

IN THE MATTER OF ARBITRATION BETWEEN

FREEBORN COUNTY  
(Employer/County)

and

LAW ENFORCEMENT LABOR  
SERVICES, INC., LOCAL NO. 236  
(Union)

DECISION AND AWARD  
(Interest)  
BMS Case No. 07-PN-1174

ARBITRATOR: Frank E. Kapsch, Jr.

DATE AND PLACE OF HEARING: February 15, 2008 at the Freeborn County Government Center, located in Albert Lea, MN

RECEIPT OF POST-HEARING BRIEFS: Briefs were due by February 29 and were filed in a timely manner by both Parties.

APPEARANCES

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THE EMPLOYER

Freeborn County, Minnesota is located on Minnesota's southern border with the State of Iowa. The County is known as the "Southern Gateway of Minnesota" because the City of Albert Lea, the County seat, sits at the intersection of Interstate Highways 35 and 90. The County covers approximately 720 square miles of rolling land, beautiful lakes and rich soil, includes 14 cities and 20 townships, and has a population of some 33,000. The County work force consists of some 255 employees.

Of the County's 255 employees, approximately 141 are not represented by any labor organization and are "non-union". Of the County's remaining employees, approximately 114, are represented by unions in three (3) bargaining units: 1) a unit of about 26 Sheriff's Office Detention Deputies working in the County Jail and represented by Teamsters Union, Local No. 320; 2) a unit of approximately

75 social service employees of the County's Department of Human Services represented by American Federation of State, County & Municipal Employees (AFSCME) and 3) a unit of 13 Sheriff's Office licensed Deputies represented by Law Enforcement Labor Services, Inc. and its Local Union No. 236 (LELS). It is the LELS bargaining unit which is the subject of this matter.

### THE UNION

Law Enforcement Labor Services, Inc. and its Local Union No. 236 is the recognized collective bargaining representative for a unit of approximately 13 employees working in the County Sheriff's Office. Of that number, 12 are licensed Patrol Deputies and one is classified as a Court Security Officer. The contractual bargaining unit consists of;

*"...all essential-licensed employees of the Freeborn County Sheriff's Office, Albert Lea, Minnesota. who are public employees within the meaning of Minn. Stat. 179.03A, subd. 14, excluding supervisory, confidential and all other employees.*

### COLLECTIVE BARGAINING HISTORY

The Union and the Employer have been parties to a series of labor contracts covering the unit employees since about 1997. The most recent contract was effective January 1, 2006 and expired December 31, 2007. Article 22 – Wages, provided for the reopening of that contract for the negotiation of wages for 2007.

The Parties did engage in negotiations and mediation in an effort to resolve the issue of wages for 2007, but those efforts were unsuccessful and they found themselves at impasse.

### THE CURRENT ISSUE

On October 11, 2007 the Minnesota Bureau of Mediation Services (BMS) certified the following issue for arbitration pursuant to Minn. Stat. §179A.16, Subd. 2 and Minn. R. 5510.2930:

1. Wages – Amount of Wage Increase in 2007 – Article 22.1 & Appendix B.

As stipulated at the hearing, this Arbitrator was subsequently selected by the Parties, pursuant to Minn. Stat. §179A. Subd. 4., to hear and resolve this Issue.

The challenge to an arbitrator, in an Interest case such as this, is to try to formulate a suitable resolution based on what the Parties, as reasonable persons, would have eventually agreed upon had their negotiations proceeded to a successful conclusion. To achieve that goal and objective, like my arbitrator colleagues, I subscribe to a commonly accepted set of standards of analysis to

be applied to an issue. These are the same standards that the Parties themselves applied in the context of their negotiations.

- Ability to Pay – Can the Employer reasonably afford to pay the requested wage or benefit amount without causing serious harm to the continued financial viability of the organization?
- Statutory Considerations – Does the contemplated resolution violate or conflict with any applicable statutes, rules or regulations?
- Internal Comparisons – How does the contemplated resolution fit within or affect the existing organizational pay system and structure? Does it maintain a reasonable and equitable relationship with other positions within the organization?
- External Comparisons – How does the contemplated resolution, if adopted in this organization, compare with like or similar positions in other comparative organizations?
- Other Economic and Market Forces – Do these forces, e.g. supply and demand, cost of living, etc., have any notable effect - positive or negative - on the contemplated resolution?

I am also cognizant of the fact that while private sector Interest arbitration is bilateral – involving the employer and the employee – in the public sector, it is trilateral, with at least three distinct and different interests to be accommodated; the employees, the particular governmental unit as employer and the citizens represented by that governmental unit as voters, taxpayers and consumers of services. Also, to make the mix more interesting, those various parties, groups and constituencies each have their own distinct political and economic philosophies, perspectives and goals.

### **ISSUE NO. 1 – WAGES FOR 2007 (Article 22.1, App. B):**

Union Proposal – In its Final Position for 2007, the Union proposes a General Wage increase of 3.5% over the wage schedule for 2006 to be effective January 1, 2007.

Employer/County Proposal – In its Final Position for 2007, the County proposes a General Wage increase of 2.5% over the wage schedule for 2006 to be effective the first pay period of 2007.

#### Ability to Pay

Employer/County Position - The County is not arguing inability to pay in this situation. It essentially agrees with the Union's estimate that the total net cost difference of the Union's proposed increase of 3.5% versus the County's proposed 2.5% wage increase for 2007 for the 13 employees in the LELS bargaining unit would be about \$7200.

