



## ISSUE

UNION:<sup>1</sup>

**Did the Employer violate the Memorandum of Agreement when it failed to grant a 3% base wage adjustment to the members of this bargaining unit after Steele County negotiated the same adjustment for another bargaining unit?**

**If so, what should the remedy be?**

EMPLOYER:

**Whether the grievance is arbitrable.**

**Whether the Rice/Steele County Communications Center violated the Memorandum of Agreement when it declined to modify the salary structure by adding an additional step to the salary schedule.**

## JURISDICTION

The matter at issue, regarding interpretation of the terms and conditions of the Collective Bargaining Agreement (CBA) between the Parties, came on for hearing pursuant to the grievance procedure in said Agreement The Grievance Procedure (Article IV), in relevant part, provides as follows:

**“6.1. DEFINITION OF A GRIEVANCE**

A grievance is defined as a dispute or disagreement as to the interpretation or application of the specific terms and conditions of this Agreement.”

**“6.2. UNION REPRESENTATIVES**

The Employer will recognize representatives designated by the Union as the grievance representatives of the bargaining unit having the duties and responsibilities established by the Article. The Union shall notify the Employer in writing of the names of such Union representatives and of their successors when so designated.”

**“6.3 PROCESSING OF A GRIEVANCE**

It is recognized and accepted by the Union and the Employer that the processing of grievances as hereinafter provided is limited by the job duties and responsibilities of the employees and shall therefore be accomplished

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<sup>1</sup> The Union modified its issue statement on 01/25/2012.

during normal working hours only when consistent with such employee duties and responsibilities. The aggrieved employee and the Union representative shall be allowed a reasonable amount of time without loss in pay when a grievance is investigated and presented to the Employer during normal working hours provided the employee and the Union representative have notified and received the approval of the designated supervisor who has determined that such absence is reasonable and would not be detrimental to the work programs of the Employer.”

“6.4 Grievances, as defined by Section 6.1, shall be resolved in conformance with the following procedure:

**STEP 1.** An employee claiming a violation concerning the interpretation or application of this Agreement shall, within twenty-one (21) calendar days after such alleged violation has occurred, present such grievance to the employer’s supervisor as designated by the Employer. The Employer-designated representative will discuss and give an answer to such Step 1 grievance within ten (10) calendar days after receipt. A grievance not resolved in Step 1 and appealed to Step 2 shall be placed in writing setting forth the nature of the grievance, the facts on which it is based, the provision or provisions of the Agreement allegedly violated, and the remedy requested and shall be appealed to Step 2 within ten (10) calendar days after the Employer-designated representative’s final answer in Step 1. Any grievance not appealed in writing to Step 2 by the Union with in ten (10) calendar days shall be considered waived. [Emphasis Added]

**STEP 5.** A grievance unresolved in Step 4 and appealed in Step 5 shall be submitted to arbitration subject to the provisions of the Public Employment Labor Relations Act of 1971, as amended. The Employer and the Union representative shall endeavor to select a mutually acceptable arbitrator to hear and decide the grievance. If the parties cannot agree on an arbitrator, the selection of an arbitrator shall be made in accordance with the “Rules Governing the Arbitration of Grievances” as established by the Bureau of Mediation Services.”

#### **“6.5 ARBITRATOR’S AUTHORITY**

- A.** The arbitrator shall have no right to amend modify, nullify, ignore, add to or subtract from the terms and conditions of this Agreement. The arbitrator shall consider and decide only the specific issue(s) submitted in writing by the Employer and the Union, and shall have no ‘authority to make a decision on any other issue not so submitted. [Emphasis Added]
- B.** The arbitrator shall be without power to make decisions contrary to or inconsistent with or modifying or varying in any way the application of laws, rules or regulations having the force and effect of law. The arbitrator’s decision shall be submitted in writing within thirty (30) days

following the close of the hearing or the submission of briefs by the parties, whichever be later, unless the parties agree to an extension. The decision shall be binding on both the Employer and the Union and shall be based solely on the arbitrator's interpretation or application of the express terms of this Agreement and to the facts of the grievance presented.

- C. The fees and expenses for the arbitrator's services and proceedings shall be borne equally by the Employer and the Union provided that each party shall be responsible for compensating its own representatives and witnesses. If either party desires a verbatim record of the proceedings, it may cause such a record to be made, providing it pays for the record. If both parties desire a verbatim record of the proceedings the cost shall be shared equally."

#### "6.6 WAIVER

If a grievance is not presented within the time limits set forth above, it shall be considered "waived." If a grievance is not appealed to the next step within the specified time limit or any agreed extension thereof, it shall be considered settled on the basis of the Employer's last answer. If the Employer does not answer a grievance or an appeal thereof within the specified time limits, the Union may elect to treat the grievance as denied at that step and immediately appeal the grievance to the next step. The time limit in each stem may be extended by mutual agreement of the Employer and the Union." [Emphasis Added]

The Parties selected Rolland C. Toenges as the Arbitrator to hear and render a decision in the interest of resolving the disputed matter.

