

IN THE MATTER OF ARBITRATION ) INTEREST ARBITRATION  
 )  
 between )  
 )  
 Goodhue County, Red Wing, )  
 Minnesota )  
 ) BMS Case No. 06-PN-0614  
 -and- )  
 )  
 Law Enforcement Labor )  
 Services, Inc., Local )  
 No. 78 (Detention Deputies/ )  
 Dispatchers Unit) ) November 27, 2005  
 ))

**APPEARANCES**

**For Goodhue County, Red Wing, Minnesota**

Susan K. Hansen, Attorney, Frank Madden & Associates, Plymouth,  
 Minnesota  
 Melissa Cushing, Human Resources Director  
 Scott McNurlin, Chief Deputy, Sheriff's Office

**For Law Enforcement Labor Services, Inc., Local No. 78**

Kenneth Pilcher, Business Agent  
 Robert W. Dirks, Business Agent  
 Tom Carroll, Steward  
 Denise Mintu, Committee  
 Shawn Whipple, Committee  
 Jennifer Todd, Committee

**JURISDICTION OF ARBITRATOR**

Law Enforcement Labor Services, Inc., Local Union No. 78  
 (hereinafter referred to as the "Union" or "LELS") is the  
 certified bargaining representative for all essential non-  
 licensed employees hired by Goodhue County (hereinafter referred  
 to as the "County" or "Employer") in the County Sheriff's

Department in the classifications of Detention Deputies and Dispatchers.

As part of the County's full range of services, it operates both a Detention Center and a Dispatch Center. The approved capacity for the County Detention Center is 154 beds and is staffed around the clock by 38 Detention Deputies. The Dispatch Center is staffed around the clock by 10 Dispatchers. The Union is the exclusive representative for these 48 employees.

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

The Parties entered into negotiations for a successor contract effective January 1, 2006. The Parties negotiated and mediated to no success. As a result, on May 8, 2006, the Bureau of Mediation Services ("BMS") received a written request from the Union to submit the unresolved issues to conventional interest arbitration. On May 11, 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 - What Shall The Term of The Contract Be? - Art. 28
2. Wages - Amount of Wage Increase in 2006 - Appendix A
3. Wages - Amount of Wage Increase in 2007, If Awarded - Appendix A

4. Wages - Amount of Wage Increase in 2008, If Awarded - Appendix A
5. Insurance - Amount of Employer Contribution in 2006 - Art. 17
6. Insurance - Amount of Employer Contribution in 2007, If Awarded - Art. 17
7. Insurance - Amount of Employer Contribution in 2008, If Awarded - Art. 17
8. Holidays - Amount of Compensation For Holidays - Art. 18
9. Overtime - Overtime Rate for Employees Working on Holidays - Art. 12
10. Vacation - Amount of Vacation Based on Years of Service - Art. 14
11. Shift Differential - Amount of Compensation for Shift Differential - Art. 27
12. Compensation - Amount of Compensation for Working Out of Class - Art. 21
13. Sick Leave - What Shall the Sick Leave Accrual Rate Be? - Art. 15
14. Wage Retroactivity - When Shall Wage Increase be Effective? - NEW
15. Insurance Retroactivity - Shall the Employer's Insurance Contribution be Retroactive? - NEW
16. Uniform Allowance - Amount of Uniform Allowance - Art. 20
17. Longevity Pay - Amount of Longevity Pay - Appendix A

Prior to the commencement of the arbitration, the Union withdrew its final position on the issue of shift differential (Issue #11), the County withdrew its final position on the issue

of uniform allowance (Issue #16), and the Parties agreed to a clean up language change on the longevity pay provision (Issue #17). Thus, those three issues are no longer at impasse and will not be discussed by the Arbitrator.

