

IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

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International Brotherhood of Teamsters  
Local 320

Union

-and-

BMS Case No. 12-PN-0039 (Deputies)  
BMS Case No. 12-PN-0368 (Jailers/Dispatchers)

Waseca County, Minnesota

Employer

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ARBITRATOR: Christine D. Ver Ploeg

DATE & PLACE OF HEARING: June 11, 2012  
Waseca County Courthouse  
Waseca, Minnesota

DATE OF RECEIPT OF POST-HEARING BRIEFS: July 3, 2012

DATE OF AWARD: July 31, 2012

ADVOCATES:

For the Union  
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For the Employer  
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## INTRODUCTION

This interest arbitration has been conducted pursuant to Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. Secs. 179A.01 – 179A.30. The International Brotherhood of Teamsters, Local 320 (hereinafter the Union) is the exclusive representative of the two bargaining units now in interest arbitration: the Deputies, Jailers and Dispatchers who are employed by the Waseca County Sheriff's Department (hereinafter Employer). The Union and the Employer have engaged in contract negotiations and have agreed on all but the following items.

Members of these bargaining units are "essential employees" who cannot strike but who have the right to request interest arbitration upon reaching impasse. Minnesota Public Employment Labor Relations Act, §179A.01 - 179A.25. They have done so here, and the parties agree that these matters are now properly before this arbitrator.

## ISSUES

The Minnesota Bureau of Mediation certified nineteen issues to binding interest arbitration pursuant to Minn. Stat. § 179A.16, subd. 7. The parties resolved issues 2, 5 and 10 prior to this hearing.

1. Salaries and Compensation — Training Officer Pay — Article XXIII/XXIV
2. Management Rights — Rights of Employer — Old Article XIX & XX — Article V
3. Work Week and Overtime — Hours Worked to Qualify — Article VI
4. Sick Leave — Sick Leave Accumulation — Article VII
5. Funeral Leave — Number of Days — Article VIII
6. Uniform Allowance — Uniform Requirements (Jail) — Article XIII
7. Uniform Allowance — Return of Property Upon Separation — Article XIII
8. Insurance — Availability of Groups Insurance — Article XIV
9. Insurance — Employer Contribution for Health Insurance — Article XIV
10. Grievance Procedure — Employer Step 3 Representative — Article XVII/XVIII
11. Salaries and Compensation — General Increase, If Any, For 2012 Article XXIII/XXIV

12. Salaries and Compensation — General Increase, If Any, For 2013 — Article XXIII/XXIV
13. Salaries and Compensation — General Increase, If Any, For 2014 Article XXIII, XXIV
14. Salaries and Compensation - Shift Differential (Jail) — Article XXIV
15. Salaries and Compensation — Compensation System — Article XXIII/XXIV
16. 16. Term of Contract — Length of Contract — Article XXIV/XXV
17. Salaries and Compensation — Steps 2012, If Any — Article XXIII/XXIV
18. Salaries and Compensation — Steps 2013, If Any — Article XXIII/XXIV
19. Salaries and Compensation — Steps 2014, If Any — Article XXIII/XXIV

The parties and this arbitrator met for a hearing on these matters on June 11, 2012. The parties then submitted post-hearing briefs which were received on June 3, 2012. At that time the record was closed.

## ANALYSIS

### *Generally*

The two primary bases for decision in any interest arbitration are:

(1) Determining what the parties would likely have negotiated had they been able to reach agreement at the bargaining table or to settle a strike. Although this determination is speculative, arbitrators understand that to award wages and benefits different than the parties would, or could, otherwise have negotiated risks undermining the collective bargaining process and provoking yet more interest arbitration.

(2) Seeking to avoid awards that significantly alter a bargaining unit's relative standing, whether internal or external, unless there are compelling reasons to do so.

These comparisons in turn entail a two-fold analysis. First, arbitrators consider an employer's ability to pay. This issue is self evident: it serves no purpose to issue an award that an employer cannot fund and thus could never agree to in collective bargaining. However, a simple assertion of financial crisis does not alone warrant freezing wages and other benefits. It is not unusual for employers to claim financial exigency, and when they do so arbitrators closely scrutinize that claim.

Notwithstanding such scrutiny, it is important to note that recent years have seen significant economic challenges that are obvious to all. No arena has escaped economic hardship: global, national, personal, public and private sectors. The economic climate—past, present and into the foreseeable future—has played a major role in interest arbitration awards in the last few years.

