

IN RE ARBITRATION BETWEEN:

HENNEPIN COUNTY

and

HENNEPIN COUNTY DEPUTY SHERIFF'S ASSOCIATION

DECISION AND AWARD OF ARBITRATOR

BMS Case No. 10-PN-0776

JEFFREY W. JACOBS

ARBITRATOR

September 7, 2010

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and

DECISION AND AWARD OF ARBITRATOR
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Hennepin County Deputy Sherriff's Association, HCDSA,

APPEARANCES:

FOR THE UNION:

Gregg Corwin, attorney for the Union
Cristina Parra Herrera, Attorney for the Union
Kevin Schwartz, Vice President
Al Saastamoinen, President
Tim Chmielewski, Secretary

FOR THE EMPLOYER:

Greg Failor, Labor Relations Representative
Bill Peters, Labor Relations Director
Tracy Martin, Inspector

PRELIMINARY STATEMENT

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. Negotiation sessions were held and the parties negotiated in good faith but were ultimately unable to resolve certain issues with respect to the labor agreement. The Bureau of Mediation Services certified 15 issues to binding interest arbitration pursuant to Minn. Stat. 179A.16, subd. 7 by letter dated April 1, 2010

The hearing was held on July 26, 2010 at the Hennepin County Government Center in Minneapolis, Minnesota. The parties presented oral and documentary evidence at that time. Post-Hearing Briefs were submitted to the arbitrator on August 9, 2010.

ISSUES PRESENTED

The issues certified at impasse and in dispute at the time of the hearing were as follows:

1. Wages 2010 – General Adjustment 2010 – Art. 17
2. Wages 2010 – General Adjustment 2011 – Art. 17
3. Steps 2011 – Steps 2011 – Art. 17
4. Shift Differential – Amount of Shift/Weekend Differential 2010 – Art. 10
5. Shift Differential – Amount of Shift/Weekend Differential 2011 – Art. 10
6. Uniform Allowance 2010 – Amount of Uniform Allowance 2011 – Art. 32
7. Field Training Officer, FTO, Pay – Amount of FTO Pay 2010 – Art. 10
8. Latent Print Examiner/Firearms Examiner – Latent Print Examiner/Firearms Examiner Pay Differential – Art. 10
9. Work Units – Seniority Rights for New Work Units – Art. 7
10. Schedule Changes – Advance Notice of Schedule Change – Art. 3 & 10 (New)

11. Definition of Emergency – Change Definition of Emergency – Art. 3, Sec. 1
12. Retroactivity – Retroactive Pay for Economic Changes – Art. 38
13. Premium Pay 28-Day Schedule – Rate of Pay for Work Performed on 28-Day Schedule – Art. 3
14. Vacation Cashout – Designated County Official to Approve Vacation Cashout – Art. 12, Sec. 10
15. Fitness for Work – Alternate Duties for Ill or Disabled Employees – New Provision

The parties were unable to reach agreement on any of the issues prior to arbitration.

ISSUES 1 & 2 - WAGES – GENERAL ADJUSTMENT 2010 & 2011

UNION’S POSITION:

The Union’s position was for a 3% general wage increase in 2010 and 2011 as follows:

“Effective January 3, 2010, the Following monthly rates shall apply

Classification	Minimum Rate	Maximum rate
Crime scene Investigator	\$3,886.19	\$5,928.68
Deputy Sheriff	\$4,027.00	\$5,405.44
Sheriff’s Detective	\$4,082.00	\$6,724.76”

“Effective January 3, 2011, the Following monthly rates shall apply:

Classification	Minimum Rate	Maximum rate
Crime scene Investigator	\$4,002.78	\$6,106.54
Deputy Sheriff	\$4,147.81	\$5,567.60
Sheriff’s Detective	\$4,204.46	\$6,463.00”

This represents an increase in wages in 2010 and 2011 over the existing pay structure in the County. In support of the position for wage increases the Union made several arguments.

The Union asserted that despite alarmist claims regarding the economic downturn in recent years and the “bad” economy, the County could certainly afford the modest increases in wages the Union is seeking. Moreover, the Union asserted that the County’s opposition is based largely on speculation rather than the actual cost of the economic changes in the contract. Further, the County extends the changes to all represented County employees to determine what the Union’s proposal would cost the County. The Union noted that this is hardly representative of the true cost of what this Union is asking for since the other units have in most cases settled their contracts. Ability to pay should apply only to the bargaining unit at issue.

Further, the Union rejected the notion that the County “cannot” negotiate a different contract for these employees than it does for the other units and non-represented employees in the County. If the County treats all bargaining units the same, there is no point in having separate bargaining units. Moreover, it means that every bargaining unit is not truly represented by the exclusive representative it elects, but by whichever unit first sets the pattern for the other bargaining units. Administrative ease is not the standard by which appropriate wage increases are judged but rather by what is fair and equitable to compensate employees.

The Union chastised the County for its position in bargaining, that it characterized as wooden and claimed that this stance is not in keeping with the letter of PELRA but also by its spirit. The Union asserted that to simply say “we don’t have the money” is disingenuous and not exactly true. The County controls a 1.6 billion dollar budget and some \$440 million fund balance and could thus easily find the money within that budget to fund these requests.

The Union further noted that the Sheriff did not even spend his entire budget last year and that there was more than ample money to cover the cost of the wage increases, and the other economic items claimed herein, in what was left over from the 2009 budget. The original 2009 budget for the Sheriff’s Office was \$86,597,958 and the final amended budget was \$86,330,596. The Sheriff spent \$84,811,144, leave a difference of over \$1.5 million, see, Union Ex. 18 that could be allocated towards wage increases for this unit.

If one compares the Hennepin County wage rates for its deputies to that of Ramsey, its nearest “competitor” in terms of size and population, a wage freeze proposed by the County will cause these deputies to fall behind. Ramsey County granted a 2% increase effective January 1, 2010 and a 1.99% increase effective March 1, 2011. See Union Exhibit 8 at p. 25. Further, the Union argued that Hennepin County deputies should also be compared to the Minneapolis and St. Paul Police Department since they operate in very similar situations and face the same dangers from many of the very same people that the Minneapolis officers do. Those wage rates are considerably higher and should be adjusted upward to reflect the reality of the wage structures in comparable jurisdictions.

Further, the Union compared the overall wages that deputies can expect to earn over 25 years will lag far behind those other jurisdictions. This of course means more than just earnings but PERA contributions as well. The Union pointed to its exhibit 21 to demonstrate the disparity in wages over time even if the 3% is granted. Without it, the Union argued that the difference is even more stark and should be considered by the arbitrator.

Finally, the Union countered the claim by the County that this Union should essentially fall into line with the other units. While it is true that most of the other units have accepted the County’s wage freeze proposals, this Union has not. Collective bargaining, means just that – bargaining and negotiation – it does not mean simply rolling over and taking what the County offers merely because some other Union did.

The Union’s argument is that the wages are low when compared to the external market and should be adjusted.

COUNTY’S POSITION

The County’s position is for a 0% increase in wages for 2010 and 2011. The County asserted that literally all of the other bargaining units in the County have accepted the County’s wage proposals and that even the few units who are still going to interest arbitration are not asserting economic items but rather going to arbitration over language or other non-economic issues. The County made the following arguments in support of this position.

The County asserted that interest arbitration is not a “roll the dice and see what comes up” proposition. It must be based on what the parties would have negotiated had they been able to resolve their disagreements. It must further be based on evidence, facts, compelling need for any proposed changes in the agreement or a quid pro quo for such adjustments it must also be based on economic reality and the notion that merely because an employer *could* pay a claimed wage increase (presumably by taking money from someone or something else) does not mean it *should* pay these increases.

The County asserted that it is faced with unprecedented economic pressures and deep cuts in its budget by the State. The County argued that one simply cannot ignore the economic situation in the State and indeed the entire country and that it would be irresponsible for the arbitrator to do so either. The County noted that it implemented a similar sort of wage freeze during the last economic crisis in 2004-05 and that this situation is much worse.

The County pointed to multiple awards by other arbitrators who have recognized the serious financial crisis facing the State and the County and have awarded 0% in wages in many other jurisdictions. The County noted that the severe economic times results in a very slow growth of the CPI; which is yet another reason not to award the Union's request and to award the County's proposed 0% increase. Over the past few years, the CPI has grown far slower than the deputies' wage rates.

The County further asserted that literally all of the other units in the County have accepted the 0% wage increase for both 2010 and 2011 and have negotiated in good faith with the County to assist it in solving its economic woes. The County asserted that this Union seems to want to benefit by glomming onto the money the County saved through the wage agreements reached with the other units.

The County pointed to the long string of prior rulings by other arbitrators that internal consistency is the most important factor in determining appropriate wage awards in interest cases. The County asserted that if suddenly this Union were to receive a wage award that is out of line with what the other units and non-Union employees would receive it would be disastrous for labor relations within the County. There would be widespread dissension and justifiable jealousy between units; the County would lose legitimacy and credibility with its employees by saying one thing and doing another and it will lead to a huge increase in interest arbitrations.

While interest arbitration is a statutory right, the main purpose of PELRA is to encourage voluntary resolution of labor disputes and to achieve agreement through negotiations rather than arbitration. Her the County argued most vehemently that it would never have agreed to the wages sought by this Union under these circumstances and that the main tenet in interest arbitration must always be to determine what the parties would have negotiated for themselves had they been able to do so. Here there is virtually no possibility in this economy that this Union would have staged a successful strike over this issue, especially when the County's largest units, AFSCME and IBT #320 have already settled on their wage agreements for the coming years. Thus by all measures, the internal comparisons compel the County's position here. Externally, the County noted that these deputies should never be compared to Minneapolis or St. Paul police. They perform vastly different services, their departments are funded in vastly different ways and their history is very different from that of the County. Moreover, the argument that deputy sheriffs be compared to city police departments has been rejected by virtually every arbitrator who has faced that question, including this one, and that argument should once again be rejected.

The County noted that while Ramsey County granted wage increases for 2010, that was due to their contract being negotiated in a very different time and that it was the last year in a multi-year contract that commenced January 1, 2009. It is very unlikely that such a contract would be negotiated now given the very different economic and social times today. Further, as noted above, if one compares the overall earnings over the 25-year projected career of a deputy, the earnings are in fact very close even if the County's proposal is granted. Hennepin County's philosophy of paying its deputies is somewhat different and "front loads" it by granting higher pay in the earlier years. Thus the Union's assertion that it will somehow lag behind the Ramsey pay structure is simply untrue.

Even using the 2010 wage rates, Ramsey County deputies do not pass Hennepin County deputies in cumulative career wages. At the end of their respective 25-year careers, a Hennepin County deputy will earn more than a Ramsey County deputy. The County's calculations over time shows that in 25 years a Hennepin Deputy will earn \$1,540,408 compared to \$1,511,839 for one in Ramsey. See, County Ex. 4-14.

Further, even if Hennepin County's stability pay is not included in these 25-year calculations, the Union's own exhibits show that a Hennepin Deputy will earn more. See Union Tab 21. Using Ramsey's 2011 rates with longevity steps and Hennepin County's 2009 rates without stability pay reveals that cumulative wages paid over the twenty-five year period are slightly more in Ramsey County---Hennepin County deputies will receive \$1,520,355 and Ramsey County deputies will receive \$1,541,925. When Hennepin County's stability pay is added to the comparison, the two counties are almost identical. Hennepin County deputies will be paid \$1,540,408 over a 25 year career and Ramsey County deputies \$1,541,925. Employer Ex. 4-14. The County argues that such small differences cannot and should not be used to grant these deputies an increase that the figures simply do not justify at his time.

The County asserted that all of the factors traditionally considered by interest arbitrators support its position in this matter. There is a strong and consistent internal pattern of settlement, all of which were for a 0% increase, even by the much larger and presumably more powerful Unions with bargaining units in Hennepin County. Moreover, while the Union seeks to use external market factors as more comparable, the employees in this unit work closely with the employees in the other units and have a much closer community of interest than they would have in comparison to the Ramsey County deputies anyway.

