IN THE MATTER OF THE ARBITRATION BETWEEN

LAW ENFORCEMENT LABOR SERVICES, INC., Union, and THE COUNTY OF CARVER, Employer.	MINNESOTA BUREAU OF MEDIATION SERVICES CASE NO. 09-PN-~~0698~~ 0806 DECISION AND AWARD OF ARBITRATOR

APPEARANCES

For the Union:	For the Employer:
Kenneth Pilcher Business Agent Law Enforcement Labor Services, Inc. 327 York Avenue St. Paul, MN 55130-4039	Pamela R. Galanter Frank Madden & Associates Attorneys at Law Suite 295 505 North Highway 169 Plymouth, MN 55441-6444

On January 21, 2010, in Chaska, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, whom the parties selected under the provisions of the Minnesota Public Employment Labor Relations Act ("PELRA") to resolve a collective bargaining issue about which the parties are at impasse. Post-hearing briefs were received by the arbitrator on February 4, 2010.

BACKGROUND

The County of Carver, (the "County" or the "Employer") is one of seven counties in the metropolitan area that includes Minneapolis and St. Paul, Minnesota. The County's population in 2008 was about 90,000. The Union is the collective bargaining representative of sixty-six non-supervisory employees of the Employer, who are classified as Deputy Sheriffs ("Deputies").

The Union and the Employer were parties to a labor agreement that had a stated duration from January 1, 2007, through December 31, 2009. That agreement, which was executed in late February of 2008, included a Memorandum of Agreement, set out below, which the parties entitled, "Wage Reopener for 2009":

> This Memorandum of Agreement is entered into between the County of Carver (hereafter "County") and Law Enforcement Labor Services, Inc. (hereafter "Union").
>
> WHEREAS, the County and the Union are parties to a Labor Agreement in effect from January 1, 2007 through December 31, 2009 covering employees in the classification of Deputy Sheriff; and
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> WHEREAS, the County has made a commitment to conduct a compensation study to be completed by December 31, 2008.
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> NOW, THEREFORE, the parties agree as follows:
>
> 1. The Labor Agreement shall be reopened for the sole purpose of negotiating implementation of the compensation study for 2009.
> 2. This Memorandum of Agreement constitutes the complete and total agreement between the parties regarding the wage reopener for 2009.

On May 27, 2009, the Minnesota Bureau of Mediation Services ("BMS") issued a Certification to Arbitration, after BMS received, on May 22, 2009, a request from the Union "to submit contract negotiations in the above-entitled matter to conventional interest arbitration." The Certification to Arbitration certifies the following issue to arbitration under the provisions of PELRA:

1. 2009 Market Adjustment - Shall wages receive a market adjustment for 2009? If so, what amount? Art 18, Appendix A.

Section 18.1 of the 2007-2009 labor agreement and Appendix A to the agreement are set out below:

> Section 18.1. Employees shall be compensated in accordance with the wage schedule attached hereto as Appendix A. . . .

Appendix A
(These Rates are in dollars per hour)

1-1-2007: 3.0% general adjustment over the 1-1-2006 rates.

Minimum	Maximum
$18.93	$27.05

1-1-2008: 3.0% general adjustment over the 1-1-2007 rates and increase Maximum rate by an additional 2.5%.

Minimum	Maximum
$19.50	$28.56

1-1-2009: 3.0% general adjustment over the 1-1-2008 rates.

Minimum	Maximum
$20.09	$29.42

At the hearing, the parties explained 1) that the Employer uses a compensation system that sets a range with a minimum and maximum hourly wage rate and 2) that employees move through the system in steps from the minimum rate at the time of hiring (though the contract permits hiring at a rate higher than the minimum rate under some circumstances) to the maximum rate, in increments of 4.5% -- one provided after six months of employment and each additional such increment provided at each succeeding 12 months of employment until the employee reaches the range maximum.

The Union's Position.

The Union, in its final position as presented to BMS on June 11, 2009, proposed a "general market adjustment of 9.12% over the January 1, 2009, wage rates."

The Employer's Position.

The Employer, in its final position as presented to BMS on June 10, 2009, proposed "no increase in the wage schedule that became effective on January 1, 2009."

Decision and Award.

In the Memorandum of Agreement, the Employer "made a commitment to conduct a compensation study to be completed by December 31, 2008." The Employer retained the Stanton Group to conduct the study, which was completed in the fall of 2008 with its final report issued in December of 2008. The Stanton Group worked with a "Compensation Study Advisory Team" that included non-union employees of the County and members from the unions representing County employees. The Compensation Study compared the County's compensation of employees in fifty-seven "benchmark" positions (one of them, Deputies) to the compensation of employees in similar positions in a comparison group consisting of nine public employers in the Metropolitan Area -- five of them cities with population ranging from 25,000 to 80,000 and four of them counties -- Anoka, Dakota, Scott and Washington. The Compensation Study concluded that, overall, the County's compensation paid to employees in the benchmark positions was 103.1% of the average for the comparison group (the "market").

