

IN RE ARBITRATION BETWEEN:

LAW ENFORCEMENT LABOR SERVICES, Local 157

and

SCOTT COUNTY

DECISION AND AWARD OF ARBITRATOR

BMS 08-PN-0547

JEFFREY W. JACOBS

ARBITRATOR

September 2, 2008

IN RE ARBITRATION BETWEEN:

LELS, Local 157

and

DECISION AND AWARD OF ARBITRATOR
BMS Case # 08-PN-0547
Licensed Deputies

Scott County.

APPEARANCES:

FOR THE UNION:

Dan Vanelli, Business Agent for the Union

FOR THE COUNTY:

Pam Galanter, Attorney for the County

PRELIMINARY STATEMENT

The hearing in the above matter was held on July 17, 2008 at the Scott County Courthouse in Shakopee, Minnesota. The parties submitted Briefs dated July 31, 2008 and the record was closed.

ISSUES PRESENTED

The parties were unable to resolve certain issues concerning the terms of the collective bargaining agreement and requested mediation from the Bureau of Mediation Services, BMS. BMS certified 15 issues to binding interest arbitration pursuant to Minn. Stat. 179A.16, subd. 7 by letter dated April 10, 2008 as follows:

1. Salary Grade 2008 – Adjustments Amount – Article 17, Section 1, Appendix C
2. Salary Grade 2009 – Adjustments Amount – Article 17, Section 1, Appendix C
3. Wages 2008 – Amount of General Increase – Article 17, Section 1, Appendix C
4. Wages 2009 – Amount of General Increase – Article 17, Section 1, Appendix C
5. Salary Matrix – Amount – Article 17, Section 1, Appendix C, 3
6. Detective Differential – Amount- Article 17, Section 1,
7. Shift Differential – Amount – Article 10, Section 5
8. Field Training – Amount – Article 10, Section 8
9. Clothing Allowance – Amount – Article 19, Section 2
10. Employer Definition – Language – Article 3, Section 1.6
11. Probation Period – Language – Article 3, Section 1.12
12. Promotion- Language – Article 3, Section 1.3
13. Probationary Period – Language – Article 9, Section 1
14. Probationary Extension – Language (NEW) – Article 9, Section 2
15. Working out of Class – Language – Article 23, Section 1

**ISSUES # 1& 2: SALARY GRADE 2008 & 2009 – ADJUSTMENTS AMOUNT – ARTICLE 17,
SECTION 1, APPENDIX C**

UNION’S POSITION:

The Union is requesting a 3.0% increase in the 2008 Salary Grade with an additional 3.0% increase in 2009. In support of this the Union made the following contentions:

1. The agreement covering the period from January 1, 2005 through December 31, 2007 provides at Appendix C for a matrix based on performance. These are separate from the general increases also provided for in Appendix C of the contract. This salary grade matrix provides in relevant part as follows:

	Less Than		Exceeds	
	<u>Satisfactory</u>	<u>Satisfactory</u>	<u>Expectations</u>	<u>Outstanding</u>
Base adjustment	0.0%	4.0%	4.5%	5.0%
Lump Sum	0.0%	0.0%	0.0% - 1.0%	0.0% - 1.0%

Salary increases for employees below the Midpoint of the appropriate grade will be based upon the Midpoint. Salary increases for employees at or above the Midpoint and below the Maximum of the appropriate grade will be based upon the employee’s base salary. Employees whose performance is satisfactory shall receive a 4.0% salary adjustment or the Maximum of the grade, whichever is less

An employee’s case salary and base Adjustment shall not exceed the performance Maximum. Base adjustments of an employee at or above the Maximum rate of pay shall be available only for performance appraisal of Exceeds Expectations or Outstanding and approval of pay adjustment recommendations. Increases will be calculated on the employee’s actual base rate.

2. In addition, the Scott County Compensation System is based on a Minimum, Midpoint, Maximum and Performance maximum set of pay grades as set forth in the Appendix of the contract. For deputies, who are at grade 11, this results in pay grades as follows:

Minimum	Midpoint	Maximum	Performance Maximum
\$48,875	\$57,500	\$66,125	\$73,399

3. The County noted that the compensation system in Scott County is far more complex than the normal salary schedule with its various steps allowing movement through them on an annual basis. First there is the Salary Grade providing the pay range as set forth above. Second there is the matrix, which provides the formula for moving through the pay grades and then finally the general increase. The Union noted that the general wage increase is separate from the Salary Grade.

4. The Union asserted that granting a 3.0% increase in Salary Grade for 2008 and 2009 will essentially retain the relationship of deputies to the Salary Grade if the Union’s request for a 3.0% increase in general wages is granted for 2008 and 2009 as well.

5. The Union argued that it should not have to blindly accept what the County sets as the Salary Grade for these years. Granting the 3.0% will insure that deputies just starting and those at the very top of the grade will receive the full 3.0%.

6. The Union countered the County's argument by noting that the County's offer of only 2.0% will mean that the minimum rate for new hires will only be 2.0% above the 2007 minimum rate which is far less than the starting pay for Region 11 Counties and the Stanton group IV cities and far lower than the current cost of living increases.

7. Finally the Union asserted that its request is quite reasonable and results in a mere \$1,760.00 for 2008. It is not possible to know what the cost is for 2009 as the County has not stated a position for 2009 but asserted that the increase should be similar in size.

Accordingly the Union seeks an award of the arbitrator granting the salary grade increase of 3.0% in both 2008 and 2009.

COUNTY'S POSITION

The County's position is to implement salary grades in accordance with the County Board's Compensation Plan for both 2008 and 2009.

1. The County also acknowledged that the pay system is somewhat unusual and more complicated than a "normal" compensation system found in other Minnesota Counties. There is a 3-part pay system at play: the Salary Grade, the General Increase and the Salary Matrix. The County pointed out that there was a major change in the compensation system, with a concordant increase in salary, as the result of a compensation study undertaken in July 2006. At that time the Salary Midpoint was increased by some 17.2%, which resulted in a significant increase in compensation over what the deputies had been getting paid up until that time. The County further noted that this increase was given in the middle of the contract even though there was no requirement that it be given at that time.

2. The County further asserted the new system is a Midpoint driven pay system for employees who meet job performance expectations and is consistent with the market. Those who meet expectations can have their salary increased up to 110% of the salary midpoint. Those who exceed expectations are eligible for increases up to the salary maximum and outstanding employees can even go to the performance maximum set forth in the wage Appendix. (See Union's contentions set forth above for reference).

3. The County further noted that there are 9 bargaining units within Scott County, including several represented by LELS and that all of the other units are settled for 2008 and that all but two are settled for 2009. Several have even settled for 2010. This is the only unit not settled for 2008. All of these units have agreed to the County's position with regard to the Salary Grades.

4. The County asserted that the County Board adopts salary grades on an annual basis and that for 2008 they increased the salary grades by 2%. Effective January 1, 2008 the salary grades were as follows:

Grade 11	Minimum	Midpoint	Maximum	Performance Maximum
2007	\$48,875	\$57,500	\$66,125	\$73,399
1-1-08	\$49,853	\$58,650	\$67,448	\$74,867

5. The County argued that in 2007 this unit agreed to the very same language now proposed for 2008-09 by the County. See Appendices B and C of the 2005-07 labor agreement. See Appendix B and C, which provide that "Effective January 1, 2006 (and 2007 respectively) implement salary grades in accordance with County Board Compensation Plan." The Union offers no quid pro quo for this nor any solid rationale for changing what the parties negotiated for themselves in the current labor contract.

6. The County further cited several other interest awards for the proposition that internal consistency is the paramount consideration in current interest arbitrations, and indeed over the past 20 or more years, and further asserted that internal consistency would be completely upset by creating a different salary grade schedule for this one unit. Again, there was no rational or quid pro quo offered for this change. Moreover, the other units all agreed to this and have been treated quite fairly and equitably by the County in this regard.

The County seeks an award of the arbitrator granting the County's position to retain the current language and salary grade system.

DISCUSSION OF SALARY GRADE ISSUES

Both parties noted that the County's pay system was out of the ordinary. It is complex to be sure but suffice it to say for our purposes it was mutually agreed to in recent bargaining between these parties and seems to be working well for all concerned. There was no evidence of problems in its implementation nor any evidence of a disparity from the market in pay for these deputies. Indeed as will be discussed more below, the evidence showed that Scott County deputies tend to be paid slightly better than deputies in comparable jurisdictions. The parties also acknowledged that the salary issues, i.e. grade, general increase and salary matrix are somewhat interrelated. They will be treated separately here only for purposes of clarity but the evidence showed that they are indeed interrelated quite closely.

The evidence showed several salient facts in this discussion. First, it is quite significant that the parties negotiated the language currently proposed by the County in the last labor agreement. The provision in the wage appendices calling for the implementation of the salary grades consistent with the County Board Compensation Plan is indeed in the contract for both 2006 and 2007.

Moreover, the evidence showed that there was a 2% increase in that for 2008 made by the County Board. There was no evidence of an abuse of this or that this provision was being used as some sort of subterfuge to retain absolute authority of wages in the employer's purview to the exclusion of the collective bargaining process.

Further, the evidence showed that all of the other represented units, including several represented by this same Union, agreed to this language for their 2008 and 2009 contracts as well.

