

IN THE MATTER OF ARBITRATION

OPINION & AWARD

-between-

**THE HENNEPIN COUNTY
SUPERVISORS ASSOCIATION**

Interest Arbitration

B.M.S. Case No. 10-PN-932

-and-

**THE COUNTY OF HENNEPIN
MINNEAPOLIS, MINNESOTA**

**Before: Jay C. Fogelberg
Neutral Arbitrator**

Representation-

For the Association: Zaidee Martin, Attorney
Ron Rollins, Attorney

For the County: Jennifer E. Peterson, Labor Rel. Rep.
William P. Peters, Labor Rel. Director

Statement of Jurisdiction-

In accordance with the Minnesota Public Employment Relations Act ("Act"), the Commissioner of the Bureau of Mediation Services for the State of Minnesota ("Bureau"), certified two (2) issues at impasse in connection with the parties' 2010-11 Collective Bargaining Agreement, on May 27, 2010. The certification followed a declaration of impasse, and an agreement by the parties to submit the outstanding issues to binding

arbitration pursuant to the provisions of M.S. 179A.16, subd. 2. Subsequently, the undersigned was notified that he had been selected as the Impartial Arbitrator to hear evidence and arguments concerning the outstanding issues, and to thereafter render an award. A hearing was convened on September 23, 2010, in Minneapolis. Following receipt of position statements, testimony and supportive documentation, the parties indicated a preference for submitting written summations which were received on October 18, 2010. Thereafter, the hearing was deemed closed.

Preliminary Statement-

This matter arises from an impasse that has been certified by the Bureau earlier this year between the Hennepin County Supervisors Association (hereafter "Association" "HCSA") which represents some 166 first line supervisors, and Hennepin County ("County," "Employer," or "Administration"). There are currently five separate classifications for these employees: Senior Attorney, Chemical Health Unit Supervisor, Human Services Supervisor, Sheriffs Detention Sergeant and Corrections Supervisor.

The Association first gained representation rights with the County approximately ten years ago pursuant to an agreement reached with the

Employer and approved by the Bureau of Mediation Services. That agreement designates the HCSA as the exclusive bargaining representative for all of the first line supervisors in the County. However, only those classes that voted to be represented, are covered by the Collective Bargaining Agreement.

In October of 2009, the Corrections Supervisors ("CS") were accreted to the bargaining unit. Currently, there are approximately forty Corrections Supervisors working in the County. They are part of the Department of Community Corrections and Rehabilitations ("Department"). Their job assignments are divided among three different institutions: the Adult Correctional Facility ("ACF"), the Hennepin County Home School ("Home School") and the Juvenile Detention Center ("JDC" or "Center"). The ACF incarcerates both men and women who have already been sentenced. The JDC is located in downtown Minneapolis and houses juvenile offenders who have yet to be sentenced, and the Home School holds juvenile offenders who have already been sentenced.

Prior to joining the bargaining unit, the Corrections Supervisors received many of the same benefits as their counterparts in the Association. There were however, four "unique" differences. The CS employees received a uniform allowance, free meals at their assigned

facility, time and on-half premium pay for work on a holiday, and an additional \$1.50 per hour wage for supervisors who were designated as “in-charge” during the evening, night or weekend shifts. Once the accretion took place, the County agreed to continue the uniform and free meal benefits, but declined to continue the holiday pay as well as the additional \$1.50 hourly stipend when assigned to be in charge during evenings, nights and weekends in each of the three institutions.

With the assistance of the Bureau of Mediation Services, the parties were successful in working through a number of issues. However, their good faith efforts failed to bring about resolution of all matters in dispute. Accordingly, the HCSA petitioned the Bureau to certify the remaining issues for interest arbitration.

The Issues-

1. Holiday Premium Pay
2. In-charge Pay

Issue No. 1
Holiday Premium Pay

Association's Position: For the term of the new Agreement, the HCSA is seeking premium pay for Correction Supervisors and the Detention Sergeants in the bargaining unit who are assigned to work a holiday, with the exception of Christmas Eve Day, at two and one-half (2½) times their base pay rate for hours worked on a holiday. Supervisors who are assigned to work the Christmas Eve holiday shall receive compensation of two (2) times their base pay rate for hours worked on that holiday. Compensation for holiday hours assigned/worked shall be provided either in the form of compensated time off or a cash payment as approved by the County.