The Parties selected Richard John Miller to be the sole arbitrator from a panel submitted by the BMS. A hearing in the matter convened on Tuesday, October 31, 2006, at 10:00 a.m. in the Administration Conference Room on the third floor at the County Government Center, 509 West Fifth Street, Red Wing, 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 Tuesday, November 14, 2006, and received by the Arbitrator on Thursday, November 16, 2006, after which the Arbitrator declared the record to be closed.

**ISSUE ONE: DURATION - WHAT SHALL THE  
TERM OF THE CONTRACT BE? - ART. 28**

**POSITION OF THE PARTIES**

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

**AWARD**

A one year agreement, effective January 1, 2006 through December 31, 2006.

**RATIONALE**

Even though the Employer has voluntarily settled with four other County bargaining units (AFSCME Clerical/Maintenance/Highway unit, LELS Jail and Dispatch Sergeants unit, LELS Patrol Deputies unit and LELS Patrol Sergeants unit) for 2006-2008 and the Teamsters Public Works unit for 2007-2008, the Parties have a history of collective bargaining agreements beginning in 1982 through the current agreement that have never been three years in length. In fact, the current agreement that expired on December 31, 2005, was for only one year. Thus, past bargaining history supports the Union's position for a one year contract.

While a multiple year contract is usually more desirable to avoid immediate resumption of collective bargaining, a one year contract will provide the Parties with an immediate opportunity to resolve at the bargaining table the significant issues confronting them, particularly the contentious disputes concerning the compensation of the Detention Deputies and the conflict over insurance benefits.

The Public Employment Labor Relations Act states that "[i]t is the public policy of this state and the purposes of sections

179A.01 to 179A.25 to promote orderly and constructive relationships between all public Employers and their employees." Minn. Stat. §179A.01 (2005). The Union assigned a new Business Agent (Kenneth Pilcher) to service this local. He replaced Chuck Bengtson who superbly serviced this unit for many years. A one year agreement will provide an opportunity for Mr. Pilcher to develop strong relationships with both the local members and the Employer, as was the case with Mr. Bengtson. A three year agreement would not be consistent with public policy. The Parties need a one year agreement to provide an immediate return to the bargaining table in order to build a constructive relationship which is the articulated goal of PELRA.

Another important consideration utilized by interest arbitrators in establishing the duration of a contract is the availability of valid external settlement patterns. Such information is lacking in the instant case and supports the awarding of a one year agreement. The Union's proposed comparability of the "Big Jail" group of fifteen counties has only five settlements for 2007. The Region 10 comparison group of 11 counties (which includes Goodhue County), proposed by the Employer as the appropriate comparability group, has only four settlements for 2007. There is only one economic settlement for 2008 in the "Big Jail" group of counties. Clearly, there is

insufficient information on which to base economic awards beyond one year.

As a result of awarding a one year agreement for 2006, Issues #3, 4, 6, and 7 certified at impasse by the BMS for 2007 or 2008 will not be awarded or discussed by the Arbitrator.

**ISSUE TWO: WAGES - AMOUNT OF WAGE INCREASE  
IN 2006 - APPENDIX A**

**ISSUE FOURTEEN: WAGE RETROACTIVITY - WHEN  
SHALL WAGE INCREASE BE EFFECTIVE? - NEW**

**POSITION OF THE PARTIES**

The Union proposes a general wage increase of 5% retroactive to January 1, 2006. The County proposes a general wage increase of 2.5% for 2006 which shall be effective upon receipt of the Arbitrator's award with no retroactivity.

**AWARD**

A general wage increase of 2.5% for 2006 effective January 1, 2006.

**RATIONALE**

There are four well-recognized criteria in interest arbitration for deciding the wage issue. They include the employer's ability to pay, internal comparables, external comparables and the changes in the cost-of-living ("CPI").

The County is not making an "inability to pay" argument. However, the vast majority of the items at impasse have real

financial implications not only to this local but also to other unionized employees and non-union employees in the County. Consequently, the consideration of financial prudence needs to be given some weight by the Arbitrator in the economic issues at impasse.

