispatchers at approximately 3% (effective March 1) and all other organized employees at 2.5% or less. There is no established wage increase for non-union employees in 2007. These inconsistencies for both 2006 and 2007 result in the Arbitrator having to place greater emphasis on external market data rather than replying upon internal settlements.

The Parties have proposed different comparability groups. The Union contends that the appropriate comparison group are those ten counties contained in Economic Region 10 (Fillmore, Freeborn, Goodhue, Houston, Mower, Rice, Steele, Wabasha, Winona and Olmsted). The Employer avers that the appropriate comparison group for Dodge County includes the counties of Fillmore, Houston and Wabasha, as established by Arbitrator James McClimon in County of Dodge and Teamsters Local No. 320, BMS Case No. 96-PN-1532 (1997). In this 1997 interest arbitration, which is the most recent interest arbitration proceeding between the County and the members of the Sheriff's Essential unit, the Union

proposed Economic Region 10 counties as the comparison group.

Arbitrator McClimon on page 41 of his award rejected that argument and stated:

Under the facts presented in this case the appropriate external comparable counties are Houston, Fillmore, and Wabasha. These are comparable counties within Region 10 because, excluding Olmsted County with a population of 112,570, and Freeborn County, which is not organized, the average population of the four (4) remaining organized contiguous counties is 39,958, which is more than twice the size of Dodge County's 16,180 population. Houston, Fillmore and Wabasha County populations are 18,630, 20,400, and 19,970, respectively. The four (4) organized contiguous counties are Goodhue, Mower, Steele, and Rice. The remaining Region 10 County is Winona with a 47,830 population.

It is true that the relevant circumstances have not significantly changed since 1997 with respect to the relative relationship of population increases among the Economic Region 10 counties (most have increased in population proportionately with Dodge County) and other financial differences between Dodge County and the other jurisdictions in Economic Region 10 (Dodge County's budget, expenditures, total market value, tax capacity, total housing units and number of full-time employees are substantially lower when compared to the counties in Economic Region 10). The Arbitrator, however, cannot rely solely upon the Arbitrator McClimon group, since only two of the three counties (Houston and Wabasha) have settled for 2007. Fillmore County has not yet settled for 2007.

For the Arbitrator to rely upon only two settled counties out of three in 2007 to resolve many of the outstanding issues is not prudent. This is too small of a sampling for comparison purposes. Smaller samplings tend to skew data. A better approach in this case to avoid the data being skewed is to rely upon all but one of the Economic Region 10 counties (which also contain the Arbitrator McClimon counties). This provides a more reliable sampling of counties for both 2006 and 2007. There are eight settled counties for 2006 (excluding Olmsted County). Olmsted County is not a valid comparison due to its extremely higher population than the other counties in Economic Region 10 (121,452 versus 34,282 - the average of the other counties in Region 10). There are five settled counties in Economic Region 10 for 2007, which is a better sampling than two under the Arbitrator McClimon group.

The average wage increase for 2006 for the settled counties in Economic Region 10 is approximately 3% and 2.80% for 2007. The awarded wage increases thus follow the settlement trend of the comparable counties. These percentage wage increases are necessary to maintain the wage relationship between Dodge County and the other comparable counties. The wage award results in maintaining the relative position of Dodge County to the other comparable counties which historically has been at least 90% of

the average at the minimum and maximum of the wage schedule among the Economic Region 10 counties.

The Arbitrator did not find any merit in the Employer's proposed comparability group referred to as the County Comparison Group. These counties consists of Brown, Clearwater, Hubbard, Kanabec, Lake, Meeker, Nobles, Pine, Redwood, Renville, Wabasha, and Waseca. This comparison group was developed by the County based on population, budget, county program aid, levy, tax capacity, county taxes, county taxes per person, number of full-time employees, and geographic location in the southern 2/3 of Minnesota in addition to metro influence. This proposed group does not compare as favorably as the Economic Region 10 counties which are geographically closer to Dodge County. There is no need to venture outside this geographic area to find other counties, when a sampling of comparable counties can be found closer to Dodge County in Economic Region 10.