The Arbitration Hearing was conducted as provided by the terms and conditions of the CBA and the Public Employment Labor Relations Act (Minn. Stat. 179A.01 – 30). The Parties were afforded full opportunity to present evidence, testimony and argument bearing on the matter at issue. All witness were sworn and subject to direct examination and cross-examination.

There was no request for a verbatim record of the hearing.

### **BACKGROUND**

The Rice/Steele County Communications Center provides 911 dispatch services to Rice and Steele Counties, plus the Cities of Northfield, Faribault and Owatonna. The

Communications Center was established in 1997 as a separate government entity via the Minnesota Joint Powers Act. The purpose of consolidating dispatch services into a central location is to provide efficiency of scale plus greater expertise and quality. The Communications governing board is made up of officials from the Counties and Cities receiving service from the Center. The Communications Center is located in the Steele County Law Enforcement Center, Owatonna, Minnesota.

The Union represents a bargaining unit consisting of non-supervisory 911 Dispatchers employed at the Communications Center. The Employer and Union are Parties to a Collective Bargaining Agreement (CBA) in effect from January 1, 2009 through December 31, 2011. The event, giving rise to the instant grievance matter, arose during the term of this CBA.

The Parties begin negotiations for said CBA in late 2008<sup>2</sup> and continued for some time thereafter, with the Parties reaching a tentative agreement on a salary increase and other matters early the following year (2009).<sup>3</sup> However, due the deteriorating condition of the economy, the cost of an FLSA settlement averaging about \$2,100.00 per employee<sup>4</sup> and concern that the Employer's revenue would be less than anticipated, the parties reached a settlement with no increase in base wage rates during its term. Salary step increases, were to be continued. Employees hired before 2001 were grandfathered under the previous salary step system. All hires after January 1, 2001 were covered by a salary step system that allowed progression from the starting salary to the maximum salary in Six (6) years.

The Parties executed a "Memorandum of Agreement" (MOA), as an addendum to the CBA, providing for no base salary increase for the duration of the three-year

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<sup>2</sup> Union Exhibit #2 & #3 show that the first negotiating session occurred on September 15, 2008.

<sup>3</sup> Union Exhibits #4, #5, #6, #7 & #8.

<sup>4</sup> Testimony of Lisa DeRaad.

Agreement, subject to certain conditions. The relevant part of the MOA is as follows:<sup>5</sup>

“The Union and the Employer agree on the following amendment to the 2009-2011 Labor Agreement.

Based on this amendment, the Employer agrees, if any union or nonunion personnel in Steele County receive a negotiated base wage adjustment (excluding any arbitration award) in 2010 and 2011 that is greater than .1%, essential employees of the Rice/Steele County Communications Center will receive that same increase.

This language shall be effective as of date of ratification and shall remain in full force and effect until December 31, 2011

On April 7, 2010, the Union filed a grievance alleging violation of the MOA, based on certain salary adjustments approved by the Steele County Board of Commissioners in December 2009.<sup>6</sup> The Employer denied the grievance on several grounds, including procedural deficiencies and failure to identify a cause of action.<sup>7</sup> The salary adjustments, which were the subject of the Union Grievance, were required by the Minnesota Pay Equity Act and were not at the discretion of the Steele County Board of Commissioners.<sup>8</sup> Following several exchanges between the Union and the Employer, the Union withdrew the grievance.

On July 11, 2011, the Union filed a Class Action Grievance alleging that the MOA had been violated by the Employer not extending, to the 911 Dispatchers, an increase that had been granted to Steele County Sergeants. A CBA, covering Steele County Sergeants (January 1 through December 31, 2010), provided no increase in base pay rates but added a sixth (6<sup>th</sup>) step to the Sergeant’s salary schedule.

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<sup>5</sup> Parties CBA, Page 14.

<sup>6</sup> Union Exhibit #9,

<sup>7</sup> Union Exhibit #9.

<sup>8</sup> Union Exhibit #9.

The Union had found out about the Sergeant's added step about April 2011.<sup>9</sup> The CBA was executed on September 14, 2010.<sup>10</sup> Two of the three Steele County Sergeants accrued more than six years service as of March 19, 2011 and qualified for the sixth step.<sup>11</sup>

On July 29, 2011, the Employer denied the Union's July 11, 2011 Grievance, citing procedural deficiencies. The Employer's position was that the CBA requires a grievance must be filed by an individual employee and there is no provision in the CBA for "Class Action" grievances. The Employer also denied the grievance on the grounds that it was not timely (was not filed within 21 days after the alleged violation had occurred) and therefore was waived. The Employer further denied the grievance on the grounds that the Steele County Sergeants received no percentage increase in base salary, and the added sixth step only brings the Sergeant salary schedule up to what the 911 Dispatchers already have.<sup>12</sup>

Thereafter, the Union appealed the July 11, 2011 grievance to step two of the Grievance Procedure<sup>13</sup>. The Employer again denied the Grievance on the same grounds as stated earlier.<sup>14</sup> On August 16, 2011, the Union proposed moving the dispute directly to the arbitration step.<sup>15</sup> On August 22, 2011, the Employer was in agreement to move the matter directly to arbitration and waive step 3.<sup>16</sup>

Accordingly, the dispute over the sixth step added to the Sergeant's salary range is now before the instant proceeding for resolution.

