

IN THE MATTER OF ARBITRATION BETWEEN

**Minnesota Teamsters
Public and Law Enforcement Employees Union,
Local 320**

and

County of Becker, Minnesota

OPINION AND AWARD

**CONTRACT / IMPASSE
ARBITRATION**

BMS Case No. 08-PN-0349

ARBITRATOR

Joseph L. Daly

APPEARANCES

On behalf of Minnesota Teamsters
Public Law Enforcement Employees Union,
Local 320
Paula R. Johnston, Esq.
Minneapolis, MN

On behalf of County of Becker, Minnesota
Terrence J. Foy, Esq.
Ratwik Roszak and Maloney
Minneapolis, MN

JURISDICTION

In accordance the Public Employment Labor Relations Act of Minnesota, Minn. Stat. §179A.01, et. seq. (2008); and, under the jurisdiction of the State of Minnesota, Bureau of Mediation Services, the above Contract / Impasse Arbitration was submitted to Joseph L. Daly, on July 30, 2008, in Detroit Lakes, MN. Post-Hearing Briefs were sent by the parties dated August 22, 2008, and received by the Arbitrator on August 25, 2008. The decision was rendered by the Arbitrator on September 17, 2008.

ISSUES AT IMPASSE

The following unresolved issues were certified for interest arbitration:

1. Sick Leave/Funeral Leave – shall Section 21.2D Be Amended to Allow For 24 Hours of Funeral Leave Rather than 8 Hours? – Art. 21.2D
2. Wages – What Shall the General Wage Increase Be in 2008? – Art. 23.1, Appendix A
3. Wages – What Shall the General Wage Increase Be in 2009? - Art. 23.1, Appendix A
4. Longevity Pay – What Shall Longevity Pay Be For Eligible Employees – Art. 25
5. Salary Schedule – Shall The Salary Schedule Be Amended So That Steps 5-9 Increase 1.5%? – Art. 23.1, Appendix A
6. Shift Differential – What Shall The Terms of The Shift Differential Section Be? Article 23.4
7. Rest Break Compensation – Employee Eligibility For Compensation Under This Section – Art. 23.3
8. Purpose – Shall Language Be Added Indicating This The Complete Agreement Between The Parties? – Art. 1.2
9. Employee Rights – Grievance Procedure – Shall Language Be Added Limiting Arbitral Authority? – Art. 7.5(A)
10. Severance Pay – Shall The Severance Pay Section Be Amended? – Art. 26

ISSUES, POSITIONS OF THE PARTIES, AWARD & RATIONALE

ISSUE #1 - SICK LEAVE/FUNERAL LEAVE – SHALL SECTION 21.2D BE AMENDED TO ALLOW FOR 24 HOURS OF FUNERAL LEAVE RATHER THAN 8 HOURS? – ART. 21.2D

Union’s Final Position:

Because of the death of a brother-in-law, sister-in-law, father-in-law, mother-in-law, such use not to exceed ~~eight (8)~~ twenty-four (24) working hours for funeral attendance. The Union seeks to increase the eight (8) hour limit to twenty-four (24). [Post-hearing Brief of Union at 2].

County’s Final Position:

No change from current contract provision.

AWARD & RATIONALE

The final position of the Union is awarded. Funeral leave is not consistent within the county of Becker. While Deputy, Sheriffs’ Supervisors and Sheriff Confidential Units receive 8 hours, Human Services Supervisors and Courthouse Units receive 24 hours. Further, all non-union personnel covered by the personnel policy receive 3 days of funeral leave for the death of an in-law. In all of these examples, the funeral leave is subtracted from the employee’s sick leave bank.

The fact that a large number of county employees already receive 24 hours of leave in the case of the death of an in-law supports the Union's position in this case. Furthermore, there is no additional cost item to the County since such funeral leave for in-laws is subtracted from already granted sick leave. Jailers and Dispatchers use their accumulated sick leave for funeral time.

**ISSUE #2 - WAGES – WHAT SHALL THE GENERAL WAGE INCREASE BE IN 2008?
– ART. 23.1, APPENDIX A**

Union's final position:

23.1 During the term of this agreement, employees shall be paid in accordance with Appendix A which is attached hereto and incorporated herein.

Effective 1/1/08 Increase Salary Schedule (attached) by 5%
 Step Increase on anniversary date
 Increase Steps 5-9 by 1.5%

County's Position:

Increase the salary schedule one and one-half percent (1.5%) effective January 1, 2008.

AWARD & RATIONALE

Neither the Union's nor the County's final position is accepted. The Salary Schedule shall be increased by 3% effective January 1, 2008.