While internal consistency is not always the sole consideration to be taken into account, here there was no compelling reason set forth by the Union to persuade the arbitrator as to why a radically different system should be implemented or put in place here. As will also be discussed on other issues below, it is generally incumbent on the party seeking a radical change in the contract to put forth a compelling reason for such a change. This is especially true in interest arbitration where the main consideration is to determine what the parties would have negotiated for themselves if left to their own designs. While that is also a somewhat inexact science, here the best evidence of that is the language that all the other units negotiated and what this unit negotiated with the County during the last round of bargaining. See County exhibits 48, 49 & 50. Without more, there was no compelling need shown to set this unit apart from the other units within the County with regard to the Salary Grade. Accordingly, the County's position must be awarded.

AWARD ON SALARY GRADE FOR 2008 AND 2009 - ISSUES # 1& 2:

The County's position is awarded.

ISSUES # 3 & 4: GENERAL WAGE INCREASES – AMOUNT - ARTICLE 17 & APPENDIX - 2008 & 2009

UNION'S POSITION

The Union seeks a general wage increase of 3% for both 2008 and 2009. In support of this position the Union made the following contentions:

1. The Union pointed out that most arbitrators use more than a simple internal consistency calculation to determine appropriate wages. The factors to be used are the employer's ability to pay, internal equity, external market considerations, pay equity considerations and cost of living/other economic forces.

2. The County has more than sufficient ability to pay the Union's requested increases of 3.0% and 3.0%. The additional cost for these increases result in just over \$100,000.00 in cost for the County as compared to a 2008 budget of nearly 100 million dollars. The Union asserted that the additional cost to the County would be negligible in comparison to such a large overall budget.

3. The Union argued that Scott County is the fastest growing county in all of Minnesota and indeed one of the fastest growing places in the entire country. New development is literally springing up all over resulting in new tax capacity and economic development. Even though the overall economy may be slowing due to high fuel prices and other factors, Scott County remains very strong and economically viable.

4. With regard to Local Government Pay Equity, the Union asserted that its proposed increases will not in any way adversely affect the County's Pay Equity compliance.

5. The Union asserted that despite the County's argument to the contrary there is not a perfectly consistent internal pattern of wage settlements. The County Attorneys negotiated a wage matrix 1.0% higher than for other employees in addition, the County Commissioners received increases of 4.69%.

6. The Union further asserted that if one simply blindly assumes that internal consistency is the main consideration, the underlying policy of negotiation in PELRA would be defeated. If public employees are allowed to set wages for its unrepresented employees and then assert "internal consistency" with regard to its represented units, labor negotiation would become moot and PELRA effectively repealed.

7. The Union also countered the County's assertion that there are no problems with attraction and retention. It pointed out that four deputies washed out during training strongly implying that the quality of candidates may be suffering due to the compensation offered.

8. The Union pointed to external market considerations are still permissible and in fact widely used to determine appropriate wages. The Union pointed to the wages paid in comparison jurisdictions in the Minnesota Department of Economic Development Region 11, including the metro area and Scott County in support of these external market considerations. The Union asserted that region 11 Counties and cities should be used given the location and financial situation in Scott County. The Union further noted that Stanton Group IV counties are in many cases located quite far away and that the League of Minnesota Cities no longer even uses DCA Stanton.

9. The Union asserted that the "market" is comprised generally of employers who are in competition for the same set of employees. Here it makes no sense whatsoever to compare St. Louis County for example to Scott County since they do not generally compete for the same employees and are located almost 200 miles away from each other. In fact, the 2006 wage study was implemented for Scott County's marketplace, i.e. metro counties and cities. That is what the external market should consist of now.

10. The Union further argued that cities should also be included in the market for Scott County since they are also competing for the same employees. With the passage of PERA Police and Fire Pension Fund employees are no longer bound to stay with the same employer for decades to receive their pensions. Employees are increasingly mobile and can move between counties and cities with ease and retain their pension rights. As a result, it is no longer appropriate to simply compare far flung counties to each other when the real market is far different. The Union noted that the prevailing rate of increase for metro counties and cities is 3.73% with average requests of 3.53% in 2009.

11. Regarding the CPI and other economic factors, the Union noted that the cost of living has risen dramatically recently due to huge increases in fuel costs, which have resulted in similar increases for virtually all other commodities and necessities of life. In order to ensure that the deputies can maintain their standard of living, a concomitant increase should be granted. Here the Union seeks only a modest 3.0% increase, which is far lower than the CPI's increases of more than 4.5%. The Union asserted that its proposals are reasonable, well within the ability to the County to pay and more than justified on any measure.

COUNTY'S POSITION

The County proposes a 1.0% wage increase for both 2008 and 2009. In support of this proposal the County made the following arguments:

1. The County pointed to the increase granted as the result of the wage study done in July of 2006 and asks that the arbitrator take note of the 17% increase these employees were given then.

2. The County also pointed to the various component parts of the salary and pay system in Scott County and noted that the parties themselves agreed that there would be a shift away from simple longevity to more of a merit pay system in order to achieve the County's goal of excellence in employment there. The County asserted that it is working thus far and the vast majority of the employees meet or exceed expectations and are performing outstanding work on behalf the County and its taxpayers.

3. The County argued that while it is not in financial crisis by any means and is healthy, it is not in as positive a position as the Union would have the arbitrator believe. The County's Fund balance, much of which is mandated by the State Auditor and is not simply available to spend without regard to the financial standards applicable to Minnesota Counties, has decreased over time. It is now actually somewhat below the recommended balance by the State Auditor. In the meantime, the County's operating budget has increased as costs for operations have risen. The County is now experiencing a decrease in housing values for the first time in decades.

4. The County argued most strenuously that internal consistency is still the main factor to be considered by interest arbitrators in this State. Here all of the other units have already agreed to the 1.0% general wage increase proposed by the County for this unit as well. There is no reason to carve out an exception for this unit and no quid pro quo offered to justify paying this unit 3.0% as the Union proposes when no other represented unit in the County receives that much.

5. The County argued too that the County Attorneys negotiated a separate merit pay scale as a quid pro quo for a 0% general wage increase. All other units agreed to a 1.0% increase, again including several units represented by LELS. The County re-asserted its position that internal consistency among the various units within the County should be the primary factor in determining the appropriate wage award. PELRA exists to promote harmonious labor relations between labor and management. Setting up a situation whereby one unit stands alone from the rest of the units within a jurisdiction does just the opposite. Moreover, there was no compelling showing of why doing this for these employees would be justifiable.

6. The County further argued that the highly competitive wages offered in Scott County is an appropriate quid pro quo for the award of 1.0% and that was all that was offered to and accepted by the other bargaining units within the County.

7. Granting the 3.0% would further erode the wage differential between the licensed deputies and the sergeants. The County pointed that when the sergeants were in this same unit (until becoming supervisors several years ago) this Union argued that there should be a 12% pay differential between the two groups of employees. The sergeants have agreed to a 1.0% increase and granting the 3.0% sought by the Union would create a situation where there would be too small a gap between line employees and their supervisors, as once upon a time argued by this same Union.

8. Regarding the external market, the County asserted most vigorously that Scott County has never been compared to the Economic Development Region 11 jurisdictions and that several prior arbitrators who have rendered decisions between these parties have so held. Scott County has always been compared to Stanton Group IV counties and not cities and the County argued that no such comparisons should be made here nor should the arbitrator use data from region 11 to determine the external market for Scott County.

9. The County argued that when compared to the appropriate group, the data shows that Scott County deputies are paid well above the average in that group and that the County's wage proposals will continue that trend.

10. Regarding the CPI argument presented by the Union, the County noted that there is more to the wage award than the general increase. When one views the entire picture of the compensation package, it is apparent that the wage increases are quite competitive and in line with the CPI. If a deputy's performance exceeds expectations, and the County noted that a great many do, that deputy would receive a 5.0% increase even if one uses the County's final position. The Union's position would result in far greater increases, which are not justifiable by any comparison, whether that be internal, external or compared to the CPI.

11. The essence of the County's argument is that the total package must be considered and that it results in a very competitive wage increase package for these employees and that this can be made even better with superior performance. The County asserted that internally and externally Scott County's offer to these employees is more than fair and results in a wage package that continues the trend placing Scott County's wages at the top of the comparison group.

DISCUSSION OF WAGE INCREASES – AMOUNT - ARTICLE 17 & APPENDIX - 2008 & 2009 - ISSUES # 3 & 4

As noted above, the total package must be taken into consideration in order to arrive at the appropriate general increase for these employees. There is obviously more to this than a simple 1.0% increase, which on its face sounds low. However, on this record it would not be appropriate to view this in a microcosm and when the full picture comes into view that general increase is, as the County asserted, a reasonable increase given the other pieces of the compensation package.

Moreover, looking at the various factors typically raised in such discussions it is apparent that the County's proposal is the appropriate general increase. First, arbitrators look to internal consistency as a major factor in this determination. Much has been written about the notion of internal consistency and how much weight that one factor should be afforded in making such determinations. The Union argued that it is but one factor to be considered among many and that internal consistency should not be afforded presumptive weight or probative value by interest arbitrators. The Union cited language by other interest arbitrators to that effect and argued that while internal comparisons are important, they are not controlling. See e.g. *LELS and City of Mendota Heights*, BMS 01-PN-968 (Martin 2001).

The County on the other hand argued that it is perhaps *the* major factor to be considered and that others are but minor considerations to be taken into account. The County cited awards by other arbitrators rendering their awards to that effect. See e.g. *LELS and Scott County*, BMS 01-PN-1152 (Miller 2001). The County asserted that internal consistency has been the primary factor relied upon by active interest arbitrators for many years.

