IN THE MATTER OF ARBITRATION **OPINION & AWARD**

-between-

Interest Arbitration

TEAMSTERS UNION, LOCAL 320

-and- **B.M.S. Case No. 10-PN-141**

THE COUNTY of RICE
FARIBAULT, MINNESOTA

Before: Jay C. Fogelberg
Neutral Arbitrator

Representation-

For the Union: Paula R. Johnston, Gen. Council

For the Council: Terrence J. Foy, Attorney

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 a single issue at impasse in connection with the parties' (new) 2010 Collective Bargaining Agreement, on February 8, 2010. The certification followed a declaration of impasse, and an agreement by the parties to submit the outstanding issue to binding arbitration pursuant to the provisions of M.S. 179A.16, subd. 2. Subsequently, the undersigned was notified by the

Commissioner on June 21, 2010, of the selection as the Impartial Arbitrator to hear evidence and arguments concerning the outstanding issue, and to thereafter render an award. A hearing was convened on October 28, 2010, at the County's Government Center in Faribault. Following receipt of position statements, testimony and supportive documentation, the parties indicated a preference for submitting written summary briefs. They were received on November 15, 2010, at which time 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 Teamsters Union, Local 320 (hereafter "Union," or "Local") which represents approximately fifteen full time law enforcement personnel working for Rice County ("Employer," "Department" or "Administration"). The bargaining unit is comprised of Licensed Patrol Officers (Deputies) and Bailiffs employed in the County Sheriff's Office.

The Issue-

Should the members of the bargaining unit receive step movement within the salary schedule for calendar year 2010?

Positions of the Parties-

The **UNION** takes the position that all members of the bargaining unit who are eligible, should receive a step movement on the schedule for the year 2010, just as they have in the past.

Conversely, the **COUNTY'S** position is that these employees are not to receive a step increase on the salary structure, for the calendar year 2010.

Analysis of the Evidence-

Pared to its essentials, the Union argues that the Employer can readily fund what they deem to be a quite reasonable request, while the Administration maintains that current economic conditions coupled with the internal settlements negotiated with the other bargaining units in the County, require a step freeze for the year 2010.

As I have previously noted in *Teamsters Union, Local 320 and the Metropolitan Council Transit Police Department,* BMS Case No. 09-PN-833,

the existing recessionary climate that has been experienced both locally and world-wide over the past few years, and which continues today, heightens consideration of the statutory mandate in this state for public employers to "....efficiently manage and conduct their operations within the legal limitations surrounding the financing of (their) operations." *Minn. Stat 179A.16, Subd. 17*.

The argument proffered here by the County is one heard throughout Minnesota by public employers who have continuously been faced with a shrinking revenue stream through declining state aids, property values, and the concomitant erosion of the tax base. The Employer presented a number of exhibits painting a dire financial situation for Rice County, and the efforts they have undertaken to stay within their budgetary constraints (Exhibit Book p. 25, 28, 31, 33, 35, 39, 60 and 78). This has included the elimination of two FTE positions in Planning and Zoning, as well one in Community Corrections.

The Administration asserts that the combined effects of the State's budget cuts, the unallotments, and levy limits puts them in the unpopular position of having to freeze wages and step increases for the current year.

The Union counters that the continuation of step movement for the

members of this bargaining unit is minimal, and would have little effect on the County's overall budget. The Local estimates the cost to be $8,285 for the year, which they maintain to be well within the County's ability to pay (Union's Ex. 4). Even using the Employer's figures and rolling such additional costs as employment taxes into the equation, the number remains most reasonable, by the Local' estimation ($9,888 according to the County).

The Union also cites the County's Annual Financial Report (Local's Ex. 6) which indicates that in 2009, its net assets actually increased by some $4.7 million dollars.[1] An increase of nearly five million dollars in one year, they argue, cannot by any stretch of the imagination, be an indicator of financial distress. Additionally, the Local observes the same document indicates that the Employer's general fund, which is their "principle liquidity reserve," increased by some $2.66 million last year, which was due in part to "higher than anticipated Intergovernmental revenues, excess TIF reimbursement from a decertified district, and higher than anticipated return on their investments" (*id.*). The same report allows that "[A]ctual revenues were greater than budgetary estimates by $1.0 million" in 2009. The Local asserts further that the Report, in the

[1] The Union calculates that their position equals a minuscule .002% of the increase in net assets.

County Auditor's own words, demonstrates that their present economic situation is actually improving, and that it has a present ability to pay the very small amount it would take to fund the step increases for members of the Deputy unit.

The Employer does not deny that they maintain an adequate liquidity reserve to meet future needs. However, they add that this does not mean the County has an excessive amount of funds held in reserve. The argument is made that the fund balance should be relatively large at year's end to cover cash flow cycles, noting that the same fund must cover expenditures during the first five months of the next fiscal year. An adequate fund balance is therefore needed to finance expenditures and avoid short-term borrowing during this critical time period.