Clearly, the County can adequately afford the awarded general wage increase of 2.5% for 2006, since this is the Employer's position. The County could also adequately fund the Union's position of 5% without suffering devastating effects upon their overall financial condition.

The Minnesota's Local Government Pay Equity Act ("LGPEA") makes clear that internal equity is an important wage consideration. "In 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, subd. 2 (2005).

In the present case, the Detention Deputies are a balanced class and the Dispatchers a female dominated class. The LGPEA provides that "[i]n interest arbitration for a balanced class, the arbitrator may consider the standards established under this section and the results of, and any employee objections to, a job evaluation study, but shall also consider similar or like

classifications in other political subdivisions." Minn. Stat. § 471.992, subd. 2 (2005).

The legislature directed the Department of Employee Relations ("DOER") with the responsibility of ensuring compliance with the LGPEA. Minn. Stat. § 471.9981 (2005).

To ensure compliance with the LGPEA, the legislature requires jurisdictions to file reports every five years. DOER has developed computer software to statistically measure equitable relationships and determine if a given jurisdiction is in compliance. DOER, Guide to Understanding Pay Equity Compliance and Computer Reports, p. 1 (2005). Based upon the results of the computer analysis of each jurisdiction's report, DOER makes the determination whether or not the jurisdiction is in compliance with the LGPEA.

The County's latest internal equity analysis filed with DOER in early 2003 shows full compliance with the LGPEA. The Union also has the same DOER software. A computer analysis of the Union's requested wage increase for 2006 of 5% shows the increase will not affect the County's compliance with the LGPEA. Obviously, the awarded wage increase of 2.5%, which is lower than the Union's proposal, would also be in compliance.

Since the County's compliance with the LGPEA exists even under the Union's proposal, there is another portion of internal

equity that requires review. A review of the Parties' bargaining history with respect to internal equity among both organized and non-union County employees shows there has been consistency in percentage wage increases among all employee groups. The County has historically and traditionally negotiated a uniform percentage wage adjustment pattern between all employee groups. This historical pattern has existed since at least 1996.

The evidence establishes that consistency in percentage wage increases among all County employee groups has resulted in the County maintaining labor relations stability. During this last round of bargaining, the County reached agreement with all five of the other Goodhue County units for a general wage increases of 2.5%, 3.0% and 3.5% in 2006, 2007 and 2008, respectively. The 2006 and 2007 terms and conditions of employment have also been set for non-union employees with a 2.5% general wage increase for 2006 and a 3.0% general wage increase for 2007. There are no exceptions to the uniform percentage wage increases. No other group of employees has received general adjustments of the magnitude proposed by the Union in these proceedings.

It is undisputed that Detention Deputies work 12 hour shifts and 2,184 hours per year. The Union claims that the County divides the annual salary for Detention Deputies by 2,184 hours in order to arrive at an hourly rate rather than the normal work

year of 2,080 hours found in Article 16 of the expired labor agreement. The Union also claims that the County divides the annual salary for other employees by 2,080 hours in order to arrive at an hourly rate. This method of calculation, according to the Union, results in the County treating the Detention Deputies in a disparate manner, since the hourly rate of the Detention Deputy is nearly 5% below the hourly rate if computed based on 2,080 hours.

The Union's argument was contrary to the testimony of County Human Resources Director Melissa Cushing. According to her testimony, the County multiplies all employees' hourly wages by the general wage adjustment to arrive at the subsequent year's hourly wage. The hourly wage is then multiplied by either 2,184 or 2,080 hours. Non-exempt County employees, including Detention Deputies and Dispatchers, are all paid an hourly wage.

The Union also alleges that there was a flaw in the Hay Group compensation study. Arbitrator Nancy Powers awarded the implementation of the Hay Group compensation study for 2005 for the LELS Detention Deputy/Dispatcher unit.