However, as the arbitrator discerned at the hearing, that cost figure does encompass the whole wage increase situation which will result from this Decision. As noted in the hearing, the current labor agreement between the County and AFSCME covering the 75 social service employees in the Department of Human Services contains a provision that says that group will receive the same "increase over 2006 equal to the highest increase of any other bargaining unit in Freeborn County (emphasis added)."

Currently the LELS bargaining unit is the only one with its 2007 wage increase situation unresolved. The Teamsters Local 320 bargaining unit representing the 26 Sheriff's Office Detention Deputies has agreed to the 2.5% wage increase for 2007, as currently proposed by the County to the LELS unit. If LELS prevails in its argument for a 3.5% wage increase for 2007 for its 13 member bargaining unit, that will also result in a net cost increase for the social services (AFSCME) bargaining unit of some \$41,300. Accordingly, by awarding LELS its proposed 3.5% wage increase for 2007, as opposed to adopting the County's proposed increase of 2.5% for 2007 the arbitrator will increase the County's total wage cost for those two bargaining units by almost \$50,000 (\$7,200 + \$41,300).

The County's actual financial statement for 2007 shows that it had expenditures of \$12,419,656.82 and revenues of \$11,822,932.98. The resulting "shortfall" was \$596,724. The Sheriff's Office portion of this shortfall was \$166,198. This situation is exacerbated with the current pending wage issue. While the County has budgeted for its proposed wage increases of 2.5% for the LELS deputies and the AFSCME social services employees for 2007, those wage increases were not actually paid in 2007. The result is that awarding the County's proposed wage increase of 2.5% for 2007, effectively to both the LELS and the AFSCME units will increase the Sheriff's Office shortfall to \$184,057 and the total County budget shortfall will increase to \$699,951. Awarding the Union's proposed wage increase of 3.5% will increase the Sheriff's Office shortfall to \$191,251 and the entire County shortfall would increase to \$741,242.

While the County is not asserting that it lacks the "ability to pay", this data shows that 2007 carried over into 2008 are not years in which the County's finances are easily able to absorb additional costs.

Union Position – The Union's wage proposal should be awarded because the County is financially sound and has the ability to pay the requested increase.

In the hearing the Union gave the arbitrator a figure of \$7,194.33 as the estimated cost increase for awarding the Union's proposed 3.5% wage increase for 2007, as opposed to awarding the County's proposed 2.5% increase. That estimate was based on the assumption that all 13 members of the bargaining unit were at top pay on the wage schedule. In actual fact, only one deputy is actually at top pay. Accordingly, the cost difference between the Union's and the County's wage proposals would actually be less than \$7,194.33.

The County is economically healthy, according to financial reports filed with the State Auditor's Office. The Freeborn County's net assets increased by \$3,071,861 in 2005 and increased by an additional \$4,327,876 in 2006. Unrestricted assets that may be used to meet the County's ongoing obligations were \$7,042,412 in 2005 and increased to \$13,668,036 in 2006. As of December 31, 2006, Freeborn County had unreserved funds of \$537,676 designated for contingencies.

Freeborn County's budget for 2007 was \$13,706,582. The additional cost of awarding the Union's proposed 3.5% wage increase for 2007, which is about \$7,194.33, amounts to 0.002% of the County's 2007 budget.

During the hearing, the County's representative correctly did not argue the cost of granting "favored nation" status to the AFSCME Council 65 Social Service bargaining unit. This arbitration is exclusively reserved for the essential Freeborn County Sheriff's Deputies, represented by LELS Local 236. The award in this matter is limited by the October 11, 2007 BMS Certification to Arbitration (BMS Case No. 07-PN-1174) to one issue for this unit: "Wages – Amount of Wage increase in 2007?" Any mistake or arrangement made by the County with another (non-essential unit) should not even be considered in this essential employee unit's arbitration. To do so would undermine the rights afforded this group within the PELRA statute.

The cost of the Union's proposed wage increase for this unit for 2007 is well within the County's ability to pay and is fair, reasonable and should be awarded.

Analysis, Discussion and Conclusion – Based on the record evidence and testimony there is no question or concern on my part with respect to the County's ability to pay either its proposed wage increase of 2.5% for 2007 or the Union's proposed increase of 3.5%.

The "most favored nation" provision in the County's current contract with AFSCME Council 65 covering the County's 75 social services employees, while interesting, really has no impact with respect to this matter. For whatever reason, the County and AFSCME jointly chose to base the amount of the 2007 wage increase for the social services employees on the outcome of this arbitration. As the Union aptly points out, this arbitration matter involves only the 13 employees in the LELS bargaining unit and the outcome will be based solely upon the relative merits of that unit and situation. The social services employees have, in a sense, hitched their wagon to the LELS vehicle but have no voice or control and no idea where the vehicle may go. They are merely along for the ride.

The fact that this arbitration decision may impact upon the social services group is a concern only for AFSCME, its members and the County, but not for this

Arbitrator. I presume that the County, in agreeing to the “most favored nations” provision in the AFSCME contract, has also set up appropriate budget contingencies to accommodate all potential outcomes in this matter.

Accordingly, based upon the foregoing and the record as a whole, I find that “ability to pay” is not a factor for consideration in this matter.

