

**IN THE MATTER OF INTEREST ARBITRATION
BETWEEN**

Minnesota Teamsters Public & Law Enforcement Employees' Union, Local No. 320)	BMS Case No. 10 PN 0313
)	
(“Union” or “Local 320”))	Issue: Interest Arbitration- Correctional Officers Unit
)	
and)	Hearing Site: Albert Lea, MN
)	
Freeborn County, Albert Lea, MN)	Hearing Date: 12-06-10
)	
(“Employer” or “County”))	Briefing Date: 12-21-10
)	
)	Award Date: 01-21-11
)	
)	Mario F. Bognanno, Labor Arbitrator

JURISDICTION

The parties involved in the above-captioned matter are signatories to a Collective Bargaining Agreement (“CBA”), covering the Correctional Officers (“COs”) employed by the Sheriff’s Office; their most recent CBA had effective dates of January 1, 2009 through December 31, 2009. The parties were unable to agree on a successor CBA, as negotiations had broken down over three issues. Pursuant to Minn. Stat. 179A.16, Subd. 2, on July 20, 2010, the Commissioner, Bureau of Mediation Services, State of Minnesota, received a request from the Union to submit the contract negotiations to conventional interest arbitration. On July 23, 2010, the Commissioner certified the parties’ contract negotiations to binding arbitration and he referred the following specific issues to interest arbitration:

Issue No. 1. Working Out of Classification – Should the language be amended to eliminate the current two (2) week requirement? – Article 10

Issue No. 2. Working Out of Classification – What should the compensation amount be for working out of class? – Article 10

Issue No 3. Health and Welfare – Should the language be changed to establish a specific employer contribution? – Article 20

(Employer Exhibit, Section C, 1) In letters dated August 6 and August 9, 2010, respectively, the Union and Employer submitted to the Commissioner their “final positions” on each of the foregoing issues. (Employer Exhibits, Section B, 2 and 3 and Union Exhibits, Employer’s Final Position and Union’s Final Position)

Pursuant to Minn. Stat. 179A.16, Subd. 5, Subd. 6 and Subd. 7, on December 6, 2010, a hearing on this matter was held in Albert Lea, Minnesota. Through their designated representatives, the parties stipulated that the Commissioner-certified issues were properly before the Arbitrator for final determination. The parties were afforded the opportunity to present witness testimony under oath, documented evidence and arguments. Witness testimony was subject to cross-examination. Following the hearing, the parties agreed to file post-hearing briefs, *via* email, with the Arbitrator on December 21, 2010, and to exchange briefs with one another on the following day, December 22, 2010. Because of clerical error, the Arbitrator did not receive his copy of the Union’s post-hearing brief until January 3, 2011. Thereafter, the certified issues were taken under advisement.

APPEARANCES

For The Union:

Paula R. Johnston

General Counsel, Local 320

Halla Elrashidi
Michael J. Golen
Darrel Turvold

Law Clerk, Local 320
Business Agent, Local 320
Correctional Officer

For the County:

Scott M. Lepak
John Kluever
Susan Phillips
William Helfritz

Attorney at Law
Administrator, Freeborn County
Human Resources, Freeborn County
Financial Manager, Freeborn County

I. BACKGROUND

Freeborn County is located on the southern border of Minnesota in the central part of the state. Freeborn County has a population (2000 Census) of 32,584, with over 18,356 persons living in the County seat of Albert Lea, MN. The County includes 14 cities and 20 townships. As of September 2010, the County employed 249 regular employees, several of whom are in bargaining units represented by Local 320, including 28 COs.

Specifically, the Union represents Patrol Deputies (“PDs”), Correctional Sergeant Officers (“CSOs”) and COs, all job classifications that are in separate bargaining units with separate CBAs. Moreover, all of the employees in these job classifications are employed by the Sheriff’s Office. The instant matter involves COs, whose first CBA covered the 2006 and 2007 calendar years, and whose second and third CBAs covered the calendar years 2008 and 2009, respectively. (Union Exhibit, Prior Contracts) This history suggests that the CO bargaining unit is relatively new. However, the CSOs bargaining unit is even newer. This unit was established following the Employer’s creation of the CSOs job classification in April/May, 2009. The effective dates of the first negotiated CBA covering CSOs are January 1, 2010 through December 31, 2010. (Employer Exhibit, Section B,

2) Prior to April/May 2009, CSOs were dubbed, "Shift Leaders:" A position that was previously included in the CO bargaining unit. In addition to reaching a 2010 CBA with the new CSO unit, the County and Local 320 succeeded in negotiating a 2010 CBA for PDs. (Employer Exhibit, Section B, 3)

Finally, the parties stipulated that the matter at arbitration pertains to their January 1, 2010 through December 31, 2010 CBA. Further, the Arbitrator is cognizant of the fact that the County is presently negotiating its 2011 CBAs with all of its bargaining units, including the CO unit.