Another consideration given to the wage award was the Consumer Price Index ("CPI"). The CPI is used as an indicator of inflation and as an escalator for income payments. The data issued by the Department of Labor show the Wage Earners for the Midwest Region had a CPI increase of 4% for 2005 and 3.5% during the first half of 2006. The CPI for all U.S. Cities increased 4% for 2005 and 4% during the first half of 2006. The wage award

recognizes, to a certain extent, the increase in the CPI under both indexes.

The County conceded that they have the ability to pay the wage increases proposed by the Union. The Union presented data showing the additional wage cost of the Union's proposed increase for 2006 and 2007 to be \$26,094.33 (without additional roll-up costs). Consequently, the wage award, which is lower than the Union's wage proposal, can be adequately funded without the County suffering any adverse financial harm. In fact, there is no evidence that the County cannot afford any other monetary increases that may be awarded to the Union with regard to other outstanding issues at impasse in this hearing.

The County's latest computer analysis filed with DOER shows full compliance with the LGPEA. A computer analysis of the Union's requested wage increases for 2006 and 2007 shows the increases will not affect the County's compliance with the LGPEA. This evidence was not refuted by the County. Obviously, the wage award, which is less than the Union's position, will not take the County out of compliance with the LGPEA.

The County's wage proposal for 2006 included language that the general wage increase granted for 2006 should have an effective date upon the receipt of the Arbitrator's award. The County offered no internal or external precedent in support

of their position. This is not surprising, since to award any effective date other than January 1, 2006 (first day of new contract), would be tantamount to punishing the Union for going to interest arbitration which is a right under state law for essential employees in this bargaining unit.

It must be remembered that essential employees are prohibited from striking. The legislature meant interest arbitration to be a replacement for a strike, without harm to essential employees. Most certainly, great harm would occur to essential employees if they pursued their legal right to interest arbitration and then have the awards be effective upon receipt of the Arbitrator's decision.

**Issue Five: Clothing Allowance - Level of Employer
Contribution and Plan Structure - Art. XVII**

CURRENT CONTRACT LANGUAGE

- 17.1 The Employer will provide the initial uniform to new employees. See addendum for list of articles. Following the completion of twelve (12) months of employment, employees will receive the clothing and maintenance allowance as set forth in Section 17.2.
- 17.2 The Employer will provide five hundred and fifty dollars (\$550.00) annually to replace and maintain articles of the uniform.

For employees not working a full calendar year, but a minimum of 120 hours in a six (6) month period, this amount will be adjusted on a pro rata basis. The allowance will be paid in two (2) equal installments in April and September.

- 17.3 Items damaged beyond reasonable repair in line of duty through no fault of the employee shall be replaced by the employer when accompanied by appropriate documentation.
- 17.4 In the event the County should determine a Ship's Store for uniforms would better serve the needs of the department, it will be established and a minimum of three (3) months notice will be given.

COUNTY POSITION

- 17.1 The Employer will provide the initial uniforms to new employees. Following the completion of twelve (12) months of employment, employees will receive the clothing and maintenance allowance as set forth in Section 17.2. The uniform allowance will be prorated for employees completing twelve (12) months of employment during the calendar year.
- 17.2 The Employer will provide \$600 annually in 2006 and \$625 in 2007 to replace and maintain articles of the uniform. Said amounts to be available for purchases the first of the calendar year. The clothing allowance system shall be effective January 1, 2007.
- a. Allowable purchases include, but are not limited to, the following:
- Uniform items
 - Uniform/work related accessories
 - Work related/job specific purchases
 - Footwear, to include winter boots
 - Logo clothing such as baseball-style caps, golf shirts, etc.
- b. Special duty officers, such as Investigators and SRO, will be permitted to purchase "civilian" clothing and accessories.
- c. Item such as firearms, ammunition, and cell phones shall not constitute approved purchases. Questionable purchases require the pre-approval of the Sheriff or designee with final approval of the

County Administrator. All expenditures for this uniform allowance must be defensible as proper uses of public funds to the State Auditors Office.