If the evidence demonstrates that at least some financial improvement is possible and warranted, arbitrators next consider the comparability data. This step requires the arbitrator to evaluate the parties' proposals in two contexts: (1) considering the wages, benefits, and other cost items this employer provides to its other employee groups (internal comparables); and (2) considering what comparable employers provide to similar employees (external data).

*Applying interest arbitration standards to Waseca County and these bargaining unit employees*

A. Economic Factors

Most of the issues now at issue are economic issues, and as such it has been appropriate to consider the County's overall financial health. The Union argues that the County can afford to fund its proposals, and the evidence demonstrates that is true. The Union offered evidence that as of December 31, 2010, the County had an unreserved General Fund balance of \$11,996,203. This amount that reflects approximately 86.24% of its total closing governmental fund balance. The Office of the State Auditor recommends maintaining an unreserved fund balance of 35% - 50%. Even if the County is correct in disputing the 86.24% figure, the Union notes that it nevertheless has a 55% fund balance which still exceeds the State Auditor's recommendation by 5%. In short, the Union submits that the County has the ability to fund the cost proposals now at issue, and there are good reasons to do so.

I have considered the Union's evidence on the question of ability to pay and find that while the County may have the ability to pay the cost items that the Union seeks, it is also true that the County's financial situation is more alarming than the Union has acknowledged. The County's ability to fund one or some employee groups' proposals does not necessarily mean that it should.

Minnesota's Public Employment Relations Act directs arbitrators in interest arbitrations to consider the "obligations of public employers to efficiently manage and

conduct their operations within the legal limitations surrounding the financing of these operations.” Minn. Stat. Sec 179A.16, subd. 7. In this case the County, like virtually all public sector employers in Minnesota, faces extraordinary economic stresses and has been forced to undertake painful steps to maintain mandated services and stay within its budget.

The County's financial condition and budget have suffered as a direct result of the U.S. and State economy and the State's budget deficits. Its County Program Aid and Market Value Credit have been reduced by \$1,072,663 from December 2008 through 2011 and its investment earnings have dropped by \$352,251 from 2008 to 2012.

In addition to ongoing reductions from the State's County Program Aid, in 2011 the State repealed the Market Value Homestead Credit (MVHC) program for property taxes payable in 2012. MVHC was a State mandated program for property tax relief which was administered by the County. Previously, a homestead property received a State-paid MVHC based on the property's market value. In place of a credit, homeowners will now see an exclusion (meaning a reduction in their market value). This new market value exclusion means that beginning in 2012, each jurisdiction's tax base will be reduced, and the tax rate will have to rise to obtain the same property tax levy dollars. This means that under the new exclusion system the County no longer receives State funding and taxpayers must pay the full levy amount. This tax increase — or shift in funding — will occur even if the County lowers or keeps the levy the same. The market value exclusion will reduce the County's overall tax capacity by \$1,129,839 in 2012.

The County has attempted to proactively prepare for these financial losses by reducing expenditures. In 2012, the Board reduced a preliminary budget levy increase from 14% to 3.79%. The 2012 budget also included an increased use of reserves to cover the adopted budget. In conjunction with these efforts the County has taken significant steps to reduce its expenditures and increase revenues. It has more closely scrutinized training and travel requests and has declined to fill, or only partially filled, several open positions. The County has offered an Early Retirement Incentive multiple times to reduce personnel costs, and 18 employees have taken advantage of this option. The County has also encouraged employee use of its Voluntary Leave Without Pay program, and has reduced its overall number of full-time equivalencies (FTEs).<sup>1</sup>

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<sup>1</sup> There was a reduction of .5 full-time equivalency (FTE) in the Administrator's Office (Budget Technical Clerk); .5 FTE in the Parks Division (Parks Caretaker) and .32 FTE (Hwy. Building Maintenance). These were all non-union positions. In the AFSCME Courthouse/Human

In short, the County has responded to significant financial pressures by implementing cost-savings measures wherever possible and undertaking meaningful steps to increase revenues and reduce expenditures. Although the County has sufficient reserve funds to pay for the Union's cost proposals, those reserves are within the level recommended by the Minnesota State Auditor and it is prudent that they remain so.

In short, the County's economic realities have been a significant factor in making the following awards.

B. Internal Comparisons

Parties present evidence of "internal comparability"--evidence of the terms and conditions of employment an employer provides its other employee groups--to demonstrate that the bargaining unit now in interest arbitration is or is not being treated equitably by comparison.