II. CURRENT CONTRACT LANGUAGE

A. CORRECTIONAL OFFICERS' 2009 CBA

ARTICLE 10.WORKING OUT OF CLASSIFICATION

10.1 In the event that any employee covered by the Agreement performs all of the duties of any position higher than the employee's for two (2) consecutive weeks or more, the employee shall be paid at the higher rate after the first two (2) weeks of work in the higher classification retro to the first date in the position. This should be the first step in the new classification that is higher than the employee's current step in their current class.

(Employer Exhibit, Section B, 1 and Union Exhibit, Contract)

ARTICLE 20.HEALTH AND WELFARE

20.1 All eligible employees shall be offered participation in the employer's insurance program. An eligible employee is defined as an individual who would be covered under the health insurance coverage provisions of the County personnel policies. The employer will make available and contribute toward health and life insurance on the same basis as the basic program for nonunion employees.

(Employer Exhibit, Section B, 1 and Union Exhibit, Contract)

ARTICLE 23.SHIFT DIFFERENTIAL

23.1 Sift Leader: Establish differential for shift leader at two dollars (\$2.00) per hour for hours assigned as shift leader effective retroactive to December 14, 2008.

(Employer Exhibit, Section B, 1 and Union Exhibit, Contract)

B. CORRECTIONAL SERGEANTS OFFICERS' 2010 CBA

ARTICLE 22.WAGES

22.1 Salary Schedule Payments.

A. Employees will be compensated according to the 2010 salary schedule as attached as Appendix A. This will continue the wage scale on the same basis as 2009 without change. The four (4) individuals who previously received the two dollar (\$2.00) differential would be grandfathered into the compensation plan as follows:

- a. This would only apply to the four individuals in a one time placement – the individual promoted who never got the \$2 and future Sergeants would not have this \$2 considered. Newly hired Sergeants will be placed into the Sergeant pay grade 11 up to Step 3 based on the Sheriff's determination of qualifications and experiences. Sergeants promoted from Correctional Officer will be placed on the first step that grants an increase in pay. The existing individual who was promoted would remain at the same pay grade 11 level (and eligible for step movement according to the County pay plan).

(Employer Exhibit, Section B, 1)

III. UNION'S FINAL POSITIONS

A. Issue No. 1 and Issue No. 2 – Article 10.1, Working Out of Classification

Both of the following issues pertain to Article 10, Section 10.1, Working

Out of Classification:

Issue No.1. Article 10.1 Working Out of Classification – Should the language be amended to eliminate the current two (2) week requirement?

Issue No. 2. Article 10.1 Working Out of Classification – What should the compensation amount be for working out of class?

Accordingly, the Union treats Issue No. 1 and Issue No. 2, as a single issue when answering the foregoing questions. As shown in the amended language below, the Union's final position is that (1) the "two (2) consecutive weeks or more" reference in Article 10.1 should be deleted and (2) the phrase "a minimum of two dollars (\$2) per hour" should be added in Article 10.1. Regarding consolidated Issues No. 1 and No.2, the Union's final position is:

10.1 In the event that any employee covered by the Agreement performs all of the duties of any position higher than the employee's ~~for two (2) consecutive weeks or more~~, the employee shall be paid at the higher rate. ~~after the first two (2) weeks of work in the higher classification retro to the first date in the position.~~ This should be the first step in the new classification that is a minimum of two dollars (\$2) per hour higher than the employee's current step in their current class.

(Employer Exhibit, Section C, 3 and Union Exhibit, Union's Final Position) With these amendments to Article 10.1, the Union seeks to have COs who work out of classification paid immediately at the higher classification's pertinent wage rate, rather than to work in the higher classification for at least two (2) weeweeks before qualifying for the premium pay. Further, the Union seeks to have the premium paid to these COs set at \$2.00 per hour, at a minimum, and not merely at the salary schedule's first step in the new classification that exceeds the COs' current step and grade.

