

**IN THE MATTER OF ARBITRATION  
BETWEEN**

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**GREATER MINNESOTA AFSCME  
COUNCIL 65**

**Union,**

**and**

**PINE COUNTY,**

**Employer**

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**ARBITRATION DECISION AND  
AWARD**

**BMS Case No. 12-PN-0571**

**Arbitrator:**

Andrea Mitau Kircher

**Date and Place of Hearing:**

October 4 and 15, 2012  
Pine County Courthouse  
Pine City, Minnesota

**Date Record Closed:**

November 9, 2012

**Date of Award:**

November 21, 2012

**APPEARANCES**

For the Union:

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For the Employer:

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## **INTRODUCTION**

Greater Minnesota AFSCME Council 65 (“Union”) is the certified bargaining representative for the Correction Officers, Correction Sergeants, Jail Programmer and Dispatchers in Pine County. These employees constitute a bargaining unit of essential non-licensed employees who work for the Pine County Sheriff’s Department, in Pine City, Minnesota. Pine County (“County” or “Employer”) and the Union are signatories to an expired collective bargaining agreement (“CBA”) covering the period from January 1, 2010 through December 31, 2011, the first contract between the parties. Negotiation of a successor contract covering 2012-2013 has not been completely successful. Pursuant to the Public Employment Labor Relations Act, the parties engaged in mediation, and then petitioned the Bureau of Mediation Services for interest arbitration.

The Bureau certified 5 issues for arbitration, and the parties submitted their final positions. In accordance with Article 5 of the Contract, the parties selected me as the arbitrator, and I conducted a hearing at the Pine County Courthouse, Pine City, Minnesota on October 4 and 15, 2012. At the hearing, I accepted exhibits into the record; witnesses were sworn and testimony was presented subject to cross-examination. Post-hearing briefs were submitted and exchanged by electronic mail on November 9, 2012, and the hearing record closed on that date.

## **ISSUES**

The Minnesota Bureau of Mediation Services certified the following issues for arbitration:

1. Full Time Positions – What, if any, language shall be added with regard to maintaining full time positions? NEW, Art. 7.9
2. Personal Days – Shall Article 10.2 be modified? – Art. 10.2

3. Wage Adjustment – What, if any, wage adjustment shall be made for 2012 – Art. 14, Appendix A?
4. Wage Adjustment – What if any, wage adjustment shall be made for 2013? – Art. 14, Appendix A?
5. Hours of Work, Shifts – What, if any, language shall be added regarding hours of work, shifts? - NEW

During the time between certification of the issues and the arbitration hearing, the first issue was resolved.

## **CERTIFIED ISSUE 2, PERSONAL DAYS.**

### **UNION POSITION**

The Union seeks to amend Article 10, § 10.2 as set out below:

#### Personal Days:

The County shall allow ~~four (4)~~ five (5) personal days to be used in full-shift increments, with non-accruing status to be used anytime during the course of the year, upon receiving them. but they may not be carried over from year to year. All personal days shall be granted January 1 and may be combined with vacation or comp hours. Employees hired after January 1 shall receive pro-rated personal days as follows: those hired after March 1 but prior to June 1 shall receive three (3) days; those hired after June 1 but prior to September 1 will receive two (2) days; those hired after September 1 will receive one (1) day.

This proposal seeks to effect two changes to the current Article. First, the Union proposes a one-day increase in the total number of personal days for its current employees, who now have four; second, it seeks personal time pro-rated, for new employees covered by its CBA.

With regard to the additional personal day, the Union argues that there is no good reason for the members of its bargaining unit to receive fewer personal days than employees in other bargaining units. Bargaining units that now have five personal days were granted the fifth day to encourage them to agree to a new system of time off, known

as PTO, instead of the leave system that provides separate vacation, sick leave, and personal days. The Employer claims that the fifth day was to make up for lost leave time attributable to the PTO consolidation, but the Union contends that no leave time was lost when employees switched to the new system. The Union contends that the arbitrator should alleviate the unfair difference in leave time and grant an extra day of personal leave to its members.

As to its second proposal, a new category of pro-rated time-off for recently hired employees, the Union argues that the high stress jobs in the bargaining unit, combined with the exigencies of life, favor allowing new employees a break from their duties during their first year. The Union seeks pro-rated personal leave for new employees as specifically set out above.