As noted above, an interest arbitrator must try to determine what agreements the parties would have struck for themselves if they had been able to do so. In making that determination evidence of the wages and benefits negotiated by or otherwise provided to the County's other employee groups is very relevant. In this specific case it is relevant that the County has reached a final agreement with its largest employee group, the 50 person AFSCME Courthouse/Human Services unit, and has reached a tentative agreement with its remaining union, the AFSCME Highway unit. The terms of those agreements are consistent with the wage increases that will be provided to the County's non-union employees. The County has maintained an essentially consistent pattern of wage increases for all its employees for many years.

The following awards have been designed to maintain these bargaining unit members' relative standing within the County's workforce. Consideration has also been given to avoiding any Pay Equity issues.

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Services unit, there was a reduction of .1 FTE (Technical Clerk—License Bureau); 1 FTE (Technical Clerk—Recorder's Office); .20 FTE (Administrative Assistant-Assessor's Office) and 1 FTE (Human Services Financial Worker). In the AFSCME Highway/Landfill unit, there was a reduction of 1 FTE (Hwy. Maintenance Worker) and 2 FTEs (Solid Waste). In the Teamsters units, there was a reduction of 1 FTE (Deputy).

C. External Comparisons

The following awards have also been designed to maintain these bargaining unit members' relative standing within the County's external comparison group. The parties have agreed that the following counties are appropriate comparisons to Waseca County: Brown, Faribault, Le Sueur, Martin, Nicollet, Sibley, Steele and Watonwan. In addition, the Union submits that the following should also be considered: Blue Earth County (which the County rejects given its significantly greater population and tax capacity), Freeborn and Rice counties and the City of Waseca. I have considered all of this data with the exception of Blue Earth County.

**ISSUES IN DISPUTE**

**DURATION (Issue 16)**

County Position:

Three year duration of 2012-2014

Union Position

Two year duration of 2012-2013

Award

Three year duration of 2012-2014

*Parties' evidence and argument*

The Union submits that maintaining the same contract duration for all bargaining units locks the Union into whatever the AFSCME group settles for, while a two year contract duration will promote good faith bargaining. Furthermore, these employees are understandably cautious regarding an extended contract duration given the County's claim of financial uncertainty. Finally, the Union submits that external comparables show that most counties have agreed to two year contracts.

The County argues that a three-year contract duration of 2012-2014 will keep the Teamsters units in sync with the other bargaining units at the County,<sup>2</sup> while the Union's

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<sup>2</sup> The County has settled the AFSCME Courthouse/Human Services unit, which includes 50 employees and is by far the largest bargaining unit at the County, for a three year duration of 2012-2014. The

proposed two year contract would create a burdensome second cycle.

*Discussion and Decision*

I agree that labor relations stability is highly desirable, particularly in these difficult economic times, and that stability will best be fostered by maintaining a three-year contract duration among all of the County's bargaining units.

**WAGES**

**(Issues 10, 11, 12, 13, 14, 15, 17, 18 and 19)**

**A. Compensation:**

County Position:

Transition to a 20 step pay plan

Union Position

Maintain the preexisting 6 step pay plan for Deputies and the 5 step pay plan for Jailer/Dispatchers with 2% base wage increases each year of the contract. Additionally, employees shall move to the next step on the wage scale on the employee's anniversary date.

Award

Transition to a 20 step pay plan

*Parties' evidence and argument*

**County**

The County has proposed transitioning to a 20 step pay plan whereby bargaining unit members would move to the next step on the pay plan above their wage, as of December 31, 2011, on the first full pay period following July 1. For 2013 and 2014, employees below the top step will move to the next step on the pay plan upon obtaining an overall satisfactory rating on their annual performance evaluation. This step increase will be effective on the beginning of the first full pay period following July 1.

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AFSCME Highway unit reached a Tentative Agreement with the County on May 21, 2012 which includes a three year duration of 2012-2014. Duration was not in dispute between the parties.

The County submits that adopting this 20 step pay plan will provide employees with increases each year of the contract. For the Deputies unit, the average increase received by bargaining unit members would be 1.1% in 2012, 1.7% in 2013 and 1.7% in 2014. For the Jailer/Dispatcher unit, the average increase received by bargaining unit members would be 0.7% in 2012, 1.97% in 2013 and 1.86% in 2014.

The County submits its proposal is supported by both internal and external comparability data. Both the AFSCME Courthouse/Human Services unit, by far the largest unit in the County, and the AFSCME Highway unit each requested a 20 step pay plan versus an open range pay plan and the County agreed to those proposals. The Courthouse/Human Services Agreement is now settled, and the AFSCME Highway unit reached a Tentative Agreement with the County on May 21, 2012. Non-union non-supervisory employees have the 20 step pay plan in place effective July 1, 2012. Non-union department heads and supervisory employees have the open range pay plan in place effective July 1, 2012. This wage offer is consistent with wages increases that will be provided to employees throughout the County.