As always with arguments like this the truth is somewhere in the middle and depends on the facts of each case. Internal consistency is certainly a primary factor to be considered by an interest arbitrator in determining an appropriate wage award. In some cases it will in fact be the major factor. Here for example, as will be discussed below, it was. That does not necessarily mean that in all cases internal consistency must be used as the *de facto* sole consideration. Merely deferring to internal consistency in all cases without regard to the underlying facts of those situations does not do justice to the clear policy in favor of negotiations as the primary way of settling labor contracts in Minnesota. One could certainly envision a scenario where blind reliance upon internal consistency would not result in an appropriate award but those fact situations and that academic discussion will have to await another day.

Having said that however, it is clear that on this record, the facts presented supported the County's position. Internally, the evidence showed two very significant facts. First, there has been a long history of internal consistency within Scott County. As County exhibit 45 demonstrates, over the past 12 years at least, there has been a pattern among the various units represented by various Unions, including LELS, of internal consistency in general wage increases. The County Attorneys negotiated a slightly different wage settlement in 2007 but the County adequately explained why that was and that it was in a specific exchange for another benefit. The County Attorneys actually negotiated a 0% increase. All of the other units, including the remaining law enforcement units negotiated a 1.0% general increase in wages.

Second, as noted herein, there is a strong indication of internal consistency among the units that have settled for 2008 and 2009. County exhibit 44 shows again a very consistent pattern of internal settlements at 1.0%. This again was with the exception of the County Attorneys who settled for a 0.0% increase for the reasons already set forth above.

Thus, the evidence here shows that there exists not only a very compelling pattern of settlement for this contract term but for contract terms going back more than a decade of internal consistency in general wage settlements. On this record, this factor alone is almost enough to carry the day for the County. There was also additional support for the County's position using the other factors to be considered.

Pay Equity is a factor to be considered but on this record was of little evidentiary value. The Union argued that granting its wage proposals would not take the County out of compliance with the Local Government Pay Equity Act. The evidence showed that to be true but that alone does not compel the result the Union seeks. Simply saying that it will not take the employer out of compliance with Pay Equity does not mean that this is the appropriate award. Other more important factors must be used to determine the appropriate award.

Externally, it was further clear that Scott County's wages are at or near the top of the comparable jurisdictions. Initially, the Union's argument that Scott County should be compared to Region 11 jurisdictions must be rejected. While there is some evidence that these comparisons should change over time as the nature of the community and of the law enforcement business changes, on this record there was insufficient proof that a different set of comparisons should be used.

The Union did make a cogent argument that there is far greater flexibility and mobility within the law enforcement community due to the passage of the PERA retirement law several decades ago and the fact that law enforcement officers do now move with much more frequency and fluidity between counties and cities. It may well be time to start such a discussion about comparables as many of these have been used for literally decades and while it may well have been a good idea to use one particular set of comparables in 1978 for example, those may not be the appropriate set of comparisons now especially if one of them is approximately 200 miles away and has not had the same sort of growth pattern or law enforcement needs over time as the metro counties have.

Having said that though it is frankly not for an interest arbitrator to change that set of comparables in this setting. That should be for the parties to negotiate or for another entity to determine based on an appropriate study. For purposes of this matter, the Stanton Group IV Counties of Anoka, Carver, Dakota, Olmstead, St. Louis and Washington will be used.

A review of County exhibits 73 through 80 reveals that Scott County's wages are at or near the top of that group of comparables, even though Scott County's population is well below the average for those comparable counties. Scott County has a much smaller than average number of employees and the smallest budget of any of the comparable counties. It is clear that Scott County has been a leader in compensation over time and the County's proposal when viewed in its entirety continues that trend.

One other important factor in determining wage awards is relative position among the comparable jurisdictions. Here a review of the total package supports the County's view that its wage proposal would continue that but not create a greater separation between Scott County and other comparable jurisdictions as the Union's wage proposal would. Accordingly, using external comparisons, the evidence on this record supports the County's position of a 1.0% wage increase.

Finally, the CPI and other economic considerations were considered. These considerations are often an inexact science as well and that the statistics can be molded and shaped in a variety of ways. The compelling evidence on this record though was the assertion that the overall wage package results in a 5.0% or even greater increase in real wages for the deputies even if the County's proposals are used. To be sure, costs have risen in the past few years and everyone who has pumped their own gas, purchased groceries or had to pay a heating bill knows all too well. However, the County's tradition of paying at or above the average of the comparison counties as well as the total package offered here provides some offset for that. On balance, the evidence supported the County's positions in this regard.

AWARD ON GENERAL WAGE INCREASES - ARTICLE 17 & APPENDIX - 2008 & 2009 - ISSUES # 3 & 4

The County's position is awarded.

ISSUE #5: SALARY MATRIX

UNION'S POSITION

The Union's position is to retain the current, 2007, salary matrix, which provides as follows:

	Less than Satisfactory	Satisfactory	Exceeds Expectations	Outstanding
Base adjustment	0.0%	4.0%	4.0%	5.0%
Lump Sum	0.0%	0.0%	0.0% - 1.0%	0.0% - 1.0%

In support of this position the Union made the following contentions:

1. The Union asserted that this system has worked well despite a long and somewhat storied history of how it came to be in the contract. In 1987 the County undertook a comparable worth study and developed an 8-step wage scale for the deputies even though a majority of the units had a 12-step scale at that time. The County tried to implement this for the deputies but this was rejected since they had a 5-set scale at the time. The Union cited an earlier interest arbitration award wherein the arbitrator ruled in the Union's favor and rejected the County's attempt to implement the 8-step wage scale. See, *LELS and Scott County BMS 08-PN-894* (Jacobowski 1989).

2. The County tried to implement that change in 1995 and 2002 Arbitrators Swenson and Miller, respectively, rejected those attempts. See, *LELS and Scott County BMS 95-PN-148* (Swenson 1995) and *LELS and Scott County BMS 01-PN-1152* (Miller 2002). Arbitrator Miller also opined that the party seeking to change the contractual relationships bears a heavy burden of proof and must provide a compelling reason to change this with an appropriate quid pro quo for the requested change. He found that no such evidence was presented in that case and rejected the County's proposed change.

3. The Union argued quite vigorously that the general standing rule in interest arbitration throughout Minnesota is that the party seeking a change, especially such a radical change in the relationship as is proposed here, bears the burden of showing an appropriate quid pro quo for the change or that there exists some compelling need for that change in some way. The Union argued that there is no reason why that rule should not be strictly applied here.

4. In 2005 this unit gave up the old 5-step schedule, plus longevity in consideration for the schedule that allowed a deputy to reach maximum pay within 9 years. The Union argued that the County's request is in effect a "bait and switch" by inducing the Union to accept the new salary matrix and now changing it and by forcing this unit to accept it merely because others have as well.

5. The Union argued that no such compelling reason exists here nor was there any quid pro quo offered for the County's requested change in the salary matrix. The Union further argued that even though other units have agreed to the new salary matrix they were offered things this unit was not as a concession or quid pro quo for that change. The Union pointed to the IUOE #49 contract, Union exhibit 62, and noted that at least four of their employees had their new increases listed in the contract. The County Attorneys negotiated a matrix that is 1.0% higher than that granted to the deputies. The Correctional Officers, also represented by LELS, negotiated an extra adjustment in exchange for the concession of agreeing to the new matrix. The LELS Correctional Sergeants apparently negotiated two 2-year contracts rather than one 3-year contract. The LELS Licensed Sergeants received performance pay one year earlier than they otherwise would have.

6. Finally the Union pointed to its calculations of what this will cost the members under certain situations if the new matrix is placed in the contract. The Union argued that it could cost a deputy up to \$87,477.44 over time if the new salary matrix is put in place. See pages 73 & 74 of the Union's arbitration booklet.

COUNTY'S POSITION

The County seeks a new salary matrix in the 2008-2009 contract consistent with what has been placed in all other settled labor contracts in the County and implemented for the non-Union employees. This salary matrix would appear as follows:

At or Above Minimum and Below Midpoint	Needs Improvement	Meets Performance Expectations	Exceeds Performance Expectations	Outstanding Performance
Base Adjustment	0.0%	2.5%	4.0%	6.0%
Lump Sum	0.0%	0.0%	0.0%	0.0%

<u>At or Above Midpoint and Below Maximum</u>	<u>Needs Improvement</u>	<u>Meets Performance Expectations</u>	<u>Exceeds Performance Expectations</u>	<u>Outstanding Performance</u>
Base Adjustment	0.0%	1.5%	3.0%	5.0%
Lump Sum	0.0%	1.0%	1.0%	1.0%

<u>At or Above Maximum and Below Perf. Maximum</u>	<u>Needs Improvement</u>	<u>Meets Performance Expectations</u>	<u>Exceeds Performance Expectations</u>	<u>Outstanding Performance</u>
Base Adjustment	0.0%	0.0%	0.0%	1.0%
Lump Sum	0.0%	2.5%	4.0%	5.0%

In support of this position the County made the following contentions:

1. The County noted that there was a problem after January 1, 2006 that was in part created by the new salary grades implemented on July 1, 2006, rather than on January 1, 2007. As a result, new jail facility officers were being hired at salaries somewhat higher than existing staff. To correct this issue the County agreed to additional merit pay increases for jail officers hired prior to January 1, 2006. See County Exhibit 65.