#### **EMPLOYER POSITION**

The Employer argues that Article 10.2 – Personal Days – should not be modified. Two of its managerial employees testified that they believe the consolidation to PTO resulted in less total leave to employees, so an extra personal day was added to encourage Unions to agree to the new system. To date, not all of the Employer’s nine bargaining units have agreed, and those who have not agreed remain entitled to fewer than five personal days. The Employer contends that employees covered by the Union’s CBA are treated the same as other bargaining units which have not agreed to PTO.

#### **DISCUSSION AND DECISION, PERSONAL LEAVE DAY**

When the parties cannot negotiate a solution and a mediator has been unable to persuade the parties that they would be better served by resolving their dispute themselves, interest arbitrators are given the task of deciding what the parties might have

agreed upon if they had been able to reach an agreement. This task is difficult at best, but even more difficult where, as here, the underlying facts are not clear.

Marc LeBrun, the County Coordinator, Administrator and Human Rights Director for the Employer from 2008-2012, testified about the County's switch to PTO. He and Rick Boland, Chief of Corrections, both stated that the reason for adding an extra day of personal leave for bargaining units switching to PTO, was that combining personal days, sick leave and vacation time created less leave time for employees, so an extra day of personal leave was added to encourage the unions to switch to the new system. Nonetheless, the Union presented a chart prepared from Employer's Exhibit 9 (pages from various CBAs) that demonstrates otherwise; that the total leave days from the old system was the same as the total number of days available to employees who chose PTO, until the employees reach twenty years of service. The variation after 20 years is not related to whether or not the group has PTO.<sup>1</sup> These facts undermine the Employer's stated reason for adding a fifth personal leave day for employees in bargaining units which agreed to adopt PTO. Nonetheless, the Employer takes the position that consolidating various types of leave would lead to a loss of leave time, and various bargaining units rejected the change.

Arbitrators often look to bargaining history as one of the guides for resolving impasse disputes. Bargaining history reveals that the Employer seems to have used an extra day of personal leave as a "carrot" to persuade unions to agree to the new PTO system. Regardless of the motives or accuracy of the parties' positions, the Union now seeks to gain the extra day of personal leave through arbitration, without a quid pro quo.

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<sup>1</sup> The group that gets the most total time is the Road and Bridge Supervisors, and they get vacation and sick leave, not PTO. The employees with the least total leave time are the Legal Secretaries, and they get vacation and sick leave also. Union Post-hearing brief at p. 3-5

Neither external market forces nor internal consistency weighs in favor of the change the Union seeks. Currently, it appears that five of the other nine bargaining units are in the same boat as the Union, with four personal days and without PTO. Bargaining history supports the Employer's consistent position that an extra day of personal leave is the quid pro quo for a union's agreement to switch to PTO. I see no compelling reason to undermine collective bargaining by granting this Union's employees an extra day of paid leave, when a number of other bargaining units are in substantially the same position, but for the fact that PELRA does not provide arbitration to them when bargaining reaches impasse.

As to the second change in leave the Union proposed, additional pro-rated paid leave for new employees, no other employees in the County have this benefit, and data from comparable counties does not support the change. Although the Union makes a reasonable argument that it might be a good idea, internal comparison and bargaining history weigh against the change. A new type of paid leave should be negotiated, not awarded through arbitration.

**Issues 3 and 4, WAGE ADJUSTMENT, 2012-2013 (Article 14, Appendix A)**

The parties have agreed to a cost-of-living adjustment of 1.50% in each year, 2012 and 2013. In addition, the Union seeks a Grid/Grade Adjustment and a Market Adjustment.

**UNION POSITION**

The Union contends that the Employer should have studied and upgraded the job classifications in the bargaining unit, because significant changes in its employees' jobs have occurred in recent years. For its Correction Officers, the majority of the employees

in its unit, the Union points out that the County adopted the more stressful, and possibly higher risk “direct supervision” style of corrections work since the new jail opened in 2008, and the Employer has not taken this into account. The Union argues that direct supervision work requires the corrections officers to be in a room with the inmates for their entire shift; previously, corrections officers could supervise prisoners at least part of the time, through a window or television camera. The Union claims that this change calls for a re-evaluation of the skills, effort, responsibility and working conditions of those working in the jail and thus, a pay increase based on changes in job classification.