### **Union**

The Union proposes to maintain the preexisting 6 step pay plan for Deputies and the 5 step pay plan for Jailer/Dispatchers plus increase base wages by 2% each year of the contract. In addition, employees shall move to the next step on the wage scale on the employee's anniversary date.

The Union submits that its proposal is reasonable given the County's ability to pay and the external comparables. The Union does not recognize there is an internal settlement pattern. Moreover, the Union submits that this proposed wage increase is not extravagant. For the Deputies in 2012, the total annual increase of 2% for an individual at the top step would be \$1,060.80. If all nine (9) deputies were at the top step, the annual cost to the County for a 2% increase in 2012 would be \$9,547.20. In 2013, if all nine (9) deputies were at the top step the annual cost to the County for a 2% increase would be \$9,734.40. In 2014, if all nine (9) deputies were at the top step, the annual cost to the County for a 2% increase would be \$10,090.08.

For the dispatcher and jailer wages, in 2012, if all the dispatchers and jailers (total of 12 employees) were at the top step, the cost to the County for a 2% wage increase would be \$10,732.80. In 2013, if all twelve (12) of the dispatchers and jailers were at the top step, the cost

to the County for a 2% wage increase would be \$10,982.40. In 2014, if all twelve (12) dispatchers and jailers were at the top step, the cost to the County for a 2% wage increase would be \$11,207.04.

### *Discussion and Decision*

By way of background, it is important to note that the parties' proposals have been developed in the context of its 2011 Springsted Study. In approximately 2008 and 2009, the County undertook a major County-wide classification study with the Springsted Group. The County implemented the results of the Springsted study in 2010 and 2011 uniformly for all of its employee groups.

In addition to this historical context it is important to note that interest arbitrators accord substantial weight to internal comparisons. In this case a 20-step plan finds strong support among the majority of the County's employees, both Union and non-union. Moreover, post-hearing evidence submitted by both parties suggests that the Union's proposed wage increases are significantly greater than 2.0% and will in fact cost \$270,436.05 more than the cost of the County's final position. In light of the previously discussed State budget crisis, the significant reductions in State aid to local units of government, and the current economic climate, and this \$270,436.05 differential is significant. The Union has failed to provide persuasive evidence as to why these two bargaining units, who represent a small portion of the County's workforce, should receive significantly higher wage increases than all others.

Finally, it is reasonable for the County to award wage increases only to those who have obtained a satisfactory performance evaluation. The County's position also poses no threat to its Pay Equity plan and is consistent with the available evidence of external comparisons. It is also true that the County has no difficulty attracting and retaining employees for these bargaining unit positions.

For these reasons, and because under Minnesota law an interest arbitrator must select one parties' position item-by-item, the Employer's wage proposal is adopted.

### **B. Field Officer Training pay**

#### County Position:

Employees who are assigned Field Training Officer duties will be paid an additional \$9.00 per hour for each hour worked as an FTO.

Union Position

Maintain the past practice of paying all bargaining unit employees who perform Field Training Officer duties at overtime (time and one-half) for both units.

Award

Maintain the current practice of paying all bargaining unit employees who perform Field Training Officer duties at overtime (time and one-half) for both units.

*Parties' evidence and argument*

The parties' Agreement does not address the rate of compensation for employees who perform Field Training Officer duties. As a result the County is unable to track the amount of time spent performing Field Training Officer duties or who is conducting the training. Rather, employees simply add two hours of overtime to their timesheet for the day they perform FTO duties. There is no way to differentiate FTO overtime from the other types of overtime.

The County submits that by attaching a rate of pay to the Field Training Officer duties, it will be able to track the amount of time being spent on training. Moreover, the County notes that external data establishes that the current FTO payments are much richer than those found in the marketplace. Of the seven comparison counties, none of them provide for special compensation or premium pay for FTO.

The Union urges that the parties should continue to conform to their past practice of paying bargaining unit members who perform FTO duties at overtime (time and one-half) for both units. The County's proposal would change the method of paying FTOs, and would limit this benefit to the Deputy Sheriff contract.

*Discussion and Decision*

In that the Union has demonstrated a past practice and the County is not offering any benefit for removing this pay from the Dispatch/Jailer unit, the Union's proposal is adopted.

