IN THE MATTER OF INTEREST ARBITRATION BETWEEN

County of Dakota, State of Minnesota	)	**BMS Case No. 10-PN-1346**
	)	
"County" or "Employer"	)	**Issue: 2010 Merit & Wage Increases**
	)	
and	)	**Hearing Date: 08-17-11**
	)	
Law Enforcement Labor Services, Inc. Local No. 213 – Licensed Peace Officers	)	**Briefing Date: 09-01-11**
	)	
"LELS" or "Union"	)	**Award Date: 09-27-11**
	)	
	)	**Mario F. Bognanno, Labor Arbitrator & Professor Emeritus**

I. JURISDICTION

Pursuant to Minn. Stat. §179A.16 the above-captioned matter was heard in Hastings, Minnesota on August 17, 2011. The parties are the County of Dakota and Law Enforcement Labor Services, Inc., Local No. 213, both signatories to a Collective Bargaining Agreement ("CBA"), with effective dates of January 1, 2009 through December 31, 2009. (Union Tab 2 & Employer Exhibit 1)

Prior to the expiration of their 2009 CBA, the parties commenced 2010 CBA negotiations. About the same time, the Dakota County Board of Commissioners determined that for budgetary reasons 2010 wages would be frozen at their 2009 levels and there would be no 2010 merit pay for the County's 506 non-union employees. (Employer Exhibit 48) In the wake of this determination, the County's remaining 1,157 employees, whose job classifications were allocated across sixteen different bargaining units, their unions and the County were negotiating 2010 CBAs. LELS, Local No. 213, represented the County's General Duty Deputy (Sheriffs' Deputies) and Special Duty Deputy (Inspectors) job classifications.

At the hearing, the Union charged that the Board's 2010 wage freeze and zeroed-out merit pay forestalled genuine collective bargaining with the Employer. The Employer demurred, arguing that genuine bargaining had occurred. Further, the Employer argued that the Board's 2009 pay announcement was legal, legitimate and designed to alert non-union employees that their 2010 pay would remain at 2009 levels.[1] The 2010 negotiations between the parties broke down and subsequent mediations failed to produce a voluntary settlement.

Thus, on April 6, 2011, the Union requested that the instant impasse be resolved *via* conventional interest arbitration. On April 21, 2011, pursuant to Minn. Stat. §179A.16, Subd. 2, two issues were certified to arbitration, namely:

1. General Wage Increase — A 2010 general wage Increase, if any — Art. XXXII & Appendix.
2. Merit Pay Increase — A 2010 merit pay increase, if any — Appendix A.

(Union Tab 3 & Employer Exhibit 5)

At the time interest arbitration was initiated, the parties had not settled on the duration of the 2009 CBA's successor agreement. However, later on the parties agreed that the successor agreement's effective duration would be January 1, 2010 to December 31, 2010. (Employer Exhibits 3 and 4) At the hearing, the parties stipulated that any 2010 wage and/or merit adjustment that was awarded should be retroactive to

[1] The Board's 2010 decision to freeze 2010 wages and merit pay was also the bargaining position the Employer argued in 2009-2010 negotiations with all of its sixteen bargaining units. In fact, ten of these units have reached 2010 negotiated settlements of 0 percent wage and 0 percent merit increases; this settlement also has been tentatively reached with an 11th bargaining unit; two of the five unsettled units are LELS-represented: the instant unit and the 15 member Sheriff Licenses Supervisor unit; two of these five units are IBT represented: the 13 member Sheriff Non-Licensed Supervisor unit and 26 member Road and Bridge Maintenance unit; the last unsettled unit is the 30 member Attorney Employees' Association. (Employer Exhibits 47 and 49)

January 1, 2010. At the hearing, the parties were given significant latitude in the presentation of their cases; they were given the opportunity to cross-examine witness testimony and make inquiries of the opposite party's exhibits; voluminous binders of each party's exhibits were accepted in the record. On or about September 1, 2011, the parties filed timely post-hearing briefs. Thereafter, the issues at impasse were taken under advisement.

II. APPEARING

FOR THE COUNTY:

Frank Madden, Esquire
Matt Smith, Director, Financial Services
Nancy Hohbach, Acting Director Employee Relations
Tim Leslie, Chief Deputy, Sheriff's Office

FOR LELS:

Kevin McGrath, Business Agent
Dennis O. Kiesow, Business Agent
David Sjogren, Detective

Thomas Jacobson, Detective
Matt Regis, Deputy

III. FINAL POSITIONS OF THE PARTIES

A. Union's Final Positions:

2010 General Wage Increase: The Union requests a 2 percent increase in 2010 wage rates over 2009 wage rates. In contract terms, this request would amend the CBA as follows:

ARTICLE XXXII WAGE RATES

32.1 Effective January 1, ~~2009~~ 2010 non-limited full-time and non-limited part-time employees shall be compensated according to Appendix A, hereto attached.