B. Issue No. 3 – Article 20.1, Health and Welfare

The question raised in Issue No. 3 is "Should the language be changed to establish a specific employer contribution?" The Union's answer to this question is "yes;" the amended contract language that incorporates the Union's final position is as follows:

20.1 All eligible employees shall be offered participation in the employer's insurance program. An eligible employee is defined as an individual who would be covered under the health insurance coverage provisions of the County personnel policies. The employer will make available and contribute ninety percent (90%) of the premium cost toward health and life insurance. ~~on the same basis as the basic program for nonunion employees.~~

(Employer Exhibit, Section C, 3 and Union Exhibit, Union's Final Position) As implied by the amended language to Article 20, Section 20.1, the Union seeks to have the Employer pay 90 percent of health and life insurance premium costs rather than to have the Employer's premium cost share be that which the Employer pays on behalf of its nonunionized employees.

IV. EMPLOYER'S FINAL POSITIONS

The Employer's final position on Issue No. 1, Issue No. 2 and Issue No. 3 is the same, namely: that the language in Article 10, Section 10.1 and Article 20, Section 20.1 should not be changed. (Employer Exhibit, Section C, 2 and Union Exhibit, Employer's Final Position)

V. UNION'S ARGUMENTS

A. Issue No. 1 and Issue No. 2 – Article 10.1, Working Out of Classification

In support of its final position regarding Issue No. 1 and Issue No. 2, the Union begins by referencing Article 23, Section 23.1 in the 2009 CBA, which is quoted below:

23.1 Shift Leader: Establish differential for shift leader at two dollars (\$2.00) per hour for hours assigned as shift leader effective retroactive to December 14, 2008.

(Employer Exhibit, Section B, 1 and Union Exhibit, Contract) Further, the Union observes that the Shift Leader language has been in the parties' CBAs, since their first, 2006-2007, CBA was negotiated. At that time, the pay differential was one dollar and fifty cents (\$1.50) per hour. (Union Exhibit 1) In their 2008 CBA, this differential was increased to one dollar and seventy-five cents (\$1.75). (Union Exhibit 2) Continuing, the Union contends that the Shift Leader position was a part of the CO bargaining unit; that the four (4) COs who held the Shift Leader position received the referenced differential pay; that when other COs filled in as Shift Leaders to cover for illnesses, vacations and so forth they too were paid the Article 23, Section 23.1 Shift Leader pay differential. The Union maintains that, for the following enumerated reasons, this discussion ties into its rationale for amending Article 10, Section 10.1, which is to delete the two (2) week requirement for work out of classification and to add a provision guaranteeing a minimum of two dollars (\$2.00) per hour for working out of classification.

1. The above referenced four (4) COs who occupied the Shift Leader position and who received the two dollar (\$2.00) per hour differential were reclassified as CSOs, effective April/May 2009. These four (4) individuals were "grandfathered" into the new CSO classification, retaining their two dollar (\$2.00) per hour differential. (Union Exhibit 4)
2. Effective January 1, 2010, COs who worked as CSOs—the former Shift Leaders—no longer enjoyed Article 23, Section 23.1 rights, rather since

the creation of the CSO job classification, this work has been treated as a Article 10, Section 10.1 matter—working out of classification.

3. CO Darrel Turvold testified that since January 1, 2010, he has been assigned to approximately 30 days CSO work, without receiving the two dollar (\$2.00) per hour pay differential that he was previously paid under Article 23, Section 23.1.
4. CO Turvold testified that he was not paid the referenced two dollars (\$2.00) per hour because (1) he did not work as a CSO for a minimum of two (2) weeks, and (2) even if he had, he would not be paid the two dollars (\$2.00) per hour, rather he would have been paid at the first step in the CSO job classification that is higher than his current step and grade.

Next, the Union urges that the reasons enumerated above provide the explanatory rational for its proposed two-part (i.e., Issue No. 1 and Issue No. 2) amendment to the language of Article 10, Section 10.1. First, the Union argues that with the creation of the CSO job classification, the County effectively eviscerated Article 23, Section 23.1, since the 2010 Shift Leaders are now CSOs. Thus, the Union closes by noting that with creation of the CSO job classification, when COs fill the former Shift Leader position—now the CSO job classification—said work newly falls under the ambit of Article 10, Section 10.1 (i.e., working out of classification). This, the Union continues, implies that the County is no longer bound to the parties' historic Article 23, Section 24.1 agreement to pay COs who fill in as Shift Leaders—now CSOs—an immediate shift differential, from the first hour worked, without regard to a two (2)

consecutive week qualification period, as currently required by Article 10, Section 10.1. It is for this reason, the Union concludes, its final position deletes from Article 10, Section 10.1 the current two (2) week reference.