**C. No Additional Salary Increases After Expiration of Contract**County Position

Maintain existing language but remove existing dates

Union Position

Delete this provision

Award

Maintain existing language

*Parties' evidence and argument*

The current Teamsters 320 contracts include provisions that state, "In the event an agreement is not reached between the parties by 12/31/11, employees' salaries shall remain at their 12/31/11 salary rate until a successor agreement is ratified by both parties." The Union seeks to delete this contract provision. The County's position is to retain the principle set forth in contract language with the removal of the specific dates.

*Discussion and Decision*

The County's position is consistent with the internal settlement pattern. The AFSCME Courthouse/Human Services unit 2012-2014 collective bargaining agreement includes the language proposed by the County. The AFSCME Highway unit reached a Tentative Agreement with the County on May 21, 2012 which includes the language proposed by the County.

**D. New Employee Start Rate**County Position:

Add: New employees may be hired above the applicable start rate for the classification, if the employer determines that the employee has additional education or training, experience or other qualifications warranting additional recognition.

Union Position

No change

Award

The County's proposal is adopted

***Discussion and Decision***

The County's position is reasonable and is also consistent with its internal settlement pattern. The AFSCME Courthouse/Human Services unit's 2012-2014 collective bargaining agreement includes the language proposed by the County. The AFSCME Highway unit reached a Tentative Agreement with the County on May 21, 2012, which includes the language proposed by the County. Similar language is also included in the non-union personnel policies.

**E. Shift Differential (Dispatcher/Jail Unit)**

County Position:

Revise the existing shift differential to simply refer to the "C" shift and the "B" shift rather than specific shift times.

Union Position

Maintain existing language

Award

Maintain existing language

***Parties' Evidence and Argument***

**County**

The County submits that it is not seeking to eliminate or modify the shift differential benefit. Instead it simply seeks to clarify this provision by addressing the reality of what may reasonably be considered the B shift (afternoons) and C shift (nights). For example, some employees currently work the 3:00 p.m. to **11:00** a.m. shift, but actually work an additional one-half (**1/2**) hour to 11:30 a.m. The current language is ambiguous relative to the calculation of shift differential for an employee working 3:00 to 11:30 p.m. Such ambiguity would be resolved by adopting this contract language.

### **Union**

The Union acknowledges that the current schedules of the dispatchers do reference "C" and "B" shifts but the reality is that those are just names arbitrarily attached to a set time range. If the County's position is awarded, the jailers will no longer be eligible for shift differential because they do not work a "C" or "B" shift.

The Dispatcher shifts overlap with one another and times that are worked in the "C" shift are also worked in the "A" and "P" shifts. Similarly, hours worked in the "B" shift are also worked in the "A" "F" and "P" shifts. The County's position is not intuitive, it is not beneficial to the employees and it is not fair. Therefore, the Union rejects the County's final position and requests the Arbitrator award the Union's final position.

### ***Discussion and Decision***

The County's has not offered a compelling reason, nor anything in exchange for this proposed change, which apparently would negatively impact at least some of these employees. For this reason, it is not adopted.

## **INSURANCE (Issues 7-8)**

### **A. Insurance Contribution**

#### County Position:

For the years 2013 and 2014, the Employer and employee will each pay 50% of any increase to dependant insurance premiums

#### Union Position

Remove language specific to 2008 and 2010-2011. County will pay the first 10% of any premium increase

#### Award

The County's position is awarded

### ***Parties' evidence and argument***

For the years 2013 and 2014, the County is proposing that the Employer and employee

each pay 50% of any increase to dependant insurance premiums. The County submits that by this proposal it simply proposeekssing to reinsert a previously agreed upon provision regarding the reduction of the Employer's contribution in the event of a reduction in premium. The reduction in premium language was included in the parties' 2007-2009 contracts but was erroneously and inadvertently omitted from the 2010-2011 contract. The 2012-2014 contract for the AFSCME Courthouse/Human Services unit, which did not contain this same error, includes this reduction in premium language as does the tentatively approved AFSCME Highway unit Agreement.

### **County**

The County submits that its position on insurance is consistent with the internal settlement pattern and does not result in a change in the amount of the County's 2012 contribution toward health insurance. For 2012-2014, the County has negotiated an absolute uniform pattern for health insurance contributions. The County's proposal for these employees is identical to its uniform internal pattern and maintains the internal consistency among all County employees with regard to the health insurance contribution. There is no reason to treat these employees differently than other County employees with respect to health insurance.

### **Union**

The Union proposes housekeeping changes regarding language that was specific to 2008 and the 2010-2011 Contracts. Beyond that, it vigorously protests what it sees as the County's effort to drastically re-write a very significant contract benefit by: (1) removing the language "[t]he employer and employee shall equally share any premium costs exceeding a 10% increase," for dependent contributions; (2) adding language by which the County and these employees will each pay 50% of any increase to dependent insurance premiums for 2013 and 2014, and (3) drastically changing the Article from one based upon a percentage contribution to a dollar amount contribution.