Further, a closer view of the external market reveals that no arbitrator has bought the Union's argument that Hennepin County deputies should be compared to Minneapolis or St. Paul police. Further, the one best measure externally, i.e. Ramsey County's, wages are in fact comparable. While there is a different philosophy in terms of "front loading" the wage structure, this simply reflects nothing more than that and should not be considered a need to pay the Hennepin County Deputies more now. There is no problem with retention or attraction of new hires or applicants and even if there was, that is for the County to worry about, not the Union. Finally, the CPI has remained very low, are lower than the wage increases granted to these deputies over a comparable period of time so there cannot be any argument that they are losing ground compared to the overall inflation rate in the economy.

Finally, the County pointed again to the many arbitral awards that have recognized the severe difficulties facing local units of government and the pattern of awards that have occurred by many different arbitrators dealing with many different public employers and Unions. All of these have awarded little or nothing in terms of wage increases for 2010 and 2011. The County argued that there is no justification for a deviation for this compelling pattern in this case and that the Union's requested 6% increase should be rejected.

DISCUSSION – WAGES 2010 AND 2011

The Union's position was for a wage increase ostensibly to bring the Hennepin County Deputies in line with what it asserted were higher wages in Ramsey County and in the cities of Minneapolis and St. Paul. The Union argued that their deputies deal with the same people and the same sort of conduct that officers in Minneapolis and St. Paul deal with and that they should be appropriately compared to those jurisdictions. The Union claimed that both are paid at a much higher rate and the Union asserted that the deputies' pay is too low for the service they perform and should be adjusted accordingly.

The Union further asserted that even if one compares its rates to Ramsey County, the Ramsey County wages will result in far higher overall earnings if one extends the earnings structure out over 25 years. Finally, the Union asserted that while the County has established a pattern of settlements with other units, those units are different and should not govern the appropriate wage rates to be awarded here.

The Union took issue with the way in which the County has bargained in this round of negotiations and asserted that the County did not really bargain in good faith since it started and ended with “no increases in any economic items.” There was no effort to compromise or alter its stance in that regard in any way. The Union asserted that if one simply looks at the “pattern” there is no real need for bargaining – the Unions should just accept whatever the County offers and go away. This is not in the spirit of PELRA, which requires good faith bargaining in a spirit of compromise and give-and-take. Here there was no such effort by the County and the parties found themselves at odds on a variety of issues. The Union further asserted that the County’s economic situation is not as bad as was portrayed and that it has both fund balances and unspent monies from which the Union’s requested changes could easily be paid.

The arbitrator cannot pass judgment on the question of whether there was truly good faith bargaining or not or whether one party liked or was comfortable with the stance taken in bargaining. Here the County presented compelling and persuasive evidence of its dire financial situation and the efforts it has undertaken to meet its obligations to provide services while at the same time staying within its budget. Obviously, as Arbitrator Fogelberg noted so eloquently in his recent decision in *Teamsters Union, Local #320 and The Metropolitan Council Metro Transit Police Dept.*, BMS Case No. 09-PN-833 (Fogelberg, July, 2010), one truly would have to be completely out of touch with the current economic state of the County and of the State in general not to know that public employers simply do not have the luxury of unlimited spending. Nor can they simply raise taxes on an already financial stressed electorate without some very dire consequences.

Hennepin County is in no different a situation from many other Minnesota counties according to the evidence presented in this matter and in some ways may have been hit even harder by State budget cuts and unallotments than others due to the greater population and somewhat greater needs addressed by Hennepin County’s services than in some others.

The evidence presented by the County was persuasive that the fund balances it maintains are preferred and in some cases even mandated by the State Auditor’s Office in order to meet its obligations. Further, the mere fact that the Sheriff did not spend all that was allotted to him in 2009 means two things – 1. That the money is almost immediately allocated somewhere else and 2. That the Sheriff has been judicious in his budget and kept a lid on unnecessary expenditures. At the very least, the fact that some money was not spent that was allocated to the Sheriff’s office ought not to result in some sort of “penalty” compelling the result that the extra money be spent on raises for certain employees. As always, the mere fact that an employer can spend the money does not mean that it should. Here the question of the appropriate award depends on both internal and external market conditions.

Certainly the most compelling evidence on this record was the consistent and strong pattern of negotiated settlements within the County. The evidence showed that quite literally all of the other bargaining units, including significantly, those involved in law enforcement, accepted the County’s wage proposals. None of those wage settlements were imposed by interest arbitration.¹

¹ It was noted that several units are going to interest arbitration and that those cases are pending. However the evidence also showed that the item certified for those matters are non-economic items and do not involve wage increases but are rather on language issues.

There was further persuasive evidence to suggest that the larger units within the County settled on this basis and that it is highly unlikely that the parties would have negotiated a wage increase for this relatively smaller unit. There was some considerable cogency to this argument. It is indeed unlikely, especially in this economy, that this Union would have been able to convince the County to grant it an increase when none of the other units were able to.

Moreover, as the County noted, the generally accepted standard in interest arbitration is to try to determine what the parties would have negotiated if they had been able to negotiate a voluntary settlement for themselves. Here there was little question given the County's posture all along and the internal pattern of settlements that the chances of a wage increase for this unit was very unlikely. On balance, the internal comparisons were far more persuasive on this record and the County's arguments on this point were quite compelling.

Turing to external markets, the County again scored slightly better. First, as noted by several arbitrators in the past, it is inappropriate to compare Hennepin County deputy sheriffs to either the Minneapolis or St. Paul police departments. Much has been written on this point and the rationale of this and other arbitrators need not be repeated ad nauseum. Suffice it to say that the reasoning of Arbitrator Miller, which was cited by this arbitrator in 2001 holds as true today as it did then:

As stated by Arbitrator Miller in Ramsey County and Minnesota Teamsters ... "The comparison of counties to counties, rather than counties to cities, is an accepted practice among arbitrators...There are too many differences in the organization, as well as the financing of the operations and sources of financing for Ramsey to compare with the cities of St. Paul or Minneapolis."

Moving then to the comparison with Ramsey County, the nearest "competitor" to Hennepin County, it was apparent that the wages paid to Hennepin deputies are in line with the external market. There was persuasive evidence to show that there is no problem currently with either attraction of qualified candidates for new positions or any issue with people leaving for higher paying positions elsewhere. Second, the Union asserted that over time, failing to grant their requested increase will result in far lower lifelong earnings as compared to Ramsey County. As noted above however, the evidence did not bear this assertion out. The more persuasive evidence was that the wage comparisons are almost the same even if one extends the payments out over the course of 25 years.

It was apparent that there is a somewhat different philosophy between the two jurisdictions and that Hennepin County "front loads" its wage structure and that it does take until about year 16 for the two wage scales. Over time however, the wage structures are not radically different and the evidence showed that the two sets of lifetime earnings are not terribly different. On his record they were not so different to compel the wage increase the Union is seeking.

In interest arbitration, the party seeking a change in the contract or the existing set of terms must be able to show either that there is a compelling reason for the change or that there was a quid pro quo for the suggested change. Here there was no such evidence of either.

Finally, there was no evidence that the deputies' pay has fallen behind the CPI by any measure of that term. The evidence showed that the wage rates have actually gained a bit over time and that these employees have experience a slight gain in comparison to the CPI. On this record, the County presented compelling evidence of both internal and external comparisons to supports its wage proposal. Further, there was insufficient evidence by the Union to establish that the wage increases it sought were compelled by any internal or external market consideration or the CPI. Accordingly, the County's wage proposal is awarded.

AWARD ON WAGES 2010 AND 2011 – ISSUES 1 & 2

The County's proposal is awarded.

ISSUE 3 – STEPS - ARTICLE 17

UNION'S POSITION

The Union proposes that employees continue to receive wage step increases for the life of the contract, including for 2010. The Union's argument here was similar to its claims for a wage increase – that unless these employees continue to receive step increases they will lag behind their nearest competitor, Ramsey County. The Union further asserted that their PERA will be affected as well since their earnings will be lower and their pensions will also suffer.

The Union argued that experiencing such a hard freeze on wages, since many of their members are already at the top step, will have disastrous economic consequences for many of them down the line and the arbitrator should recognize that and force the County to continue to pay steps for both 2010 and 2011.

COUNTY'S POSITION

The County proposes that employees receive step increases in 2010 but no wage step increases for 2011. The County again asserted that it needs to make adjustments in its wage structures to account for the economy. It further asserted that the internal pattern of settlements, in which the other similar bargaining units accepted the County's proposal for a freeze on steps in 2011, supports the County's position here. All non-essential units agreed to a wage step freeze in 2011 and, significantly, so did all the essential units within Hennepin County. The County asserted that this unit for some inexplicable reasons seeks to be different from all those other units who have worked with the County to assist it through these trying times but has provided no justification for why they above all others should be treated differently.

Further, the County pointed to its exhibit 4-17, which shows, that the maximum wage rate with stability pay for Hennepin County deputies will increase 17.6% between 2005 and 2011 even with a 0% adjustment for both 2010 and 2011. This compares with a 14.85% increase for Ramsey County deputies at maximum rate during the same time period, even with Ramsey County's 2.0% wage adjustment in 2010 and 1.99% wage increase in 2011. The Hennepin County settlements with its licensed deputies in 2006, 2007, 2008 and 2009 far exceeded the settlement of its most comparable County. In 2006 and 2007, Ramsey County deputies at top rate received 2% each year while Hennepin County deputies received 5% and 4% each year. The County asserted that on these facts there is no reason whatsoever to treat these employees better than their counterparts in Ramsey County either.

The parties are fully capable of addressing the consequences of a 2-year wage freeze once the economy improves and have done it before. The Arbitrator need not intervene on behalf of the Union at this point, particularly in light of the County's budgetary situation and the uncertain economic times that lie ahead. The parties have more than made up for lost ground the last time the County was forced to do a 2-year wage freeze during the last fiscal crisis in 2004 and 2005.

The County pointed out that the vast majority of this unit is already at the top step so there would little impact on their earnings anyway. The County argued that freezing steps has been done before and is a relatively painless way to save 4.5 million dollars. The County noted that these parties have dealt with this before and can certainly do it again. There is no need to grant these employees differently without any rational basis for doing so.

DISCUSSION OF STEP INCREASES – ISSUE #3

There was little question that the internal pattern of negotiated settlements amply supported the County's position here. While the Union again asserted that a public employer cannot simply trot out the "pattern" especially if the "pattern" started with one imposed on the non-Unionized workforce, and prevail. That is certainly true enough – public employers should not rely upon the patterns started with their non-represented workforce and work from there. Here however, the compelling and persuasive evidence showed that the pattern was with both essential and non-essential units and that these Unions, all of whom are well versed in PELRA and competently represented, agreed to a step freeze in 2011.

There was simply no compelling reason given for a deviation from this internal pattern of settlements on this record. Further, there was persuasive evidence as noted above, that the County will face a potentially even larger budget deficit in 2011 and must make adjustments to be able to meet its obligations for providing service. This is certainly one small step toward that goal and one that is shared by virtually all County employees.

There was considerable merit to the assertion by the County that treating these employees differently, especially when they work in close proximity to other employees in those bargaining units who have agreed to this proposal will certainly undermine the morale of those employees and undermine the County's credibility with its employees, both represented and unrepresented. On this record it cannot be said that the parties would have negotiated anything differently from what the County proposed and the arbitrator can find no compelling reason for doing anything other than that.

Accordingly, the County's proposal on steps is awarded.

AWARD - STEPS 2011 – ISSUE #3

The County's proposal is awarded.

ARTICLE 10 - SHIFT DIFFERENTIAL 2010 AND 2011 – ISSUES 4 & 5

UNION'S POSITION

Current language at Article 10, section 12 (for 2009) is summarized as follows: Currently, the night shift differential when at least five hours of a shift occur between 5 p.m. and 5 a.m. is \$0.80 per hour. The weekend differential when an employee is required to work on Saturday or Sunday is \$0.60 per hour.

The Union proposes to increase the shift differentials for 2010 and 2011 as follows:

2010: The Union proposes to increase the night shift differential to \$1.00 per hour, (from the current \$0.80) and weekend differential to \$0.80 per hour, (from the current \$0.60).