Second, the Union also closes by noting that prior to the evisceration of Article 23, Section 23.1, the COs who fill the former Shift Leader position—now the CSO job classification—received a shift differential of two dollars (\$2.00) per hour. Thus, the second part of the Union’s final position is that maintenance of the *status quo* requires that Article 10, Section 10.1 should be amended to guarantee a minimum of two dollars (\$2.00) per hour whenever a CO fills a CSO—formally Shift Leader—job. Further, the Union contends, maintenance of the *status quo* is required because neither party contemplated that creation of the CSO job classification would cause COs to forfeit the Article 23, Section 23.1 benefit of extra pay as compensation for assuming the extra CSO—formally Shift Leader—responsibilities, creating an “inequitable gap.” An absurd consequence.

Next, the Union identifies eleven (11) southern Minnesota county sheriff’s department contracts that it analyzed in search for regional pattern of “Working Out of Classification” language. However, none was found. (Union Exhibit 5) The Union also observes that the Freeborn County’s jail has recently been designated as a regional “hub jail,” used to house federal inmates awaiting deportation from the U.S. This arrangement, the Union argues, could generate up to \$2.5 million in incremental County funds, which are more than sufficient to cover any incremental costs associated with implementing its Issue No. 1 and Issue No. 2 final positions. (Union Exhibits 6, 7, 8 and 9)

B. Issue No. 3 – Article 20.1, Health and Welfare

The Union seeks to amend Article 20, Section 20.1 such that the County is required to expressly pay 90 percent of health and life insurance premium costs. In support of this position, the Union's arguments are set forth below.

Initially, the Union acknowledges that all County employees are subject to the same health and life insurance policy or nearly so. However, the Union argues that its "90%" final position is based on "external," not "internal," comparisons, where it is clear that Freeborn County pays a much smaller share of its health insurance premium bill than does Freeborn County's relevant Development Regional group of eleven (11) counties and its group of six (6) contiguous counties.

With respect to both external comparison groups, the Union points to the average shares shown in Table 1, which show that Freeborn County pays a much smaller share of its health insurance premium bill than does its comparable counties. (See Union Exhibits 10, 11 and 12)¹ That is, conversely, Freeborn County's COs' pay a much larger share of health insurance premium costs that do their regional counterparts. The Union argues that the gross disparity between the out-of-pocket health insurance payments by Freeborn County's COs *versus* the COs employed by its relevant comparable counties cannot be ignored.

Finally, the Union maintains that if its Article 20, Section 20.1 position is sustained, the County's family contribution would increase from \$796.65 to \$1,308.60 (= .90% x \$1,454.00) and its single contribution would increase from

¹ The Union appended to its post-hearing brief the health insurance language appearing in the CO/Rice County 2010 CBA; it also appended a corrected edition of Union Exhibit 12.

Table 1 CO Health Insurance: Monthly Dollar Rates and Percent Share Paid by County[†]

Development Region Group of Counties					
Single Coverage Rate	County's Single Payment Rate		Family Coverage Rate	County's Family Coverage Rate	
\$577.96	\$574.29	99.4%	\$1,482.35	\$1,088.00	73.4%
Freeborn County's Contiguous Group of Counties					
\$544.59	\$557.79	102% ^{††}	\$1,427.54	\$990.87	69.4%
Freeborn County ^{†††}					
\$544.00	\$345.63	63.5%	\$1,454	\$796.65	54.8%

[†] The Development Region's averages exclude Freeborn and Rice County data. The record does not include data on Rice County's payments. The Freeborn County's Contiguous Group averages do not include data on Freeborn County.

^{††} Inspection of the record's raw data suggest that the single coverage data for Fairbault County is erroneous, which explains this nonsensical result.

^{†††}Based on Union Exhibit 11 data.

\$345.63 to \$489.60 (= .90 x \$544.00): Increments in health insurance costs that Freeborn County has the ability to pay.

V1. EMPLOYER'S ARGUMENTS

A. Issue No. 1 and Issue No. 2 – Article 10.1, Working Out of Classification

The Employer levels several arguments in opposition to changing the language in Article 10, Section 10.1. First, the Employer notes that the parties negotiated the language in Article 10, Section 10.1 when they agreed to their original, 2006-2007 CBA; that this language has remained intact ever since; that, citing precedent, interest arbitration should not be used to disturb a long-standing bargain that was struck between the parties.

Second, the Employer argues that the language in Article 10, Section 10.1 in the COs' current CBA also appears almost verbatim in the County and Local 320 CBAs covering the CSO and PD bargaining units. Moreover, said language was not changed during the parties' negotiations of the latter units' 2010 CBAs. For reasons of internal equity among Sheriff's Office personnel and for reasons of operating efficiency, the Employer argues that Article 10, Section 10.1 should not be changed.