#### Statutory, Regulatory or Other Legal Considerations

According to the record testimony and evidence, the County is currently in compliance with the provisions of the Minnesota Local Government Pay Equity Act (LGPEA). Minn. Stat. §471.991-999. Freeborn County’s most recent LGPEA Pay Study/Compliance Report was issued February 20, 2007 and that report showed that the County was in full compliance with the statute. The Parties also agree that there have been no subsequent employee objections or challenges to that report. The County’s next Compliance Report will be required in 2010.

Each of the Parties have apparently run perspective computer scenarios and simulations using a MN Department of Employee Relations (DOER) program to determine the effects of the proposed wage increases on the County’s current LGPEA status. The Parties are in agreement that neither of the competing wage proposals will adversely affect the County’s future compliance status under LGPEA.

The Parties are also in agreement that there are no other statutory or regulatory considerations which would reasonably impact upon the ultimate award or resolution in this matter.

Accordingly, I find that there are no relevant statutory, regulatory or other legal considerations that will affect or impact on the resolution of this matter.

#### Internal Comparisons

Union Position – Arbitrators generally recognize claims of negotiated patterns as one factor in deciding wage awards. Freeborn County claims a 2.5% pattern for 2007, but reality does not support such a claim. The County has four (4) distinct groups of employees: unrepresented non-union employees and three (3) employee groups represented by three (3) separate Unions. The non-union employees did not negotiate a contract or their wage rates with the County. The 2.5% wage increase imposed upon them for 2007 was a unilateral decision by the County and hardly constitutes a meaningful pattern. To give any weight to that transaction would be in conflict with the spirit of the Minnesota Public Employee Labor Relations Act (PELRA), Minn. Stat. §179A; which grants public employees the right to negotiate terms and conditions of employment and essential public employees the right to arbitrate issues at impasse.

There are three Unions that do negotiate labor agreements with Freeborn County: 1) Teamsters Local 320 representing Sheriff's Jailers, 2) AFSCME Council 65 representing employees in the Social Services Unit within the County's Department of Human Services and 3) LELS Local 236 representing the Sheriff's Patrol Deputies. The Teamsters Local did agree to a wage increase of 2.5% for 2007 in their labor agreement with the County, but they are the only bargaining unit to thus far agree to that figure.

AFSCME has a contract covering the year 2007, but they **did not** accept the County's offer of a wage increase of 2.5%. The AFSCME contract in Article 11 states, "*The 2007 salary schedule will represent an increase over 2006 equal to the highest increase of any other bargaining unit in Freeborn County.*" In fact, there is even a formula in the contract to adjust their 2008 salary schedule, as soon as the appropriate increase figure is determined:

*"Once the last bargaining group settles the 2007 salary adjustment the 2008 salary schedule will be revised to reflect the 2007 salary adjustment plus the 3% adjustment and employees will be paid 2007 salary adjustment back to the first payroll period in 2007 and will be paid the necessary adjustment to the 2008 salary schedule back to the first payroll period in 2008."*

The County settled the AFSCME contact by granting them "favored nation" status, promising to increase their wages by whatever this Union (LELS) could negotiate or otherwise obtain. The County has thus far negotiated only one unconditional wage agreement of 2.5% for 2007. The remaining two Unions have not agreed to the County's 2.5% wage offer for 2007. The negotiated wage agreement by the Teamsters for 2007 does not constitute a "pattern".

Even if there was a valid pattern, it would not justify the County's position. To do so would keep the Union's employees at salaries which are both below their fair market value and below the cost of living. Arbitrator William Martin addressed this type of inequity. He wrote:

*"While internal comparisons are important, they should not be controlling in every case. To do so would not be to elevate negotiation as the principles of PELRA require. Rather, it would permit employers to dictate wage increases whenever the Union has for some period agreed to employer internal patterns. PELRA does not intend to replace negotiation with Interest Arbitration, but neither does it intend to use interest arbitration to freeze patterns set initially by employers."* Law Enforcement Labor Services v. City of Mendota Heights, BMS 01-PN-968 (2001) (Martin, Arb.)

Arbitrator Stephen Bard also examined both sides of this issue:

*"It is natural for Duluth and all cities to want uniform percentage wage increases for all its employee groups for reasons of employee morale, etc. Furthermore, there is some validity to the argument that different percentage raises would make each Union afraid to be the first to settle out of fear that it might be taking less than another group.*

*This argument, however, is a two edged sword and is not persuasive to this Arbitrator. Carried to its logical conclusion it effectively eliminates collective bargaining and locks every Union in a city to the pay raise negotiated by the first Union to settle. If followed rigidly, it would encourage public employers to always settle first with its smallest and weakest union and then claim a binding precedent had been set for wages for the remaining groups. It also has the effect of completely eliminating consideration of market factors and the differing demands of differing jobs." Duluth Police Union v. City of Duluth, BMS 07-PN-0383 (2007), (Bard, Arb.) p. 11.*

The Arbitrator must look at the other factors, such as the external market, before defaulting to the County's alleged pattern and forcing low wages onto the deputies.

Employer/County Position - Internal equity will be best served by awarding the County's final wage increase position. This is particularly true as compared to the Union's final position. As noted in the County's hearing brief, adoption of the County's final position will result in a uniform general increase of two and one-half percent (2.5%) for all of the organized (corrections, social services and patrol deputy) groups as well as the non-union employees.

Consideration of the special wage provision in the social services (AFSCME) contract magnifies the County's internal equity argument. Awarding the County's position of a 2.5% general increase for 2007 would result in perfect internal equity for the various employee groups employed by Freeborn County, including the non-union, detention deputies, social services employees and the licensed patrol deputies groups.