2011: The Union proposed a further increase in 2011 for an increase in the night shift differential to \$1.20 per hour and the weekend differential to \$1.00 per hour.

The Union argued that these proposals result in only a modest amount of money when compared to the overall budget, i.e. \$10,823.10 and \$25,707.81, respectively, for a total of \$36,530.91 in 2010 and would result in a total cost over the two years of \$21,617.62, and \$51,857.21, respectively, for a total of \$73,474.83. See Union Tab 14, page 2.

Further the Union pointed to the Ramsey County, Minneapolis Police and St. Paul Police contracts and noted that those officers and deputies get shift differentials as well. See Article 15 of Ramsey County and LELS CBA, Section 7.5 and wage addendum to Minneapolis Police Department and Police Federation CBA and Article 19 of St. Paul and St. Paul Police Offer's Federation CBA. The Union noted that in most cases these contracts call for a far higher shift differential; in the Minneapolis case well over \$2.00 per hour more for certain officers.

The Union again asserted Minneapolis and St. Paul are appropriate comparison groups and that the “market” should include those departments because of the similarity in work, the proximity to Hennepin County and because of their relatively large size departments. The Union argued that shift work is both inconvenient and difficult work and the deputies deserve an increase to reflect that along with the low rate of their differentials compared to other jurisdictions.

COUNTY’S POSITION

The County’s position was for no increase in shift differential for 2010 and 2011. The County proposed deleting all references to shift differentials for 2010 and 2011 and to continue the 2009 levels for shift differentials. In support of this position the County made the following arguments:

The County pointed to the internal pattern of settlements with the essential units in Hennepin County and noted that literally none of them received an increase in shift differential for 2010 or 2011. Thus, the Countywide pattern for night shift differential will remain \$0.80/hour for 2010 and 2011. Weekend differential Saturdays and Sundays will remain \$0.60/hour for the next two years.

Moreover, the County noted that not only is there a strong pattern of settlements with all the other relevant units for this year, since 1990, the Licensed Deputy Unit has been in lock step with the County’s general settlement pattern regarding shift/weekend differentials, receiving an increase only when the County’s other Unions did. See County Exhibit 6-2. Thus, there is no justification to break with the extensive bargaining history of the parties, which has traditionally always placed the shift/weekend differential at the Countywide pattern.

The County vehemently objected to the use of Minneapolis and St. Paul police as groups for any external comparisons for the same reasons set forth above. Further, the County argued that there are very different historical reasons for those differences in shift differential there as compared to Hennepin County and that the arbitrator should not use those cities as comparison groups.

Further, when compared to other metro area County Sheriff’s departments, Hennepin is very competitive in what it pays for shift and weekend differential. Five of the seven metro area Sheriff’s departments do not pay weekend differential at all. See County Exhibit 6-3. Moreover, the \$0.80/hour Hennepin County pays for night weekday work and the \$1.40 per hour it pays for working nights on Saturday and Sunday (the combination of night shift and weekend differential) is very competitive with the night shift rates paid by the other Sheriff’s departments in the metropolitan area, including Ramsey. The County asserted that while the internal pattern cited above should be the most significant factor, external comparisons to other area Sheriff’s departments support the County’s position here.

DISCUSSION OF SHIFT DIFFERENTIAL FOR 2010 AND 2011 – ISSUES 4 & 5

The County presented persuasive evidence that the patterns of settlements both for the current contract as well as historically should be followed. The evidence showed that the other essential units, some of which are far larger, agreed to a freeze on increases in shift differentials for 2010 and 2011. Moreover, there was also strong evidence that over time this unit has followed or been consistent with the internal pattern of settlements with those other essential units. On this record that alone was enough to support the County’s position. The Union was unable to demonstrate a compelling need for the requested increase nor was there any showing of a negotiated quid pro quo for them.

Externally, the evidence again supported the County’s view. As noted above, the notion that the County should be compared to Minneapolis or St. Paul police is again rejected as unsupported by the evidence. They are funded differently and have somewhat different roles and circumstances. For the reasons stated above, that argument by the Union was unpersuasive.

Moreover, while Ramsey County pays a shift differential a comparison of the rates reveal what Hennepin County is at least competitive with those paid by the County's in the metro area who do pay shift differential. It should be noted to that many do not and that of course places Hennepin County at a competitive advantage in this regard in terms of external comparisons.

Clearly, shift work is difficult and somewhat inconvenient and there should legitimately be compensation for those deputies who are required to work nights and weekends. Here however, there was simply insufficient evidence to establish that there was a compelling need or some other reason to alter the existing structure, especially in light of the strong internal pattern demonstrated here.

The arbitrator was mindful of the intertwining of this issue with issue #13 discussed below, i.e. the 28 day schedule issue and whether it was equitable to award no increase for weekend shift differential and at the same time deny the extra compensation for the loss of pay from the 6-3 schedule. Clearly the County will be saving some money due to not having to pay the extra compensation from the 6-3 schedule and Article 3 after the Befort award in 2009 and that could well be a factor in the next round of bargaining. That issue was not specifically raised by the Union but it was considered here for whatever that is worth. On balance though given the strong internal pattern the evidence still favored the County's positions on all these economic items.

AWARD ON SHIFT DIFFERENTIAL FOR 2010 AND 2011- ISSUES 4 & 5

The County's proposal is awarded.

UNIFORM ALLOWANCE 2010 - ARTICLE 32 - ISSUE 6

UNION'S POSITION

The Union proposed an increase in uniform allowance from the current \$800.00 per year to \$1000.00 per year. In support of this the Union argued as follows:

While new hires are given uniforms when they begin employment, they are required to replace clothing and other items that are required equipment at their own expense. The Union noted that these items can be quite expensive. Further, some items wear out routinely but others are frequently damaged due to interactions with the public yet the Sheriff still requires that they be replaced. The Sheriff requires that deputies look sharp and that their clothing not be soiled or torn and that certain equipment be operational at all times. This requires considerable cleaning and replacements or repair of other items such as leather items and this can be quite expensive; often exceeding the \$800.00 per year allowance. For example, Boots, can cost in excess of \$260; long sleeve shirts cost \$45.00 plus any embroidery costs. Further, employees must purchase several shirts each year. Pants also wear out quickly and cost over \$80.00/pair. Employees must also purchase other items, including baton holders, handcuff cases, belt keepers, key holders, knives, flashlights, batteries, gloves and hats. These items and the necessary cleaning and occasional repairs can far exceed the allowance.

While the County may under some limited circumstances replace or repair damaged items that are damaged or soiled in the line of duty, the instances in which this is required are much stricter than in other departments and employers. See, Union Exhibit 8, requiring that the damage be "as a result of an aggressive, and/or intentional and overt act or consequences of such act of a person not provoked by the employee or which is incurred while attempting to apprehend or take into custody or person." See, Article 32, Section 6. The Union asserted that this is far different from Ramsey County's replacement policy, which only requires that the item be damaged "in the course of employment."

The Union asserted that the items these employees are required to use are slightly different from those used by other essential employees, like dispatchers for example, who do not use the leather items or boots that deputies are required to wear and thus are in a different situation. Thus the "internal pattern" does not strictly apply since the items and the use they get are different.

COUNTY'S POSITION

The County's position is for no increase in uniform allowance. In support of this position the County made the following arguments:

The internal pattern even for the essential employees was again for no increase in the uniform allowance. Moreover, while there are some differences in equipment and clothing that is taken into account by the greater amount these deputies receive. civilian Detention Deputies that are assigned to work in the jail in the Sheriff's Office receive \$495.00 annual uniform allowance and received no increase in that amount for 2010 or 2011. The Juvenile Correctional Officers at the County Home School or Juvenile Detention Center and the Correctional Officers that work at the Workhouse in Plymouth did not receive an increase either. Their allowances are also less so the argument that the deputies in this unit are somehow lacking in uniform allowance should be rejected as lacking adequate factual support.

The County also asserted that the Union bore the burden of proof as to why there was a need for the claimed 25% increase and argued that no evidence whatsoever was presented on that score. There was no evidence of any actual increase in cost in these items nor, significantly, any evidence that the cost exceeded the uniform allowance. There was no evidence for example that the deputies were required to pay more for the cleaning and maintenance/replacement of required items than the current \$800.00 per year allowance. The County argued that without such evidence there should be no increase since the Union must show a compelling need for the increase.

Further, not all items need to be replaced on an annual basis. While some do, like shorts and pants, the leather items and boots, which are by far the most expensive, do not. They can last for several years. If they are damaged as the result of an aggressive act by an inmate or member of the public, the County replaces those due to that type of action, without cost to the affected employee. See Article 32, Section 6 cited above.

Externally, the County noted that its uniform allowances are very competitive with other law enforcement units in metro area counties. Carver County's allowance is \$670; Dakota County's allowance is \$650; Scott County's allowance is \$640; and Washington County's allowance is \$625. Ramsey County's allowance of \$780 is even close to Hennepin County's and is obviously \$20.00 per year lower. The County found it ironic that the Union used Ramsey County in so many other places in this matter yet chose to ignore it for the uniform allowance issue since it was actually quite apparent that Hennepin is already at the very top of the charts in this regard. The County argued that it was consistent with all of its units in refusing to add any extra cost to any economic item until the economy improves and asserted most strenuously that there was no justification for any increase in uniform allowances for these employees.

DISCUSSION OF UNIFORM ALLOWANCE – ARTICLE 32 – ISSUE #6

This issue presented something of a closer case in that there was some evidence that the duties performed by these employees are vastly different from those of other essential units in Hennepin County. There are certainly other essential units as defined by PELRA and they did not receive any increases in their allowance. However, they are not required to carry the same sort of items the deputies do and do in most cases perform different functions. Internal consistency, while important, did not carry the same weight here as it did in other issues simply because of this difference.

Having said that however, the County made some very compelling and persuasive arguments in support of its position here that were sufficient to carry the day. First, the amount of uniform allowances for the various units differs – as noted above. These employees get a far greater allowance for their required clothing and equipment than do other units. That was a significant piece. There was also the clear evidence that none of the other units required to have certain clothing and who receive a clothing allowance received an increase in their allowances either. There was, as noted above, considerable merit to the argument that sound labor relation principles support consistency in the compensation packages received by employees who work in similar circumstances, i.e. law enforcement and incarceration settings. Here those facts supported the County’s arguments.

Further, externally, there was little support for the Union’s claims. The other metro Counties pay well below Hennepin, including Ramey County, its nearest “competitor.”

Finally, the Union did not provide sufficient evidence of what the problem was in terms of why the allowance needs to be larger. They certainly provided evidence of what some of these items cost., many are expensive indeed, i.e. boots and leather items. Certainly too, they are required to look professional in their roles and are not to wear worn out tattered or soiled clothing. This requires certain dry cleaning and other light maintenance and even repair but there was no evidence as to whether that required upkeep etc. exceeded the \$800.00 allowance. Had there been such evidence the Union might well have been able to carry the burden of a compelling need for the change. While the County maintained its strong assertion that there would be no increases, an employer cannot require its employees to wear certain clothing, have certain equipment and require that those items be maintained to a certain standard and not adequately compensate the employees for those requirements. To do so smacks of the sort of unfunded mandates many public employers lament, including Hennepin County. Here though there was simply insufficient evidence to demonstrate why the allowance is inadequate at this time. Accordingly, by a somewhat slimmer margin on this issue than perhaps on others, the County’s position is awarded.

AWARD ON UNIFORM ALLOWANCE – ARTICLE 32 – ISSUE #6

The County’s proposal is awarded.

FTO PAY - ISSUE #7 – ARTICLE 10

UNION’S POSITION

The Union proposes an increase in FTO pay from the current \$2.50 per hour to \$3.00 per hour. The Union also proposes a compensatory time component by giving FTO’s the option of accruing one (1) hour of compensatory time for each FTO shift instead of being paid in cash. See Article 10, section 14. Finally the Union proposes paying FTO pay for both field training and classroom training. The latter is not in current language a constitutes a change in the FTO pay.