2. As noted above, effective July 1, 2006 the midpoint salary levels were raised by 17.2% resulting in very large increases for these deputies. The County argued that with these dramatic salary increases the 2007 salary matrix was no longer financially feasible or fiscally responsible and needed to be changed.

3. Further, when the increases were granted in July 2006 this salary matrix was no longer feasible for the County. Thus, the County sought to change it and has done so with virtually every other represented employee group in the County and the non-Union employees. This again includes several units represented by LELS. Under the older system employees were allowed to progress to the maximum or even the performance maximum end of the scale. Thus progression was compared to the market prior to July 1, 2006. After that date however, when significantly higher salary grades were implemented following the wage and salary study, the County changed to a comparison to the midpoint of the market. The County asserted that once that occurred, it was no longer appropriate for employees to be able to simply progress to the upper salary grades irrespective of performance. The County argued that all parties agreed that only those employees whose performance exceeds expectations should progress to the maximum salary levels. Likewise, only outstanding employees should progress to the outstanding salary grade levels.

4. The matrix has been changed slightly from 2007 but is still based on performance. The better the employee's performance the greater the percentage increase. The 2007 system may have worked on one level but provided only a minimal differential in opportunity for increases between levels of performance and did not thereby create sufficient incentive for employees to excel. The County asserted that the 2008-09 matrix will remedy this issue and that the other bargaining units agreed and have ratified the new matrix in their labor contracts. The County pointed out that under the 2007 matrix there was only a 0.5% difference between performance levels whereas the 2008 system provides far more incentive to perform well. The County gave one example of a deputy with outstanding performance and noted that, when coupled with even the 1.0% general increase offered by the County, such an employee would receive an actual 7.0% increase as opposed to a 3.5% increase under the 2007 system.

5. The County countered the Union's claim as to what this new system might cost employees over time and argued that their argument assumes all employees receive only a satisfactory performance rating. Most of the employees receive ratings that exceed performance expectations and 1/3 of the employees received ratings of outstanding. The "cost" under those assumptions is very different from the Union's calculations. (The County noted that there is every reason to believe this trend will continue as the new matrix provides large financial incentives for it to.)

6. Moreover, all other bargaining units that have accepted the new matrix and in 2007 the other LELS units began transitioning to this system. See County exhibit 54. The County again asserted that internal consistency and harmonious labor relations dictates that the salary matrix be the same for all units. The County pointed to arbitration awards that were much more recent than the one relied upon by the Union for the proposition that this unit should be treated the same as all other units within the County. Even though perhaps 20 years ago this unit saw itself as apart from other units the much more recent trend is toward internal consistency, especially since the other units voluntarily negotiated and agreed to place the new matrix into their contracts.

7. Moreover, for the reasons stated above, there is the sort of compelling rationale for instituting a change in the labor agreement present here. Thus, despite arbitral precedent requiring a showing of a compelling need or justification for a change in the labor agreement and/or a quid pro quo for the change, such is present here and should be awarded.

DISCUSSION OF SALARY MATRIX – ISSUE #5

At the outset it should be noted that both parties agreed that the language found in Appendix C 3 of the current contract is to carry through to the 2008-09 contract irrespective of the award on the rest of the matrix issue. That language provides as follows:

“Salary increases for permanent employees will be effective on March 15. Salary adjustments for probationary employees will occur on the anniversary date upon the successful completion of the probationary period. The next review shall occur on March 15 and be pro-rated based upon the time interval between the anniversary date and March 15. Thereafter, reviews and salary adjustments shall occur on March 15.”

The question presented here is whether to place the County's proposed new salary matrix in the contract. This presents a much more difficult and closer call than the previous two issues. The Union raised a commonly held tenet of interest arbitrations and argued that the party seeking to institute a major change in the labor agreement must present a compelling need or a quid pro quo for such a change. Indeed a great many prominent and well-respected arbitrators have so held. See *IBT #320 and Anoka County*, BMS 91-PN-9 (Fogelberg 1991); *LELS and Suburban Hennepin Regional Park District*, BMS 02-PN-1427 (Ver Ploeg 2003). Certainly, a party seeking to place a significant change in the labor agreement bears the burden of providing a compelling justification for that change.

The Union asserted that no such compelling need has been offered by the County other than the bald claim that it will save the County money over time. The Union presented considerable argument that over time deputies under the "new" salary matrix would lose tens of thousands of dollars in compensation and in an extreme case could lose over \$87,000.00 over the course of a projected law enforcement career.

In addition, the Union noted that traditionally, this unit has been treated separately and pointed to the history of the County's attempts to impose a different 8-step salary progression step system in the early 1990's that met with considerable resistance from this unit even though other units accepted the County's proposed change. Further, it was only after there was a quid pro quo offered that the new 8-step progression system was placed in the contract. The County cited Arbitrator Jacobowski's 1989 award in which he refused to place the County's 8-step salary progression system into the contract, stating that the benefit "was obtained through the collective bargaining process. When adopted in all probability was granted in lieu of other instant considerations." Arbitrator Jacobowski declined to alter what had apparently been in the contract for 14 years and had remained substantially unchanged.

Arbitrator Miller recognized as much as well when he held that "any change in negotiations usually occurs as a 'quid pro quo' for some other concession." He declined to eliminate longevity incentive pay as proposed by the County at that time. The Union asserted that what is being proposed now is a radical change in the employment relationship for which the County has offered nothing and is justified on nothing more than the fact that everybody else accepted it without apparent resistance or concessions. The Union argued that this unit stands alone and should not be forced to accept this change without something in exchange for it.

The County acknowledged that it offered no quid pro quo to the other units in exchange for the change in the salary matrix. It was unclear why they accepted it but it is clear that they did. See County's brief at page 11. See also County Exhibit 54. The County's argument is based largely on the strength of the internal consistency to be garnered by having all the units on the same salary matrix. It is further based on the fact that the new matrix allows an employee to progress relatively quickly to the midpoint but that further advancements must be based on performance that exceeds expectations by a significant amount. A review of County exhibits 30 through 33 shows how the new system might work as compared to the old system and it is understandable why the County desires this change. It is further clear that the new system tends toward the policy of granting increases based more on excellence and performance than on longevity or other considerations and is in line with the County's Compensation plan policy, See County exhibit 34.

The essential question is not so much whether something makes sense to one of the parties but rather whether there is a compelling showing for why something should be placed in the labor agreement by an interest arbitrator over the objection of the other party. Here there were several very cogent policies working at odds. On the one hand, it is clear that the other units in the County have all agreed to this compensation matrix.

The Union asserted that there was a specific quid pro quo offered to some of these other units but this was not clear on this record. Certainly there were other things different about those agreements but there was an insufficient showing as to what if anything offered in specific exchange for this benefit. On the other hand, this fact cuts the other way as well in that there generally should be a showing of a quid pro quo or some compelling need for a change of this nature in order to justify its placement in the agreement by an arbitrator.

The underlying policy of interest arbitration is to try to determine what the parties would have negotiated for themselves. See *LELS and Scott County*, BMS 01-PN-1152 (Miller 2001). This has long been a basic tenet of interest arbitration.

One other important consideration is to determine the impact on an award and on the relationship between the parties. This consideration did not make the ultimate call any easier.

The County argued that all the other units now have the new matrix and it would be unwieldy and expensive at best to have a different matrix for just this one unit. There was not however any hard evidence of what the impact would be if the old system were to be left in place.

The Union asserted that there was in fact no showing that any untoward harm would befall the County if the old system was left in place and argued that in fact it was clear that many deputies would potentially be financially harmed if the new one is put in place. As noted above, the County disputed the Union's figures in this regard and noted that the financial impact could be far less or even negligible if one uses slightly different assumptions regarding those numbers.

Ultimately, while there was some evidence that the unit has stood apart on some items in the past the overall evidence showed a high level of consistency in compensation over time. See County exhibit 45. It was also clear that while the old matrix was negotiated into the contract in 2007 the new one was negotiated into virtually all the other contracts in 2008 and 2009. This level of internal consistency on this record presents strong evidence that the new matrix should be placed in the contract.

Further, there as a large salary increase granted in July 2006. While it was not shown to have been a quid pro quo for this benefits (and it likely was not as it was granted effective July 1, 2006 long before the expiration of the 2007 contract) this evidence is again strong evidence that there exists a need to change the salary matrix. Certainly without this evidence the County would not be able to sustain its burden of showing a compelling need for the. On this record, based on the clear pattern of settlements with the other units and the fact that such a large increase in wages was granted in 2006, the County has sustained its burden of providing a compelling need to replace the salary matrix with the proposed 2008-2009 matrix noted above.

AWARD ON SALARY MATRIX – ISSUE #5

The County's position is awarded.

DETECTIVE DIFFERENTIAL – ISSUE #6

UNION'S POSITION

The Union proposes to increase the detective differential from the current \$180.00 per month to \$205.00 per month effective January 1, 2008 and to \$230.00 per month effective January 1, 2009. In support of this position the Union made the following arguments:

1. The current agreement provides for differentials of \$160.00 per month in 2005, \$170.00 effective January 1, 2006 and \$180.00 effective January 1, 2007. The increases requested would simply continue those increases in order to adequately compensate the detectives for the work they do.

