

IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

HENNEPIN COUNTY)	BMS NO.12-PN-1041
)	
“COUNTY”)	DECISION AND AWARD
)	
HENNEPIN COUNTY DEPUTY SHERIFF’S ASSOCIATION)	RICHARD R. ANDERSON
)	
"ASSOCIATION”)	ARBITRATOR
)	
)	DECEMBER 31, 2012
)	

APPEARANCES

For the Association:

Mark J. Schneider, Association Attorney
Al Saastamoinen, Deputy and Association President
Shari Bukkila, Deputy and Association Trustee
Tim Chmielewski, Deputy and Association Board Secretary
Ginger Knutson, Senior Accountant, Schechter, Dokken, Kanter, Andrews & Selcer LTD

For the County:

Greg Failor, Labor Relations Representative/Attorney
Bill Peters, Labor Relations Director
Chris Mathison, Sheriff’s Lieutenant

JURISDICTION

Pursuant to the provisions of the Minnesota Public Employment Relations Act (PELRA),¹ Bureau of Mediation Services (BMS) Commissioner Josh Tilsen certified the following issues in dispute to interest arbitration in a letter dated May 23, 2012.

¹ Minn. Stat. Sec. 179A.16, Subd. 2.

1. Steps 2012 - Award of 2012 Steps - Article 17, Sec. 2
2. Steps 2013 - Award of 2013 Steps - Article 17, Sec. 2
3. Wages/Comp 2012 - Wage Rates 2012 - Article 17, Sec. 2
4. Wages/Comp 2013 - Wage Rates 2013 - Article 17, Sec. 2
5. Shift Differential - Rate of Shift Differential Pay - Article 10, Sec. 12
6. Weekend Differential - Rate of Shift Differential Pay - Article 10, Sec. 12
7. Discipline & Discharge - Removal of Information From File - Article 34, Sec. 4
8. Off Duty Employment - Off Duty Employment Opportunities - Article 35, Sec. 1
9. Retroactivity - Retroactivity of Economic Issues - All Applicable
10. Longevity - New Longevity Steps - Article 17, Sec. 2

The undersigned Arbitrator, being duly appointed as an Arbitrator under the auspices of the BMS, was notified of my selection as the neutral arbitrator in this matter by Association Counsel Mark J. Schneider in a letter dated July 31, 2012. Hearings were held on November 19 and 27, 2012 in Minneapolis, Minnesota. The parties were afforded a full and fair opportunity to present their case. Witness testimony was sworn and subject to cross-examination. Exhibits were introduced and received into the record. During the course of the hearing, the parties stipulated that the aforementioned Commissioner-certified issues were properly before the undersigned Arbitrator for final determination. The record was closed on December 13, 2012 after the Arbitrator received the parties' timely post-hearing briefs.

BACKGROUND

Hennepin County, hereinafter the County, is the most populous and diverse county in the state of Minnesota. It is one of the seven counties that comprise the Twin Cities metropolitan area located in east central Minnesota. The County has a population in excess of 1.3 million residents. The City of Minneapolis, which is the State's largest city, is the county seat. The County has approximately 7,200 employees. There are

approximately 1,950 non-organized employees. There are eight non-essential bargaining units consisting of approximately 4,100 employees. There are approximately 1,100 essential employees in eight bargaining units. The Hennepin County Deputy Sheriff's Association, hereinafter the Association, represents 272 essential employees in the Deputy bargaining unit being litigated herein. This unit, which is a part of the Sheriff's Office led by Sheriff Richard W. Stanek, includes approximately 240 Sheriff's Deputies, 14 Crime Laboratory Technicians and 18 Sheriff's Detectives.² The Deputies perform a wide variety of duties within various divisions of the Sheriff's Office including adult detention, court security, civil process, water patrol and enforcement.

The parties have negotiated a series of collective bargaining agreements since 1994. The last Agreement, which was resolved through interest arbitration, was effective from January 1, 2010 through December 31, 2011. The parties are currently operating under the provisions of said expired Agreement pursuant to Minn. Stat. Sec. 179A, Subd.4.

All of the non-essential units have accepted the County's final offer for 2012 and 2013. In addition, four of the essential units accepted the County's final offer while the County's final wage offer was recently imposed through interest arbitration on a fifth essential unit (*Hennepin County and Minnesota Public Employees Association*, BMS Case 12-PN-0697(Schiavoni, November 7, 2012). At the time of the hearing, in addition to the unit herein, the only bargaining units not settled were the Sheriff Supervisors and Social Service Supervisors, both essential units represented by different independent

² Whenever the term Deputy is used, it is referring to all deputies in the unit. Whenever the term Sheriff's Deputy is used, it is only referring to that specific group of Deputies.

unions consisting of 62 and 80 employees, respectively.

OPINION AND AWARD

On the basis of the evaluation of all of the testimony, documents and arguments presented by the parties, the decision by this Arbitrator is as follows:

Arbitrators in Minnesota generally consider the following factors in interest arbitration awards—employer’s ability to pay, pay equity³, internal equity, external equity, the cost of living and purchasing power; and other economic factors such as difficulty in hiring, turnover rates and retention rates. I intend to continue to follow these factors. I also reject the Association’s argument that municipal police officers should be included in the seven county Metro area comparison group for external market comparisons... As I have stated in past interest arbitration decisions, the traditional comparison group is the seven county Metro area that includes the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington. I see no reason to add any city, either within or outside Hennepin County, in this comparison group. The County is considerably larger and has a different organizational structure than any of the cities the Association is attempting to compare its Deputies to. It also has different sources of funding and financing of its operation than those cities.

ISSUES 1-4—STEPS AND WAGE INCREASES—2012-2013—ARTICLE 17 AND ISSUE 10—LONGEVITY—NEW LONGEVITY STEPS—ARTICLE 17, SEC. 2

1. STEPS 2012—AWARD OF 2012 STEPS—ART. 17 SEC. 2:

The existing language:

The EMPLOYER shall determine the rate of compensation for each employee within the established range based upon tenure and quality of performance provided that the EMPLOYER shall have the discretion to grant compensation in excess of the maximum rates shown when the EMPLOYER determines that the performance of any employee warrants any such additional compensation. Newly employed, re-

³During the course of the hearing, the parties stipulated that pay equity was not in issue. The County would still be in compliance with the Pay Equity Act even if all of the Association’s economic proposals are awarded.

employed or reinstated employees shall be eligible to be considered for their first in-range merit increase after completing one (1) year of service. Employees shall be eligible to be considered for additional in-range merit increases after completing each additional (1) year of service.

No in-range merit⁴ increases shall be granted between January 1, 2011 and December 31, 2011.

The Association proposal:

The Association proposes to reinstate the merit increases that had been suspended effective January 1, 2012.

The County proposal:

Consistent with the voluntary settlements reached with its other unions, the County proposes that there be a wage step freeze for 2012 and that NO merit wage steps be administered between January 1, 2012 and December 31, 2012. See Issue #2 for proposed contract language.