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<sup>9</sup> Testimony of Kirk Oswald.

<sup>10</sup> Union Exhibit – LELS Contract.

<sup>11</sup> Union Exhibit #15.

<sup>12</sup> Union Exhibit Step 1 Employer Response

<sup>13</sup> Union Exhibit Step 2 Union Appeal

<sup>14</sup> Union Exhibit Step 2 Employer Response

<sup>15</sup> Union Exhibit Step 3 Union Appeal

<sup>16</sup> Union Exhibit Step 3 Employer Response

In a later action, which is not an issue in the instant proceeding, the Union filed a grievance with the Employer in November 2011.<sup>17</sup> The grievance alleged that the MOA had been violated by failing to grant the 911 Dispatchers a one percent increase that had been granted to Steele County Employees, effective October 1, 2011, as was evidenced by Proceedings of the Steele County Board of Commissioners on October 11, 25 and 31, 2011.<sup>18</sup> The Steele County Board approved a CBA for its employees that provided the one-percent increase effective October 1, 2011 and an additional increase effective January 2012.<sup>19</sup> The Union filed grievance appeals in December 2011.<sup>20</sup> The Employer granted the Union's grievance for a one percent increase to the 911 Dispatchers effective October 1, 2011.<sup>21</sup>

### **EXHIBITS**

#### **UNION EXHIBITS:**

- Union Statement of Issue In Dispute.
- Union Grievance, dated 07/11/2011
- Step 1, Employer Response, dated 07/29/2011
- Step 2, Union Grievance Appeal, 08/04/2011
- Step 2, Employer Response, dated 08/11/2011
- Step 3, Union Appeal, dated 08/16/2011
- Step 3, Employer Response, dated 08/23/2011
- Teamsters 320 Contact, 01/1/2009 – 12/31/2011

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<sup>17</sup> Union Exhibit #11

<sup>18</sup> Union Exhibit #12

<sup>19</sup> Union Exhibit #12

<sup>20</sup> Union Exhibit #13 & 14

<sup>21</sup> Union Exhibit #13

- LELS Contract, 01/01/2010 – 12/31/2010
  1. Steele/LELS Contract, 01/01/2009 – 12/31/2009
  2. Union Negotiation Notes, 09/15/2008
  3. Union Negotiations Proposal, 09/15/2008
  4. Employer Negotiations Proposal, 10/08/2008
  5. Union Negotiations Proposal, 10/24/2008
  6. Union Negotiations Proposal, 01/23/3009
  7. Joint Tentative Agreement, 01/23/2009
  8. Joint Tentative Agreement – CBA Language & MOA, 09/17/2009
  9. Union Grievance plus related correspondence, 04/06 - 24/2010
  10. Withdrawn
  11. Union Grievance, dated 11/26/2011
  12. Proceedings of Steele County Board of Commissioners, 10/11, 25,31/2011
  13. Employer & Union Grievance Communications, 12/12, 14, 29/2011 & 01/10/2012
  14. Steele/LELS CBA, 01/01/2011 – 12/31/2012
  15. Steele County Sergeants Seniority List and Corresponding salary step
  16. 911 Dispatcher Seniority List
  17. 911 Dispatcher Salary Schedule 2009 – 2011, showing a 3% increase
  18. 911 Dispatcher Salary Schedule showing 3% Plus 1% increase
  19. Joint Powers Agreement Establishing Rice/Steele County Communications Center

**EMPLOYER EXHIBITS:**

1. Employer Statement of the Issue in Dispute.
2. Union bargaining Proposal, dated 01/02/08.
3. Written notes by Terry Foy, dated 01/03/08.

4. Collective Bargaining Agreement, Rice/Steele Comm. Ctr. & Teamsters 320, January 1, 2008 through December 31, 2008.
5. Union Bargaining Proposal 2009 – 2010. with notes by Terry Foy.
6. Written notes by Terry Foy, Dated 09/15/08.
7. Employer Bargaining Proposal, Dated 10/08/2008.
8. Written notes by Terry Foy, dated 10/08/08.
9. Union Bargaining Proposal, with written notes by Terry Foy, dated 10/24/08.
10. Written notes by Terry Foy, dated 01/23/09.
11. E-mail, Severson to Weiers, dated 07/06/09.
12. E-mail, Severson to Weiers, dated 07/02/09.
13. Written notes by Terry Foy and draft MOA, dated 08/31/09.
14. Written notes by Terry Foy, dated 09/14/09.
15. E-mail, Carey to Foy, dated 09/16/09. with attached CBA language and draft MOA.
16. MOA draft with notes by Terry Foy,
17. Collective Bargaining Agreement draft, Rice/Steele Comm. Ctr. & Teamsters 320, January 1, 2009 through December 31, 2011.
18. Written notes by Terry Foy, dated 10/21/09.
19. Letter, Foy to Carey, dated 10/23/09 – comments on draft CBA.
20. Executed Collective Bargaining Agreement, dated 12/01/09.
21. Executed Memorandum of Agreement, undated.