APPENDIX A

~~2009~~ 2010 WAGE RATES:

Classification	Minimum	Control Point Q3	Maximum
General Duty Deputy	51,900	66,800	71,700

Special Duty Deputy	54,200	70,300	75,600

Employees employed as of January 1, ~~2009~~ 2010, whose salaries are below the range maximum shall receive a ~~3.0%~~ 2.0% general increase. The general increase is effective the first day of the first pay period closest to January 1. Employees at the salary range maximum shall receive ~~3.0%~~ 2.0% non-base lump sum payment …
The Employer shall…conduct a formal performance review of each employee to determine whether the employee shall receive a merit increase… Employees below the maximum of the salary range shall be eligible for a merit increase on the employee's anniversary date in class subject to the following.

Merit Increase: The Union requests that the 2009 Merit Matrix remains unchanged in 2010. In contract terms this request would amend the CBA as follows:

~~2009~~ 2010 MERIT MATRIX

Role Model performance rating	2% base plus 1% lump sum
Achiever performance rating	2% base plus 1% lump sum
Contributor performance rating	2% base plus 1% lump sum
Learner/Corrective performance rating	0%

Merit calculations shall be based upon the salary range Q3 control point.

In ~~2009~~ 2010 only, there will be no differentiation between performance ratings in order to transition to four performance rating levels.

If the merit increase exceeds the salary range maximum, the base increase is limited to the salary range maximum and the remainder shall be paid in a lump sum.

(Union Tab 4 & Employer Exhibit 7)

B. County's Final Positions:

2010 General Wage Increase: The County requests a 0 percent increase in 2010 wages relative to 2009 wage rates, and no increase in the 2009 salary range. In contract terms, this request would amend the CBA as follows:

ARTICLE XXXII WAGE RATES

32.1 Effective January 1, ~~2009~~ 2010 non-limited full-time and non-limited part-time employees shall be compensated according to Appendix A, hereto attached.

APPENDIX A

~~2009~~ 2010 WAGE RATES:

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Employees employed as of January 1, ~~2009~~ 2010, whose salaries are below the range maximum shall receive a ~~3.0%~~ 0.0% general increase. The general increase is effective the first day of the first pay period closest to January 1. Employees at the salary range maximum shall receive ~~3.0%~~ 0.0% non-base lump sum payment…

* * *

Merit Increase: The County requests zero 2010 merit increases and that the balance of the merit matrix language in Appendix A remain unchanged. In contract terms this request would amend the CBA as follows:

~~2009~~ 2010 MERIT MATRIX

Role Model performance rating	0% base plus 1% lump sum
Achiever performance rating	0% base plus 1% lump sum
Contributor performance rating	0% base plus 1% lump sum
Learner/Corrective performance rating	0%

Merit calculations shall be based upon the salary range Q3 control point.

In 2009 only, there will be no differentiation between performance ratings in order to transition to four performance rating levels.

If the merit increase exceeds the salary range maximum, the base increase is limited to the salary range maximum and the remainder shall be paid in a lump sum.

(Union Tab 5 & Employer Exhibit 6)

IV. FACTS AND BACKGROUND

The record evidence shows that the U. S. economy remains weak, as it struggles to recover from the depths of the "Great Recession" of 2008-09: a struggle that is marked by dwindling individual and household budgets as well as the budgets of public

and private sector enterprises. To some degree, Dakota County is an exception to this gloomy economic picture: its property taxes are the lowest among Minnesota's 87 counties and Moody's and Standard and Poor's gives the County's bonds Aaa and AAA ratings, respectively. As these ratings suggest, Dakota County's finances are well managed and, thus, not surprisingly its 2010 unreserved general fund balance was abundant, albeit incrementally lower than it was the year before. The facts making up this introductory summation of the evidence are not in dispute. These and other uncontroverted facts in the record are enumerated below.

1. In 2009, U.S. per capita income fell by 2.6 percent; in Minnesota it fell by 3.3 percent. (Employer Exhibit 11)

2. In August 2010, the nationwide unemployment rate was 9.5 percent and Minnesota's unemployment rate was 7 percent. In addition, a July 2010 poll of Minnesota adults indicated that 29 percent had their hours reduced and 36 percent had pay or benefits cut. (Employer Exhibits 12 and 28)

3. In January 2010, the state of Minnesota's gross sales tax receipts from businesses were $25 million less than forecast, outpacing positive income variances from corporate, motor vehicle and other tax revenue sources. (Employer Exhibit 15)

4. With slower than expected GDP growth, anemic job growth and the expiration of one-time federal stimulus monies, the state of Minnesota's budget outlook in December 2010 was grim, with a $6.2 billion shortfall being forecast for FY 2012-13 biennium. This forecast was later adjusted to $5.028 billion. (Employer Exhibits 16, 17,18 and 23)

5. The governor and Legislature reached a FY 2011-12 balanced budget agreement, but only after the state's June 30, 2011 shut down idled 22,000 employees for 18-days. (Employer Exhibits 20) In addition to cutting millions in state aid to local units of government, the budget-balancing agreement also delayed $762 million in state aid payments to school districts and borrowed $640 million against the state's future tobacco settlement monies. As the terms of this agreement suggest, the state's structural deficit remains intact, possibly leaving an even larger FY 2014-15 biennium shortfall. (Employer Exhibit 18)