The current language of Article 10, section 14 provides as follows:

Effective January 6, 2008, employees specifically assigned by the Sheriff or his/her designee to perform the duties of Field Training Officer (FTO), will be paid an additional \$2.50 per hour for each hour worked in that capacity. Any deputy assigned as FTO shall be eligible for a maximum of \$2.50 per hour for the hours specifically assigned as an FTO, regardless of the number of trainees.

The parties agree there is a certain degree of guidance or coaching that more experienced employees are expected to provide to new or newly assigned employees.

The FTO duties shall be distinguished by the specific assignment of the deputy as the FTO, as well as the requirement that the FTO sign off as the coach on the required evaluation forms.

The parties further agree that training done in classrooms or orientations performed in an office setting are not the type of training for which the training deputy would be eligible for FTO pay.

The Union's proposed changes would alter the \$2.50 in the first paragraph to \$3.00. The Union proposal is for a change and an additional clause regarding compensatory time to the first paragraph as follows: "Any deputy assigned as FTO shall be eligible for a maximum of \$3.00 per hour for the hours specifically assigned as an FTO, regardless of the number of trainees, or given one hour comp time per 8 hours prorated if more or less." (Changes are underlined).

The Union's other change would be to the final sentence of Article 10, section 14 as follows: "The parties further agree that training done in classrooms or orientations often requires special skills, preparation and training and therefore the training deputy would be eligible for FTO pay. (Changes are underlined).

In support of these changes the Union made the following arguments:

These items would cost the County very little and are quite reasonable given the small dollars that would be involved. Based on the number of FTO hours worked in 2009, the Union estimated the cost to be approximately \$2,389.70 per year. See, Union Ex. 14. Even applying shift differential to those hours would cost an additional \$3000 per year. Thus, the total cost of the Union's proposal would be less than \$5,500, a small cost to the County

Further, the contract language reflects the reality that Field Training Officer do in fact possess special skills and training and that they are therefore so exceptionally qualified that the County uses them to train other deputies. The fact that some of this training may occur in a classroom setting is, in the Union's view, not relevant. What is important is that the FTO's are compensated for the value they bring to the overall organization due to their level of expertise and skill. The contract should thus be changed to reflect that reality.

Finally, a comparison to Ramsey County supports the Union's position on all these points. Ramsey County pays any full-time employee assigned as an FTO an additional \$3.00 per hour. The description of the work that qualifies for FTO pay does not exclude training done in classrooms. See Ramsey County and LELS CBA at Union Exhibit 8. Thus, externally there is support for the Union's claims. The Union also noted that there is no comparable internal comparison so that the County's long touted internal consistency argument does not apply here. The County is simply trying to save money by failing to pay their FTO's for the valuable service they provide.

COUNTY'S POSITION

Hennepin County proposes no change to the language contained in Article 10, Section 14. the County rejected the notion of an increase in the payment from \$2.50 per hour to \$3.00 and the notion that the FTO's could substitute one hour of comp time for any hour spent on FTO duties. Finally, the County strenuously objected to the proposal to pay FTO's for classroom training and insisted that "F" stood for "field" training and should be left as is. In support of these positions the County made the following arguments:

With regard to the claim to increase the pay to \$3.00 per hour, the County asserted that during the last financial crisis, which occurred in 2004-05, the County froze this pay then and is simply doing so again, consistent with its prior position during difficult economic times. As noted above, the County asserted that it would not have ever agreed voluntarily to a negotiated increase in the amount paid for FTO hours. The County asserted that it made it crystal clear at the outset and throughout bargaining that it would not agree to any increases in economic items and maintained that stance with this and every other Union in Hennepin County.

The other contract that contains a provision for FTO's is the Teamsters and they agreed to no increase. Thus there is in fact another internal pattern supporting the County's position here. Moreover, the Teamsters receive \$2.00 per hour, not the \$2.50 paid to these deputies. Granting an additional \$0.50 to these employees would exacerbate the difference between the two units, who work closely together, and would prove deleterious to labor relations and morale within the department.

The County asserted that there is no justification for paying comp time or giving the deputies the option of comp time for their FTO hours. This will result in greater cost to the County both in terms of the payout to the FTO and for having to cover the comp time as overtime, which is frequently the case when one employee takes a comp hour. When that happens another employee has to cover that time and many times at overtime rates.

Finally, the County argued that there is no historical or factual support for allowing FTO pay for classroom training. Traditionally FTO pay has been for *field* training, i.e. training that occurs in the field, not in a classroom and is payment for a very different sort of skill and training technique. Learning something in a classroom is obviously very different from performing that operation or task in the field and the FTO article has always reflected that essential difference. The Teamsters labor agreement also contains this same understanding and was not changed in this round of bargaining by those parties. See, County Exhibit 16-14, Article 10, Section 11. Disturbing this long understanding, particularly when the Employer strenuously opposes the change, would violate well-established arbitral principles and could well result in considerable tension between the two groups of employees. Moreover, the other employees who have these types of FTO clauses will of course insist that this be granted to them as well so there will be a considerable spill over effect that goes far beyond the reach of just this labor agreement. The County argued that any such change should come through negotiation so that any unintended consequences imposed by this process are avoided. The County asserted that this change be likewise rejected by the arbitrator.

DISCUSSION OF FTO PAY – ARTICLE 10 – ISSUE #7

This was a thorny issue. Dealing first with the question of the proposed increase from \$2.50 to \$3.00, it should be noted that there was no evidence as to why this was justified. Internally, the Teamsters unit agreed to no increase and it is clear that their FTO pay is actually already lower than for this unit. Further, there was no evidence of any greater training or responsibilities placed on FTO's now than there has been in the past. Without such evidence it is difficult to justify an increase, when and if there has been clear evidence that other similarly situated units have agreed to no increase in their FTO pay.

It should be noted here that the assertion that because one party claims it would never have agreed to something does not necessarily provide adequate support for what the arbitrator must do to equitably and reasonably determine appropriate awards in an interest arbitration under PELRA. Obviously it is very easy for one party to simply say, "we would never have agreed to this in bargaining" and leave it at that. Such an analysis is far too simplistic and tautological to be persuasive in interest arbitration. Because a party does not want to agree to something does not mean it would not have if the parties had been able to continue bargaining and not resort to interest arbitration. This is, of course, part and parcel of the difficult and sometimes subjective process of determining appropriate interest awards but this argument alone does not carry much weight. Far more significant are the internal pattern of actual settlements, other awards, external comparison, where applicable, and other factually based economic factors.

Having said that however, that pattern and that stance was shown to have been the case here. No other increases were apparently granted throughout the bargaining and it is exceedingly unlikely that an increase from \$2.50 to \$3.00 would have been agreed to without some quid pro quo for it. Further, the Union was unable to provide any evidence as to why the increase was justifiable on this record other than they wanted it to be higher. That is certainly a legitimate request – raises are raises and frequently requested simply because of the value good employees like this deserve. Here though given the economic times and the lack of anything that would compel an increase for an increase's sake, the claim for an increase found insufficient support on this record.

Turning next to the question of comp time, the analysis was somewhat easier. The County correctly points out that comp time is sometimes a cleverly disguised way to pay someone more money later for hours worked today. Compensatory time is frequently paid later when the pay has gone up. Those hours have to be covered by other employees. Here the County provided an interesting example of how the comp time pay would increase the cost considerably. See County Brief at page 47.

Further, there is no history of allowing comp time for this type of pay either internally nor externally in other metro counties. About all the Union was able to show was that actual cost would be small in comparison to the overall budget. On this record that was not enough to demonstrate a compelling need for the change in compensation structure. Clearly, as the County noted this is something the parties should negotiate for themselves in the next round of bargaining rather than having an interest arbitrator impose at this time

Finally, there was the question of allowing FTO hours for classroom training. The longstanding understanding has been that the FTO hours were paid for only for actual field training and current language reflects that understanding. While there is little question that FTO's are highly trained individuals who do in fact possess special skills and abilities, the relationship here has been to pay them for actual training in the field. There was also evidence to suggest that classroom training is indeed different from field training as one can easily imagine.

The County's claim that this change would potentially have far reaching unintended consequences was well taken. The Teamsters contract does not have a similar clause providing for FTO pay for classroom training and imposing one here would most certainly give rise to that request being made by other bargaining units in the County and could also create tension between the two groups. One aim of interest arbitration is to promote harmonious relationships between employee groups and this could well have the effect of doing just the opposite.

Here too there was little in the way of evidence from the Union as to why this existing relationship should be changed. There was insufficient evidence of a compelling need for such a change nor of any sort of negotiated quid pro quo for it. Under these circumstances the County's claim that this is a matter for voluntary negotiation rather than imposition through interest arbitration is well taken.

AWARD ON FTO PAY – ARTICLE 10 – ISSUE #7

The County's proposal is awarded.

LATENT PRINT EXAMINER/FIREARMS EXAMINER PAY DIFFERENTIAL - ARTICLE 10, SECTIONS 9 & 10 - ISSUE NO. 8:

UNION'S POSITION

The Union noted that the Latent Print Examiner or Firearms Examiner position are paid at a rate 5% above the regular base pay rate and proposed that the rate be increased to 10% above the employees' regular base pay rate. In support of this the Union made the following arguments:

The Union noted, contrary to the assertions by the County, that the deputies do in fact wish to perform this work but that the work is being transferred to civilian employees of the Sheriff's department. The Union alleged that the work is similar in nature to what the civilian employees, called forensic scientists, do and that the deputies performing this work should be paid at the same pay rate as the civilian employees performing this same work.

COUNTY'S POSITION

The County proposed no changes to the rates of pay for the Latent Print Examiner or Firearms Examiner positions. In support of this position the County made the following arguments:

The County noted that currently there is no one in the Latent Print Examiner position and only one employee in the Firearms Examiner position. The County noted too that both the Latent Print Examiner or Firearms Examiner positions require an extensive level of training and expertise and that because of the significant investment in training, the parties have required that employees selected and trained for these positions commit themselves exclusively to these positions for at least four (4) years for the latent print examiner position and eight (8) years for the firearms examiner position. See, Article 10, Sections 9 & 10 of the CBA at pages 26-27.

As a result, very few members of this bargaining unit have expressed any interest in doing these jobs because of the training and time commitment requirements. The County argues that it is phasing out of these positions and substituting them with civilian forensic scientists who have the expertise and training to do the jobs and who can devote the time to them. The County further asserted that the jobs are not the same, as alleged by the Union and that the trend now is to require the sort of expertise that the civilian employees have.

The County further noted that the rates currently paid for this are actually higher with the 5% adjustment, since the employee in the Firearms examiner role is at top patrol rates. There is of course a concomitant impact on PERA rates as well. See County Brief at pages 50-51.

Overall, the County's position is that there is no need for any adjustment since these positions are being phased out and further that there was no justification brought forward by the Union to justify increasing the pay under these circumstances.

DISCUSSION OF LATENT PRINT EXAMINER/FIREARMS EXAMINER PAY DIFFERENTIAL - ARTICLE 10, SECTIONS 9 & 10 - ISSUE NO. 8:

The preponderance of the evidence showed that these positions are indeed being phased out and that they will shortly be taken over by civilian scientists. The Union contended that there are employees who want to do this work but very little evidence of who that would be or why. Moreover, the County's evidence again supported the claim that with the 5% increase in pay under current language the rates of pay are largely similar to what the civilian employee's receive. The Union was not able to show that there was a diminution in their Union security nor did it raise that issue squarely – there was not for example a claim that the Sheriff is surreptitiously trying to wean bargaining unit work away from the unit. That of course would have been a very different sort of argument but that was not apparently the case here.

Given that the jobs are being phased out and given the County's numbers the most appropriate award is to leave the rates where they are and award the County's position.

AWARD ON LATENT PRINT EXAMINER/FIREARMS EXAMINER PAY DIFFERENTIAL - ARTICLE 10, SECTIONS 9 & 10 - ISSUE NO. 8:

The County's proposal is awarded.