The issue of the Hay Group compensation study and the salary structure has not been certified as an issue by the Commissioner of the BMS in this case. The Arbitrator has jurisdiction to decide only those items of dispute certified to interest

arbitration by the Commissioner. Minn. Stat. § 179A. 16, subd. 5. Moreover, the present proceeding is not a grievance arbitration relative to the implementation of the Arbitrator Powers' award. As a result, the Union's arguments with respect to work hours and the Hay Study are best addressed during negotiations which will resume immediately after receipt of the Arbitrator's award.

In 2003 Arbitrator Joseph Daly identified the "Big Jail" group of counties as the appropriate market comparison group for Detention Deputies and Dispatchers. LELS and Goodhue County, BMS Case No. 04-PN-22 (Daly, 2004). Arbitrator Daly based his decision on the size of the jail, the level of responsibility and the type of work required by the employees.

The County, on the hand, alleges that the appropriate comparability group are those counties contained in Economic Region 10. These counties have similarities to Goodhue with respect to location, population, social and economic ties.

The addition of Dakota County is also warranted, since it is an immediate neighbor of Goodhue. Thus, it has geographic ties with Goodhue. In fact, Dakota County was also used by the County as a comparison in its own Hay Study market comparison.

Both of these proposed comparability groups are valid other than for review of wages. This is simply because the Parties

have maintained a consistent bargaining history of utilizing internal settlements among union and non-union County employees for determination of an appropriate percentage wage increase for Detention Deputies and Dispatchers. The Parties have not been dependent upon the use of external comparisons or the CPI in determining the appropriate percentage wages increase for Detention Deputies and Dispatchers. The Arbitrator's wage award for 2006 follows this long-standing precedent established by the Parties.

The Union requests that their wage proposal for 2006 be effective January 1, 2006. The County proposes the wage increase for 2006 be effective upon receipt of the Arbitrator's award with no retroactivity. The net effect of awarding the Employer's position would be a near wage freeze for 2006. This would be contrary to the internal settlement pattern, whereby all other County employee groups received a 2.5% wage increase effective January 1, 2006.

The County's proposal is not only inconsistent with internal settlements it is also contrary to any external precedent. This is not surprising, since to award the language sought by the Employer would be tantamount to punishing the Union for pursuing their statutory right to interest arbitration guaranteed to essential employees in this bargaining unit.

**ISSUE FIVE: INSURANCE - AMOUNT OF EMPLOYER CONTRIBUTION IN 2006 - ART. 17**

**ISSUE FIFTEEN: INSURANCE RETROACTIVITY - SHALL THE EMPLOYER'S INSURANCE CONTRIBUTION BE RETROACTIVE? - NEW**

**POSITION OF THE PARTIES**

The Union seeks to maintain the current contract language found in Article 17, Health Insurance, as follows:

17.1 The EMPLOYER will pay the monthly premium for full-time employees for individual group medical insurance coverage and pay for fifty percent (50%) of the cost of the employees dependent EMPLOYER group health insurance.

17.2 The employee shall have the option of insuring dependents by paying the additional cost of the premium.

The County's revised position is no change in the existing contract language in Article 17 for 2006. Effective January 1, 2007, the County proposes modifying Article 17 as follows:

17.1 Health Reimbursement Account (HRA) insurance will be available to all eligible employees effective January 1, 2007. The EMPLOYER contribution to the HRA account will be an amount equal to 75% of the deductible in 2007; and 50% of the deductible in 2008.

17.2 The EMPLOYER will pay the monthly premium for full-time employees for individual group medical insurance coverage and pay for fifty percent (50%) of the cost of the employee's dependent EMPLOYER group health insurance.

17.3 The employee shall have the option of insuring dependents by paying the additional cost of the premium.

**AWARD**

Maintain the current contract found in Article 17, Health Insurance.

**RATIONALE**

Both Parties agreed to maintain the current contract language in Article 17 for 2006. The Arbitrator has previously ruled that the duration of this contract will be for only 2006, effective January 1, 2006 through December 31, 2006. Thus, the Arbitrator has no jurisdiction to rule on the Employer's health insurance position effective January 1, 2007.