In contrast, awarding the Union's final position of 3.5% would result in significant internal inequity. The result would be that the patrol deputies and social services employees (comprising 88 of the 255 employees of the County) would receive one general increase of 3.5%, as proposed by the Union and the remaining 167 of the 255 employees would receive the 2.5% general increase being proposed by the County. The arbitrator's award in such an instance would effectively split the County's workforce into two major groups. While the County recognizes that it cannot take this approach in future negotiations, awarding the Union's position would provide a strong incentive for the social services bargaining unit to elevate its bargaining position in the future by seeking to maintain such a tie to the essential licensed deputy group. Accordingly, awarding the Union's final position would also damage the future social services negotiations.

The two clear choices for the arbitrator are perfect internal equity or schism. Maintaining a reasonable and equitable relationship strongly favors the County's wage proposal and position.

Analysis, Discussion and Conclusions – Like the overwhelming majority of arbitrators, I am very cognizant of the importance of internal equity considerations in determining Interest cases. Employees, themselves, have a keen and innate sense of internal equity in that they generally are aware of the relative position and value of their job or task within their organization and where their particular job stands in relation to other jobs, both within and outside their organization. Employees can quickly detect and discern inequitable situations within their organizations and conclude that they are not being treated fairly. The result is low morale and dissension within the workforce. In order to avoid and prevent those kind of problems, most employers spend significant amounts of time and money to insure that their organizational wage and salary systems and structures are readily perceived by employees as transparent, equitable, just and fair. Additionally, of course, the organization must also pay attention to perceived equity relative to the world around it, i.e. external equity.

In considering internal equity as a factor in Interest arbitration, an arbitrator must carefully consider the effect of his/her decision on what is currently perceived as an equitable, just and fair compensation system within the organization. Like the caution in the Hippocratic Oath for physicians, an arbitrator should "do no harm".

As an extreme example of such a circumstance, consider the effect of an arbitrator's award that suddenly increases the wage of an organization's building maintenance and janitorial employees by 100%; that is a doubling of their current wage/salary. Further, let's presume that other employees in the organization have perceived that, up until the arbitration award, the maintenance and janitorial employees were earning a fair and equitable wage, based on the required education, training and skills required for the position. We can all easily see or predict what occurs next in that organization – it isn't pretty.

I am also well aware that it doesn't require a 100% wage increase decision to cause internal equity problems. Employees are sensitive to almost miniscule changes in an organization's wage and salary structure or system. Accordingly, an Interest arbitrator must tread very carefully with respect to the issue of internal equity.

Turning back to the current situation, there is a definite disagreement between the Parties as to whether or not there is an established "pattern" for employee wage increases among the County's various employee groups for 2007.

The County points out that its workforce totals some 255 employees. Of that number, 144 are non-union and the remaining 111 employees are represented

by three different Unions in three distinct bargaining units or groups. The County Commissioners mandated a wage increase of 2.5% for the 144 non-union employees for 2007. The Teamsters Union negotiated and agreed to the same 2.5% wage increase for 2007 for its 26 member group. The County and AFSCME negotiated a contract that provides that the 75 member social services employee group will receive the same wage increase for 2007 as received by any other union in the County – namely the LELS unit of 13 members.

The Employer argues that currently 170 or about 67% of the county's 255 employees received a 2.5% wage increase for 2007 and that clearly demonstrates a "pattern" to support its wage increase proposal in this matter.

The Union argues that the Employer's so-called "pattern" is skewed by the fact that for the 144 non-union employees of the County the 2.5% wage increase wasn't negotiated or discussed, but was unilaterally imposed upon them. The Union further points out that of the 111 union employees (43% of the total workforce) only 26 or 10% of the total workforce - the Teamster group - have agreed to the 2.5% figure. The other 88 employees or 33% of the workforce, represented by AFSCME and LELS, have rejected the County's wage offer of 2.5% for 2007.

This situation appears to give credence to the concerns expressed by Arbitrators Martin and Bard, as cited by the Union, above. Here, the County has unilaterally imposed a wage increase of 2.5% on 57% of its workforce and negotiated that same figure with 10% of the remainder of its unionized workforce and argues that an internal pattern has been created for 2007. However, it has not been able to "sell" that alleged pattern as equitable, just, fair or reasonable to the remaining 88 union employees, who obviously have the ability to negotiate their wages and the ability to say "no" to the offer. Given these facts, I am not convinced that a clear-cut "pattern" exists sufficient to warrant County's the 2.5% wage proposal.

On the other hand, while the Union argues that its proposed 3.5% wage increase should be awarded for 2007, it provides no objective evidence to support that figure. If two-thirds of the County's workforce are receiving a 2.5% wage increase for 2007, what justifies giving the 13 members of the LELS unit a 3.5% increase, from an internal equity point of view? The Union offers no explanation. It does not contend that the relative wage position of the Patrol Deputy unit is somehow out of line with other job classifications within the County and to correct such an inequity, they need a greater increase than that offered by the County. Nor is the Union asserting that the larger wage increase is warranted by significant changes in the Deputy job classification, such as additional duties, qualifications, training, etc.; which would potentially raise the value of the position in the County's wage/salary system/structure. In the absence of some specific evidence to internally and objectively justify the Union's higher wage proposal, adopting the Union's proposal, from an internal equity perspective, could

adversely affect the integrity of the County's existing wage structure and thereby cause unwarranted morale problems.