6. In mid-2011 the specter of "Recession II" was abuzz; national GDP was growing at about 1.3 percent; consumer spending was inching downward; home values continued their downward slide; gas prices and the nationwide unemployment rate remained high. (Employer Exhibit 24)

7. Counties are the nation's public service "safety net." In 2010, Dakota County financed these public services mainly with intergovernmental fund transfers and property taxes, which accounted for 39 percent and 47 percent of its revenues, respectively. (Employer Exhibit 25) Thus, the FY 2012-13 biennial budget cuts in state aid to Dakota County is adversely affecting its programs in health care, disabled and elderly care services, chemical dependency services, child care assistance, children's and mental health grants. (Employer Exhibit 18).

8. At the time the Board was formulating the 2010 budget, the County had already experienced "un-allotments" or state aid cuts in the amount of $2.3 million and $1.7 million in 2008 and by mid-2009, respectively, and an additional $3.5 million in reduced state aid was forecast for FY 2010, which began on June 1, 2009. (Employer

Exhibit 26) In December 2010, after the Board had adopted its 2010 budget, the state cut another $2.6 million in aid. Accordingly, the Board's 2010 budget was premised on these actual and forecast cuts in state aids plus falling investment earnings, which in combination amounted to about $9 million in lost 2010 revenues; property tax revenues were expected to fall by $5.1 million in 2010 because of falling property values. (Employer Exhibit 26; Testimony of Matt Smith, Director, Financial Services) In the face of these revenue projections, the Board reduced its 2010 operating budget by 5.3 percent through freezing pay and by reducing travel and training expenses, permanently eliminating 55 vacant FTE positions, delaying building projects and reducing spending on capital equipment, for example, and by raising revenues from non-traditional sources without raising property tax levies. (Employer Exhibit 27 & Union Tab 7, p. 20)

9. Since 2007, the number of jobs in Dakota County has fallen by 1.8 percent (or 3,000) annually; between 2007 and 2010, average weekly wages declined in every County industry except professional services, where weekly wages remained unchanged; between 2007 and 2010, Dakota County's median household income has fallen by approximately $8,000; between 2007 and 2011, median assessed home value fell steadily from $246,100 to $200,800 and petitions challenging property tax assessments increased from 156 in 2007 to 554 in 2010. (Employer Exhibit 30) The increase in tax petitions is consistent with a 2011 Dakota County residential survey which showed that residents increasingly see "taxes" as the County's most "serious issue," eclipsing issues like "jobs," "schools," "crime," "safety" and the like. (Employer Exhibit 31)

10. Between calendar year 2009 and 2010, Dakota County's General Fund balance fell by about $2.4 million. The year-end 2009 General Fund balance was $73,657,313 and that of 2010 was $71,202,672, of which $62,365,602 were "unreserved" monies that could be spent at the County's discretion. (Employer Exhibit 33 & Union Tab 7, p. 22) The 2010 General Fund's unreserved balance as a percent of General Fund expenditures was 72.4 percent: a percentage that is significantly larger than the State Auditor's 35 percent to 50 percent recommended "liquidity" cushion. (Cross-examined testimony of Mr. Smith)

11. Dakota County is one of seven counties in the Twin Cities Metropolitan area; its 2008 property taxes were the metro area's lowest; the state of Minnesota's average gross per capita property taxes on a $200,000 home were $1,000, whereas, they were only $500 in Dakota County—the lowest among *all* 87 Minnesota counties. (Union Tab 7, p. 34)

12. The record evidence suggests that Dakota County government has long maintained a strong fiscal profile, as its bond rating reflects. The County was one of only 43 counties in the United States with an Aaa 2010 bond rating by Moody's. (Union Tab 1) The County's 2010 Standard and Poor's bond rating was AAA. These ratings remained unchanged in 2011, except that Moody could change its 2010 Aaa/"stable" rating to Aaa/"negative" in 2011. (Employer Exhibit 37 & Union Tab 7, p. 42; Testimony of Mr. Smith)

IV. <u>UNION POSITION</u>

The Union begins by observing that a 2 percent (1 percent) 2010 general wage proposal would cost the County $64,048.91 ($32.024.45) in increased wage outlays,

and its 3 percent merit pay proposal would cost an additional $95,035.25. If awarded both a 2 percent general wage increase and 3 percent merit pay increase, the County's wage and merit pay outlays would increase by $159,084.16 annually. (Union Tab 7, pp. 5 – 11) The Union maintains that these increases in incremental costs are modest and well within the County's ability to pay.

