

IN THE MATTER OF THE ARBITRATION BETWEEN

LAW ENFORCEMENT LABOR SERVICES, INC.,	)	MINNESOTA BUREAU OF MEDIATION SERVICES
	)	CASE NO. 08-PN-0751
	)	
Union,	)	
	)	
and	)	
	)	
THE COUNTY OF MURRAY,	)	DECISION AND AWARD
	)	OF
Employer.	)	ARBITRATOR

APPEARANCES

For the Union:

Dean Mann  
Business Agent  
Law Enforcement Labor  
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For the Employer:

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Consultant  
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On December 3, 2008, in Slayton, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, who was selected by the parties under the provisions of the Minnesota Public Employment Labor Relations Act ("PELRA") to resolve collective bargaining issues about which the parties are at impasse. Post-hearing briefs were received by the arbitrator on December 17, 2008.

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## BACKGROUND

The Employer is the County of Murray, a rural county in southwestern Minnesota, with a population of about 9,500. The Union is the collective bargaining representative of seven non-supervisory employees of the Employer, classified as Deputy Sheriffs ("Deputies"), who work in the Sheriff's Department.

The Union and the Employer are parties to a labor agreement that has a stated duration from January 1, 2006, through December 31, 2007. Because they have not yet agreed to all of the terms of a new labor agreement, they continue to operate under the terms of their 2006-07 labor agreement, which I may sometimes refer to as the "current labor agreement." They have successfully negotiated most of the provisions of their new labor agreement, but have reached impasse about several bargaining issues, described hereafter. In this proceeding, they seek to use the arbitration procedures established by PELRA to resolve the issues at impasse. The parties have agreed, however, that the new labor agreement will have a one-year duration, from January 1, 2008, through December 31, 2008.

On March 26, 2008, the Minnesota Bureau of Mediation Services certified that the parties were at impasse with respect to four collective bargaining issues that are to be resolved in this arbitration proceeding. I refer to these issues by the following titles:

- Issue 1. Compensation.
- Issue 2. Uniform Allowance.
- Issue 3. Shift Differential.
- Issue 4. Health Insurance.

At the hearing, the Union withdrew its proposal to add a provision to the labor agreement that would establish a shift differential, thus settling Issue 3.

The Employer negotiates with unions representing five bargaining units in addition to the Union. The Minnesota Nurses Association represents the Registered Nurses employed at the hospital operated by the Employer, the Murray County Memorial Hospital (the "Hospital"). Four affiliates of the American Federation of State, County and Municipal Employees ("AFSCME") represent employees in four bargaining units -- 1) the non-supervisory employees in the Highway Department, 2) the County's Jailer-Dispatchers, 3) the Hospital's Licensed Practical Nurses and 4) most of the other non-supervisory employees at the Hospital.

ISSUE 1: COMPENSATION  
ISSUE 4: HEALTH INSURANCE

I consider these two issues together because, as I describe below, the Employer's positions with respect to both issues treat them as inter-related economically.

Article 20 of the current labor agreement provides that "Employees will be granted Compensation in accordance with Appendix A." Appendix A establishes a Salary Schedule with fourteen steps, the first two of which are titled, "Start," and "6 Months." The remaining twelve steps are titled, "Year 1" through "Year 12." Appendix A of the current labor agreement establishes the following hourly wage rates, effective January 1, 2006, and January 1, 2007:

<u>Deputy Sheriff</u> <u>(Steps)</u>	<u>Hourly Rate</u> <u>Effective 1-1-06</u>	<u>Hourly Rate</u> <u>Effective 1-1-07</u>
Start	\$15.92	\$16.08
6 Months	16.32	16.48
Year 1	16.73	16.89
Year 2	17.15	17.31
Year 3	17.58	17.74
Year 4	18.02	18.18
Year 5	18.47	18.63
Year 6	18.93	19.10
Year 7	19.40	19.58
Year 8	19.89	20.07
Year 9	20.39	20.57
Year 10	20.90	21.08
Year 11	21.42	21.61
Year 12	21.96	22.15

The employee shall move on 1-1-2006 to two steps below the step the employee was at on 12-31-2005. The employee shall [move] on 1-1-2007 to the same step the employee was at on 12-31-2006.