2. The Union also pointed to the market and argued that the surrounding counties that have a detective classification offer far more in terms of detective differentials. Even the vast majority of Stanton Group IV counties, which the County so vehemently asserted should be the comparison group, pay far more than Scott County does to its investigators. Carver offers \$220.00 per month in 2008 and 2009. Dakota pays \$325.00 per month and Washington offers \$282.54 in 2008 and \$291.20 per month in 2009. Olmsted County pays \$435.20 per month in 2008 and \$471.33 in 2009. St. Louis County paid its investigators \$375.00 more per month in 2007.

3. The Union also pointed to Hennepin and Ramsey Counties and noted that Hennepin pays \$817.00 per month in 2008 and \$844.00 per month in 2009. Ramsey pays \$100.00 to a deputy assigned to investigations and \$801.26 for anyone promoted to that position. Finally, Anoka provides something similar to Ramsey in that it pays \$75.00 per month for assignments to investigations and \$662.13 per month for promotion to permanent assignments to those positions.

4. The Union asserted that if the differential is allowed to remain fixed the differential between detectives and line deputies will continue to shrink. It is well established that there should be an adequate differential between classifications to maintain separation between these jobs to provide incentive to take the more responsible jobs. The Union argued that even though the sergeants' pay was not increased, the sergeants formed their own unit effective January 3, 2006 and their pay was increased to grade 12, top pay of \$74,520.00. The Union argued that the differential between a sergeant and a deputy assigned to work as a detective was 9.9% under the 2005 contract. In order to maintain that same differential, the deputies' detective differential would need to be increased to \$325.00 per month. The Union is seeking only a modest increase to \$205.00 for 2008 and \$230.00 for 2009. The Union argues that it is important to maintain the same differential; between job classifications and that adopting the County's position here will not only not meet that goal but would work to defeat it.

5. The Union also countered the County's assertion that these positions are separate job classifications as a distinction without a difference. The terms "detective" and "investigator" are used virtually synonymously throughout the industry and the job duties and responsibilities are quite similar across jurisdictions. Moreover, only Anoka and Ramsey detectives are in separate units.

6. The Union argued that the total cost of their proposal would be minimal adding approximately \$3,000.00 to the cost of the contract. The Union argued that its proposal is more than reasonable and justified given both external marketplace comparables and the need to maintain appropriate separation between job classifications.

COUNTY'S POSITION

The County's position is to maintain the current language and detective differential. In support of this position the County made the following arguments:

1. The Union's request is for an increase of 28% over the life of the contract. The County asserted that there is simply no justification for such a large increase in the detective differential.

2. There is also a detective differential included in the LELS Licensed Sergeants' contract. The County pointed out that the detective differential has traditionally been the same for both the Licensed Sergeants and the licensed Deputies. The Detective differential was not increased for the Licensed Sergeants for their 2006-2008 contract. See Employer exhibit 81. Thus, in order to maintain internal consistency the same language should be awarded in the deputies' contract.

3. Regarding the external market, the County argued quite vigorously that Hennepin and Ramsey Counties have never been used as comparisons to Scott and argued that the arbitrator should not use data from Hennepin or Ramsey as external market data here. Moreover, the County noted that there is really no external market since all but one of the Stanton IV counties have separate job classifications for detective and Investigators, whereas in Scott "detective" is an assignment within the deputy classification. The County argued that this is in fact a significant difference in the way these positions should be evaluated since they have separate wage schedules in these other counties and separate job classifications as well.

4. Only Carver County has anything comparable and there are valid reasons for the differential there. Carver County's general wages are far lower than in Scott County and traditionally has been and as a result, the detective differential is somewhat higher to offset that difference.

DISCUSSION OF DETECTIVE DIFFERENTIAL – ISSUE #6

Once again the parties differed greatly in the weight to be placed in internal versus external comparisons with the Union seeking a comparison more on external factors and the County leaning the other way toward an emphasis on internal comparisons and factors. Looking to external market considerations several things become clear.

First, comparisons to Hennepin and Ramsey Counties are inappropriate here since they are not in the group of counties that have been traditionally used to determine appropriate wage comparisons for Scott County. That may well change as the character of the County and its demographics change over time but for now at least no weight was given to the wage figures for either of those counties.

Second, a comparison to the Stanton IV counties that were cited by the parties reveals that except for Carver, the detective position is a separate job classifications and not an assignment within a classification as it is in Scott County. There is a difference in that set of facts. Scott County deputies remain deputies when they are assigned to work as detectives and are not apparently given a separate job title of detective as they are in most of the other comparison counties. Accordingly, while it is true that the terms are used interchangeably as the Union suggests, the facts and evidence presented here show that the external market argument does not really carry the day. Moreover, there was merit to the County's argument that Scott County's wages and compensation package has traditionally been somewhat higher than in other counties and that this leads to somewhat higher pay for things like detective differentials in order to in effect balance that out.

Internally, the County argued that the sergeants and deputies have traditionally received the same detective differential. For 2008 the sergeants receive \$180.00 and the County argues that there is no rational basis to grant the deputies, whom the sergeants may be supervising, a higher increase.

One difficulty with this is that the sergeants are not settled for 2009 yet and the contract covering the sergeants unit was for the period from 2006 to 2008. It was not clear when this contract was settled on this record.

There was some merit to the assertion by the County that the 2008 detective differential should remain the same as between the sergeants and deputies.

For 2009 however the story is very different in that neither unit is settled for 2009. There is thus no true internal consistency argument that can be made on this record. The question then is whether the deputies should receive an increase for 2009 in their detective differential. It is clear that the parties negotiated a \$10.00 per month increase in 2006 and 2007 as set forth in the current language of Article XVII section 1. Given the underlying philosophy of interest arbitration to determine what the parties would have negotiated for themselves it is reasonable to award a progression for the deputies for 2009 that continues that trend.

Obviously, the arbitrator was mindful of the impact that may have in the 2009 sergeants contract and the need to maintain appropriate wage separation between supervisory positions. That should also be for the parties to work out in negotiations. Accordingly, the detective differential for 2008 is awarded to remain at \$180.00 per month effective January 1, 2008. The detective differential is further awarded to increase to \$190.00 per month effective January 1, 2009.

AWARD ON DETECTIVE DIFFERENTIAL – ISSUE #6

The Detective Differential for 2008 is awarded to remain at \$180.00 per month effective January 1, 2008. The Detective Differential is further awarded to increase to \$190.00 per month effective January 1, 2009.

SHIFT DIFFERENTIAL – ISSUE #7

UNION’S POSITION

The Union seeks to increase shift differential from the current \$0.75 per hour to \$1.00 per hour effective January 1, 2008 for the life of the contract. In support of this position the Union made the following arguments:

1. Shift work is more dangerous and demanding than working in daylight hours. The Union argued that this is the fundamental reason behind granting greater pay for nighttime work.

2. The Union pointed out that health experts around the country have begun to document some potentially serious health concerns for people who are required to work during the night. The circadian natural rhythms of the human body are upset by the cycle and health problems can arise – far more than had been previously suspected. See Union exhibit 289, indicating that shift workers are at significantly greater risk of cancer as the result of sleep deprivation and other conditions caused by working abnormal hours.

3. Since most social and family events do not occur in the middle of the night, workers who are required to work on this schedule miss out on “normal” functions and events and are required to undergo greater stress because of their unusual schedules compared to the majority of the rest of the workforce.

4. Externally the Union argued that a modest increase of \$0.25 per hour is justified and pointed to the surrounding counties in support of that argument. See Union exhibit 291.

5. Finally, since the value of such a differential erodes over time due to inflationary factors, it should be periodically increased to preserve its value. The last time the differential was increased was 2006 and it should be increased again in 2008 and 2009.

COUNTY’S POSITION

The County’s position is for no change in the shift differential. In support of this position the County made the following arguments:

1. The County asserted that the shift differential in 2008 for all essential employees, including those represented by LELS, \$0.75 per hour. For 2009, for those groups that have settled, i.e. the Dispatchers, and LELS Correctional Sergeants, the shift differential is also \$0.75 per hour. Those latter two units have even settled into 2010 for the same shift differential.

2. The County argued that internally there is a string pattern of consistency among essential and law enforcement units and that once again these are all the same. The County asserted that there is no compelling reason to increase the shift differential in either 2008 or 2009 as several units have already settled for that thus creating a strong presumption in favor of internal consistency.

3. Externally, while the County argued external market considerations should play only a minor role if at all, the Stanton IV counties shows an average of approximately \$0.68 per hour. Thus, there is no justification on any level that can be made by the Union to justify the increase.

DISCUSSION OF SHIFT DIFFERENTIAL – ISSUE #7

The Union was unable to provide sufficient justification for the requested increase. Internally the pattern of settlements again showed consistency among the law enforcement negotiated settlements and those left the shift differential at the current level. While several of the units are not settled for 2009, those that are also left it at \$0.75 per hour.

Moreover, even reviewing the external market considerations shows that the average of the Stanton IV counties indeed shows an average of just under \$0.70 per hour for shift differential pay. Carver County is somewhat higher, again apparently to offset slightly lower general wages and Olmsted was considerably higher. On balance though there was not enough evidence on this record to establish a reason to increase the shift differential beyond its current level for 2008 and 2009.

AWARD ON SHIFT DIFFERENTIAL – ISSUE #7

The County's position is awarded.