The Union also argues that the working conditions for Dispatchers have worsened, because the County has scheduled them to work alone instead of with another Dispatcher. The Union contends that less desirable working conditions support their demand for a job classification upgrade.

In connection with the Union’s request for a wage adjustment, it argues that comparable counties have increased their Correction Officers’ pay over the last few years, and that the Union’s members have been falling farther behind the external market pay for this job. Additionally, the Union contends that its employees have fallen behind the pay of other Pine County employees whose jobs, like those of Corrections Officers, are on the compensation grid at B-23. During negotiations for the 2008-09 CBAs, other unions were successful in persuading the Employer to raise the pay of their employees to match that of corrections officers, who were paid more. The Union seeks to reinstate the corrections officers’ advantage over other B-23 employees, either through reclassification or through a market adjustment or both. The Union seeks a \$.70 per hour market adjustment in 2012 and a \$.75 per hour market adjustment for 2013. It seeks to reclassify

the Programmer from B-31 to C-41, the Dispatchers and the Corrections Officers from B-23 to B-24, and the Sergeants from B-24 to B-31, and it includes a chart showing the pay that should be attributable to each step based on the changes requested.

### **EMPLOYER POSITION**

The Employer argues that the Union should not be granted any wage increase beyond the 1.5% COLA that it has agreed to pay all of its employees in both 2012 and 2013. It claims that no market adjustment is needed and the Union has failed to state to the Bureau of Mediation Services its demand for reclassification as one of its final positions; further, such a change is not within the authority of the arbitrator. The Employer also argues that no market adjustment should be granted, because an increase would disrupt internal equity, not achieve it; the County cannot afford it, and the employees covered by the CBA are currently within a reasonable range compared to nearby counties.

### **DISCUSSION AND DECISION – WAGE ADJUSTMENT, 2012-2013**

Factors commonly considered by arbitrators in impasse dispute arbitration are these: internal comparables; external market conditions; bargaining history; ability to pay; and statutory considerations, such as the Pay Equity Act. The parties presented a tremendous amount of information concerning these factors. By the time I heard the evidence, however, the parties had agreed to a 1.5% increase for each year, the same increase to which the majority of bargaining units have already agreed. The only wage dispute remaining is whether the Correction Officers should be granted an additional adjustment. Considerations of internal equity combined with economic factors and bargaining history combine to outweigh the other considerations in this case and to

persuade me that the Employer's position should prevail. The reasoning behind this decision is set out below.

The Employer argues that it should not agree to a market adjustment for the Union's employees because of various economic factors. First, it is a county without much ability to absorb an increased tax burden. The County Auditor testified that Pine County's average homestead is worth \$71,300; it is not a tourist haven, and the County has very few large agricultural or commercial properties to generate additional taxes. Its financial condition may also be worse than comparable counties because it has made some controversial financial choices. First, its unreserved fund balance is only 9.22% of its operating revenues, much lower than the 35-50% of fund operating revenues recommended by the State Auditor. This factor affects the County's bond ratings and cost of interest.<sup>2</sup> Second, it has built a modern new jail, opened in 2008, which was much bigger than necessary, and the County has been largely unsuccessful in filling the jail with inmates from other counties, as it had hoped to do. The County collected only 21% of the amount it anticipated in its budget from boarding prisoners from other counties by August of this year. (Er. Ex. 24.) The County Auditor, Cathy J. Clemmer, testified that the County will be \$700,000-800,00 over budget for 2012.

The County has also suffered loss of revenue due to legislative belt-tightening affecting local units of government. But instead of increasing its tax levy in response, the County has not raised its tax levy for the last few years, and indeed, it has lowered its tax levy for 2012. Lowering the tax levy lowers the amount of property taxes it collects from its citizens. These financial problems may not have much bearing on

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<sup>2</sup> Testimony of Auditor.

paying the relatively small amount sought for the 47 employees in this bargaining unit, but the Employer sees its financial situation as poor, and any increase in pay for this bargaining unit as an unnecessary and unwelcome increase in its financial burden. The County's financial circumstances weigh against a third party decision to impose increased expenditures.