ISSUE NO. 9: SENIORITY RIGHTS FOR NEW WORK UNITS--ARTICLE 7

UNION'S POSITION

The Union seeks changes in Article 7 Section 5E as follows:

“The EMPLOYER shall organize the Sheriff’s Office into work units. “Work units” are the principal division into which the Sheriff’s Office is organized. The currently designated work units for the term of this contract are warrants, narcotics, CISA, Court Security, Jail, Patrol, SERT and Civil. The EMPLOYER may establish the hours of the shifts into which the work day is divided if, in doing so, it complies with the provisions of this AGREEMENT specifying hours of work. The EMPLOYER may establish rotating shifts in such work units as it determines, but the period of rotation shall be at least four months.”

The Union further proposes to completely delete Article 7, Section 5H, which currently reads as follows:

Nothing in this section shall be construed to limit the right of the EMPLOYER, as established and limited in Article 7, Section 6, to assign or reassign an employee to the work unit where the EMPLOYER determines such employee is needed or is best suited.

Finally the Union seeks a change in Article 7, section 6C as follows:

“When the EMPLOYER fills vacancies in the SERT, Civil, warrants, Jail Patrol and Court Security Units/Divisions, the EMPLOYER shall select the most senior application for the vacant position. The EMPLOYER shall meet and negotiate with the Union to determine whether vacancies in work units created during the term of the AGREEMENT shall be filled by seniority”

In support of these changes the Union raised the following arguments: the Union first insisted that it was not trying to usurp the Sheriff’s inherent managerial powers to determine work unit; merely limit the work units that are in place to those that have already been established for the life of the agreement. The Union asserted that it is simply seeking stability in the work units for the life of the contract, so that when Deputies bid into work units, they have certainty about what the units are and will know that they will not change during the life of this contract. The Union further asserted that this would only be for this contract and that it is willing to negotiate any such changes in the next contract.

The Union noted that until the current Sheriff took office the work units were stable and employees knew what they were and that they would not likely change. Under Sheriff Stanek however there have been 3 new work units added just during his short tenure. One such attempt to create a new work unit for the SERT unit was grieved and the parties agree that bidding for that unit would be by seniority. The Union argued that having a clear provision limiting the Sheriff’s right to establish these new units without regard to seniority would avoid grievances and streamline the process.

The Union further asserted that its changes do not undermine the Sheriff’s inherent managerial powers under PELRA and cited several Court decision in support of the argument that assignment to work units is not a matter of inherent managerial right.

The Union cited PELRA and noted that §179A.07 Subd. 1, matters of inherent managerial policy include, “the organizational structure, selection of personnel,” and does not extend to the assignment of work units. Those, it argued are matters that are within the purview of “terms and condition” of employment and should be negotiated with the Union. Thus, the argument goes, they are not precluded from consideration by the arbitrator, as the County asserted and should be considered in interest arbitration.

Moreover, the Union asserted that the clause in PELRA regarding “selection of personnel” refers to *hiring decisions*, not to employee assignments. The Union drew a distinction between the employer’s right to establish the number of the employees it needs and the way in which those employees are to be used. The Union cited several appellate Court cases in support of the argument that their proposal is not an “assault” on the Sheriff’s inherent managerial rights as suggested by the County’s representatives.

The Union relied heavily on *LELS v Hennepin County*, 414 N.W.2d 452 (Minn. App. 1987) and noted that the Court dealt with the same sort of issue, i.e. transfers into work areas, and held that those were not matters of inherent managerial discretion. The Court held as follows: “Decisions relating to personnel transfers are not presumptively matters of inherent managerial policy; the burden remains on the employer to show that those decisions are “inextricably intertwined” with basic policy goals of its office or institution. In this case, the County has failed to meet its burden.” 452 N.W.2d at 456. The line of cases cited by the Union requires that a decision to be a matter of inherent managerial policy must be “inextricably intertwined” with the policy goal of the organization, such as the decision to grant tenure as it was in *University Educ. Assoc and University of Minnesota*, 353 N.W.2d 534 (Minn. 1984). The Union asserted that these cases show that the decision over transfers into work units is a negotiable item and should be considered.

The Union asserted finally that the members seek no more than to establish objective criteria for assignment into a work unit. The Union noted that the agreement already contains ample protection for the Sheriff and the proposed language does not prevent the County from setting reasonable qualifications for assignment to work units, establishing performance standards, or assigning and reassigning for just cause. See, *In Re Arbitration Between LELS and Hennepin County*, PERB case # 90-PP-107-B (Karlins 1990) slip op. at pages 8-9. The Union asserted that if the County requires a certain standard or set of criteria to be assigned to a work unit that can be negotiated in good faith with the Union.

The Union rejected the idea that this proposal would grant some sort of veto power to the Union to stall the creation of a new work unit by having to negotiate it with the Union. These parties have a long history of negotiations in good faith and the Union asserted that it will of course do so in good faith on such a decision.

Moreover, if the matter is a negotiable item, it is a negotiable item and it matters little that bargaining may be inconvenient. The Union asserted that administrative ease cannot supplant the statutory obligation to negotiate over the work unit issue,

COUNTY’S POSITION

The County asserted that the Union’s proposed language changes, when read in their totality and in context of the existing language is nothing more than an outright assault on the inherent managerial right of the Sheriff to select and direct the work force.

The County cited Minn. Stat. 179A.07, subdivision 1; and argued most adamantly that the statute reserves to the Employer the right to create work units and to organize the department as it sees fit. The Union’s proposed changes would not only upset a long standing set of relationships that have been in place for decades but also would usurp the right to create a work unit when and under the circumstances the Sheriff deems necessary.

The County further drew the distinction between creation of the units and transfers or assignments into them. While the latter may be a matter for bargaining the former is certainly not and it asserted that the Union seeks to undermine the rights to even create a work unit.

The County pointed to the 1990 interest arbitration by Arbitrators Kapsch, Bergquist and Miller in which the parties agreed to leave this issue alone. Not since then has there been any need or even attempt to alter this language. See *Hennepin County and LELS*, PERB # 89-PN-231 slip op. at 37. Moreover, granting what the Union is seeking now would effectively overturn the Karlins award from 1990 in which he noted that the contract contains “no restrictions on the employer’s right to establish reasonable qualifications for the work to be performed.

The rights retained by the employer include the right to establish and maintain minimum qualifications for employment in the Sheriff’s department and for specific assignments within the department; the right to establish performance standards and to evaluate employee performance according to those standards; and the right to assign and reassign work based upon criteria established by the employer for just cause.” See *Hennepin County and LELS*, 90-PP-107-B (Karlins 1990), slip op at pages 8-9. This would create a radical change not only for this unit but for the others in the department who would no doubt seek a similar change in their next round of bargaining – something that none of them requested or would have been granted in this round.

The County further asserted that even if this is determined to be a negotiable item, there was no evidence of compelling need for the radical change the Union seeks or a quid pro quo for it. There was no evidence that this has created a problem or that the Sheriff has transferred anyone against their will.

Moreover, there was no evidence that a senior employee was overlooked in the process to fill work unit vacancies. The Union could not present a single concrete example where a junior applicant was selected over a more senior applicant for a vacant position in the applicable units where vacancy bidding applies, because, the County asserted, there are no such examples. There is also a protection already in the grievance process if the transfer decision is challenged. The Sheriff must show that the junior applicant was more qualified and bears a heavy burden in that regard. Any such decision could and likely would be challenged in the grievance process. Thus there is no need whatsoever for any change at all let alone the huge changes sought by the Union here.

Finally, the County noted that the proposed changes to Article 7 Section 6C would, for all practical purposes, freeze the current organizational structure in place and give the Union effectively a veto over the creation of new work. The County asserted that this seemingly innocent looking change is in reality a “poison pill” provision that could stop the addition of a new work unit even though that work unit is deemed to be necessary by the duly elected Sheriff. This is not and cannot be the intent of PELRA and the parties have recognized this inherent right in the existing language.

Finally, the County asserted that there is no particular problem here and that in the 4 years Sheriff Stanek has been in office he has made only minor changes in the structure of the office. Moreover, the Union has not sought to add the VOTF or CISA units to the list of biddable units in Article 7, Sec. 6 of the labor agreement.

No other unit in the County has a similar provision to what the Union is seeking nor was there any evidence of any employer outside the County with a similar provision – because, as the County notes, no rational employer would ever agree to it. The County urges the arbitrator to reject all of the proposed changes in language on this issue.

DISCUSSION OF ISSUE # 9: SENIORITY RIGHTS FOR NEW WORK UNITS--ARTICLE 7

The initial question raised by the Union is whether this is a negotiable item under PELRA and the caselaw. As outlined below, there is no need for a law review article on the question of whether this item is or is not a mandatory subject of bargaining or whether it is a matter of inherent managerial policy because there was insufficient evidence to warrant a change even if this is a negotiable item.

The Union argued that Minnesota Court of Appeals has found that assignment to work units in the Hennepin County Sheriff's Office is not an inherent managerial right and cited. *Law Enforcement Labor Services, Inc. v. County of Hennepin*, 438 N.W.2d 438 (Minn. Ct. App. 1989). That case was about a grooming policy and did not involve the assignment of work units. The Minnesota Supreme Court overturned the Court of Appeals in that matter and held that grooming policy was a matter of inherent managerial policy. See *LELS v County Hennepin and Donald Omodt, Hennepin Sheriff*, 449 N.W.2d 725 (Minn. 1990).

There is merit to the County's argument that there is a difference between the decision to create a work unit and the process by which that unit is staffed. This seems to be the distinction drawn in the *Hennepin County and LELS* decision cited above, see 414 N.W. 2d 452, (Minn. App 1987). A close reading of that case reveals that the issue was whether the interest arbitrator exceeded her powers when she ruled that seniority bidding was a negotiable item and whether the grievance arbitrator had exceeded his powers in determining that the County had violated the agreement when it failed to follow the seniority provisions. The issue was essentially over the process by which certain positions were to be filled. It was not over whether the Sheriff had the power to determine work unit.

On this record that determination is, to use the words of the Courts, "inextricably interwoven" with the policies and directives of the department. An employer must have the power to set its organization and to determine how best to meet the needs and statutory directives of the department. Thus the issue is between the *creation* of a new work unit versus *who gets assigned to it and how that assignment is to be made*. The latter is certainly a negotiable item whereas the former may be a non-mandatory subject of bargaining and a matter of inherent managerial policy.

Here however, the parties already have bargained certain provisions regarding bidding for work units thus it is unnecessary to determine whether the creation of work units is or is not a mandatory subject of bargaining. See e.g., Article 7, Section 6C. That language provides for the *process* by which vacancies are to be filled but there is nothing in the labor agreement that currently restricts the Sheriff from determining *what* work units he needs.

The question of whether this is a matter of inherent managerial policy need not be reached – the contract clause governing this issue is already in the contract and the parties have apparently bargained over it in the past and have agreed in Article 7, section 5E that "the EMPLOYER may organize the Sheriff's Office into work units as it determines." Thus, the question here is not so much whether the assignment of work units is a matter of inherent managerial policy or not but rather whether there is a compelling need to alter existing and apparently longstanding language in the contract² and whether there was a sufficient showing of need to change that existing language. There was not on this record.

The Union seeks stability in work assignments and that is certainly something that would inure to the benefit of both the employees and the employer. On this record there was an insufficient showing that the Sheriff has abused this nor was there sufficient evidence of a compelling need to alter the longstanding relationship in this regard.³ This is a matter for the bargaining table and not one to be imposed by arbitral fiat. Neither should a change like this be imposed based on mere suspicion.

² The contract language found at Article 7, Section 5H, appears in the *LELS* case cited above, See 414 N.W.2d at p. 458. The section has apparently been renumbered over time since the 1983-84 contract but is quite similar to the language in the present contract. This is significant to show how long this language has been in the contract and therefore a part of the parties' relationship.

³ In *Hennepin County v LELS* 414 N.W. 2d 452, 458 (Minn. App. 1987) cited above, there is a reference to the provisions of the labor agreement in place at that time that is strikingly similar to the provisions in the labor agreement now. It was thus quite clear that this has been the understanding and agreement between these parties for many years and there was no compelling evidence presented for why this needed to be changed now.

The deletion of the language of Article 7 Section 5H was problematic for the Union. As noted, this has been in the agreement for years and there was no evidence upon which an interest arbitrator could rationally justify a change to that. This is clearly a matter for the bargaining table and not for an arbitrator to award on this record.