County's Position: The Employer seeks language to be included in Article 10 (Holidays) to read as follows:

"Section 2. Human Services Supervisors who are assigned to work a holiday with the exception of Christmas Eve Day shall receive compensation of two and one-half (2½) times their base pay rate for hours worked on the holiday. Employees who work the Christmas Eve holiday shall receive compensation of two (2) times their base pay rate for hours worked on that holiday. Employees for whom a legal holiday is a scheduled day of work shall be paid at their base pay rate for work performed on the legal holiday. Compensation for holiday hours worked shall be provided either in compensated time off or cash payment as approved by the EMPLOYER.

Detention Sergeants who work 6-3 schedules with 8 hour days shall be credited (through their schedule) with holiday benefits.

Detention Sergeants who work 6-3 schedules of 8.5 hour days shall receive a deferred holiday off for each holiday unless the holiday falls on a regularly scheduled work day and the employee, with supervisory approval, manages to get the day off. Then the day is considered a paid holiday and no deferred holiday is granted.”¹

Issue No. 2
In-Charge Pay for Corrections Supervisors

Association’s Position: The HCEA proposes to add new language to Article 9, Section 12 (“Work Schedules/Premium Pay”) which would provide Correction Supervisors who are designated as the “officer-in-charge” when the Superintendent or Assistant Superintendent assigned to the facility is not present, an additional pay premium of \$1.50 for each hour so designated.

County’s Position: The Employer seeks no new language providing such a benefit to the newly accreted members of the bargaining unit.

¹ While the current work schedule for Detention Sergeants was altered in May of last year to a “28 day” schedule (Association’s Ex. 2a), the County seeks retention of the former 6-3 schedule language found in Article 10 of the existing Agreement, in the event they wish to return to that format.

Analysis of the Evidence-

In arriving at what is believed to be a fair and reasoned decision concerning the two issues that have been certified at impasse, I have given careful consideration to the applicable provisions of PELRA which requires the reviewing neutral to examine such factors as the obligations of public employers in this state to efficiently manage and conduct their operations within the legal limitations specified, the interest and welfare of the public they serve, the ability of the County to fund the Association's proposals, the effect of the parties' respective proposals on the standard of services provided, as well as the ramifications any award might have in connection with other classifications of employees.

A number of salient facts have been established on the record are not in dispute and bear directly upon the outcome of this matter. In essence, they are as follows:

- It is beyond question that this contract, as well as the other dozen or so agreements already settled in the County, has been negotiated in a period of severe economic decline with state, county, and municipal governments experiencing budget deficits, shortfalls in anticipated revenues, and a deteriorating source of income. Hennepin County alone experienced a near 7% decline in their budget this year over last (Employer's Ex. B-13). As I have previously noted in *Teamsters Union Local #320 and the Metropolitan Council*, "Suffice it to say that the existing recessionary climate in which public employers operate

today, and the relative hardships that this has caused and continues to cause, heightens the arbitrator's consideration of the statutory mandate of public employers to 'efficiently manage and conduct their operations within the legal limitations surrounding the financing of (their) operations'" (p. 6-7).

- The Association, along with the other unions that the County negotiates with, has recognized the severity of the current economic situation, agreeing to a two year wage freeze; a difficult settlement to accept indeed, but reflecting the dour reality of the situation none the less.
- There is no dispute but that the economic outlook for 2011, is anything other than more of the same.
- The "officer-in-charge" stipend the Association has proposed is estimated to cost \$36,322 per year, based upon an average over the past five years.²
- The other exempt supervisors in the bargaining unit do not receive holiday pay or in-charge pay, and there is no provision for same in the Master Agreement.
- When the Association was first formed in 2000, and gained recognition as the exclusive representative for first line supervisors in the County, it was mutually agreed that only those classifications who voted for representation would be covered by the Labor Agreement. This created a unique situation whereby previously unrepresented supervisory classifications could be accreted on a sporadic basis.