Third, the Employer contends that since the only "out of class" work that COs are called on to perform is CSO work, to grant a minimum pay differential of two dollars (\$2.00) per hour could mean that a CO working as a CSO would make a higher wage rate than the CSO who is being replaced since, aside from the four (4) "grandfathered" COs who were initially promoted to CSOs, all other CO promotions to the CSO class will be placed "...on the first step that grants an increase in pay."² (Employer Exhibit, Section B, 2) This outcome, the Employer urges, flies in the face of the thesis that compensation systems should manifest "internal consistency."

Fourth, the Employer maintains that this matter is best left for negotiations by the parties during their 2011 round of bargaining; that, as a practical matter, the two dollars (\$2.00) per hour change combined with determining who "filled in"

² The annual salaries COs and CSOs are on the same pay grid, which consists of twenty-four (24) Grades and twelve (12) Steps. COs are placed on the grid's Grade 10 and CSOs Grade 11. A CO at Grade 10, Step 12 is paid \$49,099.50 per year. The "...first step that grants an increase in pay" to a CO who is promoted to CSO is at Grade 11, Step 9, which pays \$50,037.51 per year. Therefore, were a Grade 10, Step 12 CO to fill in for a CSO, earning Union's proposed two dollar (\$2.00) per hour wage differential, the CO would make more money on an annual basis than that made by the CSO for whom the CO is filling in. The calculation is as follows: $\$2.00 \times 2,080 = \$4,160.00$; $\$4,160.00 + \$49,099.50 = \$53,259.50$ annually for the CO who is working out of class, while the CSO is making only \$50,037.51 annually.

for less than two (2) weeks—applied retroactively—would create an administrative headache to unravel.

Finally, the Employer argues that even though Freeborn County's contract with ICE to house federal inmates will generate incremental revenues, it will also generate incremental costs; that COs do not perform "all" CSO duties, as required by Article 10, Section 10.1's current language.

B. Issue No. 3 – Article 20.1, Health and Welfare

The Employer rejects the Union's proposal to require the County to contribute ninety percent (90%) of the premium costs of health and life insurance for three overarching reasons. First, the Employer emphasizes that the County's current insurance program is offered to all Freeborn County employees (including bargaining unit employees); that the County's current insurance program's benefits are uniformly the same for all employees; that the language in Article 20, Section 20.1 of the CO's CBA has existed for years and this language, almost verbatim, is also found in the CSO and PD CBAs, which continues into 2010.³ Based on these facts, the Employer argues that its internally uniform set of health and welfare programs and the internal equity in premium cost contributions by its employees should trump external premium share comparisons: An opinion widely held by interest arbitrators.

Second, the Employer notes that it offers two health insurance programs, namely, a Deductible Plan and a Voluntary Employee Benefit

³ The PD's 2010 Agreement provides for greater term life insurance benefits than that provided to other County employees.

Account/Association Plan (“VEBA Plan”). The relevant 2010 rates associated with each plan are arrayed in Table 2 below. Moreover, as the Employer

Table 2 Freeborn County’s 2010 Monthly Health Insurance Premium Costs†

Single Coverage Rate	County’s Single Payment Rate	Family Coverage Rate	County’s Family Coverage Rate
Deductible Plan			
\$608.00	\$345.63	\$1,625.50	\$796.65
VEBA Plan			
\$529.00	\$292.43	\$1,414.50	\$726.85

†See Employer Exhibit, Section B, 10.

observed, the VEBA Plan has lower premiums than the Deductible Plan mainly because the former is a high deductible medical plan. Further, these lower premiums enable the County to contribute to health saving accounts for participants; contributions that are made on a pre-tax basis; participant account balances compound and accumulate year-after-year on a tax-free basis; participant account balances can be used to cover deductible charges. Thus, the Employer argues, it has been encouraging its employees to opt for the more economical VEBA Plan by manipulating the structure of its relative contributions to the two plans. Between 2009 and 2010, the Employer points out that it increased the share of its VEBA Plan premium costs, while holding constant the share of the Deductible Plan’s premium costs that it pays. (Employer Exhibit, Section B, 9 and 10)