- d. Uniform allowance balances of less than \$100.00 may be carried over into the next calendar year. Carryovers of more than \$100.00 require the approval of the Sheriff or designee with final approval of the County Administrator.
- e. Upon termination of employment, all employees employed less than two years must turn in all uniforms and equipment. After two years, all equipment and the following uniform items must be turned in: parka, jacket, raincoat and dress hat.
- f. An original receipt along with a completed Request for Reimbursement form must be submitted for approval and reimbursement.

17.3 Items damaged beyond reasonable repair in line of duty through no fault of the employee shall be replaced by the employer when accompanied by appropriate documentation.

17.4 In the event the County should determine a Ship's Store for uniforms would better serve the needs of the department, it will be established and a minimum of three (3) months notice will be given.

UNION POSITION

17.1 The Employer will provide the initial uniform to new employees. See addendum for list of articles. Following the completion of twelve (12) months of employment, employees will receive the clothing and maintenance allowance as set forth in Section 17.2.

17.2 The Employer will provide six hundred and fifty dollars (\$650.00) annually to replace and maintain articles of the uniform. In 2007, the Employer will increase the allowance to seven hundred dollars (\$700.00) to replace and maintain articles of uniforms.

For employees not working a full calendar year, but a minimum of 120 hours in a six (6) month period, this amount will be adjusted on a pro rata basis. The allowance will be paid in two (2) equal installments in April and September.

- 17.3 Items damaged beyond reasonable repair in line of duty through no fault of the employee shall be replaced by the employer when accompanied by appropriate documentation.

AWARD

For 2006 maintain the current collective bargaining agreement language in XVII, Clothing Allowance and Maintenance, with the exception that the first sentence in Section 17.2 shall read as follows:

The Employer will provide six hundred and fifty dollars (\$650) annually to replace and maintain articles of the uniform.

Effective January 1, 2007, the following language is awarded:

- 17.1 The Employer will provide the initial uniforms to new employees. Following the completion of twelve (12) months of employment, employees will receive the clothing and maintenance allowance as set forth in Section 17.2. The uniform allowance will be prorated for employees completing twelve (12) months of employment during the calendar year.
- 17.2 The Employer will provide \$700 annually in 2007 to replace and maintain articles of the uniform. Said amounts to be available for purchases the first of the calendar year.
- a. Allowable purchases include, but are not limited to, the following:

Uniform items
Uniform/work related accessories
Work related/job specific purchases
Footwear, to include winter boots
Logo clothing such as baseball-style caps, golf shirts, etc.

- b. Special duty officers, such as Investigators and SRO, will be permitted to purchase "civilian" clothing and accessories.
 - c. Questionable purchases require the pre-approval of the Sheriff or designee with final approval of the County Administrator. All expenditures for this uniform allowance must be defensible as proper uses of public funds to the State Auditors Office.
 - d. Uniform allowance balances of less than \$100.00 may be carried over into the next calendar year. Carryovers of more than \$100.00 require the approval of the Sheriff or designee with final approval of the County Administrator.
 - e. Upon termination of employment, all employees employed less than two years must turn in all uniforms and equipment. After two years, all equipment and the following uniform items must be turned in: parka, jacket, raincoat and dress hat.
 - f. An original receipt along with a completed Request for Reimbursement form must be submitted for approval and reimbursement.
- 17.3 Items damaged beyond reasonable repair in line of duty through no fault of the employee shall be replaced by the employer when accompanied by appropriate documentation.
- 17.4 In the event the County should determine a Ship's Store for uniforms would better serve the needs of the department, it will be established and a minimum of three (3) months notice will be given.

RATIONALE

The award represents a fair and equitable compromise to achieve the goals of each Party. The award represents the Union's desire to increase the clothing allowance from the current amount of \$550 to \$650 for 2006 and \$700 for 2007. These increases were warranted since the average uniform allowance paid by the comparable counties in Economic Region 10 for 2006 is \$796 and increases to an average of \$857 for 2007. The County is still \$157 below the average for 2007.