22. E-mail, Krueger to Foy, dated 08/04/11.

### **POSITIONS OF THE PARTIES**

#### **THE UNION SUPPORTS ITS POSITION WITH THE FOLLOWING:**

- The Employer violated the MOA by failing to extend a three percent (3%) base wage adjustment to 911 Dispatchers that was negotiated by Steele County Sergeants.
- The MOA included a “me too” agreement providing that if any Steele County Employee received a negotiated base wage adjustment of more than 1% the same increase is to be given the 911 Dispatchers.
- The plain meaning of the MOA requires that the employer grant the 911 Dispatchers the same base wage adjustment that was negotiated for the Steele County Sergeants.
- The MOA clearly and unambiguously encompasses any type of negotiated base wage adjustment made to Steel County Sergeants.<sup>22</sup>
- The Plain meaning of the language is that any type of negotiated base wage adjustment granted to an employee in Steele County must also be granted to the 911 Dispatchers.
- The plain language of the MOA did not specify the terms “cost of living adjustment” (COLA), longevity increase,” or “addition of a step.” However, all of those terms indicate a type of base wage adjustment.
- The additional step negotiated into the LELS Sergeants’ contract in 2010 constituted a base wage adjustment.

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<sup>22</sup> Cited is: Franklin County Board, Franklin County, Illinois and Laborers’ International Union of North America, The Southern and Central Illinois Laborers’ District Council, and Laborer’ Local 773, 127 LA 1537, 1541 (Van Kalker, 2010); Board of Education, City of Peoria, [Ill], School District No 1540 and Peoria Federation of Teachers, Local 780, 118 LA 1514, 1521 (Kenis, 2003); The Hertz Corporation [Las Vegas] and IBT Local 995, 119 LA 1545, 1565- 56 (Goldstein, 2004); Deerfield Public School District No. 109 and Deerfield Education Association, 129 LA 11130, 1139 (Goldstein, 2011).

- The wage rate of two of the three Sergeants advanced from \$29.97 to \$30.87 (3%), which clearly was a base wage adjustment.
- The Employer's argument that the term "base wage adjustment" be limited to the terms proposed in negotiations should be denied and the term should be understood by its plain meaning, as encompassing all types of base wage adjustments.
- The MOA did not specify that base wage adjustments come only in the form of longevity or a COLA. If the additional step is not considered a base wage adjustment, then the addition of a six-year step should be construed as a longevity increase.
- The Employer argued that the Sergeants' movement to the six-year step was nothing more than normal step progression, which is also granted in the 911 Dispatcher CBA. However, the progression is not similar because the Sergeants' wage scale did not have a six-year step.
- While it is true that the 911 Dispatcher CBA already has a sixth step, comparing them to the Sergeants step is misleading, because the progression scales are different.
- The Sergeants' wage scale oddly advances from the three-year step to the six-year step without any steps in between. If the sixth step were added with the intention of being similar to the 911 Dispatcher wage scale, the next (sixth) step would have been at four years, rather than at six years.
- For all the above reasons, the term "base wage adjustment" means any and all adjustments to the base wage. Therefore, the addition of a sixth-year step to the Sergeants constitutes a base wage adjustment, to which 911 Dispatchers are entitled.
- The appropriate remedy is to grant the 911 Dispatchers a 3% base wage adjustment.

- It is held that Arbitrators have wide discretion to fashion remedies for breach of a labor agreement.<sup>23</sup>
- Because Steele County knew it could not grant a wage increase classified as a COLA without the 911 Dispatchers being granted the same increase, it appears it instead attempted to disguise the adjustment as an additional step via normal step progression. However, it cannot and should not be classified as normal step progression, because it did not exist before.
- The Union is the Exclusive Representative of the 911 Dispatchers and has the right to file a class action grievance on behalf of its members.<sup>24</sup>
- The Employer's failure to grant a base wage adjustment to the 911 Dispatchers affects the entire bargaining unit and not just one individual employee. Mr. Carey was well within his authority to file the grievance as a class action.
- The Union has a sufficient stake in the enforcement of the Contract to maintain the grievance as a class action.
- The Grievance was timely because it is a continuing violation that occurs with each paycheck.<sup>25</sup>
- The appropriate remedy is to grant back pay of a base wage adjustment of three -percent (3%) to all 911 Dispatchers for the time period of twenty-one

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<sup>23</sup> Cited is Selfridge Air National Guard Base, 129 LA 694, 697 FMCS Case No. 11-54364-4, (Fullmer, 2011); United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 80 S.Ct. 1358,1361, 34 LA 569 (1960); United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 581 (1960); Elkouri & Elkouri, How Arbitration Works, 6<sup>th</sup> ed. at Page 218-219.

<sup>24</sup> Cited is: Minnesota Teamsters Public And Law Enforcement Employees' Union, Local No. 320 and County of St. Louis, BMS Case No. 06-PA-1306 (Befort, 2008);Elkouri & Elkouri, How Arbitration Works, 211 (6<sup>th</sup> ed. 2003); Mora Federation of Teachers, Local 1802 v. Independent School District no. 322, 352 N.W. 2d 489 (Minn. Ct App. 1984).