This is another major issue that the Parties need to address during successor collective bargaining, where meaningful discussion and possible tradeoffs can occur between the Parties.

**ISSUE EIGHT: HOLIDAYS - AMOUNT OF COMPENSATION FOR HOLIDAYS - ART. 18**

**ISSUE TEN: VACATION - AMOUNT OF VACATION BASED ON YEARS OF SERVICE - ART. 14**

**ISSUE THIRTEEN: SICK LEAVE - WHAT SHALL THE SICK LEAVE ACCRUAL RATE BE? - ART. 15**

**POSITION OF THE PARTIES**

The Union is requesting an increase in the annual payment of holiday pay from 96 hours to 144 hours, an increase in the accrual of sick leave from 8 hours per month to 12 hours per month and to change the vacation accrual schedule as follows:

0 - 2 years	8 working hours per month
3 - 5 years	12 working hours per month
6 - 9 years	14 working hours per month
10 - 14 years	16 working hours per month
15+	20 working hours per month

The County is requesting to retain the current contract language, whereby the annual payment of holiday pay shall remain at 96 hours, sick leave accrual shall remain at 8 hours per month and the vacation accrual schedule shall remain as follows:

0 - 2 years	6 working hours per month
3 - 5 years	8 working hours per month
6 - 9 years	10 working hours per month
10 - 14 years	12 working hours per month
15+	14 working hours per month

**AWARD**

Retain the current contract language.

**RATIONALE**

The Union's justification for the request for a change in each of these benefits is directly related to its argument of disparate treatment of the Detention Deputies with respect to the number of work hours. Detention Deputies work a 12 hour day, while Dispatchers work a 11.5 hour day. Because the Employer insists the Detention Deputies work a 2,184 hour work year, compared to all other law enforcement units that work a 2,080 hour work year, the Union argues that their proposed changes are necessary.

All law enforcement employees in Goodhue County accrue 96 hours of leave with pay during the year to compensate for holidays, 8 hours of sick leave per month and have the same vacation accrual schedules regardless of shift length. There are

some Goodhue County law enforcement employees that work shift lengths in excess of 8 hours. Specifically, members of the LELS Deputies unit work 10 hour shifts, the LELS Patrol Sergeants unit members work 10 hour shifts and members of the LELS Jail and Dispatch Sergeants unit work 12 hour shifts and 11.5 hour shifts. These employees all have the same holiday, sick leave and vacation accruals in their collective bargaining agreements, and LELS voluntarily settled these collective bargaining agreements for 2006-2008 without modifications to the Holiday, Vacation or Sick Leave articles.

It is axiomatic in interest arbitration that benefits should be internally consistent among similarly situated employees. There are limited exceptions. One noted exception is if the employer is "out of step" or "norm" with external comparables. This is not the case here. There was no evidence produced by the Union that establishes the accrual rates for holiday, vacation or sick leave benefits were outside the "norm" or "out of step" of the comparable counties.

Absent this external comparison showing, the holiday, sick leave and vacation benefit accrual schedules for Detention Deputies and Dispatchers should be consistent with the benefits provided to other Goodhue County law enforcement employees, and there is no reason to grant the LELS Detention Deputy/Dispatcher

unit a different benefit accrual schedule, even if the Detention Deputies are required to work a 2,184 hour work year.

The shift length for LELS Detention Deputies/Dispatchers unit members has not changed recently. Since 2000, Detention Deputies have worked 12 hour shifts and Dispatchers have worked 11.5 hours shifts. Historically, the holiday, sick leave and vacation accrual schedules have been consistent since at least 2000. The past bargaining history between the Parties indicates that the benefit accruals are reasonable and appropriate for both Detention Deputies and Dispatchers.