With reference to Employer Exhibit, Section B, 8, the Employer claims that its initiative to promote VEBA Plan enrollment is working since among the 139 employees who enrolled in both plans in 2010, 100 opted to participate in the VEBA Plan. Since the VEBA Plan's premiums are lower, even with employer contributions to the employee's VEBA account, this plan is less expensive than the Deductible Plan. Overall, the Employer argues, it is pursuing a socially responsible strategy by using economic incentives to hold down its health insurance costs and to regulate (minimize) the utilization of health care resources; that the Union's proposed amendment to Article 20, Section 20.1 would incent employee to enroll in the more expensive Deductible Plan, thwarting the County's socially responsible strategy for conserving health care expenses/resources and cost the Employer several hundred thousand dollars in incremental expenditures.⁴ Further, the Employer argues that the comparison of Freeborn County's premiums *versus* the external comparable counties In Union Exhibit 11 is replete with shortcomings—inter-county plan benefits are not controlled and, more problematically, the Union's data does not reflect Freeborn County's "actual" premiums, as suggested by comparing the Freeborn County data arrays in Table 1 and Table 2.

Finally, the Employer points out that the Union's "90%" proposal is beyond the County's ability to pay. William Helfritz, Financial Manager, testified on point, stating the following: (1) The County's annual budget is approximately \$40 million

⁴ Forecasting the incremental cost associated with the Union's health and welfare proposal cannot be made with precision. Such a forecast would depend on several behavioral assumptions that may or may not materialize. Nevertheless, as the County argues, the Employers health care expenditures could nearly triple from approximately \$1 million to \$3 million, as the Employer suggests. (See Employer Exhibit, Section B, 8)

and its Total Fund Balances equal approximately \$14 million. Within the County's \$14 million in Total Fund Balances is about \$511,000 in its "Ditch" fund, which is not accessible for County use. Therefore, the County's "accessible" Total Fund Balance is closer to \$13.5 million: A reserve balance that can cover about four (4) months of County expenses. (Employer Exhibit, Section B, 12, p.1)

(2) When "All Governmental Funds" are introduced into the analysis, the number of months of expenditures that can be covered by fund balances was 2.28 months in 2008, compared to 4.00 months in 2007, 4.83 months in 2006, 3.12 months in 2005, 5.00 months in 2004 and 5.86 months in 2003. (Employer Exhibit, Section B, 12, p.2) The County's 2009 and 2010 "Balance Sheet" will be indistinguishable from its 2008 Balance Sheet.

(3) The Minnesota State Auditor recommends that counties maintain at least 4.2 months of expenditures in fund balances. In 2008, the County had only 2.8 months of expenditures in fund balances, using All Governmental Funds or, alternatively, about 4 months, using the County Balance Sheet's "accessible" fund balance—a picture that is not expected to appreciably change in 2009 and 2010.

Mr. Helfritz concluded this testimony with the opinion that the County does not have the ability to pay for the Union's sought after amendment to Article 10, Section 10.1 In the final analysis he opined that the County "cash flow" needs exceed its unencumbered reserve balance.

IV. DISCUSSION AND INTEREST AWARDS

A. Introduction

It is always a good idea to put interest arbitration and its related arbitral decisional-making criteria into context. When impasses are reached in collective bargaining, they are generally resolved through strikes or lockouts. This generalization applies to all of private sector labor relations and to some parts of the public sector as well. The reason work stoppages result in impasse resolution is quite simple. Strike costs mount with each passing day of work stoppage and, in response, one or both of the parties to the impasse soften their bargaining positions; they begin the process of concession and compromise that results in settlement.

Minn. Stat. 179A.01 ~ 179.40 sets forth the framework for public sector collective bargaining in Minnesota. Underlying this policy is the conviction that public sector wages, hours and other conditions of employment are best determined through collective bargaining negotiations between representatives of the public employers and public employees. (Minn. Stat. 179A.01, Subd. (c), Clause (2)) Recognizing that collective bargaining negotiations sometimes breakdown, Minnesota public policy grants some bargaining units the conditional right to strike, as a means of resolving their bargaining impasses. However, “essential” employees such as police and guards at correctional facilities may not strike. (Minn. Stat. 179A.18, Subd. 1 and Minn. Stat. 179A.03, Subd. 7) Rather, public policy provides that bargaining impasses involving essential employee units are to be resolved through binding interest arbitration. (Minn. Stat. 179A.16, Subd. 2) *In other words, interest arbitration is substituted for the strike. Critically,*

it is not a substitute for collective bargaining, which is the policy-preferred means for determining wages, hours and conditions of employment.