The foregoing serves as a backdrop to the instant dispute against which the other evidence and the position of the parties must be considered.

² The parties were unable to agree upon the costing of the remaining issue.

In addition to the agreed-upon facts set forth above, both sides have addressed the burden of proof in this instance. The Association maintains that it falls with the County to demonstrate the need to reject their proposals as both of the items certified as issues at impasse here, were benefits that the Correction Supervisors' had prior to the accretion. They assert that inasmuch as this is the first contract for those holding the CS classification, it follows that the burden of proof lies with the party seeking a change in the existing practice.

A countervailing argument is advanced by the Administration. They contend that a well-settled arbitral principal requires the party seeking a change to the existing language in a collective bargaining agreement to demonstrate via compelling evidence that their proposal is warranted. Here, they argue, it is the Association that is proposing new language to be appended to the 2010-11 Master Agreement in the form of a holiday premium and in-charge pay. The Employer urges that inasmuch as the Union has not offered the necessary quid-pro-quo to entice the County into voluntarily agreeing to their proposals, they are obligated to present clear and convincing evidence in this impasse setting to gain adoption of their position.

While the Association has made an admirable attempt to assign

the burden of proof to the Employer, I must respectfully disagree with their argument regarding the standard of review to be adopted here. Having been accreted to the existing bargaining unit, the Correction Supervisors have effectively adopted the Master Contract and the terms and conditions of employment set forth therein, that already exists for the County's first line supervisors. Accordingly, I find that they bear the burden of persuasion relative to the need for additional language to be added to the agreement covering the benefits they seek.

In addressing the two certified issues, the Association and the County alike have advanced the more basic conventional arguments and evidence, in the form of testimony and documentation, which each side believes best supports their respective positions. The Union emphasizes that both of these benefits have been a part of the Correction Officers' compensation for a significant number of years, and accordingly should not be taken away now simply because of the accretion. In connection with the two issues, they point out that these employees have been receiving the additional compensation for at least twenty years. As regards holiday pay, they note that unlike most first line supervisors, CS personnel regularly work holidays. In addition, they maintain that every classification a Correction Supervisor oversees,

receives holiday pay (Union's Ex. Vol. III, 5). Should the Employer prevail here, the Union estimates that CSs would actually receive less money per hour than the employees they supervise. Further, the HCSA makes reference to the estimated cost of continuing the two benefits, emphasizing that it is extremely minimal and would have little if any adverse impact on the County's overall budget for the term of the new Agreement. To make an award favoring the Employer, in the Union's view, would mean that these benefits would be taken from the Corrections Supervisors without any consideration – something that has not occurred with other classifications in this or any other bargaining unit.

The Administration counters by emphasizing the severe economic conditions currently facing the County, and into the foreseeable future. In connection with this aspect of their case, they presented documentation and testimony which highlighted the strongly prevailing practice of internal comparisons, and noting that the balance of the exempt supervisory staff does not receive either holiday premium pay or an in-charge stipend (Employer's Ex. 1-2, 1-5, & 2-4).³ And while they

³ The County also contends that the application of relevant external comparisons reveals that no other supervisor in a bargaining unit (exempt or non-exempt) throughout the seven county metropolitan area receives any additional compensation for of in-charge pay

acknowledge that the cost of adopting the Union's two proposals might appear to be relatively small, any economic improvement for these employees runs contrary to the very clear internal pattern whereby twelve out of the total sixteen bargaining units (nearly 95% of the County's workforce) have already settled with no improvements in economic conditions. To grant the Union's position here, they assert, would have a chilling effect on the negotiations process going forward, as employees would opt for arbitration in the event they were unsuccessful at the bargaining table in gaining a new benefit without the requisite quid-pro-quo. Finally, the Administration maintains that most of the benefits enjoyed by the Corrections Supervisors were already addressed in the existing Master Agreement, and in line with the County's internal practices and settlement patterns.