<sup>25</sup> Cited is: Elkouri & Elkouri, How Arbitration Works, 6<sup>th</sup> ed. at 218-219; Services Employees International Union, SEIU, Local 26 and ABM Building Security, FMCS Case 060321-54667-7 (Jacobs, 2006); St. Paul Pioneer Press and Minnesota Newspaper Guild/Typographical, Union Local 37002, FMCS Case No. 09-57413 (Remington, 2010).

(21) calendar days prior to the filing of the grievance on July 11, 2011 and ongoing.

- Additionally, the current wage scale should be retroactively adjusted to reflect the adjustment as of twenty-one (21) calendar days prior to the filing of the grievance on July 11, 2011, and the employees of the unit otherwise be made whole.
- The CBA does not expressly limit the right of the Union to initiate a grievance in support of procedural or generally held employee rights.
- The grievance is timely because the Employer failed to alert the Union of the increase given to Sergeants.
- The Arbitrator is well within his authority in issuing the Union's position and should sustain the grievance.

THE EMPLOYER SUPPORTS ITS POSITION WITH THE FOLLOWING:

- The Union's grievance is procedurally deficient based on failure to meet the time requirement in the CBA; "21 days after such alleged violation has occurred."
- The alleged violation occurred on the date the CBA between Steele County and its Sergeants was executed, September 14, 2010.
- The Union did not file its grievance until July 11, 2011, nearly ten months later.
- The grievance is also procedurally deficient having been filed as a "Class Action" grievance.
- The CBA Grievance Procedure explicitly requires that: "*An employee* claiming a violation concerning the interpretation or application of the Agreement shall, within twenty-one (21) calendar days after such alleged violation has occurred, presents such grievance to the employer's supervisor as designated by the Employer."

- Section 6.6 of the CBA provides that if a grievance is not presented within the time limits set forth in the grievance procedure, it shall be considered “waived.”
- The Employer provided the Union timely notice of procedural defects in its grievance.
- The Arbitrator is bound by Section 6.5 of the CBA to uphold the terms and conditions the Parties have agreed upon for processing grievances. “The Arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the terms and conditions of this Agreement.”
- Rice/Steele County Communications Center and Steele County are not the same Government agency.
- Rice/Steele Communications Center was established under the Joint Powers Act as a separate government agency.
- Employees of Rice/Steele County Communications Center are not Employees of Steele County and are subject to Steele County Compensation or benefits, except as may be provided in the MOA.
- The language of the MOA is clear and unambiguous. Since the language is clear and unambiguous, the “plain meaning rule” applies and the instant grievance must be dismissed.<sup>26</sup>
- The term “base pay” is generally defined as the employee’s basic hourly rate of pay, exclusive of overtime, longevity, or special allowances.<sup>27</sup>
- The adjustment to the Steele Sergeants pay schedule was the addition of a sixth (longevity) step to the salary schedule, which constitutes a structural change. It is not a cost of living adjustment (COLA) in “base pay,” because only employees with over six years of service are eligible to receive it.
- The Union position us to convert the Sergeant’s longevity step, for which only long term employees qualify, into a general increase for all employees. This

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<sup>26</sup> Cited is: Elkouri & Elkouri, How Arbitration Works, 434 (BNA Books 6<sup>th</sup> d. 2003)

<sup>27</sup> Cited is: Webster’s New World College Dictionary (Wiley Publishing, Inc., 2010).

flies in the face of the plain meaning of the MOA, which was intended to apply only to COLA's.

- For the Arbitrator to award the Union's position would require a modification of the plain meaning of the MOA.
- The addition of a longevity step to the Sergeant's salary schedule is not the same as a base wage adjustment, as referenced in the MOA.
- The addition of the sixth salary step cannot be converted into a percentage increase, applicable to all steps in the salary range as the Union proposes, because it only applies to Employees who are qualified to be at the step.
- The sixth step added to the Sergeant's salary schedule is longevity pay as it only applies to Sergeants with over six years service. This contrasts with a base wage adjustment, which is generally applied to all employees.
- In negotiations, the Union's proposal for longevity pay was rejected and the CBA, as agreed upon by the Parties, has no provision for longevity pay.
- The primary rule in construing a written instrument is to determine from the instrument, as a whole, the true intent of the Parties, and to interpret the meaning of a questioned word in regard to the connection in which it is used along with the subject matter and its relation to all other parts or provisions.<sup>28</sup>
- The true focus of the MOA is a cost of living adjustment (COLA) The Union agreed to a zero COLA, subject to being included in any COLA negotiated by Steele County employees.
- The Union's attempt construe longevity pay for Sergeants with over twelve years service, as a COLA is misplaced.
- Steps, as that term is used by the Parties applies to progression, within the salary range, from one step to a higher step. Step progression is clearly not within the meaning of "negotiated base wage adjustment," as referenced in the MOA.

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<sup>28</sup> Cited is: Great Atlantic and Pacific T-Co., 70 LA 1003, (Horowitz, 1978).