Ability to Pay: To support this conclusion, the Union points to the following pieces of record evidence: (1) at year-end 2009 and 2010, the County's unreserved General Fund balances were $65,165,879 and $62,365,602, respectively; (2) the County's total deposits, cash and investments in 2010 were $257,084,602 (Union Tab 7, p. 22 and p. 30); (3) the Sheriff's unit did not spend $1,991,650 of its 2010 budget monies (Union Tab 7, p. 43); (4) as a percent of General Fund expenditures, the County's 2010 General Fund balance (unreserved balance) was 75.6 percent (72.4 percent), which was far in excess of the State Auditor's recommended "cash flow" cushion of 35 to 50 percent; and (5) Moody and Standard and Poor have given Dakota County their highest bond ratings, Aaa and AAA, respectively.

Accordingly, the Union concludes, Moody's and Standard and Poor's sound financing/low-risk bond rating is independent verification that the County can afford the Union's 2010 wage/merit pay proposals, in spite of the fact that Dakota County has the lowest property tax rates among all of Minnesota's 87 counties. Further, the most costly combination of the Union's monetary proposals (i.e., $159,084.16) amounts to a minuscule .26 percent of Dakota County's year-end 2010 unreserved General Fund balance (i.e., $62,365,602), which are funds that may be used at the Employer's

discretion. The Union's 2010 wage/merit pay proposals are well within Dakota County's *ability to pay*.

Pay Equity: The Union points out that the bargaining unit's two jobs classifications are "balanced classes." Minn. Stat. 471.992, Subd. 2. In addition, the Union shows that implementation of the Union's wage/merit pay proposals would not compromise Dakota County's record of pay equity compliance. The Employer uses the so called "statistical analysis" option to test whether its inter-gender pay relationships are equitable and, thus, in compliance with the state's Local Government Pay Equity Act. This test's critical statistic is the "underpayment ratio," which is 98 percent in this case. The Union points out that to pass the *pay equity* test, the ratio must be greater than or equal to 80 percent. (Union Tab 8)

External/Internal Comparisons: Citing precedence, the Union argues that the Arbitrator's 2010 wage/merit pay award should be based on the pay of comparably situated deputy bargaining units in the metro area. Such an analysis, the Union urges, would lead to a 2010 pay adjustment based on the "value" that other jurisdictions have placed on deputy work. Dakota County's deputies and the deputies working in the surrounding counties share common market and individual characteristics like the relative abundance of qualified job applicants, educational/licensure requirements, work standards, work hours, work equipment, work duties and work hazards. The Union asserts that these are the factors that affect a job classification's "value". Thus, interest arbitrated wage determinations should be and are based on the *external wage settlements* of kindred job classifications.

Conversely, the Union asserts, deputy pay adjustments that key on the negotiated wage agreements reached between Dakota County and its *internal* non-peace officer bargaining units would be the result of apple-and-orange comparisons—of spurious comparisons. Accordingly, the Union contends, the fact that ten of the County's sixteen bargaining units have reached 0 percent wage and 0 percent merit pay negotiation settlements is of limited materiality. Although it is significant that five of the six non-settled bargaining units are, like the instant unit, "essential" units that may not strike to resolve bargaining impasses.[2] (Employer Exhibit 49)

Continuing, the Union presents data on the monthly pay of sheriff's deputies in the Twin Cities Metropolitan Area's seven counties. The monthly salaries of deputies in Scott and Dakota Counties have ranked first and second, respectively, since 2006, with deputy salaries in Anoka, Carver, Hennepin, Ramsey and Washington counties ranked lower. Except for Carver and Dakota counties, deputies in the remaining five metro area counties are receiving 2010 merit pay increases, either negotiated or arbitrated. Among the latter counties, Ramsey and Scott deputies negotiated 2.00 percent and 1.00 percent increases in monthly pay, respectively. (Union Tab 9, pp. 107-08) Because Scott and Dakota counties are the only two with merit pay systems and to preserve their historic first and second rank-ordered pay relationship, the Union contends that its 2 percent general wage increase proposal is in order.

In this same vein, the Union points to the Twin Cities suburban communities of Coon Rapids and Shakopee both of which were awarded 2010 wage increases of 1 percent. (Union Tab 9, pp. 109-113) Finally, the Union raises two additional economic

[2] The Community Corrections Association, an essential bargaining unit, has reached a tentative 2010 agreement with the County.

arguments in support of its 2 percent general wage increase proposal. First, the federal government increased the wages of its civilian employees by 2 percent in 2010. (Union Tab10, pp. 119-20) Second, the "all items," Minneapolis-St. Paul area, CPI – Urban Wage Earners and Clerical Workers (1982-84 = 100) increased by 2.3 percent in 2010. (Union Tab 10, p. 115)

Merit Pay: The Union begins by referring to the following facts: first, in 1993, the parties agreed to transition from their annual "pay step" system to an annual "merit-based" pay system; second, since that time, the County's deputies have received annual merit pay increases (Union Tab 11, pp. 129-64); and third, all of the terms comprising the merit pay language in Appendix A were negotiated. (Union Tab 11, pp. 127-128) Based on this factual history, the Union argues that the County carries the burden of establishing why the Merit Matrix should be zeroed out, as it is proposing. (Union Tab 11, pp. 124-25)