The Employer has the right to hire a new employee at any step shown on this wage schedule. The Employer will pay the cost of an employee's Peace Officer (POST) license each three-year period.

Article 19 of the current labor agreement, which is set out below, requires the Employer to contribute to the cost of health insurance:

The Employer shall provide health insurance coverage in the Employer's comprehensive major medical group plan to regular employees scheduled to work thirty (30) hours or more per week. An employee will be eligible for insurance coverage upon successful completion of the first month of employment.

For the duration of this contract, 2006 and 2007, the Employer will contribute amounts equal to those contributed by the Employer for its non-organized employees.

#### The Union's Positions.

With respect to Compensation, the final position of the Union, as presented to the Bureau of Mediation Services on April 9, 2008, is set out below:

Article 20, Appendix "A" - Compensation.  
A general increase of 4% applied to the wage scale effective January 1, 2008. Employees shall receive a step increase on their anniversary date.

With respect to Insurance, the final position of the Union, as presented to the Bureau of Mediation Services on April 9, 2008, is set out below:

Article 19 - Insurance.  
No change from current language.

The Employer's Positions.

With respect to Compensation, the final position of the Employer, as presented to the Bureau of Mediation Services on April 8, 2008, is set out below:

Compensation - Wages - Article 20. Appendix A.  
Provide for a pay rate for 2008 competitive with Minnesota Region 8 Counties reduced by the equivalent of Murray County's higher than average Region 8 contribution for individual insurance coverage.

With respect to Insurance, the final position of the Employer, as presented to the Bureau of Mediation Services on April 9, 2008, is set out below:

Health Insurance - Article 19.  
No change from existing contract OR REDUCE County contribution for 2008 to average of Region 8 Counties.

Decision and Award.

Murray County is one of nine counties in the southwestern corner of the state that the Minnesota Department of Employment and Economic Development classifies as Economic Development Region 8. The evidence shows the following top-step monthly wage rates in 2007 and 2008 for Deputies in the nine counties of Region 8:

<u>County</u>	<u>2007</u> <u>Top</u>	<u>2008</u> <u>Top</u>
Cottonwood	\$3,846	\$4,001
Jackson	4,332	4,462
Lincoln	3,423	3,527
Lyon	4,318	4,458
Nobles	4,235	4,363
Pipestone	3,763	3,914
Redwood	4,351	4,493
Rock	4,200	4,316
Average	4,058	4,192
Murray	3,839	

The Employer presented in evidence a chart showing the contribution to the cost of health insurance made by the nine counties of Region 8 in behalf of Deputies. For some counties, the chart shows a contribution amount for single coverage and a higher contribution amount for family coverage. For other counties, the chart shows the same contribution amount whether for single or family coverage. In addition, the chart describes some of the variations in coverage features, such as a deductible amount or an amount for a VEBA contribution.

I recognize that, as the Union argues, it is difficult to compare health insurance benefits using as a basis for comparison only the amounts each county contributes to the cost of coverage, without more detailed knowledge about the coverage features provided by each county's insurance plan. Nevertheless, as the Employer argues, a comparison of the amount contributed by each county has some value because it shows an expenditure in dollars that each county makes in behalf of its employees. Presumably, the dollar amount spent in behalf of employees is at least some measure of the benefits they receive.

Below, I show the dollar amounts contributed to the cost of health insurance by the Region 8 counties for 2007 and 2008, as extracted from the evidence presented by the Employer:

<u>2007</u>		
<u>County</u>	<u>Monthly Contribution Single Coverage</u>	<u>Monthly Contribution Family Coverage</u>
Cottonwood	\$381	\$848
Jackson	No Information	No Information
Lincoln	646	646
Lyon	550	900
Nobles	500	500
Pipestone	414	414
Redwood	475	535
Rock	480	480
Average	492	618
Murray	583	763