FIELD OFFICER TRAINING PAY – ISSUE #8

UNION'S POSITION

The Union seeks an increase in Field Officer training pay from the current level of \$0.75 per hour to \$1.50 per hour. In support of this position the Union made the following arguments:

1. The Union again asserted that the value of Field Training Officer, FTO, pay has slowly eroded over time. Arbitrator Miller first set FTO pay at \$0.50 per hour in 2002, using mostly external data from Anoka County. The Scott County FTO rate was eventually increased to \$0.75 over time but Anoka County also grants additional time off to its training officers. The Union argued that once again external market considerations should be used to increase this benefit.

2. The Union pointed to the Region 11 comparisons and argued that the average FTO compensation is over \$35.00 per ten hour shift, whereas Scott County's is a mere \$7.50 per ten hour shift. The Union argued that given the importance of training this should be increased substantially to meet the market.

3. Finally, the Union pointed out that the County could easily control its costs here since FTO pay is only paid when a new officer is hired and trained. Over the past three years only 3 deputies have been hired and the cost of training them was minimal. Here the projected cost is approximately \$2,040.00 if that trend continues

COUNTY'S POSITION

The County seeks an award maintaining the current FTO pay at \$0.75 per hour for 2008 and 2009. In support of this the County made the following arguments:

1. The County argued that Dispatchers and Corrections Officers are the only other job classifications that receive FTO pay and that neither of these classifications gets \$1.50 per hour for performing that work.

2. The Corrections Officers receive \$.50 per hours through 2008 and the Dispatchers currently receive \$1.00 per hour for both 2008 and 2009. The County asserted that there is no basis for such a large increase in FTO pay for these deputies.

3. Externally, the County noted that only Carver County has anything similar to the way FTO pay is done in Scott County. The remainder of the comparison counties have either compensatory time off or a monthly amount for FTO. It is thus inaccurate to compare FTO pay across jurisdictions on this record since the pay is so different.

4. At most the award should be no more than the \$1.00 per hour the Dispatchers negotiated for 2008 and 2009.

DISCUSSION OF FTO PAY – ISSUE #8

The Union's arguments had merit for some increase but not for the full amount requested. Arbitrator Miller set forth the reasons for FTO pay in his 2002 award, See Union exhibit booklet at page 419. Those same considerations are at work today and the importance of training cannot be overemphasized, especially in law enforcement. Training for new officers, or even more seasoned ones, is critical and provides the basis for the appropriate response to emergency situations to protect public safety and the safety of the officers and other emergency personnel. Arbitrator Miller's comments about its importance are as germane and relevant today as when he wrote them in 2002.

Internally only the Dispatchers and Correctional Officers receive FTO pay. The evidence showed that there is not internal consistency currently across these classifications. The Dispatchers receive \$1.00 per hour for FTO paying 2008 and 2009 whereas the LELS Correctional Officers receive \$0.50 per hour in 2008. The essential Corrections Officers are not apparently settled for 2009. It is clear that there is a trend upward in FTO pay however due to the more recent settlement of the Dispatchers contract.

Externally, it was difficult at best to divine what the market was. The Union continued to use an inappropriate set of comparison jurisdictions and relied upon data from Minnesota Economic Development Region 11 Counties. For the reasons stated above, data from these counties was not considered in reviewing the external data.

A review of the Stanton IV counties reveals that Anoka FTO pay is \$75.00 per month plus ½ day off "for each phase 1 or 4 completed by a new officer and 1 day off for each phase 2 or 3 completed by a new officer." It was not entirely clear what that meant or how that works or how that compares to the FTO pay in Scott County. Carver and Dakota Counties both pay 1-½ hours of compensatory time per shift. St. Louis and Washington Counties pay 1 hour per shift. The Union asserted that this translates to a far higher amount per shift if one simply calculates the hourly rates paid in those counties multiplied by the 1 or 1 ½ hours of pay they receive. As an example, Carver County deputies would be paid 1 ½ hours times \$28.56, or \$42.84 per ten hour shift as FTO pay whereas Scott County deputies would be paid only \$7.50 for a ten hour shift. While this is not a completely accurate comparison since the time is "paid" as compensatory time off but it does provide a compelling argument for increasing the amount of FTO pay in Scott County, especially in light of the increase for the Dispatchers.

Reviewing this issue on the record as a whole it is clear that some increase is appropriate for FTO pay. This is based on the importance of training, the fact that, even though external comparisons do not provide an apples to apples comparison, the Stanton IV counties appear to pay for FTO at a higher rate and the increase granted to the Dispatchers. The County argued that some portions of the total compensation package may appear to be lower when compared to external jurisdictions but that Scott County tends to pay better overall. There was some merit to this argument so the \$1.50 increase would be an inappropriate award. On balance the appropriate award for FTO pay is \$1.00 per hour since some internal consistency should be maintained here. Again, the measure is what the parties would likely have negotiated for themselves and since the Dispatchers negotiated an increase to \$1.00 per hour this provides the best measure on this record of the appropriate increase for these deputies.

AWARD ON FIELD OFFICE TRAINING (FTO) PAY – ISSUE #8

FTO pay is to be increased to \$1.00 per hour for 2008 and 2009.

CLOTHING/UNIFORM ALLOWANCE – ISSUE #9

UNION'S POSITION

The Union proposes to increase the clothing allowance from the current \$605.00 per year to \$635.00 per year for 2008 and to \$660.00 per year for 2009. In support of this the Union made the following arguments:

1. The Union pointed to the Region 11 Counties and noted that the average uniform allowance for these counties is \$692.00 for those counties that have already settled for 2008. In 2007 the average was \$659.17, which is already higher than what the Union is seeking for 2008 in Scott County.

2. The Union also sought to have the arbitrator look at Stanton Group V cities, see Union exhibit 332, and noted that the average uniform allowance for these jurisdictions is even higher.

3. The Union noted that nothing is getting any cheaper and that uniforms are no exception. The CPI has increased by about 4.5% and it is expected that the cost of uniforms will increase by that amount or more. That translates to over \$27.00 for 2008 just to retain the same purchasing power over the cost of uniforms in 2007.

4. The Union also pointed to the provisions of Article XIX, section 2 that requires that all purchases be justified and that the Sheriff must approve such purchases. Accordingly, the County can control their costs on this issue.

5. Finally, the Union asserted that the total cost of this item for 29 deputies would be less than \$2,500.00 over the life of this contract. The increases are reasonable and should be awarded.

COUNTY'S POSITION

The County proposes no change from current language and to thus keep the clothing allowance at the current \$605.000/year level for 2008 and 2009. In support of this position the County made the following arguments:

1. The County pointed out that historically the uniform allowance for the Licensed Sergeants and licensed deputies has been the same. The LELS Sergeants receive a clothing allowance of \$605.00 and the deputies should not receive a greater allowance than that.

2. Moreover, since Scott County's total compensation package is generally far higher than surrounding and comparable counties, the uniform allowance should not be increased since it is nothing more than another economic item and part of that total compensation package.

3. The County pointed out that the total cost of the Union's proposal is over \$36,000 over the two years of this contract and is not the insignificant amount of money the Union asserted.

DISCUSSION OF UNIFORM ALLOWANCE – ISSUE #9

The Union's external comparisons were not used to determine this issue. Region 11 Counties as discussed above is not the appropriate measure for external comparisons. Moreover, Stanton Group V cities are not a proper comparison on this question and were not used to determine this issue either.

The more interesting question is how the uniform allowance should be viewed based on the internal comparisons. Part of the difficulty is that the Licensed Sergeants settled for an allowance of \$605.00 for 2008. Their contract though apparently was negotiated some time ago but did maintain consistency in the amount of allowance as between the Deputies and Sergeants. Having said that though it is also apparent that comparisons to the Correctional Officer and Sergeants and Dispatchers is also an inapt comparison given the vast difference in their job duties and the evidence that there has not been consistency across those classifications over time either. See County exhibits 87 and 88.

Most arbitrators are hesitant to create inconsistencies between jurisdictions where there has been that sort of consistency in the past. That strong policy weighs heavily on this case as well. While there may be some temptation to grant a higher uniform allowance for 2008 than the \$605.00 there was no evidence as to why that would not be sufficient to purchase uniforms for this year. The Union argued that the CPI has increased but provided no evidence that uniforms themselves would be more expensive. Thus, for 2008 there was an insufficient basis to increase the allowance beyond the \$605.00 per year.

For 2009 however, there is no settlement for the Licensed Sergeants and thus no internal consistency argument that can be made here. A review of the history in these contracts shows that with the exception of 2008 the parties have negotiated small increases in uniform allowances for several years and rounds of bargaining. The allowance increased by \$15.00 per year in 2004, 2005, 2006 and 2007. It is quite reasonable to presume that this trend would likely continue into 2009 over the 2008 rates. While there was no specific evidence of what the increase would be it is more than reasonable to assume that the costs of uniforms, much like everything else in the economy, is unlikely to go down or even stay the same. Thus a \$15.00 increase is warranted and what the parties would likely have negotiated for themselves under these circumstances. The award for uniforms in 2009 is \$620.00 per year.

AWARD ON CLOTHING/UNIFORM ALLOWANCE – ISSUE #9

The uniform allowance is awarded at \$605.00 per year for 2008 and \$620.00 per year for 2009.

DEFINITIONS – ISSUES #'S 10, 11 & 12

UNION'S POSITION

Simply stated, the Union proposes no change in any of the existing definitions and contract language on the 3 items at issue. There are three items in question here and they were consolidated for discussion here. In support of the position for no changes the Union made the following arguments:

1. Regarding the definition of "Employer" found in Article III, the Union argued against any changes to the existing language. The Union's position here, as it was with all three of these issues is essentially that the party seeking a change in the contract must provide a compelling reason to do so and that the County has not done that here with any of their proposed changes. There is further nothing inconsistent with PELRA in the current language and thus no compelling legal reason to change it.