There is also evidence that the cost of uniforms has continually been increasing. Keepers, a major supplier of law enforcement uniforms and equipment has provided information indicating uniforms and equipment prices increased from 5-10% for 2004, 3-10% for 2005 and 3-10% for 2006. The Union's requested increases is necessary to increase the currently low allowance and maintain at least the same or more purchasing ability recognized when the current \$550 was negotiated into the 2004-2005 contract.

The award also grants the County's desire for a receipt-based clothing allowance system effective January 1, 2007. A receipt-based clothing allowance system provides employees with "more bang for their buck" based on concerns employees expressed to the County regarding the tax implications of the existing

clothing allowance system. Under the existing system where the current \$550 allowance is paid as straight cash to employees, the allowance was designated as taxable income and employees paid approximately \$215 in taxes on the \$550 allowance. Based on the receipt-based clothing allowance system and a payment of \$700 for 2007, employees will realize a greater savings that was otherwise paid as taxes.

At the hearing, the Union claimed the County's proposed receipt-based clothing allowance system included "a lot of restrictions," and the Union expressed concerns regarding whether the long-johns, socks, and ammunition for an off-duty weapon carried on-duty would be carried. The awarded language does not automatically disqualify any item from purchase, such as firearms, ammunition and cell phones as proposed by the County. The language of the receipt-based clothing allowance system was awarded so as to be broad as possible while still satisfying the State Auditors requirement that public funds be utilized for a public purpose. Pursuant to the awarded language, officers are allowed to purchase uniform items; uniform and work-related accessories; work-related or job specific purchases; footwear including winter boots; and logo clothing such as baseball-style caps, golf shirts, etc. Investigators and the School Resource Officers are permitted to purchase "civilian" clothing and

accessories with the allowance. The proposed list is not exhaustive and questionable purchases simply require the pre-approval of the Sheriff or designee with final approval of the County Administrator. The Sheriff's statements at the hearing regarding the clothing items questioned by the Union were persuasive and demonstrate his willingness to be flexible in his approval of questionable purchases.

It is also noteworthy that a receipt-based clothing allowance system is contemplated in Section 17.4 of the current contract. This provision allows the County to establish a "Ship's Store" concept upon three months notice to the Union, and the County's final position satisfies this notice requirement.

**Issue Six: Court time and Call Back - Minimum
Compensation - Art. XV**

POSITION OF THE PARTIES

The Union is seeking to increase the current court time call back minimum from two hours at one and one-half (1-1/2) times the base rate of pay to three hours at one and one-half (1-1/2) times the base rate of pay. The County is opposed to changing the current court time call back minimum.

AWARD

Maintain the current court time call back minimum of two hours at one and one-half (1-1/2) times the base rate of pay.

RATIONALE

The court time or called to duty during off-duty call back minimum of two hours at one and one-half (1-1/2) times the base rate of pay was voluntarily agreed to by LELS in the first LELS contract in 1998. The provision has remained unchanged since 1998. This compensation is provided to employees to offset the cost of child care when called out, to adjust off-duty time for court appearance, or cancel family plans when called back to work.

The Union presented evidence regarding the child care cost implications of call backs. Specifically, child care costs amount to \$27 per day regardless of whether children are present for 3 hours or 10 hours. The Union claims that the current two hour minimum at the overtime rate of pay no longer covers the additional cost incurred by an officer required to report for duty on their time off. However, an Investigator at the 60 Month Step will receive over \$79 for the court time minimum based on the awarded wage increase of 3% for 2006. This is sufficient to cover the child care costs.

It is also significant to note that there was no evidence that the instances in which a unit member is required to make a court appearance during off duty time has increased since the 2004-2005 collective bargaining agreement which retained the

current court time call back minimum of two hours at one and one-half (1-1/2) times the base rate of pay.