- The Employer had proposed step progression be included in the MOA, which would have meant that Union employees would receive step progression only if Steele County employees received step progression.
- The Employer's proposal on including step progression in the MOA was rejected by the Union, meaning that step progression in Steele County is not a factor in the MOA. The Parties agreed that Union employees would receive step progression as a part of the CBA, but it was not to be a factor in the MOA.
- The addition of a longevity step for Steele County Sergeants constitutes a structural change to the Sergeant's salary structure. It is not the same as what is commonly understood as a base wage adjustment, increasing the entire salary schedule by a certain percentage (COLA).
- Accordingly, the Employer's interpretation of "base wage adjustment" should prevail, since this understanding is in accord with the ordinary meaning of that language.<sup>29</sup>
- The testimony of Union witnesses, Mike Carey's and Kirk Oswald, supports the interpretation of "base wage adjustment" as an adjustment to each step in the salary range. This is not what occurred in Steele County, where a single longevity rate was added to the Sergeant's salary structure.
- It is a well-established principle that ambiguous language must be interpreted against the drafter. Accordingly, the MOA language should be interpreted against the Union.<sup>30</sup>
- Neither the MOA nor the CBA require the Rice/Steele County Communications Center to monitor compensation events in Steele County and to report such events to the Union.

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<sup>29</sup> Cited is: Stewart Hall Co. 86 LA 370 (Madden, 1985), Gulf Printing co., 92 LA 893 (King, 1989, Kahns & Co., 83 LA 1225 (Murphy, 1984).

<sup>30</sup> Cited is: in the Matter of Arbitration Between Independent School District 2397 and Le Sueur - Henderson Education Association, (Jay, 1997).

- The addition of a sixth step to the Steele County Sergeant's salary schedule is not a base wage adjustment under the MOA; therefore, there could be no duty for the Employer to inform the Union.
- Although Commissioner Shea is a member of both boards and signed both CBA's, his signature was simply a ministerial act. It is beyond reason to expect him to contact the Union of another legal entity to advise it of action taken by Steele County.
- The Union's lack of due diligence in a matter affecting its members is not the responsibility of the Employer.
- The Union's reference to Section 6.3 of the CBA, as a basis to support a class action grievance, is misplaced. This Section simply provides that the "aggrieved employee" and the Union representative shall be allowed a reasonable amount of time without loss of pay when a grievance is investigated and presented to the Employer during normal working hours.
- The Union's grievance would provide the employees in this bargaining unit with longevity and wage increases that it was unable to gain at the bargaining table. The Arbitrator should reject an award, which grants the Union wage increases through the grievance arbitration process that it was unable to negotiate.
- For all the foregoing reasons, the Arbitrator should deny the Union's grievance.

### **DISCUSSION**

The instant case raises the following procedural and substantive issues:

#### **Is the grievance timely?**

The record shows that the alleged violation actually occurred on September 14, 2010, when the Steele County Board of Commissioners approved the Steele County/Sergeant CBA, establishing a sixth step in their salary schedule. However, no Sergeants qualified for the sixth step until March 19, 2011. Union Stewart, Kirk

Oswald, testified that the Union learned of it about April of 2011. The grievance was filed on July 11, 2011.<sup>31</sup>

The Union argues that the reason the grievance was not filed earlier was that the Employer failed to inform the Union of the matter. Union Witness, Kirk Oswald, testified that he found out about the Steele County Sergeant's sixth step increase by chance.

There is no reference in the MOA regarding who is responsible for monitoring employee compensation events in Steele County. There is no evidence in the record that the Employer knew of the event before the Union knew of it, or that the Employer intentionally withheld information from the Union. The only reference in the record regarding when the Employer knew is an e-mail from Steele County to the Employer's representative, dated 08/04/2011.<sup>32</sup>

The Employer's position is that the Steele County/Sergeant's agreement adding a sixth step is not subject to the MOA. This being the case, there is no reason why the Employer would have raised the matter with the Union, even if it did know about it before the Union.

In a matter unrelated to the instant matter, the Union filed a grievance dated April 6, 2010, alleging that, under the provisions of the MOA, 911 Dispatchers were entitled to increases provided to Steele County employees via action of the Steele County Board on December 15, 2009. The Employer denied the grievance as procedurally deficient (untimely, unsigned by an employee and claiming to be a class action). The Union later dropped the matter when given information that the evidence did not support the alleged CBA violation.

In another matter unrelated to the instant matter, Union Stewart Oswald filed a grievance on November 26, 2011, alleging that the Steele County Board of

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<sup>31</sup> Union Exhibit "Grievance."

<sup>32</sup> Employer Exhibit #22.

Commissioners had approved a one percent base rate increase for Steele County Employees via Board action on October 11, 2011, October 25, 2011 and October 31, 2011. On December 14, 2011 Stewart Oswald appealed the grievance to the second step. On December 29, 2011, Stewart Oswald appealed the grievance to the third step. On or about January 10, 2011, the Employer granted the grievance to increase the 911 Dispatcher's base rate commensurate with the one percent base rate increase approved for Steele County employees effective October 1, 2011.