Moreover, this too seems to border very much on the edge of an inherent managerial right and a change in it could arguably undermine the essential functions of the Sheriff in determining the needs of his department and how best to achieve the goals of his office.

Finally, there was the proposed change to Article 7 section 6C to go to what would be a straight seniority system. Arbitrator Gallagher awarded a relative ability seniority clause in his 1983 award and there was no compelling evidence as to why this should be changed now. The Union noted that there have been some changes to the department, as would be the case virtually every time there is, to coin a phrase, a new sheriff in town. Sheriff Stanek has determined that some reorganization needs to occur and that is his right. Here though there was no showing of any arbitrary or capricious action that might justify a change in the contract.

Moreover, if such were the case and junior employees were being assigned without justification there is a remedy available under existing language. Accordingly, the County's position on this question will be awarded.

AWARD ON ISSUE # 9: SENIORITY RIGHTS FOR NEW WORK UNITS--ARTICLE 7

The County's proposal is awarded.

ISSUES 10 & 11 - SCHEDULE CHANGES AND DEFINITION OF EMERGENCY

UNION'S POSITION

For clarity and convenience these issues will be combined:

Current language on advance notice of changes in schedules, Article 10, Section 5, reads as follows:

When the EMPLOYER determines changes in work schedules are necessary, at least forty-eight (48) hours advance notice shall be given to employees and posted whenever practicable. Except in emergencies, should it become necessary to change work schedules without forty-eight clock hours prior notice, when it is practicable to give such prior notice, the EMPLOYER shall pay for those hours worked outside of the employee's regular work schedule hours at a rate of one and one-half times his/her regular base pay rate. Employees shall be required to work overtime, holidays and night shifts when assigned to such unless excused by the EMPLOYER. The base pay rate or premium compensation shall not be paid more than once for the same hours worked under any provisions of this AGREEMENT, nor shall there be any pyramiding of premium compensation.

The Union proposes changing the 48 hour notice to a 14 day notice.

Current language defining "emergency," Article 3 Section 1 (G), reads as follows:

EMERGENCY: A crisis situation or condition so defined by the EMPLOYER.

The Union proposes adding a clause to that language as follows: "A crisis situation does not include sick days, sick calls, manpower shortages, training, vacation and foreseen leaves of absence."

Finally, the Union proposed adding two new provisions to Article 10 as follows:

“Employees scheduled for 5-2 Monday through Friday shall not be rescheduled except when there is an emergency. This does not prevent an employee from participating in OT on voluntary assignments.”

“EMPLOYER shall post three rotations ahead of the current 28-day rotation in work Force Director.”

The Union asserted that these changes are needed to give employees advance warning and notice of any change in their work scheduled to they can make arrangements for things like child care, appointments and potentially changes in spouses’ schedules. The Union pointed out that the County , pays for hours worked outside of the employee’s regular work schedule hours at a rate of one and one-half times his or her regular base pay rate and that with such short notice, i.e. 48 hours, the Sheriff could change their schedules on very short notice without having to pay the premium pay for that radical change in their schedule. The employees need and deserve more notice than that

As an adjunct to that, the Sheriff may determine that an emergency exists due to sick calls etc. and decide arbitrarily to alter the work schedules. The Union seeks to define what an emergency is and to limit those circumstances to true emergencies and not whatever the Sheriff decides it is. The Union acknowledged that law enforcement officers must be first on the scene in true emergencies like a bridge collapse. The Union argued that it’s proposal does not restrict the County in those situations but that their proposal is intended to compensate employees when their schedules are disrupted for foreseeable events that the County could and should have planned for.

Finally, since many of the deputies are on the so-called 28 day shift, the new provision for those few employees on a standard 5-2 shift will not affect the operations much at all except in a true dire emergency, i.e. like a tragedy, plane crash, large building fire, large convention, or a dignitary visit requiring many officers for security and crowd control.

COUNTY’S POSITION

The County proposed no change in either of the current provisions. The County characterized the pay provision in Article 10 as “penalty pay” and asserted that for almost 40 years the parties’ long established relationship has been for the Sheriff to establish work shifts, work breaks, staffing schedules and the assignment of employees. See Article 10. There is no other agreement in the County that contains anything like what the Union has proposed here. Thus there is no internal support for this proposed change whatsoever. See, County Exhibit 16-14, Article 10, Sec. 3 from the Teamsters CBA with the County. In fact the agreement covering Correctional Officers at the County Workhouse requires even less notice, i.e. 24 hours. See County Exhibit 11-3.

Moreover, this provision requiring the penalty pay for less than 48 hours notice was added some 28 years ago and has remained unchanged ever since. The Union provided no compelling reason to alter this and offered no justification for why anything is different in the relationship now than it was nearly 3 decades ago. The Union certainly has not offered a quid pro quo for it and simply seeks to usurp some of the Sheriff’s inherent power to establish and change shifts as he sees fit.

Regarding the definition of emergency the County was quite adamant that the Sheriff be allowed to determine what an emergency is and what it is not. There was no evidence that the Sheriff has abused this position or has tried to alter schedules to the detriment of deputies by changing things at the last minute. The Union’s request here might well severely hamper the ability of the department to deliver services or to aid in times of emergency if there is some need to do so. Indeed, a pandemic may well result in the declaration of an emergency and the Union's proposed “sick leave’ language in its proposed changes in the definition of emergency might well be exactly the emergency. Thus, the Union’s proposal would not only result in administrative disaster but unnecessary additional cost at the very time when those costs, due to an emergency, will be the highest.

The County asserted that the Union's request is simply a thinly disguised way to get additional pay if there is an emergency that would further strain an already strained budgetary situation. The County asserted that there is no need for this provision and no internal or external support for these proposed changes.

There is no other department in the metro area that has a similar provision nor is there any other department that even has a similar penalty pay provision. Thus there is little support externally for the sweeping changes the Union has proposed.

Finally, the proposal to restrict the re-scheduling of any employee on a 5-2 schedule, according to the County, is a flat out prohibition on modifying schedules. The County argued that this proposal is so contrary to the long-held management right to set and modify schedules and the overwhelming practice in the law enforcement community that the Arbitrator need not spend much time on the proposal other than to dismiss it outright. The County asserted that it would never agree to such a proposal voluntarily and that the arbitrator would be remiss in granting this request.

DISCUSSION OF ISSUES 10 & 11 - SCHEDULE CHANGES AND DEFINITION OF EMERGENCY

Turning first to the request to change 48 hours to 14 days, it was clear that no other internal contract has that language and that externally, few if any metro area sheriff's departments have a similar provision at all, much less one that requires additional pay for less than 14 days notice of a schedule change. Moreover, there was no evidence that the Sheriff has abused his power to alter the shifts or that there has been a history of arbitrary or abusive schedule changes under this Sheriff. This is once again a matter for the parties to hash out at the bargaining table rather than for an interest arbitrator to impose, especially since the overwhelming evidence showed that the other law enforcement units do not have anything close to 14 days. As the County noted, one unit has a 24 hour notice provision.

Turning next to the issue of the definition of emergency, there was considerable merit to the County's request that this be left as is. First, there is a long history of this provision in the contract and it has remained unchanged for decades. There was no showing of a compelling need for a change in this and the Union's request appears to be based more on unfounded suspicion rather than hard facts. Further, to define emergency to exclude sick leave or other medical reasons, as the Union proposes, might well lead to a major problem. The "emergency" might indeed be sickness that affects a large portion of the department. Many of these employees come into contact with all sorts of individuals whose health conditions could well be highly suspect and potentially highly contagious. Granting the Union's proposal requiring additional pay under such circumstances except where there is the additional pay provision could well place an undue burden on the administrative ability to adequately staff the department and would place even more strain on the already stressed budget.

Finally, on the question of the 5-2 shifts, this was a bit closer call since most of these individuals work a different shift. There was no compelling showing of a need for this change nor any comparable external or internal unit that has a similar provision. Accordingly, on all counts the County's position is more reasonable here and will be awarded.

AWARD ISSUES # 10 & 11 - SCHEDULE CHANGES AND DEFINITION OF EMERGENCY

The County's proposal is awarded.

ISSUE NO. 12: RETROACTIVE PAY FOR ECONOMIC CHANGES

Given the other rulings in this matter this issue is moot. Had there been an award in favor of the Union there would have been a strong argument in favor of retroactivity to January 1, 2010 but on this record no such items were awarded and no decision is made on this question.

**ISSUE NO. 13: RATE OF PAY FOR WORK PERFORMED ON 28 DAY SCHEDULE –
ARTICLE 3**

UNION’S POSITION

Current language of Article 3, section 2 reads as follows:

“Notwithstanding the definition of a full month of service, of the payroll period, or of the full work year or of other periods that appear in this Article and in other provisions of this AGREEMENT, the EMPLOYER shall compensate those who are required to work a 6-3 schedule (or a variation thereof, as described in the Decision and Award in the impasse arbitration in the Minnesota Bureau of Mediation Service (hereinafter BMS) case No 83-PN-52-A, dated July 13, 1983) by either of the following methods, as the EMPLOYER may chose:

(The rest of the Article describes the methodology by which the pay is to be completed. The Union proposes deleting the remainder of the Article but the salient provisions at issue in this matter are those described immediately above).

The Union proposes deleting Article 3 Section 2 and replacing it with the following language:

“Notwithstanding the definition of a full month of service, of the payroll period, or of the full work year or of other period of work that appear in this Article and in other provisions of this AGREEMENT, the EMPLOYER shall compensate any employee who received the 6-3 premium of 1.5% of his/her salary pursuant to the impasse arbitration in the Minnesota Bureau of Mediation Service (hereinafter BMS) case No 83-PN-52-A, dated July 13, 1983). Under the new 28 day schedule, he/she shall continue to receive said premium.”

In support of this change the Union argued that Arbitrator Gallagher, who rendered the 1983 award referenced in the Article regarding the 6-3 schedule, recognized the inconvenience to employees to work odd schedules and to be required to work weekend and holidays and justifiably ruled that those who are required to work such a schedule should be compensated for it. Thus for many years, the employee working the 6-3 schedule were compensated an additional 1.5% of salary due to that schedule.

Later, in 2009, the County changed the way it scheduled employees, and argued that it was not required to compensate employees for the great inconveniences that new 28 day schedule caused. In a grievance arbitration over that issue Arbitrator Befort ruled that the parties should bargain over the issue and the Union argued that this is precisely what they are doing – bargaining over the issue of premium pay for working a schedule that is an inconvenience to many deputies due to having to work odd hours, holidays and weekends. Thus while the exact schedule is not the same as was at issue in 1983, the same policy question is and the arbitrator should recognize the inconvenience and hardship faced by employees who work those sorts of hours and require that they be compensated for it.

The Union cited the history of the 6-3 schedule and noted that 6-3 schedule meant that employees worked a fixed rotation of six consecutive work days followed by three consecutive days off. This rotation operated continuously without deviation due to holidays or weekends. Union Exhibit 16 at page 3. At the 1983 impasse arbitration, the parties calculated that these employees worked 1,944 hours per year but because they did not receive paid holidays, the parties agreed that these employees should be credited with eighty hours for the ten contractual holidays missed.

Through a somewhat strained set of calculations, the employees on a 6-3 schedule worked two-thirds of the nine holidays (except for Christmas Eve apparently) for which they would receive time and one-half, they were credited with twenty-four additional hours. Thus the sum of the hours worked was actually 2048 and the County waived the additional 32 hours to get them to 2080 per year. This was the way it was done throughout most of the 1970’s.

In 1982 however the County sought to change that and insisted that the deputies work a full 2080 hours per year to be paid for that amount. This was bargained to impasse and submitted to Arbitrator Gallagher who ruled in favor of the Union and held as follows:

I agree with the Union that the requirement that an employee operate on a 6-3 schedule is an inconvenience to him that deserves some extra compensation. The Employer's practice for the past ten years confirms this judgment. It has permitted the very form of extra compensation that it would now revoke, presumably because it recognized the inconvenience caused by the 6-3 schedule. ...