Every other settled contract in Becker County has received a 3% increase in each year of the contract. The County contends that its financial condition was "dealt a serious blow by the legislature's imposition of levy limits for 2009." [Post-hearing brief of County at 6]. As a result of these new limits the County will have a \$343,434 deficit to make up in 2009 [Id.]. The County further argues "the County's negotiated agreements with its other bargaining units provide the Arbitrator with the best indication of the negotiated outcome that would have evolved in the economic, social and political climate of the region. It is unthinkable that the County would have struggled to place all of its employees, including these dispatchers and jailers, on its pay equity compensation schedule and would then alter the basic salary structure by giving this bargaining unit 3.5% more than any other group of employees." [Id. at 9-10]. Using

this same logic, it is equally “unthinkable” that this group of employees should only get 1.5% increase when all the other employees have received a 3.0% increase. This is the “wage outcome that would most likely evolve given the negotiation process at work within the economic climate of the region.” [Id. at 10, citing Arbitrator John Prior in LELS and County of Redwood, BMS # 94-PN-2048 (1995)]. The same rationale applies in this case.

Arbitrator Stephen F. Befort has noted that the clear trend in interest arbitration awards in Minnesota is to give greater weight to internal comparisons. [Dakota County Attorney Employees’ Association and Dakota County, BMS Case No. 96-PN-57 (1996)]. The Union’s wage demand entails a potential for substantially higher costs and could cause serious problems in complying with the Local Government Pay Equity Act (LGPEA) Minn. Stat. §471.995, seq. The Union’s wage demand would alter the salary structure between this group of employees and all other county employees by increasing the percentage between steps and increasing the top of the salary schedule range. The Union contends because deputies are permitted to take home squad cars it provides a significant real dollar value of as much as \$6,600 per year depending on the distance the employee lives from the work site. As a consequence, this Dispatcher and Jailer unit wants to increase steps 5-9 by 1.5%. The County counters this argument by answering that such a structural change in the salary schedule would place great pressure on the County to make similar adjustments for all other employee groups in order to maintain its equitable compensation relationships.

The Union’s demand would alter the salary structure between this group of employees and all other County employees by increasing the percentage between steps and increasing the top of the salary schedule range. The current salary schedule is the result of negotiations between the County and the Union. Acceding to the Union’s change in the salary schedule range would require the County to accept through arbitration a different wage structure than it negotiated with its other bargaining units. Such a result would undermine the process of collective bargaining in Becker County and allow the Union to reap a windfall through arbitration that it was unable to negotiate at the bargaining table.

The County has experienced no problems in attracting and retaining competent qualified individuals for its dispatcher and jailer positions. The County has experienced virtually no wage related turnover in this unit.

While it is true there is a fund balance, Becker County maintains a reserve for several reasons. The primary reason for the reserve is that property tax and state aid payments are not received until May/June. Because of this, sizeable year-end fund balances are necessary to meet expenditures occurred during the first five months of the following fiscal year. In addition, counties set aside reserves to provide a cushion for unforeseen revenue shortfalls or emergencies. The County has utilized such an approach to help finance improvements in the County's buildings. As a consequence the Union's contention that the County has sufficient reserves is unconvincing.

The key comparison for wages in this case is an internal comparison. While the County is now confronted with an estimated shortfall due to the legislature's imposition of levy limits on the county, this shortfall should not fall on the backs of these specific employees. The County has negotiated 3% increase for 2008 and a 3% increase for 2009 with its Deputies, Sheriff's Supervisors, Sheriff's Confidential, Highway and Human Services Supervisory groups. It is fair and just that the Jailer and Dispatcher Unit receives a 3% increase for 2008. The time of the Step increase will be on anniversary date. An increase of Steps 5-9 by 1.5% is denied.

ISSUE #3 – WAGES – WHAT SHALL THE GENERAL WAGE INCREASE BE IN 2009?

- ART. 23.1, APPENDIX A

Union's Final Position:

Effective 1/1/09 Increase Salary Schedule (attached) by 5%
 Step Increase on anniversary date
 Increase Steps 5-9 by 1.5%

County's Final Position:

Increase the salary schedule one and one-half percent (1.5%) effective January 1, 2009.

AWARD & RATIONALE

Neither the Union nor the County final position is accepted. Rather, increase the salary schedule 3% effective January 1, 2009. Step increase shall occur on anniversary date. Do not increase Steps 5-9 by 1.5%. See rationale for Issue #2 above, the 2008 increase.