2. STEPS 2013—AWARD OF 2013 STEPS —ART. 17 SEC. 2:

The Association proposal:

Continue the merit step increase with effective dates between January 1, 2013 and December 31, 2013.

The County proposal:

Contingent on the award and bargaining unit choice made in Issue No. 4 below:

If Option A is chosen, the following contract amendment is required: Amend the last sentence of Article 17, Section 2 to read as follows: merit step increases shall be granted to employees between January 1, 2013 and December 31, 2013.

If Option B is chosen, the following contract amendment is required: Amend the last sentence of Article 17, Section 2 to read as follows:

No merit step increases shall be granted to employees between January 1, 2012 and December 31, 2013.

3. WAGES/COMP 2012—WAGE RATES 2012 —ART. 17 SEC. 1: AND 4. Wages/Comp 2013—Wage Rates 2013—Art. 17 Sec. 1:

The existing language:

⁴ Hereinafter any reference to merit steps will be “in- range” merit steps.

Employees covered by this AGREEMENT shall be compensated for each full month of service in accordance with the following schedule and provisions:

Effective January 1, 2011, the following monthly rates shall apply:

Classification	Minimum Rate	Maximum Rate
Deputy Sheriff	\$3,910	\$5,248
Crime Laboratory Technician	\$3,773	\$5,756
Sheriff's Detective	\$3,963	\$6,092

The Association 2012 and 2013 wage proposal:

During the hearing, the Association amended its wage proposal. The Association is not advocating a general wage increase for 2012. It is proposing a 1.5% general wage increase for 2013. The 2012 and 2013 wage rates which includes the new merit step increases for 2012 and 2013 under this revised wage proposal are as follows

Deputies Step	2012		2013	
	Hourly Rate	Monthly Rate	Hourly Rate	Monthly Rate
1	\$22.558	\$3,910.05	\$22.896	\$3,968.70
2	\$23.637	\$4,097.08	\$23.992	\$4,158.54
3	\$24.865	\$4,309.93	\$25.238	\$4,374.58
4	\$26.088	\$4,521.92	\$26.479	\$4,589.75
5	\$28.183	\$4,885.05	\$28.606	\$4,958.33
6	\$30.277	\$5,248.01	\$30.731	\$5,326.73
Proposed 7	\$31.182	\$5,404.88	\$31.650	\$5,485.95
Proposed 8	\$32.274	\$5,594.16	\$32.758	\$5,678.07

Crime Lab Step	2012		2013	
	Hourly Rate	Monthly Rate	Hourly Rate	Monthly Rate
1	\$18.675	\$3,237.00	\$18.955	\$3,285.56
2	\$20.140	\$3,490.93	\$20.442	\$3,543.30
3	\$21.767	\$3,772.95	\$22.094	\$3,829.54
4	\$23.637	\$4,097.08	\$23.992	\$4,158.54
5	\$24.865	\$4,309.93	\$25.238	\$4,374.58
6	\$26.088	\$4,521.92	\$26.479	\$4,589.75
7	\$27.415	\$4,751.93	\$27.826	\$4,823.21
8	\$28.806	\$4,993.04	\$29.238	\$5,067.94
9	\$30.917	\$5,358.95	\$31.381	\$5,439.33
10	\$33.208	\$5,756.05	\$33.706	\$5,842.39
Proposed 11	\$33.890	\$5,874.27	\$34.398	\$5,962.38
Proposed 12	\$35.180	\$6,097.87	\$35.708	\$6,189.33

Detective Step	2012		2013	
	Hourly Rate	Monthly Rate	Hourly Rate	Monthly Rate
1	\$19.581	\$3,394.04	\$19.875	\$3,444.95
2	\$21.156	\$3,667.04	\$21.473	\$3,722.05
3	\$22.863	\$3,962.92	\$23.206	\$4,022.36

	4	\$24.837	\$4,305.08	\$25.210	\$4,369.66
	5	\$26.071	\$4,518.97	\$26.462	\$4,586.76
	6	\$27.410	\$4,751.07	\$27.821	\$4,822.33
	7	\$28.788	\$4,989.92	\$29.220	\$5,064.77
	8	\$30.185	\$5,232.07	\$30.638	\$5,310.55
	9	\$32.723	\$5,671.99	\$33.214	\$5,757.07
	10	\$35.146	\$6,091.97	\$35.673	\$6,181.35
Proposed	11	\$35.824	\$6,209.54	\$36.362	\$6,301.68
Proposed	12	\$36.792	\$6,377.37	\$37.344	\$6,473.03

NOTES:

Deputies' 2012 rates for Steps 1 - 6 are actual rates currently being paid.

Detectives' 2012 rates for Steps 1 - 10 are actual rates currently being paid.

Crime Lab's 2012 rates for Steps 1 - 10 are actual rates currently being paid.

2013 assumes a general wage increase of 1.5%.

Therefore, the new minimum and maximum monthly wage rates for 2012 and 2013 are as follows:

	<u>2012*</u>	
Classification	Minimum Rate	Maximum Rate
Deputy Sheriff	\$3,910	\$5,594
Crime Laboratory Technician	\$3,237	\$6,098
Sheriff's Detective	\$3,394	\$6,377
	<u>2013*</u>	
Classification	Minimum Rate	Maximum Rate
Deputy Sheriff	\$3,969	\$5,678
Crime Laboratory Technician	\$3,286	\$6,189
Sheriff's Detective	\$3,445	\$6,473

**Rounded off to the nearest dollar.*

The County 2012 wage proposal:

Consistent with the voluntary settlements reached with its other unions, the County proposes that there be no general adjustment or COLA increase to the wage schedule for 2012 but that employees in the bargaining unit receive a \$500 cash lump sum.

Amend Article 17 by adding a new section as follows:

Section_____. A \$500.00 cash lump sum shall be paid to all benefit earning employees of record on the execution date of the AGREEMENT. The \$500.00 cash lump sum will be payable the first full payroll period in 2012 that follows the execution date of the AGREEMENT.

The County 2013 wage proposal:

Consistent with the voluntary settlements reached with its other unions, the County proposes that the bargaining unit may choose one of the following options:

Option A: 1.5% increase to all steps in the range plus merit steps will be administered; OR

Option B: 2.5% increase to all steps in the range but no merit step increases will be administered.

10. Longevity—Market Adjustment Steps (New)—Art. 17 Sec. 2:

Existing language:

There are currently 6 merit steps for the Deputies and 10 merit steps for both the Crime Lab Technicians and the Detectives.

The Association proposal:

The Association is proposing that the following steps be added to the current merit steps:

Crime Lab Technician: Employees shall be eligible for Step 11 having achieved all prior merit increases and upon the completion of 9 years of service. Employees shall be eligible for Step 12 having achieved all prior merit increases and upon the completion of 14 years of service.

Deputy Sheriff: Employees shall be eligible for Step 7 upon the completion of 9 years of service. Employees shall be eligible for Step 8 upon the completion of 14 years of service.