<u>2008</u>		
<u>County</u>	<u>Monthly Contribution Single Coverage</u>	<u>Monthly Contribution Family Coverage</u>
Cottonwood	\$514	\$972
Jackson	326	829
Lincoln	840	840
Lyon	550	900
Nobles	515	515
Pipestone	433	433
Redwood	485	595
Rock	500	500
Average	520	698
Murray	669	895

At the hearing, the Employer gave the following explanation of the way in which its position on Compensation is related to its position on Insurance. The Employer proposes that, for 2008, Deputies receive a flat 3% increase in wages, using as a

base for that calculation the wage schedule that was effective on January 1, 2007, as set out in Appendix A of the current labor agreement, but keeping the wage schedule itself unchanged. In addition, the Employer proposes that Deputies receive no step advancement during 2008. The evidence shows that, before the start of 2008, one of the seven Deputies was at the top step and the other six were below the top step.

The Employer explained that its proposal on Insurance is presented in the alternative. One of its alternative positions is the following. It would accede to the Union's Insurance position -- to make no change in the language of Article 19 of the current labor agreement, thus continuing its obligation to pay the same contribution toward health insurance that it pays in behalf of non-organized employees -- provided that its position with respect to Compensation is adopted.

As a second alternative position on Insurance, the Employer proposes the following. If its position on Compensation is not adopted, it proposes that its contribution to the cost of health insurance for Deputies be reduced to the approximate average of the contribution that the other eight counties in Region 8 make to the cost of Deputies' health insurance.

The Union makes the following arguments in support of its position on Compensation. It argues that the cost of an award of its position would not be substantial. The Union estimates that, even assuming that all Deputies were at the top of the wage schedule, a 4% increase would raise costs by about \$12,900. In addition, the Union calculates the cost of a step increase for

the six employees who are not at the top of the schedule at about \$7,114. Thus, the Union estimates that the cost of its position on Compensation would be about \$20,014. As I understand the estimate made by the Union, the cost of the Employer's proposal to increase wages by a flat 3%, with no step advancement would be about \$9,610, if all seven employees were at the top step, and, because six of them are not at the top step, the cost would be slightly less than \$9,610.

The Union argues that the difference of less than \$10,404 between the cost of its position and that of the Employer is not significant when considered with what it views as the Employer's strong financial condition.

The Union also argues that a market comparison with the wages received by Deputies in the other eight counties of Region 8 supports the 4% increase it seeks. It argues that it would take an increase of about 5.7% just to raise the wages of Murray County Deputies to the average paid by the other eight counties in 2007, and that, even if Murray County Deputies' wages were increased by the 4% it proposes, their wages would still be about 4.98% below the average of wages paid by the other eight counties in 2008.

In addition, the Union argues that the Minnesota Local Government Pay Equity Act (the "Pay Equity Act"), Minn. Stat., Section 441.991, et seq, presents no impediment to an award of its position. The Union presented evidence showing that the Employer is now in compliance with the Pay Equity Act and that a 4% increase in the wages of Deputies would have little impact on the Employer's ability to show continued compliance with the Act.

The Union argues that the Registered Nurses employed by the Employer at the Hospital received a 6% wage increase for 2008 and they also received their annual step increase. As I note below, the Employer argues that the four AFSCME bargaining units agreed to accept a flat 3% increase without step advancement, though the settlements are still not final because of disagreement whether the increase is to be retroactive to January 1, 2008. The Union urges that, in the absence of evidence showing final settlements, I should disregard the Employer's representation that the AFSCME contracts have been finally settled.

The Union argues that the cost of living as shown by the Consumer Price Index has increased by about 4.5% during the first half of 2008, though it concedes that the decline in energy prices since then has ameliorated the rate of inflation.

The Union argues that step increases should be recognized as a structural component of compensation, reflecting the parties' continuing, consistent agreement 1) that newly hired Deputies will receive low starting wages, but 2) that they will be compensated for the low wages they receive during the early part of their employment with progressively rising wages, i.e., step advancement. According to the Union, employees whose compensation is structured as an annual step system work for low wages at the beginning of their career in exchange for the promise, at least implied, that they will receive higher wages in the later part of their career, as they advance through the step system.