If interest arbitrators routinely rendered binding awards that were outside the range of settlements that the parties themselves might have reached, they unwittingly would end up “chilling” prospective collective bargaining negotiations (i.e., chilling the process of compromise and concession): An outcome that undermines the intent of Minnesota’s public policy that wages, hours and conditions of employment are best left to the parties, not to interest arbitrators, to jointly determine. Thus, when considering an issue at impasse, interest arbitrators are inclined to look for evidence in the record that supports the conclusion that their determination is one that the parties would have reached if their negotiations would have concluded in settlement. In a related vein, in the absence of exceptionally convincing arguments and supporting evidence by the moving party, interest arbitrators are reluctant to award innovative or new policies into the contract.

Interest arbitrators often rely on “external comparisons” to determine how the parties might have settled their impasse. For example, it is hard to imagine a better decisional criterion upon which to base an arbitrated wage determination than the negotiated wage settlements reached by other similarly situated bargaining units. Further, interest arbitrators often rely on “internal comparisons” for guidance in judging how the parties might have resolved their issue through negotiations. The classic example is health insurance. Group health insurance policies are less expensive the larger the number of individuals being insured

because of scale economies and because the risk of illness is spread more widely. Thus, public employers typically purchase health insurance policies that cover all bargaining units, offering them the same coverage at the same premium costs. To fashion an interest award that would upset this internal practice would probably trigger an avalanche of “me too” demands from the other bargaining units, disrupt the internal equity that has evolved around this issue and it could even compromise the strategy of minimizing costs through “group” coverage. For these reasons, it is difficult to imagine that the parties would have ever settled on a negotiated health insurance outcome that would distinguish one of its bargaining units from another.

B. Issue No. 1 and Issue No. 2

Prior to April/May 2009, the record is that almost all of the CSO duties were performed by Shift Leaders, who were members of the CO bargaining unit. Moreover, pursuant to Article 23, Section 23.1, whenever COs were assigned as Shift Leaders they were paid an additional two dollars (\$2.00) per hour for each hour worked in this assignment. In April/May 2009, the CSO job classification was established and, subsequently, whenever a CO was assigned as a CSO he/she was “working out of classification” and therefore compensated pursuant to Article 10, Section 10.1. Officer Turvold testified that when he worked as a Shift Leader he received a two dollar (\$2.00) differential in pay for every hour worked; whereas, he was not compensated for the CSO duties he performed in 2010 because he was never assigned CSO duties “... for two (2) consecutive weeks or more...,” as required in Article 10, Section 10.1. The record shows that he

performed almost all of the duties of the CSO just as he had performed most of the duties under the Shift Leader job title.

There is not a shred of evidence in the record to suggest that the County or the County and Local 320 contemplated that establishment of the CSO job classification, bargaining unit and CBA would or should nullify Article 23, Section 23.1. Further, there is no evidence that said establishment was to somehow change the basis for compensation of COs for performing most of the new CSO classification's duties, which were not shown to differ from the duties previously performed by the defunct Shift Leader position.

Against this backdrop, the undersigned concludes that under a collective bargaining regime that would have permitted the Union to strike to preserve the vitality of Article 23, Section 23.1 and further, had the Union threatened to strike, the Employer in this case would have acquiesced to the Union's demand to preserve the *status quo*. The Union is not seeking to change in 2010 what unit members enjoyed as a benefit in 2009. The Union only seeks to preserve the negotiated Article 23, Section 23.1 benefit of paying COs' a shift differential of two dollars (\$2.00) per hour for every hour worked as a CSO, work that is indistinguishable from every hour previously worked as a Shift Leader. It is the County not the Union that seeks to change the substance of the CBA.

The County's argument about internal inconsistency and pay inequity between COs working out of classification *versus* CSOs is not persuasive. This argument was not reinforced with experiential data. For example, data showing how a hypothetical two dollar (\$2.00) differential would have actually distorted

specific 2010 CO/CSO compensation ratios; showing that said distortions, if any, would have actually amounted to more than trivial annual monetary differences. Furthermore, the record evidence is not rich enough to empirically establish that preservation of the two dollar (\$2.00) *status quo* would increase “working out of classification” expenses relative to “Shift Leader” expenses. Therefore, the County’s ability to pay argument also fails. Nevertheless, preservation of the *status quo* means that perturbations to Article 10, Section 10.1 should be kept at a minimum, as this language is not unique to the CO’s CBA, appearing as it does in the CSO and PD CBAs. It also means that Article 23, Section 23.1 should not be reduced to substantive rubble. For all of the above reasons, Issue No. 1 and Issue No. 2 are resolved as set forth below.