2. Moreover, the concern is that while the Sheriff is the designated representative of the County Board now, the language could well result in someone other than that being the employer in the future. This could well lead into the law of unintended consequences and thus what might appear to be a minor or even insignificant change could turn out to have dire consequences later.

3. Regarding the probationary period language in Article III section 1.12, the Union had much the same argument as above. Further, the Union argued that the current language defining probationary period as the first 12 months (2080 compensated hours) for newly hired or rehired employees and 6 months (1040 compensated hours) for promotional employees has never created problems in the past and there is no reason to believe it will in the future.

4. Regarding the language in Article 3, section 1.13, the Union is opposed to the deletion of the definition of promotion. The essence of this is that the County has not provided a compelling reason to change this or any reason why it should not simply be left in the contract.

COUNTY'S POSITION

The County proposed several changes in the definitions section of the agreement. These changes would result in the language as follows:

Article III, section 1.6: EMPLOYER: Scott County Board of Commissioners and its designated representative.

Article III, Section 1.12: PROBATIONARY PERIOD: The first twelve (12) months of classified service of newly hired or rehired employees and the first six (6) months of classified service following a promotional appointment.

Article III, section 1.13: PROMOTION. Delete the entire section.

The County made the following arguments in support of these proposed changes:

1. Regarding Article III, section 1.6, definition of employer, the County argued that this change is necessary to conform to PELRA section 179A.043, subd. 15(f). That section provides as follows:

179A.03 Subd. 15. **Public employer or employer.** "Public employer" or "employer" means:

(f) notwithstanding any other law to the contrary, the governing body of a political subdivision or its agency or instrumentality which has final budgetary approval authority for its employees. However, the views of elected appointing authorities who have standing to initiate interest arbitration, and who are responsible for the selection, direction, discipline, and discharge of individual employees shall be considered by the employer in the course of the discharge of rights and duties under sections [179A.01](#) to [179A.25](#).

2. The County argued that while the Sheriff is certainly consulted on all matters that might affect his department, the County Board, not the Sheriff, is the actual employer. Only the County Board has "final budgetary approval authority for its employees" as set forth in PELRA and thus only the County Board can be considered the employer under this definition. Including the Sheriff in that is inconsistent with PELRA and must be changed in order to conform the contract to state law.

3. All of the other units within the County have agreed to the change with the exception of the IUOE Local 49 employees whose labor agreement has no definition section. Thus, internal consistency mandates that this change be implemented. Moreover, the Union was unable to articulate any reason why this change should not be made. The County argued that this was a housekeeping item as much as anything else and would not result in any substantive change in the agreement or the relationship between the parties.

4. Regarding the definition of probationary period found in Article III section 1.12 the County argued that because the County's pay system triggers the end of probation at the end of 12 or 6 months and not by compensated hours.

5. In addition, the proposed language removes the reference in the current agreement to "transfer" since a transfer under the Scott County system is "the movement of an employee to a position in the same classification to a different organizational unit." There are no Deputy positions in any other department except the Sheriff's department. Thus a transfer is inapplicable to this unit.

6. Finally, the County proposed to include a reference to "classified service" in the definition to prevent a person working on a temporary basis from having that temporary service count towards their probation.

7. The definition of probationary period is also the same for all other agreements in the Sheriff's department with the exception of the classified service language.

8. Regarding the Promotion definition found in Article III section 1.13 the County proposed taking it out entirely largely due to the fact that it does not apply any longer now that the sergeants were given their own unit. The provision was included when the Licensed Sergeants were a part of this unit but the sergeants are now in their own supervisory unit. Thus there is no promotional opportunity under this agreement since the only classification is that of deputy. Anyone promoted to the rank of Sergeant will be covered by the Licensed Sergeant's contract.

DISCUSSION OF DEFINITIONS – ISSUES 10, 11 & 12

DEFINITION OF EMPLOYER: There is considerable arbitral authority for the proposition that any change in a labor agreement that alters the underlying relationship or benefits must be supported by compelling evidence or justification for such a change. The County argues that conformity with state law is such a compelling reason for the change. The County further argues that this merely conforms the contract and current practice to state law anyway and results in no substantial change in the agreement at all.

Indeed, PELRA clearly provides that the “employer” is “the governing body of a political subdivision or its agency or instrumentality which has final budgetary approval authority for its employees.” That is unquestionably the County Board. PELRA further requires that the employer consider the views of the “elected appointing authority,” i.e. the Sheriff. Thus the statute clearly treats the “employer” separately from any “elected appointing authority,” such as an elected County Sheriff.

While the Union was somewhat suspicious of this change and asserted that this could potentially change the relationship at some future time the County's arguments must prevail here on this point. Interest arbitrators are generally loath to insert substantive changes into labor contracts without a compelling showing of need or without some quid pro quo in exchange for it. Thus, the mere fact that all the other units agreed to this change would not in and of itself be enough to warrant this change. Here the need to conform to state law is the compelling reason to change it and overrides any objection that could be raised. Accordingly, on this point the County's position must be awarded.

DEFINITION OF PROBATIONARY PERIOD: Here the Union's argument prevails. The County did not provide a compelling reason, such as the need to conform to state law or the like, for this proposed change. Frankly, pay systems come and go and while the current system may not reference the number of hours a future one might and there is no way to determine how this change might affect the relationship between the parties or substantive benefits by making this change.

Moreover, while there are no transfer opportunities now and there may not be any time soon, one cannot predict how jobs or classifications may change over time and thus one cannot predict how the deletion of the transfer language might affect the substantive rights of the employees in the future.

Finally, the County argued that there is a need to clarify how temporary employees' hours may count toward completion of probation. It was not at all clear from the evidence how that is being done now and simply deleting that language might very well impact the substantive rights of the parties under the current language. Without any evidence of a compelling need to change this language, the generally accepted rule applies: the party seeking a substantive change must show a compelling need or a quid pro quo. None was presented here. Taking it out without a showing of need or quid pro quo has the very real potential of creating future problems. It is thus for the parties themselves to negotiate any such change so there is a full and complete understanding of the impacts of it. Accordingly, on this point the Union's position is awarded.

DEFINITION OF PROMOTION: The County seeks to delete this in its entirety as a housekeeping matter since there are no longer promotional opportunities under this contract. This is of course due to the Licensed Sergeants going into their own separate unit and under their own separate labor agreement.

For the reasons set forth above, the Union's position prevails. It may well be a moot issue to have this provision in the labor agreement now, but as anyone in labor relations knows, things change. Units change, job classifications change due to the changing needs of public employers and the public they serve. It may be that something will change to create a promotional opportunity within this unit and deleting this language would thus create the need to negotiate something back into the contract to deal with that. That too could create issues and taking it out without any sort of a showing of compelling need or quid pro quo creates the latent problem described above. For those reasons, the Union's position is awarded.

AWARD ON DEFINITIONS - ISSUES 10, 11, 12

Issue #10 – Definition of Employer - Article III section 1.6: The County's position is awarded.

Issue # 11 – Definition of Probationary - Period Article III section 1.12: The Union's position is awarded

Issue #12 – Definition of Promotion - Article III section 1.13: The Union's position is awarded.

PROBATIONARY PERIOD – ARTICLE IX - ISSUES #'s 13 & 14

UNION'S POSITION

The Union's position is for no change to the existing language. There are two items in question here and they were consolidated for discussion here. In support of the position for no changes the Union made the following arguments:

1. The Union is opposed to the changes in Article IX, section 1 deleting the number of hours, i.e. 2080 and 1040 for similar reasons to those stated above. The Union is also opposed to the change in the existing language deleting the requirement that an employee who does not satisfactorily pass probation be allowed to revert back to the employee's former classification.

2. The Union was also quite opposed to the insertion of language allowing only classified service to count toward probation. The Union's argument is again that there was no quid pro quo for these proposed changes and no showing of a compelling need to alter the language and therefore the existing relationship between the parties.

3. The Union argued that the County made no showing of a need to change this or any showing of a particular problem that needs to be addressed by the amendments to the language.

4. The Union countered the County's assertion that there is no longer any need for the language regarding reversion back to the employee's former job since no promotional opportunities exist under the deputy contract. The Union asserted that this is simply not true and that if a person is promoted to Sergeant but does not pass probation there they should have the right to revert back to their former position in the deputy unit. The deletion of that language would clearly adversely affect those rights and should not be awarded.

5. Regarding the addition of language allowing the County to extend the probationary period in the event there is a leave of absence for more than two weeks the Union asserted that there was no showing of a need to add this language. The Union argued that the County always retains the right to determine if a person has passed probation or not. The posed language would automatically extend the probation and the Union opposed that quite vigorously as unnecessary and burdensome for these employees.

COUNTY'S POSITION

The County seeks to change the language of Article IX section 1 and add a section 2. The revised language would read as follows:

Article IX section 1. All newly hired or rehired employees shall serve a twelve (12) month probationary period. Employees shall serve a six (6) month probationary period following a promotional appointment or transfer. Unclassified service does not count towards the probationary period.

Section 2. The probationary period in section 1 of this Article IX may be extended by the amount of time an employee is on a leave of absence, provided the leave of absence is for more than 2 two (2) weeks.