The Union argues that there should be no change in Article 19 of the current labor agreement, which establishes the Employer's obligation to contribute to the cost of health insurance in "amounts equal to those contributed by the Employer for its non-organized employees." The evidence shows that the amounts contributed in behalf of non-organized employees are the same as those contributed in behalf of organized employees as well. The Union argues that I should follow the reasoning adopted by most interest arbitrators -- that health insurance benefits should be determined using an internal standard.

The Employer makes the following arguments. The Employer urges that its revenues are facing a serious threat from the economic recession that has caused substantial reductions in the revenues of the State of Minnesota and its political subdivisions. Because of the fiscal constraints that the Employer anticipates, it has adopted the policy of offering all of its employees, except Registered Nurses, what it has proposed here for Deputies -- for 2008, a flat increase of 3% over the rate the employee received in 2007, with no step advancement. The Employer notes that, because qualified Registered Nurses are in high demand, it was obliged to provide them higher increases to meet market wage rates.

As noted above, at the hearing, the Employer indicated that it has reached a tentative agreement with the four AFSCME bargaining units by which they would accept the Employer's offer of a flat 3% increase with no step advancement, though the agreement has not been made final because of a remaining dispute

about retroactive payment of the increase to January 1, 2008. As I have also noted, the Union does not accept the Employer's indication that AFSCME has accepted such a settlement, without documentary evidence establishing it.

The Employer argues that internal comparisons derived from the formula used by the Minnesota Department of Employee Relations to measure compliance with the Pay Equity Act show that its Deputies are "overpaid" relative to many of its other employees.

The Employer argues that the eight other counties of Region 8 do not comprise a relevant labor market for use in external comparison, notwithstanding their proximity to Murray County. The Employer urges that, because the wage rates paid to Deputies by those eight counties vary substantially, the counties do not fit standard definitions of a relevant market.

Nevertheless, the Employer argues that, if wage rates paid by the other eight counties are used as an external market comparison, the comparison should include not only wage rates, but contributions to the cost of health insurance -- an expensive benefit provided to employees. Accordingly, the Employer argues that the higher insurance contributions that its Deputies receive should be considered as an offset to the lower wage rates they receive.

For the reasons given below, I make the following awards. With respect to the Employer's health insurance contribution, I award the position of the Union, which is also one of the alternative proposals of the Employer -- that the new labor agreement retain the language of Article 19 (except for a

change in the date of the contract year to 2008), as it appears in the current labor agreement. This award will provide Deputies with contribution "amounts equal to those contributed by the Employer for its non-organized employees" and, as the evidence shows, for its other employees. I make this award because, except in unusual circumstances, internal consistency should be the standard for determining this benefit, as interest arbitrators almost universally decide.

I agree with the Employer, however, that, because the health insurance contributions it will thus pay are substantially above the average paid by the other Region 8 counties, the disparity should be considered as at least partially offsetting the lower wages paid by the Employer, insofar as those counties are used for market comparison. As I have noted above, the dollar cost of a benefit received by employees is at least presumptively a measure of its value. Nothing in the evidence indicates that the Employer's higher cost of providing insurance contributions should not be considered as a relevant offset to the Employer's lower cost of wages.

With respect to Compensation, I make the following award. For 2008, Appendix A in the new labor agreement shall be amended by increasing the wage rates shown in the 2007 wage schedule by 2.5%. In addition, the first paragraph that appears below the wage schedules (which in its present form describes step movements in 2006 and 2007) shall be amended by substituting the following text for the text of that paragraph as it appears in the current labor agreement:

During 2008, each employee not at the top rate on the wage schedule shall advance one step on his or her anniversary date.