The Union argues that the grievance is timely, based on the theory of "continuing violation." Under this theory, the violation not only occurred initially, but also recurs each payday. The Union cites a number of cases in support of its argument.

The Employer argues that the language of the CBA is clear and unambiguous. The Employer argues that failure of the Arbitrator to uphold this clear and unambiguous language will exceed the Arbitrator's authority. The Employer cites CBA provisions setting forth limits on the Arbitrator's authority.<sup>33</sup>

A literal reading of the CBA language indicates the grievance could be considered untimely, having been filed several months after the Union acknowledges knowing of the alleged violation. The CBA language in Article VI, Section 6.4, Step 1, requires the grievance to be filed within twenty-one (21) calendar days after such alleged violation has occurred. It is noted that the reference to "violation" is singular, which raises question of treating it as plural ("violations"), which recur and recur?

**Is the Rice/Steele County Communication Center and Steel County the same employer?**

The Communications Center is a separate government entity established under the "Minnesota Joint Powers Act." The Communication Center governing board is made up of representatives from counties and cities served by the Communications Center. Rice and Steele Counties fund the Communications Center. Although one or

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<sup>33</sup> Employer Exhibit #4, Article VI, Section 6.5.

more of the board members is a Steele County Official, the Communications Center has, among other things, separate administration, separate human resource programs, separate labor contracts and a separate budget.

For purposes of the instant grievance, it is irrelevant whether Rice/Steele County Communications Center and Steele County are separate employers. The provisions of the MOA directly tie conditions for a 911 Dispatcher base wage adjustment to base wage adjustments for Steele County employees, notwithstanding that Steele County is a different employer.

**Was the grievance procedurally deficient because it was labeled as a class action signed only by the Union Business Agent?**

The CBA specifies “an employee” shall file a first step grievance.<sup>34</sup> The CBA specifies that a grievance appealed to step 2 and 3 shall be presented “by the Union.”<sup>35</sup> The record shows that these CBA provisions have not been strictly adhered to.

Grievance #4399 is not signed by anyone.<sup>36</sup> In December 2011 Stewart, Kirk Oswald, presented a second and third step appeal without a Union Official’s signature. In these cases, the grievances were not rejected as being procedurally deficient.

It must be presumed that the language of the CBA reflects the interests of the Parties. The commonly understood purpose of requiring an individual employee to present a grievance at the first step is to resolve issues, if possible, between the employee and supervisor. It is also to insure that the Union is not grieving matters unrelated to the interests of employees. The commonly understood purpose of requiring the Union to sign the grievance, when appealed to the step 2 and 3, is to

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<sup>34</sup> CBA, Article VI, Section 6.4, Step 1.

<sup>35</sup> CBA. Article VI, Section 6.4, Step 2 and Step 3.

<sup>36</sup> Union Exhibit #9.

insure that the Union supports the grievance, particularly if it may move to a higher level. Although the Union signed the instant grievance presented at the first step and labeled it as a “class action,” it is clear from the record that individual employees Oswald and DeRaad support the grievance.

In the instant matter, the Union having labeled the grievance as a class action and signed only by the Union Business Agent is not a fatal procedural defect. The record shows that CBA specific requirements for the party signing grievances have not been strictly enforced. Even though the signature of an individual employee is not on the instant grievance document, it is not a unilateral Union action as individual employees, Oswald and DeRaad, are clearly in support of the grievance. Although there is no provision in the CBA for a “class action” grievance, the remedy proposed by the Union would in effect be a class action, as it would involve all 911 Dispatchers.

**Is the addition of a sixth step to the Steele County Sergeants salary schedule a “base wage adjustment “ within the meaning of the MOA?**

The substantive issue in the instant case is whether adding a sixth step to the Steele County Sergeant’s salary structure is a “base wage adjustment,” within the meaning of that phrase as used in the MOA.

Based on this Arbitrator’s extensive experience in employee compensation, there is general understanding of the meaning of certain compensation terms:

- “Base Rate” - is commonly understood to be the employees rate of pay, absent any special pay or allowances, such as overtime, shift differential, longevity pay, etc.
- “Salary Range” - is commonly understood to be the spread between the entry rate and the maximum rate, expressed in terms of steps, dollars or as a percentage.

- “Salary Structure” - is commonly understood to include the various types of pay that makes up total cash compensation.
- “Longevity Pay” – is commonly understood to be an extra rate paid based, not on performance (merit), but on length of service (loyalty). The commonly understood theory of longevity pay is to provide an incentive to retain employees who have reached the maximum rate of their salary range.

A salary range is based on the theory of a job learning curve. As an employee gains proficiency in the job, the employee progresses up the salary range. The salary range is to recognize an employee’s increase in proficiency over time, so that when the employee reaches the top step of the salary range, the employee should be performing at maximum proficiency. The time established to progress from the entry rate to the maximum rate of the salary range is based on learning expectations necessary to perform at maximum proficiency. In the instant case, the learning curve for 911 Dispatcher can be noted by the expectation for greater learning during the early years (salary progression every six-months) versus later years (salary progression annually).