The Stanton Group recommended that County employees whose actual wages were below 80% of the market have their wages increased to at least the range minimum for the employee's classification, if the County had the financial ability to do so. For employees whose wages were above 120% of the market, it recommended a wage freeze or the use of lump sum adjustments until the employee fell back within the range for the employee's classification.

After completion of the Compensation Study, the Employer implemented it as follows. Non-union employees, whose actual salaries ranged from 80.9% to 111.4% of market, received no market adjustment. The County negotiates with unions representing employees in eight bargaining units -- two of them represented by Teamsters, Local 320, four of them represented by the American Federation of State, County and Municipal Employees ("AFSCME") and two of them represented by the Union -- the Deputies' bargaining unit and the Sergeants' bargaining unit. As noted, the Union and the County executed the Memorandum of Agreement providing for the negotiation of a 2009 market adjustment covering the Deputies' unit. The Union also executed an identical Memorandum of Agreement covering the Sergeants' bargaining unit, as did AFSCME for the four bargaining units it represents. At the time these six Memoranda of Agreement were executed, Teamsters, Local 320, had completed bargaining for calendar year 2009, and for that reason, no Memorandum of Agreement was executed covering the bargaining units it represented.

After completion of the Compensation Study by the Stanton Group, the Employer reached agreement with AFSCME that there would be no 2009 market adjustment for employees in the four bargaining units it represented. The Employer was not able to reach an agreement with the Union with respect to a 2009 market adjustment for Deputies or Sergeants.

In this proceeding, it is the Employer's position that, because the Compensation Study shows that the compensation of Deputies is 94% of the market -- a percentage above the 80% threshold for a market adjustment as recommended by the Stanton Group -- there should be no market adjustment to the 2009 wage rates under the Memorandum of Agreement. The Employer supports its position with arguments that I describe below.

The Union rejects the standard that the Stanton Group set for entitlement to a market adjustment -- that no market adjustment should be made except for employees whose wages are below 80% of the market. The Union seeks a market adjustment of "9.12% over the January 1, 2009, wage rates," arguing that such an adjustment is needed to bring the compensation of Deputies near what is indicated by relevant comparisons, both external and internal. The Union supports its position with arguments that I describe below.

Though the parties make various arguments in support of their positions, they have two primary disagreements. First, the Union contends that the Deputies are underpaid, as shown not only by external, i.e., market comparisons, but by internal comparisons -- as shown in the Employer's Compliance Report prepared to meet the requirements of the Minnesota Local Government Pay Equity Act, Minnesota Statutes, Section 471.991, et seq. (the "Pay Equity Act"). The Union urges that the Employer has the ability to pay the cost of the increase it proposes. In response, the Employer makes several arguments that the external comparisons made by the Union are flawed and that the Deputies are fairly paid, whether the standard for comparison is external or internal.

Second. The Employer argues strongly that, because of poor economic conditions, it must conserve its resources in the face of substantial declines in its revenues that have occurred over the past several years and are projected to continue in several future years. In response, the Union argues that the Employer's current budget and its revenue base are sufficient that it has the "ability to pay" the increase it seeks. The Union's estimates of cost project that a 9.12% increase in salaries would increase the Employer's cost by $331,382 if the adjustment is awarded for all of 2009, and by $165,691 if the adjustment is made effective as of July 1, 2009. The Union also notes that, if the adjustment is made effective as of December 31, 2009, it would cause no increase in cost for calendar year 2009. The Employer estimates the cost of the Union's position to be higher because it includes several roll-up increases that are not included in the Union's estimates of cost.

Below, I summarize the parties' arguments regarding these two primary disagreements -- whether Deputies are underpaid and whether the Employer can afford to increase the compensation of Deputies.

The Union makes the following arguments. The Employer's 2007 Pay Equity Compliance Report shows that the monthly compensation of Deputies is $182.97 below predicted pay. This insufficiency conflicts with the policy stated in the Employer's Compensation Plan -- that it will provide its employees with reasonable and competitive compensation and meet the internal equity requirements of the Pay Equity Act. The Pay Equity Act requires that compensation of Deputies and all other employees bear a reasonable relationship to the compensation in the external market and to compensation of other employees of the County.

The Union also argues that the compensation paid to the County's Deputies is ranked only sixth among the nine entities in the comparison group used in the Compensation Study and second from the bottom in an alternative comparison group suggested by the Employer. The Union urges that the market adjustment it seeks is necessary to prevent a continuation of the poor ranking of the County's Deputies. Further, the Union rejects as unreasonable the standard proposed by the Stanton Group that no market adjustment should be made except for jobs paid less than 80% of market. The Union argues that the evaluation of the

Compensation Study that shows Deputies paid at 94% of market should be justification enough to award the increase it seeks. Accordingly, the Union urges that its proposal for a 9.12% increase is reasonable and will help eliminate the unfairly low compensation paid to the County's Deputies.