The Union points out that in 2009 the Employer proposed adding a fourth performance level, "Role Model," to the Merit Matrix. To facilitate the transition to this new four-level system, during 2009 negotiations, the parties agreed to the Appendix A language, "In 2009 only, there will be no differentiation between performance ratings …". Accordingly, the Union maintains, the Employer's decision to "unilaterally" zero-out their merit pay bargain was wholly unexpected. (Union Tab 11, pp. 165-82)

The Union further argues: first, merit pay should be a function of individual performance and not of the state of the overall economy; second, merit pay is the vehicle by which deputies move to the top of the pay range: a vehicle that is slow and a range that itself has increased slowly in the post-2002 years (Union Tab 11, pp. 185-87

& Employer Exhibits 53 and 54); third, with merit increase rates of 2 and 3 percent, it would take a ten year employee from approximately 9 and 6 years, respectively, to reach the maximum of the range and 40 percent of bargaining unit members have less than ten years of service (Union Tab 11, pp. 185-86); fourth, while the contract's new "Role Model" performance level would presumably allow the "extraordinary" deputy to achieve the maximum of the pay range in fewer years, this promise was recently narrowed by the Board. Dakota County's 2010 Merit Compensation Policy & Plan, as distinct for the parties' CBA, newly limits the number of employees who may receive a Role Model rating to a goal of 10 percent of all performance reviews (Union Tab 11, p. 168 and p. 172): the County's Board is once again preempting negotiations just as it did by freezing 2010 wages and suspending 2010 merit pay; and fifth, continuing in this vein, the Union notes that even before the commencement of its 2011 collective bargaining negotiations, the Board has determined that non-union employees will receive a 1 percent increase in merit pay in 2011 (Union Tab 11, p. 183).

V. COUNTY POSITION

The County initially pointed out that counties, unlike cities, in Minnesota are responsible for providing "safety net" public services, such as human services, public health services and criminal justice services; in recent years, the financing of these services have increasingly fallen on the counties as the state has cut county aids to solve its own budget problems. Moreover, the Employer emphasizes, state aid and the County's other sources of revenues are falling at the very time public demand for human services, veteran's services and housing foreclosure assistance is increasing. Note:

- State aids to the County fell in 2008, 2009 and 2010 by $2.3 million, $5.2 million and $2.6 million, respectively. (Employer Exhibit 26; Testimony by Mr. Smith)
- Because of falling property values, the County's property tax base fell by 4 percent and 6.5 percent between 2009 – 2010 and 2010 – 2011, respectively. In addition, lower interest rates have cut into the County's budgeted revenues from investments by $10 million in 2009 and $5 million in 2010. (Employer Exhibit 26; Testimony by Smith)

Therefore, in December 2009, the County's operating budget for 2010 was reduced by 5.3 percent or $13.7 million; 55 FTE positions were eliminated.[3] (Employer Exhibit 27)

Economic Factors: The Employer maintains that the nation's struggling economy has resulted in falling levels of employment in Dakota County; increasing levels of County unemployment; falling weekly earnings; falling median household income; falling assessed home values; increased numbers of property tax challenges filed with the Minnesota Tax Court. (Employer Exhibits 28 – 30) In spite of these economic headwinds and the County's budget adversities, the Employer notes its credit risk has been superlative, albeit the risk that Moody's might downgrade the County's bond rating from Aaa/"stable" to Aaa/"negative" later this year. (Employer's Exhibit 37) To prevent this from happening, to prevent higher interest charges on its debt, the County argues that it needs to be particularly prudent in the management of its finances going forward,

[3] The economic outlook is not good. Indeed, under the state's FY 2012/2013 biennial budget, Dakota County will lose more in state aid and is expected to participate in more cost-sharing. This budget is expected to cost Dakota County's 2011 operating budget $7.8 million and $4.3 million in 2012. Relative to 2010, Mr. Smith testified that the County's 2011 operating budget was reduced by 4.9 percent and 46 FTE additional positions were eliminated. Mr. Smith stated that the state's FY 2012/2013 biennial budget did not resolve the state's structural deficit and, therefore, the County anticipates that the state's FY 2014/2015 biennial budget will include more cuts in state aid to counties and cost-shifting measures such as its contemporary decision not to finance the Market Value Homestead Credit program. (Employer Exhibit 36)

much as it was when it legitimately informed non-union employees that they would not be receiving 2010 wage/merit pay increases. In this vein, the county's economically strapped residents have made known their resistance to property tax increases as well as their support for the Board's 2010 wage/merit pay decisions and its decisions to maintain core County service levels without raising property taxes. (Employer Exhibits 31 and 32)

Next, the Employer maintains that its 2010—0 percent wage increase and no merit pay increase—bargaining positions were advocated in the negotiations with all of its bargaining units, much as they were determined for non-union employees. In addition, the Employer points out that the County cut its 2010 costs through a variety of means, such as streamlining services, deferring capital expenditures and by leaving vacated positions unfilled. However, these cost-saving measures did not free up monies for 2010 wage/merit pay increases. The Sheriffs Department, unlike other County departments, was not downsized in 2010: ten deputy positions were added in 2011. (Employer Exhibit 26)

Further, the Employer argues that the County's year-end unreserved General Fund balances should not be used to finance ongoing expenses, such as increases in wage and benefit costs. Rather, said reserve balances are designed to cover cash flow needs that may arise because operating revenue flows tend to lag behind operating expenditures. (Employer Exhibit 33) In addition, to finance the LELS' wage/merit pay proposals from these balances would cascade into wage/merit pay demands by the County's other bargaining units and it would "chill" future of negotiations with LELS

because the latter would pursue interest arbitration to achieve its economic bargaining targets.