The Union claims that internal comparisons support their position. Specifically, Highway Department employees receive a minimum of three hours for call outs during their off-duty time. However, it is important to note the call back minimum guarantees for Highway Department employees is three hours at the base pay rate and not at overtime rates. Also, Highway Department employees are typically called in to plow snow and the employees usually work for the full three hours. Finally, the Highway Department can send employees home after the work is done and there is no guarantee of overtime compensation.

Dodge County Dispatchers are also subject to potential duty related court appearances during off-duty time and other County employees are also subject to call backs. These employees may also have child care cost issues when called back to work during off-duty times. Dispatchers receive the same compensation for call outs as does this bargaining unit. No County employee receives a minimum of three hours at one and one-half (1-1/2) times the base rate of pay as proposed by the Union.

The external comparison data clearly supports the County's position. There are only two of the nine recognized counties in Economic Region 10 who provide court time call back in an amount

greater than two hours at the overtime rate of pay. Most of the comparable counties have two hours at the overtime rate of pay (1 1/2 times).

Issue Seven: Shift Differential - Amount of Differential and Applicable Hours, if Any - (New)

POSITION OF THE PARTIES

The Union proposes to establish a night shift differential as follows:

An employee working between the hours of 6:00 p.m. and 6:00 a.m. shall receive an additional one dollar (\$1.00) per hour shift differential for 2006 and one dollar and twenty-five (\$1.25) per hour in 2007.

The County is opposed to the addition of a new shift differential.

AWARD

There shall be no new shift differential for 2006. Effective January 1, 2007, an employee working between the hours of 6:00 p.m. and 6:00 a.m. shall receive an additional \$.30 per hour shift differential.

RATIONALE

As the proponent of this new provision, the Union has the burden of establishing a compelling reason for including a shift differential in the contract. The Union has met this strict burden of proof by establishing several valid reasons for the establishment of this benefit.

Shift differential compensation is generally granted to law enforcement positions because of the required 24 hour coverage. The additional compensation recognizes the requirement for employees to work undesirable hours during the evening and night shifts. Many law enforcement agencies have recognized the fact that night hours are undesirable for their employees. This recognition has resulted in the implementation of a shift differential for work between specific hours during the evening and night shift.

The County argued the issue was rejected by Arbitrator McClimon in the 1997 arbitration; therefore it should be rejected again. In the past arbitration, the Union argued longevity and shift differential were needed to supplement the below average wages paid by Dodge County. Arbitrator McClimon rejected using longevity or shift differential only to supplement the low wages when he found on page 50 of his award: "Consistent with the conclusion regarding longevity pay, and in the absence of comparability data or other compelling reasons to include shift differential as a new contract benefit, shift differential will not be awarded."

The record shows that times have changed since Arbitrator McClimon rendered his award about nine years ago. Comparability data shows all of the counties in Economic Region 10, with the

exception of Wabasha County pay shift differential. Thus, eight of the nine counties pay shift differential, including Fillmore and Houston (with each county paying \$.75 per hour) which constitute two of the three counties in the Arbitrator McClimon comparability group. This is overwhelming evidence in support of the Union's position.

Since the arbitration, research has found shift work has major affects both physically and mentally on the employee. Shift differential is no longer considered the inconvenience pay it was considered in the past... It is compensation for detriment... to the employee's family and social life and the increased risk of medical problems both physical and mental.

The County argued that even if the Union provided a compelling reason to add this benefit, the Union is required to present evidence of what the quid pro quo or trade off would have been at the bargaining table if the County had agreed to include this new provision in the contract. This argument is without merit.

In a recent Mille Lacs County arbitration, the Union was requesting the addition of payment for the P.O.S.T license fee. The County argued the benefit should not be awarded without a quid pro quo. Arbitrator Jeffrey Jacobs found:

Here the Union's argument has merit even though there was apparently no quid pro quo for this benefit. The County argued that there must in essence always be a trade-off for any benefit given by management under all circumstances. The simple answer is that there is no such requirement and that if such were true no new benefit which might be gained through negotiations or through the use of economic power would ever be granted or awarded. At times the equities of a certain benefits compel the award of it even though there was no concomitant trade-off for it.