Sheriff's Detective: Employees shall be eligible for Step 11 having achieved all prior merit increases and upon the completion of 9 years of Service. Employees shall be eligible for Step 12 having achieved all prior merit increases and at the beginning of 15 years of service.

The County proposal:

The County proposes that there be no change or expansion of its longevity program (merit steps) applicable to all Hennepin County employees.

Association Position

The County and the arbitrator in the previous round of negotiations based wage freezes on the premise that the Deputies could recover lost wages when the economy turned the corner. The economy has improved and the Deputies are entitled to sufficient wage increases to bring it up to the monthly salary level that deputies in comparable Metro counties enjoy. Additionally, the Association wants

the merit step increases restored and new merit steps added to ensure that Deputies have comparable pay and retirement levels that deputies in other Metro counties enjoy.

According to the County's own Exhibits, General Fund receipts in fiscal 2012 are now estimated to be 5% greater than in fiscal 2011. The County is expecting an increase in property tax revenue in 2013 of approximately \$6.2 million and the final numbers for 2012 show a .1% decrease (\$1 million) from 2011. The 2012 figures show that the decline felt in previous years, and in 2011, has been stalled.

The net assets of the County, which is a reliable indicator of the County's financial position, increased approximately \$100,000 from 2011 to 2012. In 2011, the County had an unreserved fund balance of \$25,500,000 available at the County's discretion. The current unemployment rate for the County is nearly 3% less than the national average. The County rate is also 2% below what it was at this time two years ago and more than 3% below the peak, during the height of the crisis in the summer of 2009. 2012 has also seen an increase in median home value indicating that there is a substantial likelihood that property tax revenue will be increasing as well.

While the economic indicators show improvement in the overall picture, the purchasing power for a Deputy has declined substantially since the last raise in wages. A Deputy who earned \$60,747 in 2009 has seen a decrease in the purchasing power of that salary of over 8.75% or \$5,319.00 meaning that Deputies have been required to do more with the same for the last two years. Further, the January through August 2012 inflation rate is 2.3%.

The additional costs for the Association's proposal for 2012, including the proposed new steps, would be \$327,058.93. This is offset by the County's proposal that would cost \$134,500.00 meaning that the total difference between the two proposals is \$192,558.93. For 2013 the Association's proposal would bear a cost of \$438,200.28, while the County's 1.5% plus step movement proposal would cost \$409,307.39. The difference here is \$28,892.82. The marginal difference between

the two proposals accounts for less than .1% of the total budget for the Sheriff's Office for the new contractual period.

In 2011, the Sheriff's Office had a budget of \$85,480,047.00. Fine and forfeiture revenue were modestly projected at \$75,000.00 for fiscal years 2011 and 2012, at least \$230,787 less than that which is historically received. Therefore, the additional amounts requested by the Association are less than the additional amounts the County will actually receive for fines and forfeitures. The result is the County's actual budget is unlikely to be affected at all by the requested increase. Further, the County expended \$25,000,000 for the purchase of the 701 building in downtown Minneapolis and increased its share of the costs for the Lowery Avenue Bridge for aesthetic reasons and bridge additions by \$65,000,000. If the County can expend this additional money, it can afford the Association's wage proposals. For these reasons, the County can hardly argue that it does not have the ability to pay.

The County's longstanding philosophy regarding collective bargaining is to bargain uniform wage adjustments and benefit improvements among all its bargaining units unless there are compelling reasons to do otherwise. Even the County recognizes that internal consistency has its limits and that not all bargaining groups are equal. The Deputies have been historically prejudiced by the County's bargaining pattern. Once the largest unions and other non-essential units settle, their wage rates are imposed on the unorganized employees. The County then imposes the same wage increases on the smaller essential units, arguing internal consistency requires it to do so.

Currently, the Deputy's salary range tops out at six steps with an average of 4½ years to reach the top step. Nearly all of the other employee classifications have both a greater number of steps and a larger increase from the minimum monthly salary to the maximum monthly salary. For example, a Corrections Officer will see the minimum monthly salary rise by 60% over a 9½ year period, while Sheriff's Deputies will see their minimum salary rise to a maximum monthly salary of only 34% more than the minimum and reach Step 6 in as little as 4½ years. Detective Deputies reached their maximum monthly salary in an average of 6.5 years and an

increase of only 59%. Adding the Association's proposed additional steps, in conjunction with the wage increases, will put the Deputies in a position where the maximum monthly salary is 43% greater than the minimum, still below most internal comparative positions, with the time to reach this maximum increased also to be more in line with the internal pattern.

It is likely that the County will argue that the Deputies' salaries are merely "frontloaded" and that the total compensation is equitable over the tenure of the employee. However, this disregards the benefit of having a greater "back-end" salary when it comes to determining Public Employees Retirement Association (PERA) benefits for retirement, which are based on the last five years of employment. In looking at the high five totals, the Deputies rank last in the comparable seven county Metro group and approximately \$13,000 a month less than Scott County Deputies, according to figures compiled by the Association's retained outside CPA Ginger A. Knutsen. Essentially, the Deputies are being disadvantaged both by having lower relative and absolute pay during their tenure, and then being comparatively disadvantaged in terms of retirement benefits.

Testimony and documents compiled by Ms. Knutsen also disclose that Deputies current wage rates and 30-year projected earning totals for PERA are the lowest in the seven county Metro area. Even with the Association's current wage proposals, the Deputies will still lag behind. Based on the County's proposal, a Sheriff's Deputy over a 30-year career would earn \$2,334,037. Based on the Association proposal, a Sheriff's Deputy over a 30-year career would earn \$2,436,876, which amounts to an increase in compensation over 30 years of \$102,839. The step and wage increase will only put them in the middle of the comparable counties, and still almost \$100,000 below a Dakota County Deputy even with the Association's proposal. The Association's proposed wage terms would still yield total retirement benefits at the bottom of the list of relative comparative units, though at that point by a negligible amount from Ramsey and Washington County Deputies. The Association's proposal still yields a benefit amount more than \$100,000 below what a Scott County

Deputy would expect to receive, and approximately \$30,000 less than the average of all comparative units.

The County is arguing that if it provided additional merit steps for the Deputies, it would result in having to provide increases across all bargaining units, which would impact its ability to pay. There is no evidence that other units need, or more importantly, would receive these additional steps. The County believes that it would be seen as favoring one unit and thereby upsetting the others. There is no evidence to support this. Rather, the proposal puts the Deputies in a position with a progression of merit steps comparable to other County's employees. The other bargaining groups already benefit from and are granted more steps than the Deputies.

Adding additional merit steps would encourage the retention of experienced Deputies and keep them in step with other comparable counties. Ramsey and Washington County both provide additional salary ranges to be attained and amount to 8.6% more than the maximum available to a Deputy. Most of the Detectives and Crime Lab Technicians have already reached their top pay step. By the end of this two-year bargaining term, it is likely that over 70% of the Deputies will have reached their top pay step.