The Union's interpretation of the uncodified statute cited by the Employer - that it is nothing more than a specification of the method of determining the payroll period - is probably correct. See, *In Re, Interest Arbitration between Hennepin County and LELS, BMS case #83-PN-52-A*, (Gallagher 1983) Slip op at 12.

He then gave the County two choices for compensating people on the 6-3 schedule. Essentially these were to continue the past practice for the employees on the 6-3 schedule, recognizing that a 2,080 hour work year is not required for all full-time employees, or to require that such employees work the additional thirty-two hours per year and provide them with extra compensation for their 6-3 schedule in a different form – an increase in pay of 1.5% (32 divided by 2,080). These options are those found in the current language.

The Union noted that Arbitrator Gallagher was apparently mindful of the County's potential for seeking clever ways to subvert his award and admonished that if the County were to come up with another scheme that was not an exact 2 days on to 1 day off ratio the County would be required to a pro rata adjustment and that "if the Employer should adopt such a work schedule, the parties should bargain over the question of extra compensation for required weekend work. *Id*, Slip op at 13.

In 2009 the parties went to arbitration, this time in a grievance setting, when the County failed and refused to pay the 1.5% premium for the new 28 day schedule. Arbitrator Befort denied the grievance but gave very clear direction to the parties regarding the equities. He held, "if I were to address only the equities of this grievance, I might be tempted to award premium pay on some sliding scale to those employee on the bottom half of the seniority roster because they incur an inordinate share of inconvenience under the new schedule. ... [T]he matter of extra compensation should be addressed through the collective bargaining process." *Hennepin County and Hennepin County Sheriff's Deputies Association*, slip op. at page 11.

The Union argued that it is doing exactly what Arbitrator Befort suggested – bargaining over this issue, but that the County has steadfastly held to its position that no one get the premium pay that Arbitrator Gallaher and Befort both recognized was reasonable, even though the bottom half to one-third of the seniority list may go months working almost every weekend. The Union asserted that there must be a sliding scale applied here and some pay ordered for those who are inconvenienced the most due to this new schedule.

COUNTY'S POSITION

The County also acknowledged the history of this issue and noted that it paid the 1.5% premium under the old 6-3 schedule but that it discontinued it when the County went to the new 28 day schedule. The County asserted that Arbitrator Gallagher's decision is now history and no longer is applicable to the new 28 day schedule.

The County explained the new 28 day schedule and noted that now all employees are scheduled to work 160 hours in a 28 day period. Employees assigned to an 8 hour shift, are scheduled to work 20 days on and 8 days off. Employees assigned to a 10 hour shift are scheduled to work 16 days on and 12 days off. Each 28 day work period coincides with two bi-weekly pay periods. Employees submit their requests prior to the posting of schedules to determine their off days. Seniority is used to determine the employees' days off. See County Exhibits 14-4 and 14-5. At the request of the Union during meet and confer, employees must work at least one weekend each 28 day period and the County asserted that those in the top half of the list love this new system. Under the fixed 6-3 schedule all employees, including those with considerable seniority were required to work two-thirds of the weekends annually, or about one weekend off per month on average. The County submitted a chart of how this works and argued that there is an endless system of choices and that most people can get pretty much the schedule they want.

When the County changed the schedule from the 6-3 to the 28 day schedule and this was grieved, Arbitrator Befort recognized that the new schedule is not the old 6-3 schedule nor is it a variant of that schedule – it was due to the very recognition that he denied the 2009 grievance. His dicta statement about the equities of this situation are not applicable and have no bearing on this case.

The County reiterated as it has throughout the entire case that it has no willingness to accede to any additional economic items and would not have agreed to the Union's proposal. The County noted that while the employees at the bottom of the seniority list do work more weekends than those at the top, one cannot say that this is entirely unwanted. Some people prefer working weekends and there is no way to determine who wants to and who does not.

Further, the payment of 1.5% additional pay for those at the top of the seniority list would be manifestly unfair since they get to pick almost any shift they want and are required to work only one weekend per month. The County argued that seniority simply works that way – those at the top of the list get advantages due to the greater time in grade than those at the bottom. If people want to get better shifts they will need to gain the seniority to get the shifts they want.

Further, the County noted that many employees work a 5-2 shift and virtually never work weekends. The Civil, Court Security, Detective, Internal Affairs, Narcotics, Transport, Warrants and Training Units are assigned to the traditional fixed 5-2, Monday through Friday schedule which would not be eligible for the 1.5% premium payment. It would be manifestly unfair to grant them 1.5% pay when none of Arbitrator Gallagher's theories about inconvenience apply to them.

Further, the County noted that Arbitrator Gallagher's holding was specifically limited to the 6-3 schedule and that he recognized that, as did Arbitrator Befort in denying the Union's 2009 grievance. Arbitrator Gallagher's remedy for possible changes in the schedule was to bargain over that. Here, the County argued that it has done just that and has told the Union it would not accede to the demand that everybody get an additional 1.5%.

Internally only the Teamsters have a similar clause and also grieved the failure to pay the 1.5% but they have wisely chosen not to pursue it, likely because they know that their grievance would likely be denied just as this Union's was by arbitrator Befort. The Teamsters did not even certify this issue to binding arbitration even though they are going to impasse arbitration on other issues. The County asserted that this is at least tacit recognition that this issue should be dealt with at the table not by interest arbitration. The County raised the concern that if this were ordered other units would certainly want to follow suit with predictable cost implications that the County simply finds unacceptable at this point.

The County noted the possibility of a spillover effect if this is awarded. The Correctional Officers and Juvenile Correctional Officers at the County's three correctional facilities that operate around the clock just as the facilities where these employees work. These bargaining units do not receive additional pay for the "inconvenience" of their schedules other than the traditional forms of shift and weekend differential and like these employees work grueling and inconvenient schedules early in their career. – it goes with the job and people understand that when they enter law enforcement. If these employee receive a premium for their schedule the other essential units are likely to want this premium as well. The County raised the scepter of cost and argued that it held the line on this as well as all economic issues.

Further, externally there was no evidence of a similar type of provision upon which the arbitrator could base a decision in favor of the Union and the County argued that the Union failed to provide sufficient evidence of need or justification for this proposed change.

Finally, despite the clear finding by Arbitrator Befort that the top half to 1/3 of the seniority list enjoys a greatly improved schedule, the Union held to its position that it wanted the premium pay for everybody. There is no justification for that since they are not inconvenienced at all and should not get any additional pay. Splitting the baby is not an option since the Union provided no guidance by which that could even be done and the arbitrator should resist the temptation, despite Arbitrator Befort's somewhat misguided statement that he "might be tempted" to impose something on a sliding scale had he been the interest arbitrator in that case rather than a grievance arbitrator.

DISCUSSION OF ISSUE NO. 13: RATE OF PAY FOR WORK PERFORMED ON 28 DAY SCHEDULE – ARTICLE 3

Obviously there is a long history on this issue gong back to the 1970's. The best starting point though is Arbitrator Gallagher's 1983 award and the statements and rulings he made at that time. It was clear that he based his decision on the equities of having employees work weekends and the inconvenience that causes. It was also clear that the requirement of working an inordinate number of weekends "deserves some extra compensation." Slip op at page 12. However it was also clear that there were other factors at play in the Gallagher award other than the inconvenience of working weekends and holidays. There was the story of how the pay was done in the 1970's and the fact that the County sought to alter what was then a longstanding practice of paying for 2080 hours when the employees were working less than that.

Until 2009 the employer paid an extra 1.5% of compensation based on the Gallagher award but that the 6-3 schedule was discontinued, at that time. Arbitrator Befort felt the equities weighed in favor of some form of compensation but found that the 6-3 schedule was no longer in place nor was the 28 day schedule a variant of that and therefore no additional compensation was due. Arbitrator Befort's statements about what he was "tempted" to do have no binding effect here even though it was clear why he made that statement – it is clear that while some employees, those at the top, enjoy the benefits of the 28 day schedule, those at the bottom do not and are required to work most if not all weekends.

It was equally apparent in this matter that the parties' positions were miles apart – the Union wanted extra compensation for every employee whether they worked the 28 day schedule at the top or at the bottom of the seniority list and apparently too for the 6-3 shift employees who typically do not work a lot of weekends. The Employer simply said no to any economic increase at all. Neither position was persuasive here and frankly some form of compromise would very likely have been possible if this had been the sole issue and if the parties had worked just a touch harder to find that middle ground and had not taken such absolutist positions here.

Using the very same analysis that Arbitrator Gallagher used the most reasonable resolution of this issue can be found in the essential features of the 28 day schedule. Certainly it makes no sense to compensate every employee who works a weekend. Everyone is required to work at least one per month and that is both fair and reasonable and should be an expectation of the position. It further makes little sense to compensate employees at 1.5% of their salary who do not typically work weekends at all, assuming they are on a 5-2 schedule.

Having said that though it is clear that many employees, perhaps one half to one third, are greatly inconvenienced by having to work almost every weekend due to their position. The question is what to do with that reality and how best to resolve this seemingly intractable issue. The Union provided no practicable solution other than to simply continue the practice of paying the extra 1.5% to everyone, just as was the case when the department was on the 6-3 schedule. As noted above, this was clearly not a reasonable solution and does not reflect the current reality of the 28 day schedule nor of Arbitrator's Gallagher's underlying rationale for granting the extra compensation to begin with. That extra compensation was for inconvenience – here not everyone is.

I share Arbitrator Befort's temptation to create some form of sliding scale to grant some form of compensation to those whose schedule involves frequent even chronic weekend work but had little if any evidence upon which to do that and so resisted it. Where would one “draw that line?” Even if such a line could be drawn, how would one divine the most appropriate compensation to grant those at the bottom of the list? Would it be \$1.00 per hour; 1.5% of total compensation or something else? How would this intertwine with the weekend shift differential and if it were granted how might that play out with the other units some of whom have shift differential but not all of whom had the 1.5% extra compensation based on the 6-3 schedule. At best the answers to these vital questions would be a guess and interest arbitrators are well advised not to guess on things like this.

At least in the Gallagher award, the 1.5% was based on the 32 hours divided by 2080 and there was thus a rational basis upon which that award was made. Here no such evidence or analysis was provided and anything awarded now would be, as Arbitrator Befort put it, and quoted from the famous Steelworkers Trilogy, to dispense one's own brand of industrial justice.

Certainly these employees at the bottom of the seniority list work what appears to be a very inconvenient schedule for most and the equities favor providing some form of compensation for that. Perhaps that could take the form of some compensation for working more than the required one weekend per month but that is frankly for the parties to determine on their own during the next round of bargaining. That is for the parties to negotiate for themselves.

Obviously this was a closer call than many of the matters involved in this case. The Union provided a fairly compelling reason for why some additional compensation should be provided to those at the bottom of the “heap” but did not provide anything substantial enough in the way of a proposed change upon which an award can be based. Interest awards must not be simply the roll of the dice or the whim of the arbitrator but must reflect why an award is given and what it is based on. Otherwise such an award that is plucked from thin air is nothing more than a tour de force.

The arbitrator was mindful of the fact that the IBT #320 unit also filed a grievance over the refusal to pay the 1.5% pursuant to their contract and that they have not certified this issue to impasse arbitration. While that does not control this result it is yet another piece of evidence in support of the County's claim that to provide a benefit to one unit and not another creates disharmony and even dissension among the ranks and confusion in payroll.

The arbitrator was also mindful of the County's position throughout the case against granting anyone any economic increase. On that point the County was crystal clear. While one side's refusal to accede to the other's demands during negotiation and mediation does not control the result, the clear internal pattern of settlements was a strong piece of evidence on this particular record that supported the County's position

Accordingly, with some trepidation the County's position is awarded here. It is hoped that the parties can find a way to negotiate something to compensate those employees who are required to work more than one weekend per month for the trouble and inconvenience of doing so.