C. Awards – Issue No. 1 and Issue No. 2

Drafted in the form of contract language designed to implement arbitral intent, Issues No. 1 and No. 2, respectively, are resolved as follows:

Article 10.1 With the exception of duties performed by Correctional Sergeant Officers, in the event that any employee covered by the Agreement performs all of the duties of any position higher than the employee’s for two (2) consecutive weeks or more, the employee shall be paid at the higher rate after the first two (2) weeks of work in the higher classification retro to the first date in the position. This should be the first step in the new classification that is higher than the employee’s current step in their current class.

23.1 Correctional Sergeant Officers: Establish differential for Correctional Officer at two dollars (\$2.00) per hour for hours assigned as Correctional Sergeant Officer effective retroactive to January 1, 2010.

Only new wording to the above-awarded 2010 CBA is underlined. These awards are ordered and, retroactively, take effect on January 1, 2010.

D. Issue No. 3

The Union urges that Article 20, Section 20.1, Health and Welfare, should be amended to expressly provide that the Employer pay 90 percent of health and life insurance premium costs. While acknowledging, in so many words, that this change cannot be supported based on application of the “internal comparison” criterion, it argues that the “external comparison” criterion supports its case. Referring to two (2) different groups of comparable counties, the Union showed that on average, the County pays a much smaller share of health premium costs than do the counties contiguous to Freeborn County and the counties in Freeborn County’s Development Region. For example, the County only pays 63.5 percent and 54.8 percent of single coverage and family coverage rates, respectively. In contrast, the respective comparable percentages for the five (5) counties contiguous to Freeborn County are 102 percent and 69.4 percent, and for the ten (10) other counties in its Development Region are 99.4 percent and 73.4 percent. The gross disparity in out-of-pocket health insurance expenses paid by County COs cannot be sustained, the Union argued.

For the reasons discussed below, the Union’s proposed change to Article 20, Section 20.1 is denied. First, the raw data underlying the averages shown in Table 1’s top two (2) numerical rows leave much to be desired. For example, excluding Freeborn County, there are ten (10) counties in its Development Region, but the raw data provided on Rice County was insufficient, precluding its inclusion in the Development Region’s average computations; the undersigned concludes that Fairbault County’s raw data are erroneous, producing the nonsensical 102 percent noted above. Next, the Freeborn County data shown in

Table 1's third (3rd) numerical row are inexplicable. Said data differs from supposedly comparable data appearing in Union Exhibit 10; they apply only to the County's Deductible Plan rates and, by the undersigned's count, only 39 of the County's 139 covered employees subscribed to that plan in 2010. Finally, the undersigned is not at all convinced that the comparable counties' health insurance coverage matches that of Freeborn County. In summation, the data and analysis the Union relied on to make its external comparison case are wanting.

Second, although the budget documents the County introduced into the record were incomplete, the undersigned concludes from Mr. Helfritz's more expansive testimony that the Union's "90%" proposal, if affirmed, would put the County in a financial bind. Without contradiction, Mr. Helfritz credibly testified that the County's fund balance cover less than four (4) months of expenditures, which is well below the State Auditor's recommendation that counties should hold between 4.2 and 6.6 months of unencumbered fund balances. Therefore, it is concluded that to affirm the Union's proposal would impede the County's ability to conduct its operations in a fiscally responsible manner.

Third, the undersigned is persuaded by the County's contention that to affirm the Union's proposal would undermine its VEBA Plan initiative that is designed to curb health insurance premium cost inflation: A valid public policy interest.

Finally, there is no question that all of the County's union and non-union employees are covered by the same health insurance plan, they pay the same

premium-cost shares and there is no question this scenario dates back several years. Moreover, the language in Article 20, Section 20.1 of the CO's CBA is almost identical to that found in the CSO and PD CBAs, and the County and Local 320 settled the latter bargaining units' 2010 CBAs without altering said language. What the Union seeks to achieve through interest arbitration is to change the health insurance subsection in the CBA—a change that, in all likelihood, it never would have been able to achieve through hard bargaining. As previously discussed, interest arbitration is not a substitute for collective bargaining. Innovations like the Union's "90%" plan should be legislated at the bargaining table, not in interest arbitration. Internal comparisons control in this case and all such comparisons point to a 2010 CBA with Article 20, Section 20.1 language that replicates that found in the 2009 CBA.

E. Award – Issue No. 3

The language in Article 20, Section 20.1 of the 2010 CBA shall not be changed to establish a specific Employer contribution.

Issued and Ordered on the 21st day of
January, 2011 from Tucson, Arizona.

Mario F. Bognanno, Labor Arbitrator &
Professor Emeritus