Progression within the Salary range differs from longevity pay. The concept of Longevity pay is to reward length of service (loyalty) for employees who have previously reached the salary range maximum. Longevity pay commonly appears as an extra rate(s) above the regular salary range.<sup>37</sup> Advancement to the longevity rate(s) usually requires a number of years at the maximum step of the salary range before qualifying for the longevity rate. In the case of Steele County Sergeants it is three years.

The Steele County Sergeant base salary range consists of three steps. This fairly short range (learning curve) is understandable considering that employees advancing to Sergeant are typically highly experienced in law enforcement work. As

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<sup>37</sup> In some cases, longevity pay is paid annually as a lump sum.

a Sergeant, they will essentially be doing the same work, but with added leadership responsibility.

The addition of the six-year rate in the Sergeants salary structure requires six years of service as a Sergeant. This is double the three years required to advance to the maximum rate of the Sergeant salary range.<sup>38</sup> This six-year rate, requiring three years of service beyond reaching the maximum of the salary range, places the six-year rate within the common understanding of what constitutes longevity pay. In other words, a Sergeant is expected to reach maximum proficiency at three years and pay beyond three years is based on longevity (loyalty), not proficiency.

The record shows longevity pay was an issue in the negotiations leading to the instant 911 Dispatcher CBA.<sup>39</sup> The Union proposed that longevity pay be provided at ten, fifteen and twenty-year intervals. The record shows that the 911 Dispatcher CBA was settled with agreement to *exclude* longevity pay<sup>40</sup>. The record also shows that the Union's proposal for an increase in "wage rates" was separate from its proposal for "longevity pay." The Union's wage rate proposal was in "Section 24.1, WAGE RATES." The Union's proposal on longevity was for a new "Section, 24.3 LONGEVITY."<sup>41</sup>

The Union's asserts that the MOA entitles all 911 Dispatchers to a 3% increase for all steps in their salary range, because the six-year rate added to the Sergeant salary schedule is approximately three percent (3%) above the Sergeant's maximum salary range step.

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<sup>38</sup> Union Exhibit #LELS Contract, Pg. 22.

<sup>39</sup> Employer Exhibit #5, pg. 3.

<sup>40</sup> Employer Exhibit #20.

<sup>41</sup> Employer Exhibit #5, pg. 3.

## FINDINGS

The addition of a six-year rate to the Sergeant's salary structure does not constitute a "base wage adjustment," within the meaning of the MOA. A fair interpretation of "base rate adjustment," as used in the MOA, is the one percent (COLA) adjustment made to *all* steps in the 911 Dispatcher salary schedule based on the one percent (COLA) adjustment Steele County employees received in *all* base pay rates on October 1, 2011.<sup>42</sup>

The Union's position that *all* steps in the 911 Dispatcher salary schedule are entitled to a 3% increase is misplaced. The addition of the six-year rate to Sergeants pay clearly falls within what is commonly understood to be longevity pay. The six-year rate only applies to Sergeants who have been at the maximum step of their base salary range for at least three years. This conclusion appears consistent with the Union's argument:

"Conversely, the LELS contract has six (6) steps that advance progressively until the creation of the 6 Year step, Union Tab LELS Contract. The LELS wage scale progresses every six months from a START step to a 1 Year step. Id. Then, the scale progresses from the 1Year step annually to the 3 Year step. Id. Finally, the scale oddly advances from the 3 Year step to the 6 Year sep without any steps in between. Id. If the step was merely added to the scale with the intention of it being a step similar to the steps this bargaining unit currently has, then based on the prior progression of the scale, the most reasonable next step would have been a 4 Year step."

It is also of significance that the wage schedule in the Sergeant's CBA, Appendix A, shows the sixth year rate *separate* from the "Start to 3 Year salary range. This is the

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<sup>42</sup> Union Exhibit #13, pg. 4.

case in both the January 1, 2010 through December 31, 2010 CBA and the January 1, 2011 through December 31, 2012 CBA.<sup>43</sup>

The Union, in negotiations, proposed longevity pay separately from an increase in the base salary range. This indicates that the Union considers longevity pay to be different than base salary. Further, the union's negotiation proposal was for a different percentage increase in base salary from what was proposed for longevity pay. The record shows that the final 911 Dispatcher CBA, the MOA, have no provision for longevity pay.

The Union's position that the sixth step added to the Sergeant's CBA, entitles the 911 Dispatchers to a three percent (3%) increase in all base salary rates is not supported by the record..

Finding that the grievance fails on the substantive issue, the Arbitrator finds no purpose in awarding on the procedural issues.

#### **AWARD**

**The grievance is denied.**

**The addition of a six-year rate to Steele County Sergeants pay constitutes longevity pay and does not violate the MOA**

#### **CONCLUSION**

The Parties are commended on the professional and through manner with which they presented their respective cases. It has been a pleasure to be of assistance in resolving this grievance matter.

Issued this 14th day of March, 2012 at Edina, Minnesota.

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Rolland C. Toenges, Arbitrator

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<sup>43</sup> Union Exhibit "LELS Contract," Appendix A. and Union Exhibit #14, "LELS Contract," Appendix A - "Wage Schedule."