In support of this position the County made the following arguments:

1. The County argued that these changes are proposed in order to make this provision consistent with the proposed changes in the definitions sections, discussed above.

2. The County also argued that since there are no promotional opportunities under this contract there is no need for much of the current language found in Article IX section 1. A deputy promoted to sergeant for example would have their rights covered by the Sergeants agreement and not the deputy contract anyway. Thus there is no reason to retain this language.

3. Regarding the addition of Section 2, the County argued that there is a need to extend probation in rare circumstances where a person is hired or promoted into a new position but takes a leave of absence, such as a medical leave, for more than two weeks. Under those circumstances the County would be able to judge their performance over the full 12 or 6 month period and it would be unfair to both the County and the employees to make a determination on less than the full amount of the probation time. If for example a person were to be on a long leave they could literally have only a few weeks of actual work performed during their probation. Requiring them to be hired would be burdensome on the County. On the other hand, requiring the County to make a decision without adequate knowledge could result in people being denied probation and taken out of their positions even though they were good at the job simply because the County did not have sufficient time to determine their qualifications. The County argued that it seeks only to extend the probation period for leaves of absence and for no other reason.

4. Finally, the County asserted that this language is consistent with provisions in the other agreements in the County. It has not created problems there and should be awarded here.

DISCUSSION OF PROBATIONARY PERIOD – ARTICLE IX – ISSUES #'s 13 & 14

The Union's arguments here prevailed on much the same analysis set forth. The County did not provide a compelling need to change the language deleting the number of hours from the language nor did it provide any compelling reason to delete the language allowing an employee to revert to their old position. Granted, there are apparently no promotional opportunities under this contract now but that could change. Moreover, while a deputy may well be promoted to the rank of Sergeant and have their rights considered under that contract, deleting the language currently in Section 1 makes it less clear what their rights are if they do not pass probation. Part of an interest arbitrator's job is, to the extent possible; alleviate confusion as to the rights of the employees and employers under their labor agreements. Doing this may well have the opposite effect and cannot be awarded.

Further, there was no showing that the County offered any sort of quid pro quo for these changes in Section 1 and they were substantive. There was little in the way of bargaining history offered on these points but presumably, this language was negotiated over time and there was something offered or conceded in order to gain them. To simply take them out with no corresponding exchange is not in keeping with the notion that the award be what the parties would have *negotiated* for themselves. Accordingly, the Union's position on issue 13, Article IX section 1 is awarded.

Section 2 presents a slightly different problem but the result is the same. The County did frankly make a cogent argument about this and noted that a probationary period is for the purpose in large part to assess the employee's performance in the job. It is also for the employee to assess whether they like the job and want to continue doing it. It goes both ways and requiring that assessment without adequate opportunity to work the full period seems unfair to everyone concerned.

Still though in those circumstances where a person goes on an extended leave there is nothing to prevent a voluntary extension of the probationary period if both parties agreed to it. Indeed, the language proposed by the County uses the word "may" as opposed to "shall" in an apparent attempt to take account of varying circumstances and not require that the probation be extended if the circumstances do not warrant it, at least as determined by the County.

On balance, additions like this to existing language must be supported by some fairly compelling rationale for them or a showing that there was an exchange made in order to gain the language. Without that showing here, and it was by a very slim margin, the determination is that it cannot be awarded in this setting. Accordingly, the Union's position is awarded on this item as well.

AWARD ON PROBATIONARY PERIOD ARTICLE IX – ISSUES #'s 13 & 14

The Union's position is awarded on both issues 13 & 14.

WORKING OUT OF CLASS – ARTICLE XXIII – ISSUE #15

UNION'S POSITION

The Union is opposed to any change in the language of Article XXII. In support of this position the Union made the following arguments:

1. The Union argued that the current language is clear and has created no difficulties for either the County or the Union. It simply requires that where an employee is required to work out of their current classification, that employee is paid at the next step on the salary schedule for the classification that is higher than the employee's current rate.

2. The Union noted that adopting the County's language does little more than take this provision out of the labor agreement as a practical matter and places the decision as to whether to grant a salary adjustment in the hands of the Employee Relations Director. The County policy referenced in the contract language provides in relevant part that "Any working out of class designation and salary adjustments shall be subject to review and approval of the Employee Relations Director."

3. It further defines working out of classification as performing "all the duties and responsibilities of a position in a higher classification for 30 consecutive work days or more in any 12-month period." This is a substantial change from the current language that has no such time limitations within it. The Union argued that the County's "trust me" position is highly objectionable and should not be awarded.

4. The Union again argued that the County did not provide a compelling reason or quid pro quo for this proposed change and that it should be denied.

COUNTY'S POSITION

The current language of Article XXIII provides as follows:

An employee who is required by the EMPLOYER to work at a higher classification shall receive pay for the higher classification at the next step on the salary schedule of the higher classification that is higher than the employee's rate of pay.

The County seeks to change the existing language of Article XXIII as follows:

Employees shall be eligible for out-of-class pay in accordance with the Compensation Plan Policy set forth in the Scott County policies and procedures.

In support of this change the County made the following arguments:

1. The County argued that the current language is obsolete since it makes reference to the placement of employees on the "next step" of the salary schedule. Currently there are no steps in the salary schedule in any salary grade within the County. The Current language therefore gives no authority to grant any additional pay to an employee who is assigned to work out of classification. The County argued that this lack of clarity will inevitably lead to confusion and disputes about pay when an employee is required to work out of classification.
2. The County noted that this language has been negotiated into the other LELS contracts within the County without apparent problems and these all refer to the County policy. That policy allows for higher pay.
3. Internal consistency again dictates that the same language be in all the contracts, especially those for the law enforcement units and those represented by the same labor union.

DISCUSSION OF WORKING OUT OF CLASS – ARTICLE XXIII – ISSUE #15

The County's desire to change the language is understandable in that it sets forth "steps" as the way to determine the appropriate pay. The evidence showed that there are no steps on the County's salary schedule and that this language is somewhat obsolete. There is also some merit to the County's claim that since there are no longer steps in the salary schedule, there will quite likely be confusion created and disputes that will arise.

The Union's objections to the proposed change are even more understandable even though this same language was placed in the other LELS contracts with the other law enforcement and corrections units. The clear net effect of it is to leave it to the discretion of the Employee Relations Director whether to pay at a higher rate for work out of classification. It further purports to require that the employee work out of classification for 30 consecutive work days in a 12-month period as a prerequisite for the higher pay. These requirements are not in current language. It was not at all clear why the other units agreed to this or what was offered to those units in exchange for this concession

The proposed changes do indeed represent a radical change in the relationship and in this benefit even though some of the language appears now to be obsolete. Under these circumstances it is especially true that there must be a quid pro quo granted in exchange for this proposed change and none was offered here.

There was some temptation to re-draft the language to simply delete the reference to steps and replace that word with "grade" as that appears to be the basis for the current pay system. That might well have led to more disputes than it would solve so that idea was rejected. Without any further evidence of how this language has been interpreted in the past or what exactly the "problem" would be it is not possible to draft or create language to address those.

The intent of the language appears clear enough even though the “steps” are no longer in place. If an employee is required to work at a higher level the employee is to be paid at a higher level. At best, given the lack of any compelling problem this proposed change is to address and, more to the point, no quid pro quo offered in exchange for what is a significant change in the benefit granted by current language, the language must be left alone. Accordingly, the Union position of no change in the language of Article XXIII is awarded.

AWARD ON WORKING OUT OF CLASS – ARTICLE XXIII – ISSUE #15

The Union’s position is awarded.

SUMMARY OF AWARD

AWARD ON SALARY GRADE ISSUES - ISSUES # 1 & 2

The County’s position is awarded.

AWARD ON GENERAL WAGE INCREASES – ARTICLE 17 & APPENDIX - 2008 & 2009 - ISSUES # 3 & 4

The County’s position is awarded.

AWARD ON SALARY MATRIX – ISSUE #5

The County’s position is awarded.

AWARD ON DETECTIVE DIFFERENTIAL – ISSUE #6

The Detective Differential for 2008 is awarded to remain at \$180.00 per month effective January 1, 2008. The Detective Differential is further awarded to increase to \$190.00 per month effective January 1, 2009.

AWARD ON SHIFT DIFFERENTIAL – ISSUE #7

The County’s position is awarded.

AWARD ON FIELD OFFICE TRAINING (FTO) PAY – ISSUE #8

FTO pay is to be increased to \$1.00 per hour for 2008 and 2009.

AWARD ON CLOTHING/UNIFORM ALLOWANCE – ISSUE #9

The uniform allowance is awarded at \$605.00 per year for 2008 and \$620.00 per year for 2009.

AWARD ON DEFINITIONS - ISSUES 10, 11, 12

Issue #10 – Definition of Employer - Article III section 1.6: The County’s position is awarded.

Issue # 11 – Definition of Probationary - Period Article III section 1.12: The Union’s position is awarded

Issue #12 – Definition of Promotion - Article III section 1.13: The Union's position is awarded.

AWARD ON PROBATIONARY PERIOD ARTICLE IX – ISSUES #'s 13 & 14

The Union’s position is awarded on both issues 13 & 14.

AWARD ON WORKING OUT OF CLASS – ARTICLE XXIII – ISSUE #15

The Union’s position is awarded.

Dated: September 2, 2008

Scott County and LELS award.doc

Jeffrey W. Jacobs, arbitrator