AWARD ON ISSUE NO. 13: RATE OF PAY FOR WORK PERFORMED ON 28 DAY SCHEDULE – ARTICLE 3

The County's position is awarded

ISSUE NO. 14: DESIGNATED COUNTY OFFICIAL TO APPROVE VACATION CASH-OUT – ARTICLE 12, SECTION 10

COUNTY'S POSITION

The County sought this change so the County's position will be listed first. The County seeks a change in the language of Article 12, Section 10 designating the official responsible for approving vacation cash out requests. Currently the provision calls for the Sheriff to do this and the County seeks to change that to the County Administrator. The County also seeks several other technical changes that were recommended by financial experts and consultants and are for this matter non-controversial. Only the change from the designated person was in dispute.

The changes in the language as outlined by the County were as follows: (Deletions are stricken; additions are underlined.):

Pursuant to Internal Revenue Service Rules and Regulations, employees may annually, with the approval of ~~the Sheriff, the County Administrator,~~ cash-out or convert to the County's deferred compensation program, up to forty (40) hours of vacation. In order to convert such vacation to cash ~~or deferred compensation,~~ the employee must, ~~by November 1~~ during Open Enrollment of the payroll year PRIOR to conversion, submit to the EMPLOYER in writing, the specific number of vacation hours requested for conversion. The EMPLOYER shall convert such vacation to cash ~~or make payment to the employee's deferred compensation account~~ in February of the payroll year following receipt of the irrevocable election. At the employee's option, he/she may deposit all or part of this cash into a deferred compensation account.

The County noted that the Sheriff was originally the designated person to determine the vacation cash out when this provision was added to the labor agreement in 2008-09. The County noted that the other units have all agreed to this change in the designated individual from the Sheriff to the County administrator. The Administrator is directly responsible to the County Board and suspended the vacation cash out program in 2009 due to severe budget constraints. While the program may be reinstated when the economy improves the County cannot afford to continue it at this time.

The County's concern is for uniformity in the person designated to make this decision since all of the other units have agreed to this change. Further, there is concern that members of the unit may bring political pressure on the Sheriff to alter the County-wide policy as determined by the County Administrator. Such change could well result in differences in this benefit between units. Since the Administrator is not elected it is less likely that the Administrator could be pressured in this way.

UNION'S POSITION

The Union opposed these changes and asserted that there was no compelling reason for this change. The Union opposed any limits on employees' ability to cash out the vacation hours they have earned. The Union noted that under the proposed changes, employees would have to seek approval from the Administrator, who is not the direct supervisor and does not understand the operations of the Sheriff's Department as intimately as does the Sheriff. The Union also opposed the limit to the time at which they cash out their vacation hours from "November 1 of the payroll year" to "open enrollment." It was not completely clear why the Union opposed that latter change other than to oppose any limits on the right to cash out vacation. The Union asserted that this was a benefit recently negotiated into the agreement and that it should be left alone and not unilaterally changed by the County.

DISCUSSION OF ISSUE NO. 14: DESIGNATED COUNTY OFFICIAL TO APPROVE VACATION CASH-OUT – ARTICLE 12, SECTION 10

As noted above, these changes seemed rather innocuous and non-controversial for the most part. There were two changes proposed. The change to the language from November 1 to "open enrollment" appears to be a technical change recommended by financial experts. The Union presented little evidence as to why this change would adversely affect the benefit. Further, there was some evidence to suggest that having two different periods within which to apply for this cash out would be confusing and difficult to administer for the payroll personnel. Accordingly that change is awarded.

The other change involved changing the person designated to determine the cash out from the Sheriff to the County Administrator. Admittedly, there was not much evidence presented on this issue by either side. The County asserted that every other unit in the Sheriff's Department agreed to it and that for those units it was something of a non-issue. The County also raised a concern that the Union could bring undue political pressure on the Sheriff to do something inconsistent with County-wide policy and thereby create a difference in benefit pay outs and disharmony among different units. This of course assumes that the duly elected Sheriff would succumb to such pressures and there was no evidence that he would act in that manner. The concern was more hypothetical than anything else.

On this record, since the County sought the change it bore the burden of showing a compelling need for this change at this time. There certainly was no quid pro quo offered to support it. The sole factor that weighed in favor of the County was that other units have agreed to it. Why they did that was not shown and no assumptions can be made about it. Given that there was no showing of a compelling need for the change, the mere fact that others have agreed to it does not compel the change. Further, there was no showing that it would be more difficult to administer a payout if the Sheriff approved it or if the Administrator did. Accordingly, the Union's position is awarded.

AWARD ON ISSUE NO. 14: DESIGNATED COUNTY OFFICIAL TO APPROVE VACATION CASH-OUT – ARTICLE 12, SECTION 10

Pursuant to Internal Revenue Service Rules and Regulations, employees may annually, with the approval of the Sheriff, cash-out ~~or convert to the County's deferred compensation program~~, up to forty (40) hours of vacation. In order to convert such vacation to cash ~~or deferred compensation~~, the employee must, ~~by November 1~~ during Open Enrollment of the payroll year PRIOR to conversion, submit to the EMPLOYER in writing, the specific number of vacation hours requested for conversion. The EMPLOYER shall convert such vacation to cash ~~or make payment to the employee's deferred compensation account~~ in February of the payroll year following receipt of the irrevocable election. At the employee's option, he/she may deposit all or part of this cash into a deferred compensation account. (Deletions in ~~strikethrough~~, additions underlined).

This reflects the award granting the County's proposal altering "November 1" to "open enrollment" and the Union's proposal that the individual responsible for approving these requests remains the Sheriff.

ISSUE NO. 15: FITNESS FOR WORK—ALTERNATE DUTIES FOR ILL OR DISABLED EMPLOYEES—NEW ARTICLE

UNION'S POSITION

The Union proposes an entirely new provision in the labor agreement that would allow for an employee who is injured or ill and cannot perform his/her regular duties to be placed in a light duty position within the Sheriff's Department on certain conditions. These are that the employee must be fit and otherwise qualified to perform the alternate work, the light-duty work must be available, and that funding must be available for a light-duty position. The Union's proposed language also calls for a procedure to determine the employee's capability and restrictions in the event there is a dispute between the treating physician and the County's medical experts.

The Union asserted that this change is needed to make consistent the current light duty policy. There are instances where some employees are given light duty work until they have recovered sufficiently to perform their regular duties and others where they are not. There is no way to know if light duty will be made available. And these new provisions will allow for that consistency while at the same time not "requiring" light duty in all instances. As noted above, there are certain conditions already infused into the proposed language that allows the Sheriff to determine if there is light duty available within the employee's restrictions.

The Union argued that this is not, as the County asserts, an inherent managerial right. The Union argues that this is akin to a transfer, see discussion above, and that such decisions are subjects of bargaining and may be considered.

COUNTY'S POSITION

The County is vehemently opposed to this proposed change and asserted that even with the safeguards in the Union's language the determination of light duty is an inherent managerial right and is not a subject of negotiation.

The County further argued that State and Federal law already covers this issue. The County is self-insured for Workers Compensation liability and has a light duty return to work policy already in place if the injury or illness is work related. Moreover, laws such as MHRA, ADA, SSDI, PERA disability, LTD and STD benefits as well as several other statutory schemes supersede the labor agreement and also provide for these protections. There is thus no need for this provision.

The County's main concern though is that the decision to create a light duty job, irrespective of whether there are procedural guarantees in the language, is an inherent management right not subject to negotiation. The County cited to the decision in *Hennepin County Sheriff's Supervisor's Association an Hennepin County*, BMS # 00-PN-1370 (Jacobs 2001) in which the arbitrator ruled that an almost identical proposal by the Union was a matter of inherent managerial policy. The County asserted that nothing has changed since then and that the matter is still an inherent managerial right. The County has never bargained away this right nor has it included such a provision or anything similar to it in any of the other bargaining units. What was an inherent managerial right in 2000 is still so today.

The County further noted that its current light duty policy is both fair and reasonable and here is no need to require a contract provision changing it or mandating certain further requirements. In fact, the County pointed out that several of the provisions that had existed under the prior Sheriff have been relaxed making it easier to get light duty if the employee is able to, See County Exhibit 1-5.

Finally, there was no external comparison County that has anything like this, See County Exhibit 16-3 and thus no basis on which this should be granted at all.

DISCUSSION OF ISSUE NO. 15: FITNESS FOR WORK—ALTERNATE DUTIES FOR ILL OR DISABLED EMPLOYEES—NEW ARTICLE

There was no showing of any compelling need to change the current policy and practice and no showing that the current policy has resulted in the sort of arbitrary or capricious granting of light duty as alleged by the Union. Had there been evidence of some form of favoritism in the granting of light duty that could well be the subject of another form of action but on this record there was no such showing.

To be sure there may well be some inconsistency in light duty assignments but that may well be as the result of differences in employee's abilities after an injury or illness. Under HIPAA, the Sheriff is not at liberty to disclose an employee's medical status or their restrictions to other employees so there may well be some natural speculation by other employees about what those are. Here though there was no showing internally or externally of any need for this change.

However, the real question here is whether this is even a negotiable item. Simply stated, the determination of whether to create a light duty position or to grant light duty for employees who have suffered an injury or illness that disables them from their regular duty is a matter of inherent managerial policy. That was the case in 2001 and there was no showing of any waiver of this right by the County nor any evidence that the County has wavered in its position since that time. Accordingly, for the foregoing reasons, the County's position will be awarded.

AWARD ON ISSUE NO. 15: FITNESS FOR WORK—ALTERNATE DUTIES FOR ILL OR DISABLED EMPLOYEES—NEW ARTICLE

The County's proposal is awarded.

SUMMARY OF AWARD

AWARD ON WAGES 2010 AND 2011 – ISSUES 1 & 2

The County's proposal is awarded.

AWARD - STEPS 2011 – ISSUE #3 - ARTICLE 17

The County's proposal is awarded.

AWARD ON SHIFT DIFFERENTIAL FOR 2010 AND 2011- ISSUES 4 & 5

The County's proposal is awarded.

AWARD ON UNIFORM ALLOWANCE – ARTICLE 32 – ISSUE #6

The County's proposal is awarded.

AWARD ON FTO PAY – ARTICLE 10 – ISSUE #7

The County's proposal is awarded.

AWARD ON LATENT PRINT EXAMINER/FIREARMS EXAMINER PAY DIFFERENTIAL - ARTICLE 10, SECTIONS 9 & 10 - ISSUE NO. 8:

The County's proposal is awarded.

AWARD ON ISSUE # 9: SENIORITY RIGHTS FOR NEW WORK UNITS--ARTICLE 7

The County's proposal is awarded.

ISSUE NO. 12: RETROACTIVE PAY FOR ECONOMIC CHANGES

Given the other rulings in this matter this issue is moot. Had there been an award in favor of the Union there would have been a strong argument in favor of retroactivity to January 1, 2010 but on this record no such items were awarded and no decision is made on this question.

AWARD ON ISSUE NO. 13: RATE OF PAY FOR WORK PERFORMED ON 28 DAY SCHEDULE – ARTICLE 3

The County’s position is awarded

AWARD ON ISSUE NO. 14: DESIGNATED COUNTY OFFICIAL TO APPROVE VACATION CASH-OUT – ARTICLE 12, SECTION 10

The language of Article 12, Section 10 is amended to read as follows:

Pursuant to Internal Revenue Service Rules and Regulations, employees may annually, with the approval of the Sheriff, cash-out ~~or convert to the County’s deferred compensation program~~, up to forty (40) hours of vacation. In order to convert such vacation to cash ~~or deferred compensation~~, the employee must, ~~by November 1~~ during Open Enrollment of the payroll year PRIOR to conversion, submit to the EMPLOYER in writing, the specific number of vacation hours requested for conversion. The EMPLOYER shall convert such vacation to cash ~~or make payment to the employee’s deferred compensation account~~ in February of the payroll year following receipt of the irrevocable election. At the employee’s option, he/she may deposit all or part of this cash into a deferred compensation account.

This reflects the award granting the County’s proposed change I the language changing the date from November 1 to “open enrollment” and the Union’s proposal that the individual responsible for approving vacation payout requests remain the Sheriff.

AWARD ON ISSUE NO. 15: FITNESS FOR WORK—ALTERNATE DUTIES FOR ILL OR DISABLED EMPLOYEES—NEW ARTICLE

The County’s proposal is awarded.

Dated: September 7, 2010

Jeffrey W. Jacobs, arbitrator