In the 2010 interest arbitration, the County argued that it is not until the 16th year of a Deputy's career that a Ramsey County Deputy starts to earn more than a Hennepin County Deputy. While this is technically true, at 11 years the difference between a Ramsey County Deputy and a Hennepin County Deputy amounts to approximately \$16.00/year. This carries through from years 11 through 16. Nearly two-thirds of the Deputies will be in the category in which they are within \$20/year of their counterparts in Ramsey County, and nearly 1/3 will be out-earned by Ramsey County Deputies. An 18-year veteran Ramsey County Deputy earns \$4,000 per year more than an 18-year Hennepin County Deputy thus enhancing their top five year wages for retirement purposes. Further, a Deputy hired in 2010 with the step freeze, would still be at the first year salary while a Ramsey County Deputy would be at a third year rate, thus eliminating any "front loading".

According to figures compiled by Ms. Knutsen, a Hennepin Sheriff's Deputy hired in 2011 received a starting annual salary of \$46,920, which is approximately \$250 more per year than a Ramsey County Deputy. (In 2005 that difference was \$2,000.) The maximum annual salary for a Sheriff's Deputy in 2011 (6 steps reached in 4½ to six years) is \$62,976 while a Ramsey County Deputy annual salary for 2012 maxed out (9 steps reached in 20 years) at \$69,359. An Anoka County Deputy's annual starting 2012 salary was \$43,514 with the 2012 maximum (4 steps reached in 15 years) being \$69,894. In 2012 a Carver County Deputy received a starting annual salary of \$49,462 while the 2012 maximum (presumably reached in 20 years) is \$69,472. In 2009 a Dakota County Deputy started at \$51,900 with the maximum (presumably reached in 20 years) being \$71,700. In 2011 a Scott County Deputy started at an annual salary of \$51,358 with the maximum (presumably reached in 20 years) being \$77,127. Finally in 2012, a Washington County Deputy started at an annual salary of \$48,443 with the maximum (8 steps reached in 16 years) of \$68,474.

During the 2010 interest arbitration proceeding, the County stated that the redistribution of wages by shifting the emphasis away from the lower end of the wage scale to the top end is best left to the parties. Adding that, the Association can't have it both ways—relatively high wages at both the beginning and the end of their careers when compared to Ramsey County, their most significant market counterpart. However, the parties have not resolved this issue at the bargaining table and it needs to be resolved in this arbitration proceeding.

The Association's proposed step and wage increase will only put them in the middle of the seven county metro grouping. The most striking implication of not awarding the Association's proposal is seen in retirement benefits. Ms. Knutsen testified that besides falling further behind, the longer an experienced Deputy stays the more they become relatively disadvantaged in terms of retirement benefits.

The County describes the turnover rate for Deputies as "extremely low", but the number of Deputies hired since 2000 who resigned before reaching the proposed maximum steps has been increasing relative to the number of new hires, and has

resulted in 28% of all new hires leaving within 2.2 years. The transfer and turnover of Deputies is inconsistent with the Sheriff's Office mission to protect life and property, protect the rights of citizens, and rehabilitate offenders. Association witnesses testified that the lack of experience and training due to the turnover of Deputies results in concerns in executing warrants, investigating crimes and securing the courts. They also testified that the morale of the Sheriff's Office has decreased substantially given the history of wage freezes and the fact that the Deputies are paid less than the comparable groups in the seven county Metro area.

County Position

The County's goal in negotiations, particularly during these trying financial times, is to treat every employee fairly and equally, union or non-union. The County is not asking the Association's 272 members to sacrifice or do more than it is asking its other union or non-union employees to do. Any deviation from the County-wide settlement pattern needs to be based on a compelling and substantial internal or external market-based reason so they can adequately explain to our many other unions, elected officials and taxpayers why County management treated one group of employees more favorably than others. If the County gave the Association, or any other union for that matter, more in terms of wages or benefits than its other unions received at the bargaining table without compelling justification, no union would trust the County ever again.

The Association's current 2012 merit wage step and new merit step demands would unfairly grant its members significant pay increases when no other union was able to negotiate these greater terms. Other unions made similar higher wage proposals and settled for what the County is offering the Association. For example, AFSCME demanded for all of its six units representing 3,930 employees a 3.8% general salary adjustment and merit step increases for both 2012 and 2013. Furthermore, no other County employee received the significant permanent wage increases associated with adding two new merit steps at 10 and 15 years of service as the Association has demanded.

These are tough financial times for all Minnesotans. Interest arbitrators in Minnesota have repeatedly addressed the poor state of the current economy and its impact on governmental revenues when fashioning awards. The State and the country are slowly emerging from the worst economic downturn since the Great Depression of the 1930's. Real GDP for the government sector in Minnesota has declined by 4% between 2007 and 2011 compared to a 2.4% increase for the government sector nationally. Since the recession began in late 2008, public employers in Minnesota, including the County, have experienced significant budgetary pressures due to the economic downturn. In response, local units of government in Minnesota (excluding school districts) have seen total employment decline by nearly 6,000 jobs from 2008 through 2011. The County has cut its workforce by nearly 500 Full Time Equivalent (FTE) positions or 6% of its workforce since the recession began in 2008.

The County can no longer rely on the State of Minnesota for budgetary help and is unlikely to receive help in the near future. A County Program Aid and Market Value Credit Aid that the County receives from the State declined collectively by nearly \$28 million or 60% since 2007. The school districts have priority in any future budget surplus and are owed over \$2 billion that has been withheld in order to balance recent State budgets. Thus, it is unlikely that the County will see a return to pre-recession funding levels for quite some time, if ever.

The taxable market value of property in Hennepin County has declined by nearly \$28.5 billion or nearly 20% since 2009. In light of this significant decline in property values combined with other economic pressures facing County homeowners and residents, the County's board of elected commissioners has understandably been extremely reluctant to raise property taxes and has kept the total level of property taxes collected by the County relatively flat for the past three years. The 2013 budget recently submitted by the County Administrator to the County Board for adoption reflects a modest 0.93% increase in the property tax levy within the maximum levy increase of 1% set by the board in September.

In short, the County's operating budgets for 2012 and 2013 are basically flat with very little revenue growth. Most County departments must cope with declining budgets or very modest increases from one year to the next. It would not be fiscally prudent for the County or its taxpayers to agree to the Association's wage demands.

The County's 2012 internal settlement pattern provides for no general wage adjustment and no merit step movement in 2012. Instead, all employees will receive a \$500.00 cash lump sum in 2012. For 2013 the County proposal of 1.5% wage increase plus resumption of the merit step movement or a 2.5% wage increase plus no step movement became the settlement pattern. During the hearing, the Association agreed to 1.5% wage increases plus reinstatement of the merit step movement.

The County has 16 bargaining units. Twelve of the units representing 4,806 employees or 92.1% of the County's unionized workforce have voluntarily settled at the settlement pattern described above. Another essential unit involving civilian detention deputies and 911 operators also received the same 2012-2013 salary package through interest arbitration. All 1,950 non-union employees will also receive the same salary package. Only 414 union employees, 272 of these being Association Deputies, in three small essential bargaining units have not reached a wage settlement with the County. Thus, 94.2% of the County's workforce has its compensation set for 2012-2013.