In view of the above analysis and discussion, I find that from the point of view of internal equity, neither the County nor the Union present clear and convincing arguments in support of their respective proposals.

### External Comparisons

With some variations, as noted below, it appears that the Parties historically have generally looked to the counties comprising what is known as "Economic Development Region 10" for external comparison purposes. The Minnesota Department of Economic Development has divided the State into eleven (11) Development Regions. Arbitrators have recognized counties within an Economic Development Region as appropriate for marketplace comparison purposes. Freeborn County is one of eleven (11) counties comprising Development Region 10. The other ten counties in that Region are: Dodge, Fillmore, Goodhue, Houston, Mower, Olmsted, Rice, Steele, Wabasha and Winona.

Union Position - The Union's wage increase proposal of 3.5% for 2007 should be awarded, because it is supported by external market comparisons.

As this Arbitrator acknowledges, arbitration precedent in Interest cases clearly supports external comparisons. In Law Enforcement Labor Services, Inc. v. City of Belle Plaine, BMS 06-PN-479 (2006), Boyer, Arb.) p. 5, Arbitrator John Boyer explained why the marketplace should be considered above internal patterns:

*"...the singular compelling similarity between units is a common Employer. Clearly unit personnel do not share the same or even substantially similar duties, hours, shift schedules, risks on the job, licensure requirements, public scrutiny, exposure to injury, continuing education and training requirements, unpredictability of work environment and/or equipment maintenance issues, etc., and such incontrovertibly justifies the differentiation in duration of the Agreements, and such is also reflected in the Award for Holiday Premium Pay and Wages below."*

Thus, in recognition given by arbitrators of external comparisons, the external marketplace should be considered in evaluating the Union's wage increase proposal.

With respect to the Economic Region 10 counties, the Union notes that the average wage increase in Top Pay for Deputies among those counties in 2007 was 3.21%.

At the hearing, the County's representative challenged the inclusion of Houston County's 2007 increase of 5.04%, which was above the average increase in the

Region. He pointed out that Houston County Deputies were among the lowest paid in the group and that their increase was the result of a 2% and 3% split during the year. Interestingly, the County did not challenge the inclusion of Olmsted County, which has the highest paid deputies in Region 10, but provided the lowest (2%) general wage increase in the Region in 2007. The purpose of an average is to find an intermediate value between two or more quantities. Ten Region 10 counties are sufficient to obtain a valid average wage increase for use in Freeborn County. If the highest and lowest settlements (Houston and Olmsted) are removed from the average calculation, the average increase for the remaining Region 10 counties is 3.13%. If only the Houston County figure of 5.04% increase is removed from the comparison group, the average increase for the remaining nine counties is 3.01% - well above Freeborn County's current wage offer of 2.5% for 2007.

The County, apparently seeking marketplace support for its wage position, proposed the inclusion of Waseca and Faribault Counties into the comparison group – even though they are not located in Economic Development Region 10. Arbitrators have rejected the inclusion of contiguous, but dissimilar counties that are not in the same Economic Region. In Law Enforcement Labor Services, Inc. v. Faribault County, BMS 02-PN-899 (2002) (Jacobs, Arb.) p.16, Arbitrator Jeffrey Jacobs decided that the contiguous counties of Freeborn and Faribault should not be compared when he found, *“It was also clear from the evidence that Freeborn County is not a comparison county here [with Faribault] under any circumstances. Freeborn is much larger and contains at least one relatively very large population center. The fact that it is not in the same judicial district [economic development district?] is, under these acts, significant as well.”*

The County's argued inclusion of Waseca County also fails the tests established by Arbitrator Jacobs. Like Faribault County, whose population is only 52% of Freeborn County's population, Waseca County's population is only 57% of Freeborn County's population. Additionally, neither Faribault nor Waseca have a large population center in their counties. Finally, both Faribault and Waseca are located in Economic Region 9 – and Freeborn County is in Region 10.

Arbitrator Richard Miller was also asked to include Waseca County in a Region 10 arbitration. Law Enforcement Labor Services v. Dodge County, BMS 06-PN-0874 (2006) (Miller, Arb.) p.12. He found, *“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.”* The eleven counties in Region 10 constitute the appropriate and sufficient sample for a valid marketplace comparison.

The Employer/County tried to justify its wage proposal by declaring that Freeborn County Deputies are ranked third, with respect to Top Pay in their comparison group and will remain third even with a 2.5% wage increase in 2007. Unfortunately, comparisons of Top Pay do not provide an accurate picture of the

wage realities in Region 10. A clearer picture emerges by comparing the amount a deputy earns at each year of service. Assuming the Employer's 2.5% wage offer for 2007, a Freeborn County Deputy's wage rate at five years of service is 2.7% below the average salary for Region 10. Deputies from Dodge, Fillmore, Mower, Olmsted, Rice and even Houston County all receive more pay at that Step. It takes nine (9) years of service before a Freeborn County Deputy reaches the average pay for the Region.

A Freeborn County Deputy's pay has generally been nearly identical to Mower County's. The two counties abut each other; both are located on Interstate 90; their populations are similar and their county seats are located in large, similarly sized population centers (Albert Lea for Freeborn and Austin for Mower). In 2004 this Union accepted a below market wage increase of 1% here in Freeborn County, due to the economic climate at that time. Promises were made by the County that the sacrifice would be rewarded in the future – that future is now! Currently, Freeborn's Top Pay for a patrol deputy is 96.7% of Mower's Top Pay (it was 99% in 2003). The relationship between the two counties in Top Pay will further erode if the County's wage increase proposal of 2.5% is awarded (to 96.24%). If the Union's wage proposal of 3.5% is awarded, the relationship will move closer to the previous level (97.17%).