Law Enforcement Labor Services v. Mille Lacs County, 02-PN-1153

(2003). The arbitrator awarded the Union's request for P.O.S.T license fees without a quid pro quo.

The average shift differential for the eight Economic Region 10 counties is approximately \$.43 per hour for 2006. There are only two settled counties for 2007, with Freeborn paying \$.40 per hour and Rice \$100 per month for shift differential pay. The start time for shift differential pay varies greatly between comparable counties. Several start before or after 6:00 p.m. The majority of the comparable counties end shift differential pay at 6:00 a.m. There are two counties that start and end at 6:00 p.m. and 6:00 a.m., respectively. All of the rest of the counties have a different start time or end time.

The Arbitrator's award for shift differential for 2007 is \$.30, with a start time of 6:00 p.m. and ending at 6:00 a.m. This is a good start in reaching the average of the comparability group. It is now left to the Union to negotiate with the County

toward reaching the average shift differential pay of the comparability group.

Issue Eight: Longevity - Amount of Longevity Pay, if Any - (New)

POSITION OF THE PARTIES

The Union is requesting a longevity pay schedule be implemented whereby the employees would receive 1% of base wage after 10 years, 2% after 15 years, 3% after 20 years and 4% after 25 years. The County is opposed to adding a new longevity schedule.

AWARD

No new longevity provision.

RATIONALE

The Union bears a heavy burden of providing a compelling reason for adding a longevity provision. This burden was not met by the Union with respect to internal and external comparability.

The vast majority of other County employees do not have longevity pay. The only unit of employees that receives longevity pay at Dodge County is the Local 49 Highway unit. However, the longevity pay for the 13 Highway employees is a flat cents per hour rate, with a maximum of \$.45 per hour after 20 years of employment. In addition, Highway employees have a base pay rate and no step structure, and the County agreed to provide Highway employees with a cents per hour longevity provision in

lieu of a step structure. Thus, there is little internal comparison data to support the Union's position for longevity payment.

The external comparison data does not support the Union's position. The majority of counties in Economic Region 10 do not have longevity pay. Moreover, for those four counties that provide longevity pay in Economic Region 10, it is generally a flat dollar rate rather than a percentage of base wages as proposed by the Union.

Issue Nine: Field Training Officer Pay - Amount of Differential Pay, if Any - (New)

POSITION OF THE PARTIES

The Union proposes to provide an employee assigned as a Field Training Officer ("FTO") to a differential of one dollar (\$1.00) per hour for all hours doing such duties. The County is opposed to the Union's proposal for FTO pay.

AWARD

No FTO pay.

RATIONALE

Previously, the field training duties were performed by the Sergeants. The County has recently send Deputies to receive specialized training as FTOs to assume these duties. The Union, thus, demands payment for those Deputies assigned to FTO duty.

In spite of the fact that Deputies will assume FTO duties there is little external comparison data to support the Union's position. The majority of the counties in Economic Region 10 do not grant FTO pay to their deputies assigned to this duty. Thus, the Union's position is not warranted at this time.

Issue Twelve: Union Security - Payment of Stewards for Negotiations - Article VI, Sec. 6.2

POSITION OF THE PARTIES

The County proposes to add the following language to Section 6.2 of the Contract:

The County will allow reasonable time off without pay to the designated stewards for the purposes of negotiations.

The Union proposes no change to the current contract language which reads as follows:

6.2 The Union may designate not more than two (2) employees from the bargaining unit to act as stewards and inform the Employer, in writing, of such choice.

AWARD

No change in the current contract language contained in Section 6.2.

RATIONALE

The current language of Section 6.2 is silent regarding the payment of stewards for contract negotiations. Stewards are currently not provided with compensation when negotiations are scheduled during the steward's day off. It only applies to

stewards on duty. No overtime compensation is allowed and it only occurs during contract negotiations every two or three years. The current language has been unchanged since prior to the Union becoming exclusive representative in 1998.