No County employee will receive the extraordinary longevity benefit that the Association is proposing through additional merit steps of 10 and 15 years in the wage progression schedule. Under the Association's longevity proposal, Sheriff's Deputies at current top step (Step 6) with more than 9 but less than 15 years of service would receive a 3% wage increase on their anniversary date in 2012 or an equivalent annual increase of \$1,884. Likewise, Sheriff's Deputies at current top step with more than 14 years of service would receive a 6.5% wage increase on their anniversary date in 2012 or an equivalent annual increase of \$4,152. Sheriff's Deputies that are not at the maximum Step 6 wage will receive wage increases

anywhere from 4.8% to 8.0% on their anniversary date in 2012 due to the Association's demand that its members receive merit wage step increases in 2012.

These percentage pay increases for the deputies would amount to several thousands of dollars on an annual basis or in many cases 8 to 9 times what other County employees will receive from the \$500.00 lump sum payment. In addition, these are not one-time lump sum payments; rather, they will permanently impact on a Deputies' earnings throughout their tenure and exacerbate the County's ability to fund its wage compensation system. The costs of the additional steps in 2012 and 2013 will be almost \$475,000 and \$480,000 respectively. The Association's longevity proposal has the potential two-year spill-over costs of over \$34 million since historically, once a unit gets an extra benefit, all of the other units will assuredly chase after it. The resulting effect would be that the County would have to increase property taxes by nearly 3% to fund it.

The cumulative benefit of the Association's merit step proposal without adjusting for inflation for years 10 through 25 years of service is \$55,104. Adjusting for future wage increases at a hypothetical rate of 1.5% per annum, would yield a cumulative benefit for 10 to 25 years of service of \$62,785. If the Association prevails on this issue in this case, not only will the Deputies receive the \$17,400 in stability pay that all other County employees get, they would get an added benefit of \$62,785 adjusted for inflation over this 15-year period. Adding roll-up costs of Medicare, PERA contribution of 14.4% and overtime yields an additional 15-year cost to the County of \$73,992 per Deputy above the current stability pay program. This is why the County would never, ever agree to add this benefit for this unit alone. Not only is it tremendously costly compared to the County's current longevity and merit program, the inequities of giving only to this unit this tremendously lucrative wage benefit could never be justified to the other unions, the County Board or the taxpayers.

The Association contends that the County never seriously bargains with it over economic items. The County, as well as distinguished arbitrators, has told the

Association that it needs to offer the necessary quid pro quo for the County to seriously look at its economic proposals.

Significant departures from the internal settlement pattern without compelling evidence would come back to haunt the County in current negotiations and irreparably harm its ability to bring collective bargaining to finality within a reasonable period of time. More importantly, the County's relationship with its unions that were among the first to settle would be strained beyond repair as they would never trust the County again if it deviated substantially from their settlement without compelling reasons to do so. Why would any unit choose to settle early when the terms of their agreement become the "floor" from which other groups commence bargaining? The County would never reach its first settlement with one of its bargaining units if it did not maintain this sound approach to collective bargaining. Like it or not, equity or pattern bargaining is simply the only logical and rational way for a large employer to conduct negotiations with multiple bargaining units represented by many different unions.

Any deviation from the pattern by the Arbitrator in this case is likely to have the following negative impacts on the County's collective bargaining process: (1) the units that have not yet settled will demand the same or greater increase in salary to settle their contracts; (2) units that have already settled with the Employer will likely demand a wage re-opener to correct the perceived unfairness; (3) there is a strong likelihood that non-essential units in future bargaining will not settle until all essential units are finished with arbitration out of concern that they will once again get less; and (4) in the future, many essential units will refuse to voluntarily settle because they have nothing to lose by "rolling the dice" in arbitration.

The Arbitrator should not deviate from the recent interest arbitration award by Arbitrator Schiavoni involving the detention deputies and 911 operators. The underlying internal consideration facts of both cases are nearly identical. For the Arbitrator in this case to "break" the County's strong internal wage pattern to favor the position of the Association in light of the substantial similarity between the two cases when Arbitrator Schiavoni articulated sound and compelling reasons not to

grant the MNPEA represented essential unit its wage demands would have adverse consequences for the County on the collective bargaining process for years to come.

The County believes that resorting to an external market analysis is totally irrelevant when there is such a strong and overwhelming internal wage settlement pattern. The wages the County pays its Deputies is wage competitive with the pay of a Ramsey County Deputy, the County's closest peer. Hennepin County and Ramsey County, for all practical purposes, are the market for licensed sheriff's deputies in the metro area, employing 61% of the deputies in the seven county metro area. The two counties together employ nearly 150 more deputies than the other five Metro area counties combined.

The career earnings of a Deputy over a 25-year career are quite comparable with Ramsey County. The County uses 25-years in its analysis since that is the average years of service of a Deputy at the time of retirement. As a result, the County disagrees with the Association's career earnings analysis which uses 30 years of service. Deputies do not work that long and using 30 years of earnings overstates potential career earnings. By using 30 years of service instead of 25 years of service, the Association is clearly manipulating the analysis by attempting to take advantage of Ramsey County's 20 year longevity step and its resulting impact on earnings between 25 and 30 years of service.

The County's career earnings analysis is based on Ramsey County's 2012 wage rates including longevity steps and a 0% wage increase in 2012. The County wage rate used is the current 2011 wage rate structure plus its longevity (stability) pay program. The analysis also reflects the County's position of no general wage adjustment for 2012. For simplification purposes, it does not include the County's wage position of a \$500.00 one-time lump sum payment in 2012.

At the end of their respective 25-year careers, a Hennepin County Deputy and a Ramsey County Deputy have almost identical career earnings—\$1,540,408 for a Hennepin County Deputy compared to \$1,541,925 for a Ramsey County Deputy. Clearly, Hennepin County Deputies are market competitive in wages with Ramsey County Deputies.

The career earnings for Hennepin County and Ramsey County Deputies are roughly the same using the Association's 30 years of service and indexing the wage structure by 1.5% per annum. The Association's analysis shows the 30-year career earnings of a Sheriff's Deputy to be \$2,334,037. Ramsey County Deputies' career earnings over 30 years of service would be 2,383,563 or about 2% higher. Using the Association's figures, but shortening the career earnings analysis to include the more appropriate 25 years of service, discloses that cumulative wages paid over the 25 year period are just slightly more in Ramsey County. Hennepin County Deputies will receive \$1,857,249 and Ramsey County Deputies will receive \$1,872,534, a difference over 25 years of less than one percent (0.8%).