The Union also urges adoption of its proposal to remove the language regarding what will happen if the parties don't ratify an agreement by 12/31/11. The Union's proposal would maintain the remaining Contract language and benefits.

### *Discussion and Decision*

The Union submits that the County seeks to remove its alleged obligation to pay the first 10% of any insurance increase for health insurance before the 50/50 split occurs. However, the County has persuasively demonstrated that it negotiated that provision out of the 2010-2011 contract. That Agreement's failure to reflect the agreed upon terms is the result of inadvertent error in its preparation.

Moreover, the Employer also persuasively demonstrated that it is not attempting to establish a flat dollar contribution. Instead its proposal simply establishes the base dollar contribution amount for 2012 in order to calculate the 50/50 split thereafter in years 2013 and 2014.

I agree with the well-established principle in interest arbitration that arbitrators closely adhere to internal consistency with respect to health insurance contribution formulas negotiated with the other bargaining units in the same jurisdiction as well as established for non-union employees. In this case the Union's position departs from the County's uniform pattern. While it is true that every bargaining unit has the right to bargain the terms of its own contract, with respect to health insurance the County has a reasonable basis for treating the employees in the Teamsters units the same as all of its other employees. Members of these two bargaining units are impacted and benefited in the same manner as all other County employees. For this reason the County's position is adopted.

### **B. RETIREE HEALTH INSURANCE (Deputies)**

#### County Position:

After 10 years of continuous service as a Deputy, an employee will be eligible to receive the County's contribution toward single health insurance coverage at the lowest available deductible plan. This retiree benefit includes single coverage. Deputies would be eligible to receive one month of insurance contributions for each year of service. The benefit would be available for a maximum of 36 months.

#### Union Position

Maintain current benefit

#### Award

Maintain current benefit

### *Parties' Evidence and Argument*

#### **Current benefit:**

For retired Deputies, the current contract provides that the County pays the full premium cost of the insurance coverage at the lowest available deductible amount. In addition, if the premium amount is less than the County contribution, the County pays the coverage to the retiree up to the amount of the County contribution. This benefit includes both single and family coverage if the retiree carried family coverage for 5 years prior to retirement. When Deputies retire, their years of service determine the number of months of insurance contributions for which they are eligible, to a maximum of 5 years.

#### **County**

The County supports its proposal to limit this benefit by noting that a retiree health insurance benefit is extremely rare. External comparison data demonstrates that six of the seven comparison counties do not provide any retiree health insurance benefit whatsoever. Internally, while the AFSCME Courthouse/Human Services unit and AFSCME Highway unit have a retiree health insurance provision, it is limited to employees after 20 years of service. Members of AFSCME are eligible to receive the County's contribution toward single health insurance coverage at the lowest available deductible plan. The AFSCME benefit is limited to single coverage. Members of AFSCME are eligible to receive one month of insurance contributions for each year of service. Members of AFSCME are eligible to receive the benefit for a maximum of 36 months. These provisions are all consistent with the County's final position.

Non-union, non-supervisors have the same benefit as the AFSCME Courthouse/Human Services unit and AFSCME Highway unit by virtue of Section 1.2 of the Employee Policy Manual which provides them with the same fringe benefits as their closely related union members. Non-union Supervisors are the only other group at the County that is eligible for the benefit after 10 years, but it is after 10 years as a Supervisor.

#### **Union**

The current contract language specifically states that in 1999 the Deputy Sheriff unit agreed to remove a prior longevity benefit in exchange for this retirement benefit. Longevity was a high price to pay. This County now proposes to reduce this benefit without offering any quid pro quo, and that proposal should be rejected.

***Discussion and Decision***

In 1999 the Deputy Sheriff bargaining unit obtained this benefit in exchange for giving up another valuable benefit. The County now seeks to reduce that benefit without offering anything in exchange for doing so. The current contract language shall be maintained.

**WORK WEEK (Deputies) (Issue 2)**County Position:

The Employer shall establish schedules that cycle in not more than 25 days and 153 working hours.

Union Position

Maintain current language

Award

Maintain the current language

***Parties' Evidence and Argument*****Current contract:**

The normal work week shall be scheduled to average forty (40) hours per week. Unless scheduled revisions are agreed upon between the employee and the Sheriff, time worked in excess of the scheduled weekly hours or scheduled daily hours shall be paid for at the rate of time and one-half (1/2). Daily scheduled hours shall not be less than eight and one-half (8 %) hours nor exceed ten (10) hours for Deputies. Changes in the daily scheduled hours shall be made only after a majority of the Union votes to approve them.