Arbitral precedent definitely supports external market comparisons. The Union's wage request of a 3.5% increase for 2007 should be awarded because it is supported by market comparisons.

Employer/County Position – Consideration of the external market does not support any deviation from the County's final wage position. The Union's materials acknowledge that the County will retain its relative ranking in the external market utilizing the County's proposed final position of 2.5%. The Union's efforts to point out the relative speed with which Freeborn County Deputies reach the maximum compared to deputies in the external market counties is not a relevant consideration in the present interest arbitration because the arbitrator is not charged with the review of the entire pay plan. Rather the arbitrator's charge is limited to the amount of the 2007 general increase. This interest arbitration limited to the single general increase reopener for 2007 issue is not an appropriate forum to consider significant alterations in the County's position relative to the external market. As the County indicated at the hearing, consideration of the external market should be limited to a broad check against disastrous results should the arbitrator follow internal consistency as his primary consideration. Given that the County and Union final positions will both maintain the County's relative ranking in the external market, this consideration is satisfied.

Analysis, Discussion and Conclusions – I am satisfied that the appropriate external market comparison group in this matter are the eleven counties comprising Economic Development Region #10.

The Parties agree that Freeborn County has, at least dating back to the year 2001, consistently maintained a ranking of Third out of eleven counties in the Region 10 group with respect to Top Pay for Sheriff's Deputies. The Parties further agree that regardless of whether the general wage increase for 2007 is 2.5% or 3.5%, Freeborn County will still maintain its Third position. The Union, however, argues that since about 2004 the pay gap between a deputy's Top Pay in Mower County (#Two ranking in Region 10) and the Top Pay for a deputy in Freeborn County has widened. According to the Union, it agreed to a reduced wage increase of 1% in 2004 to assist the County in dealing with an economic difficulty. The County allegedly assured the Union that sacrifice would be paid back in the future. The Union contends that hasn't happened. In 2003 a Freeborn County Deputy's Top Pay was 99% of a deputy in Mower County. Currently that figure is 96.7%. If the County's 2.5% increase is awarded for 2007, the figure will be 96.24% and 97.17% if the Union's 3.5% proposal is awarded.

In reviewing the Wage Increase data for Deputies Top Pay Rates for 2007 for the Region 10 counties I note that only two, Olmsted (#One rank) and Wabasha (#Eight rank), had wage increases of 2.5% or less. For Olmsted it was 2.0% and for Wabasha it was 2.5%. The percentage increases for the remaining counties were; Mower – 3.0%, Rice – 3.0%, Goodhue – 3.0%, Steele – 4.1%, Winona – 2.7%, Fillmore – 4.0%, Dodge – 2.8% and Houston – 5.0%.

Acknowledging the Employer's clarification of the wage increase situation in the Houston County situation and deleting that county from an average calculation; for the remaining 9 counties we get an average wage increase of 3.01% for 2007. I also note that, again ignoring Houston County, five (5) of the remaining nine (9) counties had 2007 wage increases of 3.0% or more and seven (7) of the nine (9) had increases of more than 2.5%.

From an external market comparison perspective, I find that the data fail to support the Union's proposal for a 3.5% wage increase for 2007 and also find that the data do not support the County's position for a 2.5% increase. The Union's figure appears to be too high and the County's figure appears to be too low. I do, however, find that the external market data does support a 3.0% figure. That figure is aptly supported by the average calculations and also the median figure for nine counties.

#### Other Economic and Market Forces

Union Position – The Union's proposed wage increase should be awarded to insure that the wages of the bargaining unit maintain pace with increases in the cost-of-living. Many arbitration awards have granted wage improvements based, in part at least, on the application of the cost-of-living standard. See How Arbitration Works, Elkouri and Elkouri, 6<sup>th</sup> Ed. (2003) at 1423-1423. "*In applying*

*the cost-of-living standard, arbitrators rely heavily upon the Consumer Price Index (CPI) issued by the Bureau of Labor Statistics of the United States Department of Labor.” Id.*

The CPI is used as an indicator of inflation and as an escalator for income payments, such as Social Security. The figures issued by the Bureau of Labor Statistics (BLS) show the U. S. City average CPI for Urban Wage Earners and Clerical Workers was 3.2% for 2006 and was 2.9% for 2007. The County presented data for Upper Midwest Urban Consumers showing a CPI for 2007 of 2.7%. Regardless of which index is used, the County’s offer of 2.5% for 2007 will result in an erosion of a Freeborn County Deputy’s purchasing power.

The County’s representative suggested Freeborn County Deputies do not need an increase in line with the CPI because up to 20% of the CPI is the result of “*the highly inflationary health insurance premium*”. He explained his line of reasoning, that since “...*the collective bargaining agreement has a separate (and established) contribution for health insurance for 2007, the CPI generally represents a greater inflationary amount than actually experienced by the members of the bargaining unit*”. This assertion is not true. The Arbitrator should note that Freeborn County’s \$500 deductible health insurance plan cost Deputies with Family Coverage \$655.35/month in 2006 and \$711.35/month in 2007, or an increase of 8.5%. Single Coverage cost a Deputy \$198.37/month in 2006 and was \$219.37/month in 2007, or an increase of 10.59%.