These small percentage differences in both the Association's 30-year or the County's 25-year career earnings is not sufficiently compelling to justify that the Arbitrator bust the countywide wage pattern wide open and grant the Association the exorbitant wage increase it is demanding. This was exactly what Arbitrator Jacobs concluded in his 2010 interest arbitration award involving this same bargaining unit. *Hennepin County and Hennepin County Deputy Sheriff's Association, BMS Case No. 10-PN-0776 (Sept. 7, 2010 Jacobs) at page 8.* In this decision Jacobs noted that, "It was apparent that there is a somewhat different philosophy between the two jurisdictions and that Hennepin County 'front loads' its wage structure and that it does take until about year 16 for the two wage scales *[to be equal]*. Over time however, the wage structures are not radically different and the evidence showed that the two sets of lifetime earnings are not terribly different. On his record they were not so different to compel the wage increase the Union is seeking," adding that "The more persuasive evidence was that the wage comparisons are almost the same even if one extends the payments out over the course of 25 years." Since a Deputy earns more than his/her Ramsey County counterpart for the first fifteen years of employment, adding a longevity step at 10 years makes no sense.

Dakota County and Scott County may pay their deputies more; but as the dominant market players in the region for hiring sheriff's deputies, neither Ramsey nor Hennepin Counties have found it necessary to chase the wages the smaller non-

urban metropolitan counties have to offer to attract qualified candidates. The County has no difficulty attracting and retaining Deputies at the wages it is currently paying.

The Association's own raw turnover data also bears this out. Excluding retirements there were four resignations in the bargaining unit in 2009; five resignations in 2010; seven resignations in 2011 and three resignations in 2012. This results in an annual average voluntary turnover rate since 2009 of less than 2% for this bargaining unit of 272 members.

During the past two years, the Sheriff's Office has recruited for the position of Sheriff's Deputy twice. There is currently a glut in the labor market for licensed peace officers. As a result, the County received an ample number of qualified candidates for the Sheriff's Deputy position. In October, 2010, 206 people applied for the position. Of that group, 174 met minimal qualifications for the position of which 81 applicants were referred to the Sheriff's Office which resulted in 22 Deputies being hired. Earlier this year, 222 individuals applied for the Sheriff's Deputy position. There were 169 individuals who met minimal qualifications of which 71 candidates were referred to the Sheriff's Office for consideration. The Sheriff expects to hire eight new Sheriff's Deputies from this group after the first of the year.

The Association points to the increase in the cost of living as a reason to justify departure from the County's overall settlement pattern in 2012. The Association's inflation analysis does not accurately reflect what has happened to the purchasing power of this unit over the past several years. It ignores the fact that in many years during the past decade, this unit received more than the rate of inflation. Taking this into account, this bargaining unit's wages have kept up with inflation during the past several years. Further, no other County employee received an inflation adjustment for 2012-2013. However, the total wages received by a Deputy has managed to keep up with inflation since 2004. From mid-year 2004 through mid-year 2012, the CPI in the Twin Cities has increased by roughly 20%. During the same period of time, the top rate of pay for a Deputy, assuming the County's position of a \$500.00 lump sum payment in 2012, will increase by nearly 19%. A new Deputy hired in 2004 who has progressed through the performance merit steps in the salary range

will have received a 48.6% wage increase since the date of hire, far exceeding the rate of inflation during this period of time.

DISCUSSION AND AWARD

As stated earlier herein, I intend to look at the traditional criteria that arbitrators use in determining wage rates in interest arbitration matters—pay equity, ability to pay, internal comparisons, external comparisons, hiring, retention and turnover, CPI and other economic considerations in formulating this Award.

My role as an Arbitrator is to ensure that this Award is consistent with what the parties would arrive at if this bargaining unit had the right to strike or the County had the right to lock out the Deputies if no agreement was reached at the bargaining table. I also need to ensure that this Award does not significantly alter the Deputies' internal or external relative standing unless there are compelling reasons to do so.

Further, I have to ensure under PELRA that any Award I fashion does not conflict with compliance with the Pay Equity Act as measured by DOER. In this regard, the parties stipulated that pay equity is not in issue. If pay equity were in issue, I would not hesitate to give even more weight to internal considerations.

The ability to pay was exhaustively covered by the parties both at the hearing and in their post-hearing briefs. Although these are not the best of economic times, the economy appears to be slowly recovering within the County. The latest home prices for the period ending in October 2012 show an increase of 9.2% from the previous year for the Minneapolis area according to the latest Standard & Poor's Case-Schiller home price index.

Even if I was to award all of the Association's proposals, that amount or percentage of the County's total budget would be de minimis. This assumes that there would be no economic fallout on the other bargaining units. Practically speaking, this is highly unlikely. The economic consequences resulting when other bargaining units presumably demand and are subsequently granted similar economic benefits could cause serious budgetary constraints on the County. However, in view of my Award, I need not address this issue

Since equity pay and ability to pay are not now in issue, I intend to ensure that any award not compromise the internal relationship of employees, and at the same time ensure that the Deputies are not left behind by the "marketplace".

As stated earlier herein, the County has approximately 7,200 employees, of which 5,200 are represented in eight non-essential and eight essential bargaining units by different unions or locals of the same parent union. There are also approximately 1,950 non-union employees. There are 272 Deputies in the bargaining unit involved herein, which is roughly 5% of the County's unionized work force and approximately 3.8% of the County's total employee compliment. The evidence disclosed that there is a consistent internal pattern that has emerged in establishing wage increases wherein all employees have received the same general wage increase percentages since at least 1995.

The County has currently negotiated or had established in interest arbitration a 0% wage increase plus a \$500 lump sum payment in lieu of step movement for 2012 and a 1.5% wage increase plus the restoration of step movement or a 2.5% wage increase and no step movement for 2013, depending on the individual bargaining unit's wishes, for all but the remaining three essential units. All non-union employees will receive the 2.5% wage increase and no step movement in 2013. The Deputy unit and the other two essential units that have not settled have a combined compliment of 434 employees, which is 6% of the County's total work force.

The evidence strongly supports the County's overwhelming internal equity argument. Absent compelling reasons, it would be extremely difficult to award greater economic benefits through interest arbitration than what has been established in negotiated settlements or imposed through recent interest arbitration or what was given to unrepresented employees.

It is understandable for obvious reasons why the County or any employer would want uniform percentage wage increases for all of its employee groups. With different wage increases for different groups the collective bargaining process could be disruptive for employee morale and create dissension in the workplace. It could

also make bargaining more difficult since a particular bargaining unit would be reluctant to settle first for fear of being left behind by other bargaining units that may be successful in negotiating greater economic benefits.

As I have pointed out in other interest arbitration awards, this argument can also have a negative impact. The practice of negotiating with the largest unions first and imposing those terms on the unorganized employees; and then offering the same terms to the remaining smaller bargaining units virtually eliminates collective bargaining and locks every other labor organization into those same terms. It is an incentive for an employer to set the wage rates for the larger unions and unrepresented employees first and then negotiate with the weakest labor organization for identical wage packages. The overall effect is establishing an overwhelming internal comparison, which has the effect of eliminating external market considerations unless there are compelling reasons otherwise. This is precisely what has happened to the Deputy bargaining unit.

This is why this Arbitrator does not believe that simply fashioning awards solely for the purpose of maintaining internal consistency in wage increases is appropriate in all circumstances. Wage equity goes beyond giving the same wage increase to all employees if compelling reasons exist to deviate from the general wage increases established for other employees. This is especially relevant where the group in question is being left behind in the external market place.