**County**

The current contract includes a provision whereby changes in the daily scheduled hours shall be made only after a majority vote of the Union. Per Minn. Stat. §179A.07, subd. 1, a public employer is not required to meet and negotiate on matters of inherent managerial rights. The County submits that the "daily scheduled hours of employees" constitute an inherent managerial right and the Union's refusal to modify the Work Week article negatively impacts the County's right to determine work schedules.

The County further submits that the schedule changes it seeks to codify in the Work Week article reflect the Deputies' actual normal schedules of 153 hours per 25 day work period. The County candidly concedes that adopting this provision would result in cost savings. Pursuant to the Section 7(k) partial exemption under the Fair Labor Standards Act (FLSA), a public employer is not required to pay overtime at time and one-half the employee's regular rate of pay after 40 hours in a work week. Instead, a public employer may establish a work period of up to 171 hours in 28 days, after which the employee is entitled to overtime compensation. The Section 7(k) partial exemption was specifically established because of the nature of scheduling in law enforcement, and it permits public employers to minimize their overtime burden.

Because law enforcement services are provided essentially on a 24-hour per day, 7 day per week basis, Deputies do not work a 40-hour schedule. Under the Union's proposal overtime would have to be paid for any hours over 40 hours per week. Of the comparison counties, a number of the counties utilize an overtime standard consistent with the Section 7(k) standards under the FLSA.

### **Union**

The Union submits that the County, which seeks to change existing contract language, has failed to satisfy its burden of demonstrating that its proposal is necessary and reasonable. The Union acknowledges that Deputies do not work a 40-hour work schedule because law enforcement services are provided on a 24/7 basis. However, the Union does not agree that the "changes the County seeks in the Work Week Article reflect the actual schedule worked by the Deputies." The Union submits that the scheduling practice has been for deputies to work an eight and one-half (8 1/2) hour shift, six (6) days in a row and then have three (3) days off. The Employer's proposal will simply affect when an employee may begin to earn overtime.

The County cannot simply remove a benefit already contained in the Contract simply because it no longer wants to abide by terms it previously negotiated. There is nothing in the current agreement that violates the FLSA.

### ***Discussion and Decision***

I agree that the County cannot unilaterally remove this provision simply because it no longer likes it. If the County wishes to make this change, it should do so through bargaining. Meanwhile, the current language shall be maintained.

## SICK LEAVE (Issue 3)

### A. Maximum Sick Leave Accrual

#### County Position:

Modify Section 1 of the Sick Leave article so that once an employee reaches the 765 hour sick leave accrual maximum, the employee may not continue to accrue additional sick time as vacation. Employees hired before January 1, 2012, will not be affected by this change.

#### Union Position

Maintain current benefit

#### Award

Maintain current benefit

### *Parties' Evidence and Argument*

#### **County**

The County proposes to modify Section 1 of the Sick Leave article so that once an employee reaches the 765 hour sick leave accrual maximum the employee may not continue to accrue additional sick time as vacation. The County's position will not impact current employees as the County is proposing to grandfather existing employees hired prior to January 1, 2012. Current employees can continue to accumulate sick leave at the rate of 8 hours per month as vacation.

The County supports this proposed change by noting that it mirrors the language of the AFSCME Courthouse/Human Services unit. Although the non-union policies and AFSCME Highway Unit Tentative Agreement language do not mirror the AFSCME Courthouse/Human Services language, non-union employees and members of the Highway unit do have a conversion formula of 1/2 day toward additional vacation and 1/2 day toward deferred sick after the maximum sick leave accrual is reached.

Dispatchers currently have a maximum sick leave accrual of 720 hours. The County is proposing to increase the Dispatchers maximum sick leave accrual to 765 so that their accrual maximum is consistent with the accrual maximum set forth in the Deputies and AFSCME Courthouse/Human Services contracts.

The County notes that its position will reduce its liability for future hires as vacation pay is

paid out as severance at 100% and sick leave has a maximum limit of \$8,000 as severance payout. The Union has acknowledged that this benefit is liberal and does not exist in the vast majority of other collective bargaining agreements.

The County further argues that its proposal to grandfather existing employees is consistent with how retiree insurance has been addressed in many collective bargaining agreements.