The County is proposing a change to the contract language and therefore have the burden of proving a compelling reason for the change. The County's argument that the other County labor agreements contain the proposed language is definitely not a compelling reason to add it to this agreement.

There is no evidence that the stewards have abused attending meetings during work hours and/or courthouse hours. The stewards always carry a form of communication ensuring they can receive and respond to calls from the Sheriff's Department that require immediate attention.

Law enforcement duties are unique and require a different benefit from other organized units. The schedules and duties required of law enforcement officers definitely subjects the stewards to a loss of pay much more than any other employees working five days a week.

The County's argument the language is supported by external comparability is without merit. All of Economic Region 10 counties, with the exception of Wabasha and Houston counties, have no language addressing this issue. The norm for law

enforcement units do not require stewards to go off the clock for negotiations.

The County failed to provide compelling reasons for removing this benefit from the Stewards, therefore the Union's position was awarded.

**Issue Thirteen: Discipline - Removal of Disciplinary
Notices After 18 Months - Article X, Sec. 10.3**

POSITION OF THE PARTIES

The Union proposes to maintain the current contract language in Section 10.3 as follows:

10.3 Written reprimands, to become part of an employee's personnel file, shall be read and acknowledged by signature of the employee. Employees may request the Union to receive a copy of such reprimands and notices of suspension and discharge. Such information, more than eighteen (18) months old, may not be used for promotional evaluation or disciplinary action and will be removed unless the original signed letter of discipline indicates otherwise.

The County proposes to maintain the current language in Section 10.3, with the exception of eliminating the last sentence as follows:

Such information, more than eighteen (18) months old, may not be used for promotional evaluation or disciplinary action and will be removed unless the original signed letter of discipline indicates otherwise.

AWARD

Maintain the current contract language in Section 10.3 of the current contract.

RATIONALE

The County is proposing the change to the contract language contained in Section 10.3 and therefore bears the burden of providing a compelling reason for the change.

The County argues that the current language of Section 10.3 is potentially inconsistent with the spirit of the Minnesota Data Practices Act and the presumption of openness established by that law. There was no compelling or convincing evidence produced by the County of any potential or real violation of the Minnesota Data Practices Act with regard to the retention of Section 10.3.

The County contends that the language in Section 10.3 may create potential difficulties in the County's defense of sexual harassment or discrimination allegations. This is speculation since there is no evidence of any difficulty in the past. The current language provides the issuing supervisor the option to determine if the document will or will not be removed.

The County's argument that other County labor agreements contain the proposed language is not a compelling reason to remove the language from the agreement. These other County employees are not licensed law enforcement officers. Law enforcement officers are constantly judged by "20/20 hindsight" and subjected to frivolous complaints and charges from the public. Some complaints result in minor discipline which may not

be justified. The language in Section 10.3 provides a reasonable means to remove minor discipline from the officer's personnel file that could otherwise jeopardize the officer's eligibility for promotions or opportunities with other law enforcement agencies.

The language in Section 10.3 originated from negotiations many years ago, prior to LELS becoming exclusive representative in 1998. The language was placed into the agreement years ago by the Parties through the give and take process of negotiations. If it is to be removed it should be accomplished by the same give and take.

Issue Fourteen: Hours of Work - Calculation of Compensatory Time in Hours Worked for Purposes of Computing Overtime - Article XIV, Sec. 14.2

POSITION OF THE PARTIES

The Union's position is no change to the current language in Section 14.2 as follows:

- 14.2 Overtime. Work performed by employees under the following conditions shall be considered overtime.
- a. All hours in excess of 80 hours per pay period shall be compensated at the rate of one and one-half (1 1/2) times the employee's regular hourly pay rate.
 - b. Compensatory Time Off. All hours worked in excess of a 80 hour pay period shall be compensated in cash at the rate of one and one-half (1 1/2) times the employee's regular hourly rate or in

compensatory time off as set forth herein.
Compensatory time off shall:

1. Be earned like overtime.
2. Be accrued to a maximum of sixty (60) hours and be allowed to maintain 60 hours.
3. Be requested at the employee's option instead of overtime pay with the final decision being at the discretion of the Sheriff.