**ISSUE #4 – LONGEVITY PAY – WHAT SHALL LONGEVITY PAY BE FOR
ELIGIBLE EMPLOYEES – ART. 25**

Union’s Final Position:

In order to recognize the employee who remains in the employment of the employer on a continuous basis, a longevity program is established effective July 1, 1987. In order to determine eligibility for longevity, the employee’s last date of hire will be the commencement date for calculating longevity. Longevity shall be paid on the following basis:

<u>Years of Service</u>	<u>Percent of Salary Increase</u>
0 – 5 years	0%
6 -10 years	1%
11 – 15 years	2%
16 – 20 years	3%
21 – 25 years	4 <u>5</u> %
26 – 30 years	5 <u>6</u> %
Over 30 years	6 <u>7</u> %

County’s Final Position:

No change from current contract provision.

AWARD & RATIONALE

The final position of the Union is awarded. While it is true that the current collective bargaining agreement is identical in longevity to that received by employees in the courthouse, Human Services Supervisors, and the Highway bargaining units, the Deputy, Sheriff’s Confidential, and Sheriff’s Supervisors bargaining units have different language which states:

Each employee shall receive, in addition to the regular compensation provided herein, longevity pay at a rate of one percent (1%) of the base compensation for each five (5) years of service, commencing at the end of five (5) years of continued service to the County.

The key difference in the language above is that there is no cap to the longevity benefit. In the current dispatch contract, if an employee worked for 35 or more years, he or she would get the same 6% longevity as was received at the 30-year mark. In the contracts, which contain the unlimited benefit language, which includes the deputies' contract, if an employee worked 35 years, he or she would get 7% longevity. If he or she worked for 40 years, he or she would get 8%.

This difference is crucial in this case because the jailers were part of the deputies' contract until March 2009. A jailer with 35 years of service would now get 6% longevity under the current dispatch contract. Had the jailers remained in the deputies' contract, he or she would receive 7%. In other words, the jailers would receive a reduction in their longevity benefit because of the unit clarification if the current dispatch contract language remains the same.

This represents a relatively low cost item to the County. Currently, only one member has enough years of service to qualify for a change in the longevity payment. That employee has twenty-seven years of service. Apparently her longevity benefit is 5%. Under the Union's final position that would increase to 6% because this member is at the top of the scale, the difference in longevity payments would be about \$400.

ISSUE #5 – SALARY SCHEDULE – SHALL THE SALARY SCHEDULE BE AMENDED SO THAT STEPS 5-9 INCREASE 1.5%? – ART. 23.1, APPENDIX A

Union's Position:

Effective 1/1/08, steps 5 – 9 shall by 1.5%.

County's Position:

No change from current contract provision.

AWARD & RATIONALE

The County's position is awarded. See rationale under Issues #2 and #3 above.

ISSUE #6 – SHIFT DIFFERENTIAL – WHAT SHALL THE TERMS OF THE SHIFT DIFFERENTIAL SECTION BE? ARTICLE 23.4

Union’s Position:

23.4 Each employee who works a scheduled shift between ~~10:00~~6:00 p.m. and 6:00 a.m. shall receive, in addition to the regular compensation provided herein, ~~sixty cents (\$.60)~~ seventy cents (\$.70) an hour effective 1/1/08. Effective 1/1/09, this amount shall increase to eighty cents (\$.80) an hour.

County’s Position:

No change from current contract provision.

AWARD & RATIONALE

The final position of the Union is awarded. The County argues that the Union “has provided no compelling reason to support the increases it seeks” in shift differential. The County further contends “that in the event that the jailers and dispatchers receive the same 3% wage increases the County negotiated with its other Law Enforcement Bargaining units it is likely that the County would have agreed to the increases in shift differentials sought by the Union, given the negotiation process at work within the region.” [Post-hearing brief of County at 18].

The Union in its Post-hearing brief highlights the fact that “every other employee in Becker County with a shift differential provision in his or her contract receives an increase in the benefit in 2008-2009 contracts.” “The deputies and supervisors receive the exact same increase that the Union is seeking for the jailers and dispatchers.” [Post-hearing brief of Union at 4]. The internal comparables justify the Union’s position.

ISSUE #7 – REST BREAK COMPENSATION – SHOULD COMPENSATION FOR ABSENCE OF REST BREAKS BE ELIMINATED? – ART. 23.3

Union’s Position:

23.3 ~~Dispatchers~~ Employees shall be paid an extra one-half (1/2) hour per working day at the regular rate of pay as compensation for rest breaks as defined in Article III, 3.8, effective January 1, 1990.