A counterbalancing factor is that employees in this bargaining unit are falling behind in pay when compared to similar employees who work in nearby counties. The parties essentially agree about which nearby counties constitute an appropriate comparable market: Carlton, Chisago, Isanti, Aitkin, Kanabec, and Mille Lacs. The Union prepared a chart comparing the top pay for its job classes with that of the same job classes in comparable counties. It finds that Pine County's pay has not kept pace with the average for these groups of employees. For example, Pine County's Corrections Officer pay in 2005 was within \$86 of average and by 2011 the differential had grown to \$332 less than the average pay per month. (The comparable counties' average went from \$3428 to \$3932 while Pine County's pay went from \$3342 to \$3600.)<sup>3</sup> No demographic reasons were advanced that satisfactorily explained the increasing differential. The Employer argued that health care benefits were better for employees in Pine County and if the amount paid by Pine County toward health insurance were taken into account, the differential would be less. Pine County contributes somewhat more toward health insurance than three of the comparable counties, contributes less than two of them, and one is unknown. The amount contributed by the Employer toward health care does not cancel the growing pay differential.

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<sup>3</sup> Union's post-hearing Brief at 20-21, citing exhibits.

Although external equity favors the Union position, internal comparables do not. At one time Corrections Officers were paid more than other employees classified as B-23 in the County's classification plan. During negotiation for the 2008-9 CBAs, however, the Employer agreed to adjust the wages of B-23 employees in other bargaining units, raising them to the same level as the Corrections Officers. The Employer opposes the Union's demand to grant COs an adjustment now, because it would recreate the differential in the B-23 group. The Employer claims that this equity adjustment would disrupt its job classification system. Relying on the equity of its classification system does not ring true in this case. The Employer has taken no steps to determine whether the requirements of the COs and Dispatchers' jobs should be changed because of recent changes in the daily work. An outside consultant developed the job classification system, and the manager who testified that it has been his job to deal with job classification problems thereafter, has had no formal training on the subject. In recent years it has not been uncommon for the Employer to make adjustments based on job classification considerations during negotiations without resort to the methodology underlying the job classification system.<sup>4</sup>

When different groups of employees in the same job classifications earn different rates of pay, the Employer should take steps to relieve the tension between its job classification system and its collective bargaining solutions. The Employer's reliance on a possibly outdated job classification system leads to a sense of inequity. The County would be well advised to engage in a professional review and revision of its job classification system with an eye to raising the minimum job requirements for

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<sup>4</sup> Testimony of Jo Musel-Parr, Staff Representative, AFSCME 65; and Marc LeBrun, County Administrator and Human Resources Director 2008-2012.

the Corrections Officers and other job classes if justified and making sure that the skills, responsibilities, qualifications and working conditions of jobs have a basis in reality and a reasonable relationship to each other.<sup>5</sup>

The parties also describe another inequity that cuts against giving the COs an additional adjustment: the Corrections Officers' starting pay is \$2.00 an hour higher than the other B-23 employees because of an earlier adjustment made when the Employer wanted to hire new COs starting at Step 3 on the B-23 grid rather than Step 1 like other B-23 jobs. This change was made to solve the problem of hiring and retaining employees at the new jail, and it effectively solved the immediate problem, but created new ones.

This evidence helps to explain how the parties got stuck in their current posture. Nonetheless, it is not a reasonable exercise of arbitral authority for an arbitrator to second guess job classification decisions and to disrupt apparently equitable internal relationships by reinstating higher pay for one group of employees at the expense of other groups slotted at B-23 in other bargaining units.

In addition to the fact that I am not equipped to study and reclassify jobs, any new adjustment awarded these employees becomes the floor for the apparently large group of employees in other unions in the same and contiguous job classifications, a much more costly change for the Employer than the initial bump for the 47 employees in this bargaining unit. As an arbitrator looking at one small piece of a large puzzle, the evidence does not support granting an adjustment to a group of employees who are getting the same across the board 1.5% increase and have higher

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<sup>5</sup> I have considered the Pay Equity Act, and pay movement in these balanced classes would not have an adverse affect on the Employer's compliance with the Act.

starting pay than other B-23 employees. The fact that the Union's employees are falling farther behind wages in the comparable external market is significant, but does not outweigh considerations of internal consistency and the County's challenging financial situation as discussed above.