BLS, on its web site, explains that the CPI divides the consumer market basket into eight major groups of goods. Medical care is one such group. It includes prescription drugs and medical supplies, physicians’ services, eyeglasses, eye care and hospital services. In their report for December, 2007, BLS noted that the “relative importance” of medical care costs towards the CPI was 5.228%. Since a Freeborn County Deputy’s health insurance fails to cover 100% of the items listed for the BLS medical care group, it is wrong to suggest that the CPI overstates the needs of the Freeborn Deputies. In addition, the premium cost for Family Coverage increased by 8.5% in 2007, which is more than the assumed medical care component in the 2007 CPI. If one wishes to challenge the CPI, based upon one component, the fact that food and beverages (components that everyone uses) rose by 4.8% in 2007, suggests that the CPI has under-reported the actual inflation rate in 2007.

The economic temperature for the year can also be read using other measures. The wage realities for 2007 were confirmed when the State of Minnesota negotiated labor agreements with 30,000 of its own employees containing a 2007 wage increase of 3.25%.

Another helpful index is the prevailing rate of wage increases for the industry under examination. Law enforcement in Minnesota has become an identifiable and measurable industry due to State licensing, a single pension plan and labor

laws that limit bargaining groups to essential employees. The prevailing rate of wage increases in Minnesota's law enforcement industry is 3.25% for Sheriff's Deputies, where 82 of Minnesota's 87 counties have labor agreements covering deputies. The figure is 3.68% when averaging settlements for both deputies and police officers throughout the State.

Freeborn County Deputies are aware of the economic climate, the CPI and the prevailing rate of wage increases in their industry. As a result, they voted unanimously to reject the County's 2007 wage proposal of 2.5% and chose to go to arbitration. They are also voting with their feet. Since January of 2007, three (3) Freeborn Deputies have left for other positions in law enforcement and two (2) more are scheduled to leave in the coming months. This is 38% turnover within the Patrol Deputy group in less than 18 months and is compelling evidence that Freeborn County's wage offer of 2.5% is inadequate. The County's representative pointed out that one Deputy left to join the City of Albert Lea Police Department because he would receive a higher wage to start and would reach the top pay more quickly, but pointed out that, if he had stayed with the County for his entire career, he could have eventually made more money, in total. This is exactly the point the Union makes in our marketplace comparison with the other Region 10 counties. We have immediate needs. The majority of our deputies make less than the average wage in the Region and will continue making less than the average until reaching nine years of service. In addition, they will fall further behind the Region's average pay and will lose ground to inflation under the County's proposed wage increase of 2.5% for 2007.

Employer Position – Supply and Demand: The County indicated that in the last five years, only four Patrol Deputies have voluntarily resigned their employment. The Union noted that three have left. The difference is that the County counted one individual who left on a disability retirement. The Parties also do not dispute that one of those who left did so to join the MN Highway Patrol. The Union characterized one as moving to Olmsted County, which the County noted as leaving to be closer to his children (in Olmsted County). The Union also noted that one – who left to join the Albert Lea Police Department – was wage related. As the County noted in its hearing brief, the City pays more than the County in its starting rate, but tops out more quickly; whereas the County has a higher Top Pay rate. The County also noted in its brief that he chose the quicker movement, provided by the City because he plans to leave the City and work in the Twin City Metro Area before he reaches the top rate. Accordingly, his planned jumping from job to job does not provide an accurate economic picture.

The Union's statement that other deputies are planning to leave is merely speculation. Accordingly, this should not be given any weight in this determination.

As noted in the hearing, the County does not have trouble filling openings for Patrol Deputies. The County's recent hires have come from among the

employees in the County's Detention Center and it has not been necessary to use an eligibility list for outside candidates. If the County's current wage and benefit package was significantly deficient, incumbent employees certainly would have "voted with their feet" and sought employment elsewhere. If the County's wage and benefit package was deficient, the County would need to formally open and recruit individuals from outside the existing County employee pool for openings. The stability of this current workforce demonstrates equitable compensation more accurately than any statistical analysis of comparable jurisdictions.

Cost-of-Living: The County's wage proposal of 2.5% for 2007 will place the members of this bargaining unit within the parameters of inflation. Because the year 2007 has already passed, the Parties have the luxury of 2007 CPI data to compare against the proposed wage increase for 2007. The CPI for Midwest Urban Consumers shows that inflation for 2007 was 2.7%. It should be noted that the CPI includes the highly inflationary health insurance premium. Because the current labor agreement with LELS has a separate (and established) contribution for health insurance for 2007, the CPI generally represents a greater inflationary amount than that actually experienced by the members of that bargaining unit. In contrast, the Union's proposed 3.5% increase will place these employees well beyond any increase needed to maintain purchasing power.

It is also important for the arbitrator to note that fluctuations in the CPI from month-to-month are not an accurate measure of overall inflation – particularly in an economy with current volatility in items such as energy costs. Rather, a more accurate comparison is over a period of years. Such an analysis demonstrates that the employees in this bargaining unit have fared well with respect to inflation:

<u>Patrol Deputies</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Gen increase	2.5%	3.0%	3.0%	1.0%	2.0%	3.0%	2.5%(E proposed)
CPI Urban Midwest	2.7%	1.2%	1.9%	2.4%	3.2%	3.0%	2.7%

The totals indicate that during the years indicated, the CPI increased by 17.1%. During the same period (2007 indicates Employer's proposed increase) the employee's wages have increased by 17%. In contrast, the Union's proposed 3.5% increase will place these employees well beyond any increase needed to maintain purchasing power. The County's final proposed wage increase of 2.5% is most consistent with the CPI change for 2007.