County’s Position:

Delete Section 23.3 as follows:

~~Dispatchers shall be paid an extra one-half (1/2) hour per working day at the regular rate of pay as compensation for rest breaks as defined in Article III, 3.8, effective January 1, 1990.~~

AWARD & RATIONALE

The final position of the Union is awarded. For nearly 20 years, the Dispatch contract has contained a provision in Article 23.3 which provides for an additional one-half hour of pay per working day as compensation for rest breaks. The reason for this is because dispatchers “frequently miss breaks since they were required to be on duty to take calls at all times and there was no one to relieve them.” [Post-hearing brief of County at 18]. The Union wants to “amend the language to include all employees in the bargaining unit.” Jailer Scott Kotaska justified that while the Jailers were still part of the Deputies contract, he participated in the negotiations for several contracts. He testified that the rest break compensation was brought up in negotiations for at least the last two contracts. He stated that the jailers proposed the same language that exists in the dispatch contract because the issue was the same for both classifications. Given the nature of the jobs and the staffing levels, “it is nearly impossible to take a break during a shift.” [Post-hearing brief of Union at 4]. Now that the Dispatchers and Jailers are in the same bargaining unit, fairness requires they receive the same benefit.

ISSUE #8 – PURPOSE – SHALL LANGUAGE BE ADDED INDICATING THIS IS THE COMPLETE AGREEMENT BETWEEN THE PARTIES? – ART. 1.2

Union’s Final Position:

No change to existing language.

County’s Position:

Modify Section 1.2 to read as follows:

Place in written form the parties’ complete agreement upon terms and conditions of employment for the duration of this agreement.

AWARD & RATIONALE

The final position of the Union is awarded. The County urges that the contract language be modified to reflect that the collective bargaining agreement is the “complete” agreement between the parties. Similarly, the County seeks to modify the language of the grievance procedure to provide that an arbitrator may not ignore the language of the Agreement to pursue the law of the shop or other considerations beyond the scope of the written Agreement. [Post-hearing brief of County at 19]. The County argues that the purpose of the County’s proposed changes is “to eliminate unwritten past practice and to express the totality of the parties’ agreement concerning terms and conditions of employment in writing.” [Id.]. The County points out that it has not negotiated such provision with its other organized bargaining units. The Union sees this change as “dramatic”. [Post-hearing brief of Union at 5]. The Union sees that the County is attempting to strip an arbitrator’s authority to look at past practice. The Union contends it would never negotiate such a clause in a contract.

Part of the legislative rationale for arbitration of contract disputes concerning essential employees - who by law do not have the legal right to strike - is to empower the arbitrator to complete the contract when the parties are at impasse on certain issues. The Minnesota Legislature has given wide-ranging authority to arbitrators to decide the contested issues when the parties are at impasse. The hope is that both parties will successfully negotiate the contract because both risk losing a contested issue if the issue is placed in the hands of an arbitrator. But if the parties mutually wish to limit the authority of an arbitrator by the contract itself, then the parties have a right to do so. But an arbitrator, based on the unilateral request of one of the parties, should not limit the wide-ranging authority given the arbitrator by the Legislature simply because one side requests the arbitrator to do so. Such a limitation on the arbitrator’s authority in the contract, if there is to be one, is best left to the give and take of the bargaining table or to Legislative amendment.

ISSUE #9 – EMPLOYEE RIGHTS – GRIEVANCE PROCEDURE – SHALL LANGUAGE BE ADDED LIMITING ARBITRAL AUTHORITY? – ART. 7.5(A)

Union’s Position:

No change to existing language.

County’s Position:

Modify Section 7.5(A) to read as follows:

The arbitrator shall have no right to amend, modify, nullify, ignore, add to or subtract from the terms and conditions of this Agreement. The arbitrator may not ignore the language of the Agreement to pursue the law of the shop or other considerations beyond the scope of the written Agreement. The Arbitrator shall consider and decide only the specific issue(s) submitted in writing by the Employer and the Union, and shall have no authority to make a decision on any other issues not so submitted.

AWARD & RATIONALE

The final position of the Union is awarded. See rationale in Issue #8 above.

ISSUE #10 – SEVERANCE PAY – SHALL THE SEVERANCE PAY SECTION BE AMENDED? – ART. 26

Union’s Position:

No change to existing language.

County’s Position:

Modify Article XXIV to read as follows:

Employees who have completed five (5) years of service and honorably separated, including medical separation, shall be entitled ~~to seventy percent (70%) of their unused sick leave as severance pay~~ to their unused sick leave as severance pay based on the following format; however, said severance pay shall not include any banked sick leave hours.

<u>Years of Service</u>	<u>Percent of Sick Leave</u>
<u>5</u>	<u>25%</u>
<u>10</u>	<u>35%</u>
<u>15</u>	<u>45%</u>
<u>16+</u>	<u>50%</u>

AWARD & RATIONALE

The final position of the Union is awarded. The County in its Post-hearing brief states “a review of the County’s agreements with its other organized groups of employees that those groups currently receive the same severance benefits as the jailers and dispatchers.” [Post-hearing brief of County at 20]. In order to maintain internal comparability, the severance pay provisions shall remain the same.

Dated: September 17, 2008

Joseph L. Daly
Arbitrator