Finally, the Employer challenges the Union's use of the CPI, noting that inflation did not erode the bargaining unit's "real" 2009 earnings and, therefore, the Union's claim for a 2010 "catch up" or inflation-based wage premium is unfounded. The Employer points out that the annual, "seasonally adjusted," CPI for Midwest Urban consumers changed by -0.6 percent in 2009. (Employer Exhibit 56) Moreover, the unit's 2009 general wage increase of 3 percent, merit pay increase of 2 percent plus 1 percent lump sum, 1.8 percent salary range increase and the -0.6 change in 2009 consumer prices, resulted in an increase in an 8 percent in "real" 2009 earnings. The Employer concludes by noting that with the possible exception of 2005, this same "real" earnings scenario has been repeated annually since 2000. (Employer Exhibit 55)

Internal Consistency: Citing precedent, the Employer reiterates that *internal consistency*— maintaining the pattern of wages and benefits negotiated by internal bargaining groups—is the paramount decision standard used by Minnesota arbitrators in interest cases. The Employer observes that for several decades Dakota County has maintained a performance-based, uniform compensation system with (1) general wage (2) merit matrix and (3) salary range components. Historically, the general wage and merit matrix components have been negotiated, whereas, the County has increased the salary range by increasing its midpoint. (Employer Exhibit s 48 and 53)

The Employer also shows that since 1995, the County and each of its sixteen bargaining units have negotiated identical general wage and merit pay increases, with the County's non-union employees receiving the sum of these increases in the form of

merit pay.[4] (Employer Exhibit 50) Moreover, the Employer has reached ten 2010 negotiated settlements and one tentative settlement with its bargaining units. All of these settlements included a 0 percent general wage increase with no merit pay increase. (Employer Exhibits 49 and 51) Therefore, the Employer concludes, pattern bargaining is Dakota County's clear historic and present collective bargaining practice; any interest arbitration award that upsets this history and the present pattern of uniform compensation adjustments would seriously destabilize the County's labor relations.

Further, the Employer observes that bargaining impasses with non-essential bargaining units are resolved *via* work stoppages and that there were no strikes over their 2010 economic package because these units found the County's position to be reasonable. In contrast, the Employer argues the LELS is exploiting its "essential" bargaining unit status—where strikes are illegal—in order to win pay increases at arbitration because it could not win them at the bargaining table. Additionally, winning at arbitration will discourage collective bargaining in the future and while encouraging more arbitration.

Next, the Employer argues that merely because deputies under the LELS' economic proposals would remain below the comparable worth "pay line," does not mean that its occupants are underpaid. Moreover, while the Union's pay proposals would not place the County out of compliance with the Pay Equity Act, it would change the pay relationships within the County, including the relationship between LELS' balanced classifications and those of female dominated classifications.

[4] In 1995 and 1996, the Attorney Employees' Association's took all of its compensation in the form of merit pay; whereas, the other bargaining units took part of their compensation in the form of wage increases as well.

External Comparisons: The Employer relies on the DCA Stanton Group IV set of counties in arguing its *external comparison* case. This set of counties substitutes Olmsted and St. Louis counties for Hennepin and Ramsey counties, which along with Anoka, Carver, Dakota, Scott and Washington make up the Twin Cities Metropolitan set of seven counties. (Employer Exhibit 59) Even so, the Employer also reports 2010 compensation evidence for Hennepin and Ramsey counties.

The Employer shows that deputy sheriffs in Anoka, Carver, Hennepin, St. Louis, Scott and Washington counties received a 0 percent general wage increase in 2010 and Carver County's deputies did not receive 2010 step increases. (Employer Exhibits 60 and 61) Moreover, deputies in the DCA Stanton Group IV set of counties had a 2010 minimum, maximum and maximum plus top longevity average annual wage of $45,339, $63,423 and $67,285, respectively. In contrast, the County's 2010 wage/merit pay positions will yield a minimum, maximum and maximum plus top longevity average annual wage of $51,900, $71,700 and $71,700, respectively. (Employer Exhibit 62) Expanding the external comparison set of counties to include Hennepin and Ramsey counties does not significantly change these external average annual wage figures. (Employer Exhibit 63)

Finally the Employer argues that it has not experienced either retention or recruitment problems, which suggests that the pay of its deputies is market-competitive. July 2009 and December 2010 postings of a deputy vacancy yielded 181 and 353 applications, respectively. (Employer Exhibit 58)