The documentation presented by the Employer relative to this issue notes the State Auditor's recommendation that at year's end, local governments maintain an unreserved fund balance in their General Fund approximating 35 to 50% of operating revenues to cover the first five months of the next fiscal year (County Ex. p. 84). I am persuaded by the evidence that maintaining adequate liquidity in their fund balance does not necessarily translate to a healthy financial condition. The Local's urging that the Employer could fund the step increases for these

employees based upon the increase in its general fund reserve, ignores the combined effects of unallotments, the State's budget cuts and levy limits, as well as the dour reality that the financial forecast indicates no real improvement in the near future.

In addition, other factors have been considered here that favor the County's final position. Not the least of which is the strong and clear pattern of internal settlements.

There are currently eight separate bargaining units in addition to the Deputies unit, in Rice County. For calendar year 2010, each arrived at a new contract through negotiations, and each settlement provided for a wage and step freeze (Employer's Exhibit p. 93.95 & 98). In addition the evidence indicates that during bargaining, the Employer reached agreement with all employee bargaining units (including the Deputies) to increase their contribution to both single and family health insurance premiums. Coupled with a modification of the insurance program's structure, the result was no additional out-of-pocket expense for insurance coverage for the organized personnel.

I remain unconvinced by the argument that a pattern of internal settlements alone should dictate the outcome of any interest arbitration involving another bargaining unit. To do so would have a chilling effect

on negotiations as well as the impasse resolution process itself. As the Union has pointed out, PELRA does not allow an employer to unilaterally determine whether there will or will not be additional monies paid to members of a barging unit simply by setting a budget in advance of negotiations and thereafter remaining completely inflexible at the table. At the same time however, if a consistent voluntary settlement pattern is demonstrated, it cannot be altogether ignored. Here, the record shows that the Deputies are the only group who were not willing to accept the step freeze through bargaining. Clearly there is an established internal pattern here which was negotiated with the other essential and non-essential units alike, all of whom agreed to the freeze. Many of the employees who have already settled, work in close proximity to the Deputies. To allow them to receive the step, and be the only bargaining unit in the County to obtain it through arbitration, would quite possibly have an adverse effect on morale. Moreover, it is significant to note that three of the eight units who have reached a voluntary settlement with the Employer, are also represented by Local 320. In each instance they accepted the step freeze along with changes in health insurance (Employer Ex. p. 93, 95, and 98).

I find further support for the Administration's position in the fact that

in 2008, the County reached agreement with all of their bargaining units regarding a new salary schedule structure which significantly reduced the number of years required to reach the top wage step from eleven to six (Employer Ex. 96). This resulted in an increase for Deputies at the top of the schedule of nearly 6%.

In support of their position, the Local has referenced the *Teamsters Local 320 and Metropolitan Council* decision (*supra*), wherein I awarded the continuation of the step progression for the affected employees. In that instance however, the employer's proposal represented a continuation of the freeze in step movement beyond the first year of the parties' labor agreement, which was found to be unwarranted under the circumstances. The experience there and the situation in Rice County are not, in my view, sufficiently similar, and most certainly cannot control the outcome here.

Another factor that has been taken into consideration here involves external comparisons. Although not assigned as much weight as the clear internal settlement pattern, it nevertheless demonstrates that an adoption of either position would not significantly affect Rice County's relative standing within what both sides have historically considered to be the market (Region 10 within the Regional Development Commission). A

review of the data submitted into the record reveals that Rice County's ranking will remain relatively high (3rd among the other eleven counties in the Region, and 2nd when limiting consideration to the seven that are contiguous) regardless. Moreover, with the reduced number of steps to reach the top of the salary structure that was instituted only a few years ago, the Deputies here will continue to be below the average number of steps required to reach the top level of the schedule within the comparative grouping, whether the measurement is the entire Region or the seven nearby counties (Employer Ex. 88; Union's Exs. 2 & 3).

I have also made note of the unrefuted fact that the County has experienced no retention issues within the Deputy bargaining unit. There has been virtually no turnover, and when a vacancy did occur recently the Employer received over a hundred applications for the position.

Award-

It is often said that the arbitrator, in an interest arbitration setting such as this, should be committed to producing a contract which the parties themselves might well have negotiated in the absence of the circumstances which led to the exhaustion of their traditional remedies. Based on the foregoing analysis, I conclude that the County's position is

most consistent with this standard, is supported by the weight of the evidence, and is therefore to be implemented.

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Respectfully submitted this 9th day of December, 2010.

/s/_____
Jay C. Fogelberg, Arbitrator