In analyzing the Association's external argument, I am not convinced that the external market considerations overcome the County's strong internal considerations argument. It is clear from the evidence presented that Hennepin and Ramsey counties, the two counties that are most compatible due to the size of their work forces, have comparable wage packages both on a long term and annual salary basis when you take into consideration total bargaining unit salary minimums and maximums plus stability or longevity pay. While the County "front loads" its compensation system and Ramsey County "back loads" theirs, the total career salaries are virtually similar during a 25-year period and are not significantly different in the 30-year employment period argued by the Association.

I am also not convinced that either annual or career salaries of the entire bargaining unit lag behind the deputies of the other five Metro counties justifying new merit steps. The Deputy bargaining unit contains specific pay schedule classifications—Sheriff’s Deputy, Crime Lab Technician and Detective Deputy—while the other Metro bargaining units do not make this distinction and apparently lump all deputy job classifications into one pay schedule.⁵

For example Anoka County makes no classification distinction—i.e. whether they are a regular deputy or a crime lab technician or a detective—between its deputies for salary purposes although certain classifications such as K-9 officer, SWAT team officer and narcotics investigator receive \$75/month extra. Dakota and Carver Counties also make no classification distinction between its deputies for salary purposes.⁶ Ramsey County also makes no classification distinction between its deputies for salary purposes; however, it pays its narcotics and general investigators plus its apprehension/intelligence unit member \$100/month extra. Washington County makes no classification distinction between its deputies for salary purposes and even includes the higher paid Deputy Sheriff-Sergeant classification in its bargaining unit. Finally, no bargaining unit classification data was available for deputies in Scott County since a contract for that group was not furnished to this Arbitrator.

The Association’s salary data is based solely on the minimum and maximum salary of the Sheriff’s Deputy and fails to include the Sheriff’s Detectives’ maximum salary. In order to accurately compare bargaining unit salaries to the bargaining units in the comparable counties, one would think that you would have to include the salary of the highest paid employee in the bargaining unit namely the Sheriff’s Detective since the Association’s data obviously includes employees in the unit who perform the detective job duties. The failure to do so results in the Association’s data being skewed in favor of the Association’s external market argument for the

⁵ Based upon a review of the recognition clauses and salary structures in the other Metro county contracts.

⁶ It does have a Special Deputy classification which refers to its inspectors.

restoration of the step movement and new merit steps for the Crime Lab Technicians and the Sheriff's Detectives.

If the salaries of the Sheriff's Detective, who are the highest paid group of the Deputies, were included in the Association's 2011 maximum salary data, the yearly salary data would be as follows:⁷

<u>COUNTY</u>	<u>MINIMUM</u>	(Sheriff's Deputy) (Sheriff's Detective)	
		<u>MAXIMUM</u>	<u>MAXIMUM</u>
Hennepin	\$46,966	\$64,176*	\$74,103*
Anoka	\$43,514	\$69,494**	\$70,434***
Carver	\$49,462	\$72,456****	\$72,456****
Dakota	\$51,900	\$73,851*****	\$73,851*****
Ramsey	\$46,670	\$68,359	\$70,559*****
Scott	\$51,358	\$77,127	\$77,127
Washington	\$48,443	\$68,474	\$71,879*****

*Includes \$1,200 stability pay.

**Includes \$3,600 longevity pay.

***Includes \$75/month extra pay for investigator, etc., and \$3,600 longevity pay.

****Includes 5%/month extra for investigator and 5% longevity.

*****Includes 3% longevity pay.

*****Includes \$100/month extra pay for investigator, etc.

*****Includes 5% extra pay for investigator.

When the County's maximum salary comparison includes the salary of the Sheriff's Detective, the County ranks second in the Metro area for annual maximum salaries. It can also be assumed that the Sheriff's Detectives as well as the Crime Lab Technicians whose annual 2011 maximum salary is \$71,073 will also rank near the top in career salaries or at least be competitive with the salary levels of the other Metro counties. Based on the foregoing, there is no justification to add new merit steps to the Crime Lab Technicians' or the Sheriff's Detectives' wage schedule for either 2012 or 2013. There is also no justification to restore their merit step movement for 2012.

⁷ The salary data is for 2011 except for Dakota and Carver counties where the salary data is for 2010 and 2012, respectively.

The above chart also discloses that the County is at the bottom of the Metro group when its deputies' maximum salaries are compared to the Sheriff's Deputies. While this may be true, it does not take into consideration that the overall salary schedule favors this group because they progress more rapidly to the maximum salary level than their counterparts. Even so, the maximum salaries for the majority the Sheriff's Deputies who are at the top of the wage schedule still lag behind the deputies in the Metro Area. However, the Sheriff's Deputies' salaries compare more favorably with other Metro county deputies when you compare the maximum salaries the Sheriff's Deputies will receive in 2013 with their 1.5% wage increase and their merit step movement restoration.⁸

In spite of the seemingly disparate salary comparisons, the Association's external market considerations still do not overcome the County's strong internal equity argument for not restoring the merit step movement for 2012 or adding additional 10 and 15-year steps to the Deputies' wage schedule in 2012 and 2013. Moreover, I am reluctant to change compensation programs or add levels of compensation, including merit steps, to an existing salary schedule unless there are compelling reasons to do so. This is best left to the give and take at the bargaining table where the whole compensation system can be examined.

The Association's hiring, retention and turnover argument also fails to justify its wage increase and step movement arguments. As pointed out by the County, it had no problem in attracting qualified candidates for the Sheriff's Deputy position during its October 2010 and February 2012 recruitment campaigns. While 16 Deputies left their employment during the 2009-2011 time period, the circumstances of their departure are unknown. In any event, this level of attrition (less than 2%) hardly constitutes a turnover or retention reason for increasing salaries.

⁸ Scott County Deputies received no general wage increase in 2012 or 2013. Washington County Deputies received .5% for both years. Ramsey County Deputies received no wage increase for 2012 and 1% in 2013. Carver County Deputies received .5%-1% effective July 2, 2012 and 1.25%-1.75 % effective July 1, 2013. To the Arbitrator's knowledge neither Anoka County nor Dakota County have ratified agreements for 2012-2013.

Finally, there is no question that the Deputies salary levels have not kept up with inflation during recent times when salaries and merit step movements were frozen. This is a financial burden that all County employees have endured as well as many Minnesotans and Americans during these lean economic times. The new salary increases and restoration of the step movements will go a long way to stop this recent financial bleeding.

In view of the foregoing, neither the Association's external market comparisons nor its other economic consideration arguments overcome the County's compelling internal equity argument for its economic positions in both 2012 and 2013. Therefore, the County's proposals are awarded. There will be no merit step movement in 2012 (Issue 1). There will be a one-time \$500 cash award with no general wage increase for 2012 (Issue 3). There will be a reinstatement of merit step movement for 2013 (Issue 2). There will be a 1.5% general wage increase for 2013 (Issue 4). There will be no new merit steps granted for either 2012 or 2013 (Issue 10).