VI. DISCUSSION AND OPINION

The nation's current and prospective economic climate and almost certain prospect of continuing state of Minnesota budgetary deficits speak volumes of the importance of fiscally prudent and sustainable levels of spending at the county level of government. Dakota County has done a commendable job of prioritizing the public services that warrant sustained levels of support. In the face of falling revenues from a variety of sources—state aids, taxes revenues and investment earnings—Dakota County has downsized its workforce, streamlined its service programs, deferred capital spending projects and in 2010, froze wages and zeroed out merit pay increases for administrators and non-union employees. Also, it ruled out inflating property taxes, given the stormy economic pall hanging over the county's residences and businesses and its status as the lowest property taxed county in Minnesota. Yet, Dakota County counts itself among a handful of counties across the country that enjoys top-tier credit ratings from the nation's leading rating agencies.

Critically, the forgoing does not mean that the worth of Dakota County's workforce has been undervalued. [5] First, the pay of deputies working for Dakota County is below the pay received by Scott County's deputies, but above that received by

[5] The Employer asserts that Dakota County's appropriate external comparison group is the DCA Stanton Group IV counties, which excludes Hennepin and Ramsey counties and includes Olmsted and St. Louis counties. However, foundation for this assertion is not particularly persuasive. While Employer Exhibit 59 shows that the former counties have much larger populations than Dakota County, it also shows that Olmsted and St. Louis counties have much smaller populations. Given the paucity of record evidence addressing this issue, notice is made of the fact that Dakota, Hennepin and Ramsey counties are in the same labor market, while Olmsted and St. Louis counties are not. In the opinion of the undersigned, employers located in the former constellation of counties compete with each other, while they are not particularly cognizant of the wages and benefits being paid by employers in Olmsted and St. Louis counties. By the same token, it is opined that workers located in Dakota, Hennepin and Ramsey compete with each other for jobs in these counties. Workers living in any one of these counties apply for jobs and commute to jobs in the other two counties. These labor market dynamics are far less applicable with regard to Olmsted and St. Louis counties.

deputies working for Anoka, Carver, Hennepin, Ramsey and Washington counties: a rank ordering that has sustained since 2006. Second, to award the Employer's 2010 economic positions would not change Dakota County deputies' second place ranking among all metro area deputies. (Union Tab 9, p. 107) Third, if Dakota County deputies were to receive a 2010 general wage increase of 0 percent and their merit pay were zeroed out, as the Employer is proposing, the record's best evidence suggests that their average maximum annual pay (including steps/longevity/merit) would be $71,700 *versus* the $68,285 that was being paid to deputies in the Twin City Metropolitan area (excluding Dakota County): an annual average difference of $3,415.

Among Twin Cities Metropolitan area counties, only Carver (tentative), Ramsey and Scott counties managed to negotiate 2010 agreements. The remaining metro area deputy contracts either were or, as in the instant case, are being interest arbitrated. Hence, the parties themselves, as distinct from arbitrators, succeeded in objectively "valuing" the work of deputies through their negotiated contracts in only three of the metro area's seven counties. Therefore, in the Arbitrator's opinion, only the 2010 "negotiated" agreements should be used to guide the instant determination. Indeed, this conclusion is consistent with the maxim that arbitrators should fashion awards that are akin to those the parties themselves would have reached through successful bargaining, not arbitrating.

The negotiated Carver (tentative), Ramsey and Scott county 2010 general wage increases were 0 percent, 2 percent and 1 percent, respectively, and although Ramsey and Scott negotiations also preserved step/merit increases, the Carver (tentative) settlement does not. These external comparison data (settlements) do not reflect a

discernible pattern. Rather, they form a uniform, three-point distribution of settlements —high, medium and low—as if random, which suggests that local, county-level circumstances, not area wide market forces, determined these settlements. Further, regarding Dakota County specifically, there is nothing in the record to suggest that its deputy pay lags behind metro area deputy pay, as discussed above. Also telling is the increasingly larger number of applications the County received for both of its recent vacancies: 2009, 181 applications; 2010, 353 applications. Finally, relevant Consumer Price Index data in Union Tab 10, p. 115 show that during 2009 urban wage earners and clerical workers in the Minneapolis-St. Paul SMSA experienced a -.9 percent decline in consumer prices. This fact does not form an independent and credible basis for awarding anything like a 5 percent increase 2010 wages/merit pay, as proposed by the Union.

While macro economic and external comparison data do not light a clear path for raising 2010 wages/merit pay, the fact remains that two metro area counties reached 2010 CBA that raised these components of pay. Thus, at this point, the undersigned turns to a brief evaluation of the County's ability to pay the Union's economic proposals. On balance, the Union's litany of reasons explaining why the County is able to pay is persuasive. There is no question that in the short run the Employer has on hand fairly liquid assets ($257,084,602) and/or General Fund unreserved balances ($62,365,602) that could be used to cover the incremental costs of the Union's proposal ($159,084.16). This could be done without disrupting the flow of County services and without destabilizing its fiscal standing.