The Union argues that the Employer has the ability to pay the increase it seeks. The Union presented evidence that at the close of fiscal year 2008, the County's unreserved fund balance was $22,506,000 and it had $76,110,000 in cash, deposits and investments. In addition, the Union showed that, for 2008, the County's general fund revenues exceeded general fund expenditures by $806,146. Thus, the Union argues, the Employer's financial condition is clearly sufficient to pay the 9.12% increase it seeks, which, according to the Union's estimates will increase the County's 2009 general fund expenditures by $331,382 if the adjustment is awarded for all of 2009, by $165,691 if the adjustment is made effective as of July 1, 2009, and by nothing if it is made effective as of December 31, 2009.

The Employer makes the following arguments. The analysis made by the Stanton Group in its Compensation Study included an analysis of the external market, using four relevant counties and five relevant cities in the Metropolitan Area. It also analyzed internal equity, comparing point values of County jobs. The Study determined that the wages paid by the County to benchmark positions were competitive, at 103.1% of the market on average. Because the compensation of Deputies was evaluated to be at 94% of the market average, no market adjustment is warranted, in accord with the Stanton Group's standard that adjustments should be made only for jobs paid less than 80% of the market average or more than 120% of the market average. The Employer treated all of its employees in accord with that standard. Thus, all non-union jobs and all union jobs for employees in other bargaining units received no adjustment, even when the job was evaluated at less than 94% of market, and as low as 80.9% of market. Only one employee, whose compensation was 78.6% of market, received an upward market adjustment. One other employee, whose job was evaluated at more than 120% of market, took a voluntary demotion to bring her compensation in line with the Stanton Group standard. The Employer argues that, because it is not possible for all jobs to be compensated at the average, it is common for some to be compensated at a rate above and some at a rate below the market average.

The Employer argues that it has generally kept wage adjustments uniform in the past. For the period covered by the 2007-2009 labor agreement, Deputies received the same 3% per year general increase for each year of the three-year term that employees in all other bargaining units received. The only departures from uniformity were the provision to Deputies and Sergeants of an additional increase in 2008 of a 2.5% increase in the range maximum, an increase not provided to other employees. None of the 550 employees of the County outside the Deputies' bargaining unit has received a 2009 market adjustment, notwithstanding that many of them were entitled to negotiate for one through a Memorandum of Agreement identical to the one covering Deputies. The Employer urges that there is no justification for a departure from that internal consistency for the sixty-six Deputies in this bargaining unit.

In evaluating compensation paid to Deputies for internal comparison, the Employer would add to their compensation items not received by other County employees -- longevity pay and Employee Growth and Development Pay. The Employer argues that, if these payments are included in total compensation, Deputies would not rank below predicted pay, but, instead, would rank $117 per month above predicted pay.

The Employer argues that, if the Union's position were awarded, the compensation of the County's Deputies would rise above the average of the compensation paid by the five counties that have traditionally been used by the parties as a comparison group -- Anoka, Dakota, Scott, Washington and Wright counties -- and that such a ranking is not justified by the County's rank as the smallest among them in population and as the County with the highest per capita property tax levy.

The Employer argues that the financial condition of the County has been severely impacted by the economic downturn that began in 2008 at about the time the Employer and the Union executed the 2007-2009 labor agreement and its Memorandum of Agreement. In developing a budget for 2009, the County's Board of Commissioners (the "Board") recognized the impact of the downturn in several ways. In December of 2008, the Board approved a budget for 2009 that reduced the County's full-time equivalent employees by 19.45 positions in an attempt to keep the property tax levy increase at 4.5% in the face of a declining average value of homes in the County from $306,000 to $294,000. The County's 2009 budget reduced total spending substantially to $82 million, a reduction of $20 million. The budget reduced services and programs in many departments, including Social Services and Public Health. The County lost $800,000 in investment earnings, and, for 2008 and 2009, it lost a total of about $1,327,000 in County Program Aid from the State of Minnesota, with an additional loss in such aid projected to be $1,148,000 for 2010. On June 9, 2009, the Board further reduced the 2009 budget by $2.5 million to offset reliance on State aid for ongoing operations. To do so, the Board made further cuts to programs and approved a further reduction in the number of full-time equivalent employees by 10.9 positions. This reduction included reductions in positions in the Sheriff's Office. The budget for 2010, which was approved on December 15, 2009, assumes no general wage increase for the County's employees and no salary range increases.

I reach the following conclusion. The evidence about the County's financial condition shows that its primary sources of revenue -- property taxes, State aids and investment income -- are severely constrained. The County had positive fund balances in 2008, as shown by the Union, and it appears that for 2009 and 2010, because of the Board's contraction of spending to meet the contraction in revenues the County will be able to maintain operations at a reduced level, notwithstanding the economic pressures that have severely impacted the County's revenues.

In these circumstances -- in which the Board has acted reasonably to meet adverse financial conditions by making substantial reductions in spending, in services and in County employment -- I am unwilling to award a market adjustment for 2009. Even if such an adjustment were made effective on December 31, 2009, it would, nevertheless, adversely impact the County's 2010 budget, a year in which the County's revenues will still be under constraint, justifying continued fiscal austerity.

Accordingly, I award the Employer's position -- that there be no 2009 market adjustment made under the Memorandum of Agreement.

March 6, 2010

Thomas P. Gallagher, Arbitrator