From the evidence presented by the parties, as described above, I have prepared the following chart, which shows the total of 1) the monthly health insurance contributions for family coverage and 2) the top monthly wage provided to Deputies by Region 8 counties in 2008:

<u>2008</u>			
<u>County</u>	<u>Family Insurance Contribution (Column 1)</u>	<u>Top Monthly Wage (Column 2)</u>	<u>Total Column 1 Plus Column 2</u>
Cottonwood	\$972	\$4,001	\$4,973
Jackson	829	4,462	5,291
Lincoln	840	3,527	4,367
Lyon	900	4,458	5,358
Nobles	515	4,363	4,878
Pipestone	433	3,914	4,347
Redwood	595	4,493	5,088
Rock	500	4,316	4,816
Average	698	4,192	4,890
Murray	895	3,839*	

\* The 2007 top step

If, as the Union proposes, the Employer's monthly contribution to family health insurance coverage is fixed at \$895 -- the same amount the Employer provides to its other employees during 2008 -- the Employer will be providing a benefit that costs \$197 per month more than the average paid by the other eight Region 8 counties. That amount, \$895, added to the 2007 top wage rate paid by the Employer, \$3,839, totals \$4,734 -- \$156 below the average total of \$4,890 that the other eight Region 8 counties pay for a family health insurance contribution

and for wages at the top step. An increase of 2.5% in the Appendix A wage schedule will raise the top wage rate from \$3,839 to \$3,935 in 2008, which, when added to the Employer's \$895 contribution for family health insurance makes the total payment for top step wages and for family health insurance coverage equal to \$4,830, still about \$60 below the average paid by the other eight counties of Region 8, but an improvement from the \$68 difference during 2007. I accept the Union's argument that the Employer's financial condition is not at present constrained, but I recognize, as the Employer argues, that the economy of Minnesota is under substantial pressure that may adversely affect the Employer's finances in the near future.

ISSUE 2 UNIFORM ALLOWANCE

At the hearing, the copy of the current labor agreement that was presented in evidence appears to include typographical errors in Article 26, which establishes a uniform allowance. I reproduce its text below:

The Employer will provide Employees with an annual uniform allowance of five hundred fifty dollars (\$550.00) for 2004, six hundred dollars (\$600.00) for 2005. Said allowance will be payable in two equal semi-annual payments as follows:

	<u>2006</u>	<u>2007</u>
January 1	\$312.50	\$312.50
July 1	\$312.50	\$312.50

In addition to the above, the Employer will provide a vest, the type and quality of which will be mutually agreed to by the Employee and the Employer.

As I interpret this provision, the uniform allowance for 2006 and 2007 was a total of \$625 for each year, with half

payable on January 1 and half payable on July 1, notwithstanding the apparently irrelevant references to the amount of the allowance in 2004 and 2005. The evidence presented by both parties is consistent with this interpretation.

The Union's Position.

The Union proposes that the uniform allowance for 2008 be increased to \$675.00, half payable on January 1 and half on July 1. Though the proposal does not explicitly seek a continuation of the last paragraph of Article 26, which relates to vests, I assume that the Union would continue that provision as well.

The Employer's Position.

The Employer proposes that the new labor agreement make "no change from existing contract."

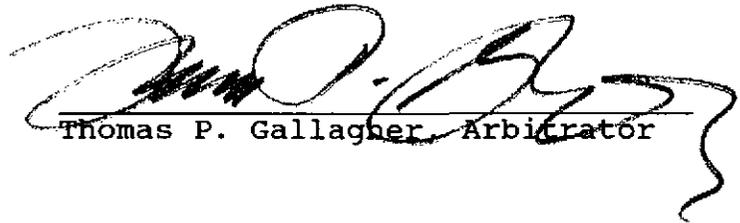
Decision and Award.

The Union argues that the uniform allowance, which was \$625 during 2006 and 2007, should be increased to reflect increases in cost. The Union presented estimates from uniform vendors, indicating that the cost of uniforms has increased from 3% to 5% per year during the last two years, with "select" vendors raising prices 10%.

The evidence shows that the average uniform allowance in the four other counties in Region 8 that pay a cash allowance rather than supply uniforms in kind was \$562.50 in 2007, \$590 in 2008 and will be \$616.67 in 2009. The Employer argues that this evidence does not justify an increase in the \$625 uniform allowance it now pays.

I agree with the Employer's argument, and, for the term of new labor agreement, I award no change in the language of Article 26, as it appears in the current labor agreement.

December 31, 2008



Thomas P. Gallagher, Arbitrator