**ISSUE 5 - Hours of Work, Shifts – What, if any, language shall be added regarding hours of work, shifts? – NEW**

The Union seeks to add new language to the CBA as follows:

Corrections Officers: Scheduled shifts shall be 6:30 am until 2:30 pm; 2:00 pm until 10:00 pm; and 9:00 pm until 7:00 am. Corrections Officers shall bid for shifts as outlined in Article \_\_\_\_.

Dispatchers: Scheduled shifts shall be 7:00 am until 5:00 pm; 5:00 pm until 3:00 am; 9:00 pm until 7:00 am; and 11:00 am until 9:00 pm. Shifts shall be bid as outlined in Article \_\_\_\_.

Sergeants: Scheduled shifts shall be ten hours in length

Jail Program Staff shall normally work 8:00 am to 4:30 pm, but may have to extend shifts based on mutual agreement with the Employer.

**UNION POSITION**

The Union argues that its members are suffering a hardship because the night shift end time has been changed from 7:00 a.m. to 7:30 a.m. According to the Union this change created at least two problems. First, additional child-care costs for employees who are no longer home early enough after work to see their children off to school; and second, setting up medications when there is no nurse on duty at the end of an exhausting night shift increases the possibility of error. The Union contends "terms and conditions of employment" includes hours of employment under applicable law, and the change requested concerns hours of employment.

## **EMPLOYER POSITION**

The Employer argues that this language should not be added to the contract because scheduling and revising shifts is a matter of “inherent managerial policy” and “organizational structure...and direction...of personnel.” Under Minn. Stat. Sec. 179A.07, Subd. 1, none of these are negotiable terms and conditions of employment. The Employer argues that designating hours of specific shifts to meet the needs of the County’s jail and dispatch operations is within the Employer’s discretion alone. Further, no other bargaining units have such language.

### **DISCUSSION AND DECISION, HOURS OF WORK, SHIFTS.**

Rick Boland, Chief of Corrections, testified that designating specific shifts is necessary to his ability to efficiently manage the jail. The reason he changed the third shift so it starts and ends half an hour later is that he thought it was more important to have overlapping shifts in the morning than in the evening, because more jail business is conducted in the morning. In the morning, the Chief of Corrections testified, the COs deal with meal distribution, medication set-up, work release inmates leaving, and vendors arriving, so that a half-hour overlap for Corrections is more desirable in the mornings.

The Union expressed the real difficulties created for some of its members by the scheduling change, which now requires certain employees to find childcare assistance at 7:00 a.m. Carol Ann Essen, a Dispatcher, also testified that she much preferred a previous scheduling system for Dispatchers. Under the current system, there is only one Dispatcher per shift, and when there is a large accident on the highway or other crisis, it is much more difficult for the employee to handle all of the calls that come in. She acknowledged that calls roll over to Kanabec County if they are not answered, but the

stress of not having an assistant in a crisis or any opportunity to leave the room during a 12-hour shift has made the work more difficult since the change over a year ago.

The Union argues that scheduling concerns hours of work and is thus, negotiable under PELRA. Although I am sympathetic to the Union's concerns, scheduling shifts is closely related to the Employer's right to direct personnel and to organize and efficiently manage the workplace. These are matters in the hands of the Employer under Minn. Stat. Sec. 179A.07. Where an agreement is otherwise silent on the subject of shift changes, as this one appears to be, and the arbitrator does not find the employer is changing the shift for arbitrary or nefarious reasons, the general rule is that "the right to schedule work remains in management." *Elkouri & Elkouri: How Arbitration Works* 722, (Ruben, ed., 6<sup>th</sup> ed. 2003.) Thus, the Employer's position is awarded on the final issue.

#### **AWARD SUMMARY**

1. The first of the certified issues was withdrawn.
2. No additional personal days are awarded. (pp. 3-6)
3. No additional wage adjustment for 2012. (pp. 6-13)
4. No additional wage adjustment for 2013. (pp. 6-13)
5. No new language on work shifts. (pp. 13-15)

Dated: November 21, 2012

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Andrea Mitau Kircher  
Arbitrator