Further, the undersigned is cognizant of the fact that the County did not make provision for arbitrated 2010 wage/market pay increases in its FY2010 budget. Nevertheless, the incremental funds that would be needed to cover the Union's 2010 economic proposals amount to only .25 percent of the County's 2010 operating expenses. Thus, to cover the referenced cost increment in the long run, the County would have to rebalance its priorities, possibly laying off non-deputy employees, as Mr. Smith testified may be necessary, or even raising property taxes. Nevertheless, in the final analysis, the County year-after-year near-cash and General Fund balances are structurally abundant: a result of the Board's overall public finance strategies and its prudent management of public expenditures. Thus, with no intent to penalize Dakota County for its fiscal successes, which are commendable, the simple fact remains that reallocating only $159,084.17 from sources like these to finance recurring deputy pay expenses would not even dent the County's fiscal profile.

So what should the deputies' 2010 wage/merit pay increase be? On numerous occasions this Arbitrator has opined that the controlling standard for deciding interest cases is that the award should reflect what the parties themselves would have negotiated through successful bargaining. This standard begs another question, namely: Is it likely that the parties would have replicated the bargain reached by either Ramsey or Scott counties? Given the facts and circumstances of this case, the answer to this question is "No".

This answer rests on two distinct sets of facts. First, for fifteen years, all of Dakota County's sixteen bargaining units have received identical percent increases in

wage and merit pay. The duration and comprehensiveness of this pattern is quite remarkable, possibly unprecedented.

Second, only five of Dakota County's bargaining units have failed to reach 2010 wage/merit pay settlements; whereas, its eleven other bargaining units have either settled or have tentatively settled on 2010 economic outcomes that the Employers proposals in this case.

Rather than to agree to any settlement that would depart from its no wage and no merit pay increase positions, the County would likely stand firm. The County's incentive to stand firm would be fortified by the fear that any concession would dash a fifteen year pattern of identical inter-unit economy outcomes and would trigger an avalanche of inter-unit whipsawing, damage worker morale and lead to other adverse consequences. *In arguendo*, the County would likely stand firm even if LELS could legally strike, threatened to strike or actually went out on strike. This is a logical conclusion because the odds are low that the Union would have threatened to strike or actually fulfilled a strike threat—the Union would have conceded. Consider the following. First, the nation, Minnesota and Dakota County were in the midst of depressed economic times which the industrial relations literature shows are generally correlates with depressed percent changes in negotiated pay.Second, with an agreement based on the Employer's 2010 economic proposals, Dakota County deputies would continue to rank second in 2010 pay among metro counties. Third, with an agreement based on the Employer's 2010 economic proposals, Dakota County deputies would continue to make several thousand dollars more than would deputies in the metro area. Last, up to eleven Dakota County bargaining units have voluntarily agreed to the Employer's 2010 economic terms, even

though most of these units legally could have struck, but did not. This level of acceptance suggests that the County's 2010 economic proposals were generally reasonable. For all of these reasons, it is difficult to conclude that the Union's bargaining power exceeded that of the Employer. To summarize, both theory and evidence support the conclusion that the Employer's economic positions would have prevailed had the parties successfully negotiated a 2010 settlement.

Note that under Minnesota's public sector collective bargaining law for essential bargaining units, interest arbitration is designed to be a substitute for the strike not a substitute for collective bargaining. However, as this Arbitrator, among others, has observed on other occasions, this policy unintentionally incorporates the seeds of its own destruction. Namely, that the marginal cost of taking an impasse case to interest arbitration is miniscule when compared to the marginal cost of striking to resolve a bargaining impasse. Thus, while a non-essential bargaining unit might choose to settle through collective bargaining rather than to strike because of the referenced marginal cost differential. In contrast, an essential bargaining unit might choose arbitration over negotiations—even though the probability of prevailing at arbitrations may be low—simply because the marginal cost of arbitration is not in the same league as the marginal cost associated with a work stoppage. Interestingly, this dynamic may be playing out in Dakota County since, as the Union observed, four of five of the county's unsettled 2010 CBAs involve essential bargaining units.

Finally, the parties are to be complimented on the expert presentation of their respective cases and on their written briefs, which received careful consideration.[6]

[6] In light of the Arbitrator's determinations in this case, the pay equity contention appearing in the Employer's brief was moot and, therefore, not addressed herein. Similarly, the Union argues in its brief

VI. AWARDS

For the reasons discussed above, the 2010 general wage Increase shall be 0 percent and there shall be no 2010 merit pay increase.

Issued and ordered on the 27th day of September 2011.

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Mario F. Bognanno, Labor Arbitrator & Professor Emeritus

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that the Merit Matrix terminology in Appendix A was negotiated language and that arbitrators are reluctant to change same absent compelling reasons as proffered by the moving party. This argument is not addressed in the opinion because its premise is wrong. The merit pay issue brought to arbitration is an "economic" issue, not a "language" issue.