Analysis, Discussion and Conclusions – In considering the record evidence and data above I don't see definitive support for the Union's proposed wage increase of 3.5%, based upon Other Economic and Market Factors.

With respect to the turnover situation, the evidence does not indicate any serious or critical problem with respect to bargaining unit employees having left their employment with the County, in any significant numbers for "greener pastures"

elsewhere. Accordingly, with respect to the turnover situation, the Employer's proposed 2.5% wage increase appears to be sufficient, at least at this point in time.

The apparent wage structure situation that allegedly doesn't bring Freeborn County Deputies up to the average pay within Region 10 until they have achieved nine (9) years of service, is not part of the Issue before me and, therefore I am unable to address it.

With respect to the cost-of-living situation, I agree with the Employer's contention that viewing the CPI on a month-to-month basis is not terribly enlightening and can lead to irrational responses. The CPI data are much more enlightening when viewed from a historical or hindsight perspective, as indicated by the Table above. That Table indicates that, based on the historical CPI data for Midwest Urban Consumers from 2001 through 2007, the Patrol Deputies have maintained what appears to be reasonable parity via their annual wage increases for that period. Accordingly, I don't see any significant evidentiary support for the Union's current proposed increase of 3.5%, based on the historical CPI data.

### **Conclusions – Wages 2007**

According to my findings and conclusions, as above, with respect to the standards:

- There is no issue with respect to the County's ability to pay either its proposed wage increase of 2.5% or the Union's proposed wage increase of 3.5% for 2007.
- There is no evidence to indicate that adoption of either of the proposed wage increases would violate or conflict with any statutes, rules or regulations and compliance with LGPEA is not at issue.
- Internal equity comparisons do not objectively justify or support the Union's proposed 3.5% wage increases for 2007, as opposed to the Employer's proposal of 2.5%.
- External comparisons also fail to justify or support the Union's proposed 3.5% wage increases for 2007, but the evidence and data also show that the Employer's offer of 2.5% falls below the average of at least 3.0% wage increases for the other nine counties in the Region 10 market comparison group.
- Consideration of Other Economic or Market Forces, e.g. CPI data and recruitment/retention data, do not significantly reinforce the Union's wage increase proposal, as opposed to the County's offer.

In evaluating the relative strength of the above standards and factors with respect to the competing wage proposals, the strongest argument on the Union's side appears to be the External Comparison situation. As noted the external market data indicate that the various calculations of average wages increases for 2007 for deputies in the Region 10 comparison group, using various

combinations of counties all indicate that deputies employed with the Region received an average wage increase of 3.0% in 2007. That leaves the County's current proposal of 2.5% about 0.5% short of that average and the Union's proposal of 3.5% about 0.5% above that average. A 0.5% "correction" at this point would result in a monthly dollar increase in the Top Pay for the Freeborn deputies of about \$23 per month. However, as the Union notes, only one Deputy is currently at the Top Rate. For those deputies not at the Top Rate, the dollar amount would, of course be less.

How should that discrepancy be resolved and should it be resolved at this point in time? Both Parties are in agreement that, regardless of which of the competing wage proposals is adopted, it will have no impact on Freeborn County's Third Rank in terms of Top Pay for deputies within the Region 10 group. The Union also points out that Freeborn County's relative Top Pay position with respect to that of Mower County has slipped since about 2004. While that assertion appears to be true, the actual numbers behind the assertion are minimal and do not appear to constitute a serious problem requiring an immediate resolution. That "slippage" situation would be best addressed in upcoming negotiations.

The lack of evidence indicating any kind of internal equity problem with respect to the deputies' pay situation also argues against an immediate correction of the 2007 external situation as does the turnover and cost-of living factors.

Based on the foregoing, I conclude that, at this time, the Employer/County's proposed wage increase for 2007 is more reasonable and appropriate than that of the Union. Furthermore, I believe that the noted disparities relative to 2007 can be more appropriately addressed in negotiations between the Parties for 2008. In that vein, I note that the AFSCME agreement already provides for a 3.0% general wage increase for 2008; that the County Commissioners have apparently given themselves an wage increase of about 3% and an increase of about 6.7% to the Sheriff for 2008. Additionally, I'm sure the current state and outlook for the economy will enter into the discussions. Finally, since the unionized portion of the County's workforce is a minority, the ability of the various groups to communicate and coordinate their goals and actions may enhance future outcomes for their groups, as a whole. That's why they call it "collective bargaining".

**AWARD – ISSUE NO. 1 – AMOUNT OF WAGE INCREASE FOR 2007 -  
(Article 22.1, Appendix B)**

The Employer/County proposal for a two and one-half percent (2.5%) general wage increase for 2007 to the members of the bargaining unit represented by LELS is hereby Awarded. The wage increase shall be retroactive and effective as of the first full pay period in January, 2007.

Dated at Minneapolis, Minnesota this 29th day of March, 2008.

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Frank E. Kapsch, Jr., Arbitrator

Note: I shall retain jurisdiction in this matter for a period of 30 calendar days from the date of this Decision and Award to deal with any related questions or problems.