Compensatory time off shall be taken and used only with the prior approval of the Sheriff. The employer will keep and record individual compensatory time earned and taken.

Under no circumstances may compensation be paid more than once for the same hours under any provisions of this agreement.

The County proposes to add the following language to Section

14.2:

14.2. To be counted as hours worked for the purposes of computing overtime, all compensatory time off requests shall be approved by the Sheriff or designee prior to use. Compensatory time off request of two (2) shifts or less shall be submitted to the Sheriff or designee at least 24 hours in advance. All other requests shall be submitted to the Sheriff or designee at least three (3) days in advance. The notice requirements in this section only apply to compensatory time taken before a full shift. The notice requirements shall not apply to compensatory time taken for funerals.

AWARD

Maintain the current contract language in Section 14.2.

RATIONALE

In the past, LELS unit members have been allowed to count compensatory time and PTO as hours worked for purposes of

calculating overtime. The County proposed limited changes to Section 14.2 in an effort to provide the Sheriff's Department administration with some additional tools to control the cost of overtime.

The County is proposing the change to the contract language and therefore assumes the burden of providing a compelling reason for the change. This burden of proof was not sustained by the Employer. The County already has numerous ways to control overtime costs. First, overtime must be authorized by the Sheriff's Department administration. Second, compensatory time in lieu of overtime compensation is subject to a compensatory time bank cap of 60 hours and the approval of the Sheriff's Department administration. Finally, the use of compensatory time is subject to approval of the Sheriff or designee. Thus, another tool such as proposed by the County that prevents officers from receiving just and equitable compensation for extra hours is not needed.

The record was devoid of any abuse by officers in the use of compensatory time. Currently, the Sheriff or designee has the authority to authorized compensatory time off on the basis of individual and departmental needs. The setting of specific notice requirements takes away the Sheriff's discretion to honor special needs of the officers.

**Issue Fifteen: Paid Time Off - Eligibility for Paid Retiree
Health Insurance Benefits - Art. XXI, Sec. 21.1c**

POSITION OF THE PARTIES

The Union proposes to maintain the current contract language in Section 21.1c as follows:

21.1.c. Retiring Employees are eligible to continue health benefits under the following conditions after retirement if they have applied for and will receive retirement benefits from PERA and/or Social Security. The Employee must have completed 15 years of employment in the Sheriffs Department for five years of continued benefits. The Employee will be eligible to receive these benefits for the years indicated above or until Age 65 whichever comes first. These benefits will be provided in a manner equal to current retirees of the County (core plan). Retirees will be subject to any changes in costs or benefits which affect other Dodge County employees.

The County proposes to add the following language to Section 21.1c:

This provision shall not apply to employees hired after January 1, 2006.

AWARD

Maintain the current contract language in Section 21.1c.

RATIONALE

The County failed to demonstrate a compelling reason for taking away the benefit of retiree health insurance from officers hired after January 1, 2006. Thus, they have not met their burden of proof.

While it is true that the County's proposal to limit the County funded retiree health insurance benefit to current employees hired prior January 1, 2006, does not negatively impact current LELS employees, this benefit is extremely important to current officers as well as officers hired in the future. Law enforcement officers are permitted by PELRA to retire with full benefits at the age of 55 because of the nature of their job. The cost of insurance from retirement until the availability of Medicare at age 65 has forced retirees to continue working or go without insurance if coverage is not available from a spouse.

The County is attempting to eliminate this important benefit for employees simply because the provision is not in the labor agreements with other County employees, nor is it in the contracts of Economic Region 10 counties. A change of this magnitude must be made at the bargaining table and not in arbitration, where the Parties can trade economic offers.

Both the Union and Employer representatives are to be complimented on their professional and courteous conduct at the hearing and the comprehensiveness of their oral and written presentations.



Richard John Miller

Dated September 29, 2006, at Maple Grove, Minnesota.