While I have given due consideration to the evidence and arguments each side has made, the agreed upon fact that this case is somewhat unique because of the Accretion Agreement in place (County's Ex. B-4) causes far greater emphasis on that dynamic. When a particular job classification, which heretofore has had separate wage rates and benefits established largely through the employer's policies

(Employer's Ex. 2-5).

(Union's Ex. Vo. II), seeks to attach itself to an existing bargaining unit, by definition, it inherits most if not all of the terms and conditions already in place for the existing members.

The Union maintains that, in connection with both certified issues, should the Employer's position be awarded, the Corrections Supervisors would have effectively gained nothing by exercising their right to be accreted. They go so far as to brand it a "take-away" for these employees.

Again, however, I must respectfully disagree.

The infirmity of the Association's reasoning lies in the choice the Correction Supervisors made when first considering accretion. As the Employer points out, prior to joining the bargaining unit they most assuredly reviewed the Labor Agreement already in place for all other first line supervisors working for the County. In doing so they would have considered the pros and cons of such a move, comparing the terms and conditions specified in the Contract, to what they were receiving at the time. The adduced evidence shows that many if not most of the benefits they had been getting, were already addressed in the Master Agreement. These include shift and weekend differentials, complimentary meals at institutions during workshifts, and uniform

allowances). County's Exhibit 2-6 is particularly instructive. Further, juxtaposing the H. R. Rules under which the CSs operated prior to the accretion, with the language in the Labor Agreement, provides a clear demonstration that these employees achieved more favorable working conditions through their entrance into the bargaining unit with such matters as layoff notices, length of layoff, alternative placement, discipline, grievances and arbitration. Clearly, not all benefits have been preserved by the move. However, this does not support the Union's "nothing gained" posture, as evidenced by the relevant documentation.

The HCSA further asserts that with accretion, the status quo should be maintained unless there is a sound reason for the change, or the benefits are given away at the bargaining table in return for something else. Again, however, I find the logic elusive. There was no evidence presented indicating the other classifications that have been accreted have held onto all they had prior to joining the bargaining unit. It is less than realistic to assume that an accreted job class should expect to keep any and all benefits they might have had prior to falling under the jurisdiction of an existing labor agreement, in addition to those assured

by the contract.⁴ Without ample evidence of a quid-pro-quo, the affected employees cannot reasonably expect to retain all pre-contract benefits in addition to the gains they perceive to be making by joining the bargaining unit. This is particularly so where, as here, the relevant testimony of witnesses and accompanying documentation plainly demonstrate a consistent internal pattern where holiday and in-charge differentials are not paid to the other first line supervisors in the County.⁵

I have also been influenced in part by the Employer's cautionary words that an award of the Union's position on either or both issues, could signal an unmanageable change. It is not unreasonable to conclude that other supervisory units, yet to seek accretion, would expect to retain all of the favorable terms and conditions attached to their job prior to falling under the jurisdiction of the Master Contract, as well as the enjoyment of those established through negotiations by the

⁴ Importantly, the Union does not appear to take issue with the point, as they have acknowledged that the Detention Sergeant classification, which was accreted prior to the negotiations over the previous labor agreement for supervisors, had an opportunity to address any of their issues and weigh any loss of benefits with the other gains offered by the new contract.

⁵ The HCSA counters that, in connection with the second certified issue, supervisors are already given additional pay if their job assignment warrants. This would include the need for foreign language skills, work at night or on the weekends and higher pay if they take on work in a higher class (Union Ex. Vol. I, 2). However, in each instance, the additional pay has been negotiated and is applied across-the-board to all bargaining unit members.

parties, without the element of consideration.

Award-

Based on the foregoing analysis of the evidence, I conclude that the proposal advanced by the County regarding both of the certified issues, is the most reasonable. It is economically prudent, consistent with the prior practices of the parties relating to the accretion process and the internal settlements already reached via negotiations as well. It is therefore awarded.

Respectfully submitted this 11th day of November, 2010.

/s/
Jay C. Fogelberg, Neutral Arbitrator