### **Union**

The Union strenuously resists any disparate treatment of employees in the same bargaining unit, be they present or future employees. It notes that under the County's proposal attrition will eventually eliminate a benefit for which the County has failed to offer any quid pro quo.

### ***Discussion and Decision***

The County has failed to offer a sufficiently persuasive rationale to amend this benefit. Moreover, the County's proposed two-tier system is contrary to the principle of maintaining internal consistency within a body of similarly situated persons performing the same work. The current language is maintained.

## **B. Transfer of Remaining Sick Leave Balance to Vacation Account**

### County Position:

Remove existing language

### Union Position

Maintain existing language

### Award

No change

### ***Parties' evidence and argument***

#### **County**

The Teamsters contracts currently provide that upon separation, an employee receiving their maximum severance pay may elect to transfer remaining sick leave balance to their vacation account, until the maximum vacation accumulation is reached. The County notes that this

provision effectively negates the sick leave severance caps in the contract for Deputies and Dispatchers. Moreover this benefit is not included in any other County collective bargaining agreement, nor is it available to non-union employees. The County seeks to establish internally consistent benefits and to reduce future liability for severance.

### **Union**

The Union notes that the parties agreed upon this provision whereby employees may transfer sick leave to vacation until the maximum vacation accrual is reached. This is a unique and valued benefit that the Union negotiated in good faith and should not now lose, with nothing in exchange, simply because the County no longer wishes to provide it.

### ***Discussion and Decision***

The County has failed to offer a sufficiently persuasive rationale to amend this previously agreed upon benefit. The current language is maintained.

## **UNIFORM ALLOWANCE (Issues 5 and 6)**

### County Position:

New contract language will correspond with the current uniform requirements, and will also state that employees terminating from the County for any reason must return any Waseca County identifying items from the standard issue.

### Union Position

Eliminate dated language and otherwise maintain current language

### Award

The County's proposal is adopted

### ***Parties' evidence and argument***

#### **County**

The County argues that it is seeking to modify the Dispatchers uniform requirements so that the contract language corresponds with the current uniform requirements and directives from the Sheriff. In addition, for both Deputies and Jailer/Dispatchers, the County has proposed new

contract language such that employees terminating from the County for any reason must return any Waseca County identifying items from the standard issue. The County is seeking this language to avoid situations where identifying objects are potentially misused and to protect the County's image.

The County submits that the Union's basic argument challenging its proposal relates to the continuation of a cash payment for uniforms. The County is not seeking to change the cash payment for uniforms. The County is simply trying to clean up the language and asks that items that are identifiable such as brass, shirts with logos, etc. be returned if an employee leaves. If the employee discards these uniforms, someone else could dress up like a police officer and perpetrate a crime or cause negative reflection on the Sheriff's Department.

#### **Union**

The Union submits that the uniform allowance provided to employees does not cover the entire cost of all of the necessary uniform items. Employees are forced to purchase items from at their own cost. While the Union understands that the County doesn't want former employees wearing Waseca County identifying items, it is unfair for the County to expect employees to return items paid for from the employee's personal funds. If the County seeks to have items returned upon separation, then the County should purchase, maintain and replace those uniform pieces.

#### ***Discussion and Decision***

The Union failed to support its assertion that employees' uniform allowance fails to reasonably cover the cost of all of the necessary uniform items. Absent evidence of a substantial disparity between the uniform allowance and amounts actually expended, it is not reasonable to expect the County to buy back that for which it has already paid. It is reasonable for the County to expect the return of all Waseca County identifying items from the standard issue upon an employee's separation from the Department.

## SUMMARY OF AWARDS

**Contract Duration:** 3 years.

**Compensation System:** The County's proposal is adopted. A 20 step compensation system is awarded.

**Field Officer Training pay:** No change. Maintain the past practice of paying all bargaining unit employees who perform Field Training Officer duties at overtime (time and one-half) for both units.

**No Additional Salary Increases After Expiration of Contract:** No change except for modification of date.

**New Employee Start Rate:** The County's proposal is adopted.

**Shift Differential (Dispatcher/Jail Unit):** No change

**Health Insurance:** The County's proposal is adopted. For the years 2013 and 2014, the Employer and employee will each pay 50% of any increase to dependant insurance premiums

**Retiree Health Insurance (Deputies):** No change

**Work Week (Deputies):** No change

**Maximum Sick Leave Accrual:** No change

**Transfer of Remaining Sick Leave Balance to Vacation Account:** No change

**Uniform Allowance:** The County's proposal is adopted. New contract language will state that employees terminating from the County for any reason must return any Waseca County identifying items from the standard issue.

July 31, 2012



Christine D. Ver Ploeg