As the proponent of an increase in the benefit accrual schedules, the Union bears the burden of proof to provide convincing and compelling justification. There is no support in the internal or external comparison data or the Parties' bargaining history to provide the members of the Detention Deputy/Dispatcher unit with more generous benefit accruals than those received by employees in the other County law enforcement units.

**ISSUE NINE: OVERTIME - OVERTIME RATE FOR EMPLOYEES  
WORKING ON HOLIDAYS - ART. 12**

**POSITION OF THE PARTIES**

The Union proposes new contract language be added to Article 12, Overtime, providing that employees shall be paid double time

for any overtime worked on a holiday. The County proposes to retain the current contract language in Article 12.

#### AWARD

Retain the current contract language in Article 12.

#### RATIONALE

The Union seeks new contract language providing for double time for any overtime worked on a holiday. Thus, the Union has the burden of proof to establish by compelling and convincing justification their inclusion of the new contract benefit.

While it is unfortunate that Detention Deputies and Dispatchers called in to work a holiday when scheduled off lose the ability to be with their family, this scenario is shared by all County law enforcement employees. No Goodhue County employees receive double time for holiday overtime. Similar to members of the Detention Deputy/Dispatch unit, employees in the LELS Deputies unit, LELS Patrol Sergeants unit and LELS Jail and Dispatch Sergeants unit all may be called into work overtime on a holiday and they all receive 1 1/2 their regular rate of pay for all hours worked on a holiday, in addition to their regular holiday hours.

LELS voluntarily settled its other collective bargaining agreements for 2006-2008 without modification to the overtime articles. As a result, the overtime provision for Detention

Deputies and Dispatchers should remain consistent with the overtime provision provided to other Goodhue County law enforcement employees. The record is devoid of any internal comparison data that supports the Union's position.

The external comparison data supports the County's position. None of the comparison counties' collective bargaining agreements provide for double time for holiday overtime. The Union could only show three statewide contracts that provide for double time for holiday overtime. There is no justification based on the internal or external comparison data to award the Union's position.

**ISSUE TWELVE: COMPENSATION - AMOUNT OF COMPENSATION  
FOR WORKING OUT OF CLASS - ART. 21**

**POSITION OF THE PARTIES**

The County's position is to retain the current contract language in Article 21, Working Out of Classification, as follows:

Employees assigned by the EMPLOYER to assume the responsibilities and authority of a higher job classification for four (4) or more hours shall receive the salary schedule of the higher classification for the duration of this assignment.

The Union proposes to modify the current Contract language in Article 21 as follows:

Employees assigned by the EMPLOYER to assume the responsibilities and authority of a higher job classification shall receive \$2.00 per hour in addition to their regular wage or the salary schedule of the higher classification, whichever is greater, for the duration of this assignment.

#### AWARD

Maintain the current contract language in Article 21.

#### RATIONALE

The Union has proposed to modify the working out of class language to eliminate the four hour threshold and increase the premium pay associated with working out of class. The Union has not met its burden of proof for the new language.

The Union argues that the employees are frequently called upon to assume the responsibilities and authority of their Sergeant in less than four hour blocks of time. When this happens, they receive no compensation, but may be disciplined if they fail to perform the assignment satisfactorily.

The working out of class provision was initially developed as part of staff development to provide employees with a valuable learning opportunity of performing the duties of a higher job classification. This valuable opportunity may some day pave the way for promotion to a supervisory position. Employees, however, work out of class on a voluntary basis and employees have not been disciplined for issues related to working out of class.

The County's position to maintain the existing contract language is internally consistent with the other working out of classification provisions at the County. All of the working out of class provisions include either a four hour minimum or a ten day minimum. Additionally, none of the other provisions at the County include the \$2.00 stipend proposed by the Union.

The current working out of class provision from the Detention Deputies/Dispatchers contract is historical and dates back to at least 2000. The historical nature of the provision demonstrates its reasonableness and there is no basis to change the provision at this time.

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 November 27, 2006, at Maple Grove, Minnesota.