ISSUES 5 AND 6—SHIFT AND WEEKEND DIFFERENTIALS AND RATE OF DIFFERENTIAL PAY—ART. 10 SEC. 12:

The existing shift differential language:

A shift differential of \$.80 per hour shall be paid to all employees who work on an assigned shift where at least five (5) hours of the shift hours occur between 5 p.m. and 5 a.m. Such shift differential shall be paid in addition to overtime premium for which the employee qualifies.

The existing weekend differential language:

All full time employees required to work on Saturday or Sunday as part of a regular schedule shall be compensated at the rate of \$.60 per hour for each hour worked. Compensation under this section will be in addition to the employee's regular salary and will be earned for the entire period worked, provided at least five hours of the shift worked falls on the day for which the additional compensation is being paid.

The Association proposals:

A shift differential of \$.90 per hour shall be paid to all employees who work on an assigned shift where at least five (5) hours of the shift hours occur between 5 p.m.

and 5 a.m. Such shift differential shall be paid in addition to overtime premium for which the employee qualifies.

All full time employees required to work on Saturday or Sunday as part of a regular schedule shall be compensated at the rate of \$.70 per hour for each hour worked. Compensation under this section will be in addition to the employee's regular salary and will be earned for the entire period worked, provided at least five hours of the shift worked falls on the day for which the additional compensation is being paid.

The County proposal:

Consistent with the voluntary settlements reached with its other unions, Hennepin County proposes that in 2012, there shall be NO increase in either shift or weekend differentials

Association Position

The Association argues that both Carver and Ramsey counties pay more shift differential than the County pays. Carver County pays \$.85/hour and Ramsey County pays \$1.47/hour. The Association also wants to include the shift differential rate for the City of Minneapolis police officers (\$1.264/hour) since its Deputies frequently work side by side with City of Minneapolis police officers. The Association further argues that the past wage and merit step increase freezes are sufficient quid pro quo for its position.

County Position

It was the County's position that internal pay equity supports its position. All County employees, with the exception of the three essential units that have not settled, will receive the same shift/weekend differentials of \$.80/\$.60 offered to the Deputies. In fact, all County employees have received the same differentials since 1990. The last two times that shift/weekend differential was before an arbitrator for consideration, neither Arbitrator Jacobs in 2010 nor Arbitrator Gallagher in 2004 awarded any increase in shift/weekend differentials for the Deputies. Both Arbitrator Gallagher and Arbitrator Jacobs concluded that the continuation of the substantial internal consistency of differentials was appropriate.

Further, external market factors support the County's position. The County is very competitive with the six other Metro area counties with respect to the shift/weekend differential it pays to its Deputies. Five of the seven counties do not

pay weekend differential at all. The \$.80/hour the County pays for night weekday work and the \$1.40/hour it pays for working nights on Saturday and Sunday (the combination of night shift and weekend differential) is very comparable to and competitive with the night shift rates paid by the other Sheriff's departments in the metropolitan area.

Discussion and Award

Internal equity is the prime consideration when formulating fringe benefit awards. The County has a strong internal equity past practice dating back to 1990 wherein all County employees receive the same shift and weekend differentials. Evidence supplied by the County disclosed that three counties paid \$.75/hour for shift differential while Carver County paid \$.85/hour in 2011. Ramsey County paid a shift differential of 6.5% of its first step wage scale in its 2012-2014 contract which amounts to \$1.47/hour. Evidence also disclosed that Ramsey County was the only other Metro county that paid weekend differential. During the 2012 to 2014 contract their deputies receive \$.45/ hour for Saturday and \$.50/hour for Sunday work.

The fact that Ramsey County and Carver County pay more for shift differential is not a compelling reason or an external market basis to offset the widespread internal equity comparison the County maintains. This is especially true when Carver County only pays \$.05/hour more for shift differential and does not pay weekend differential. Thus, Deputies receive considerably more differential pay on weekends. By the same token, Ramsey County may pay more for shift differential but it pays less for weekend work. When you combine the two rates on weekends, they are comparable.

The Association wanted the City of Minneapolis to be included for comparison in the external market group since Deputies work at various times alongside Minneapolis police officers. This argument is rejected for the reasons stated earlier herein.

This Association's position was visited in interest arbitration proceedings in both 2004 and 2010 and rejected. I see no reason to rule otherwise herein. The Association failed to establish a sufficient basis based upon either external market

considerations or any other compelling reasons for receiving greater differentials than other County employees necessary to overcome the strong internal equity considerations addressed herein. Finally, there is also no evidence of a quid pro quo basis for awarding the Association's position.

The County's position is awarded. Therefore, the shift and weekend differentials in the new Agreement will remain at \$.80/hour and \$.60/hour, respectively.

**ISSUE 7—DISCIPLINE & DISCHARGE—REMOVAL OF INFORMATION FROM FILE—
ART. 34 SEC. 4:**

The existing language:

Upon written request of the employee, an oral reprimand memorialized in writing or a written reprimand shall be removed from the employee's personnel record if no further disciplinary action has been taken against the employee within two (2) years following the date of the reprimand, or if no disciplinary action has been taken against the employee for the same or related offenses within three (3) years following the date of the reprimand.

The Association proposal:

An oral reprimand memorialized in writing, a written reprimand, counseling session documentation and/or any performance improvement plans (PIP) shall be removed from the Employee's personnel record, the County Human Resource file, and any other office personnel file, division file and all other files maintained by EMPLOYER and its representatives if no further disciplinary action has been taken against the Employee within one (1) year following the date of the reprimand, or if no disciplinary action has been taken against the Employee for the same or related offenses within two (2) years following the date of the reprimand.

The County proposal:

The County proposes no change to the language contained in Article 34, Section 4.

Association Position

The Association argues that while the Agreement requires that oral reprimands memorialized in writing or written reprimands be removed from an employee's personnel record pursuant to the provisions of this Article, this same information is still retained in other files maintained by the County. The files according to the Association include a Human Resource file, a Division file, an Internal Affairs file,

Background file, Discipline file, Training file and a Medical file. The Association also wants any disciplinary information purged from these files.

The Association also proposes to expand the scope of the information being expunged to include Performance Improvement Plans (PIP's) and Counseling Sessions. It claims that this retained information could be utilized in filling promotion or transfer requests or adversely affect other personnel decisions. It could also be used to negatively affect employee applications for outside employment.

Required Counseling Sessions and PIP's are not listed as part of this Section and are outside the normal discipline and grievance process; and as such, the rights of the employee are not protected as they are in a disciplinary setting. However, the inclusion of these items in a personnel file has been seen to have the impact of a disciplinary sanction without the protections found in Section 34. This arbitrary and capricious creation of pseudo-disciplinary procedures to circumvent the collective bargaining process is having the effect of altering the terms and conditions of employment without negotiation. This Issue is therefore ripe for determination through this arbitration.

Because Section 34 has established the protocols for discipline, it is reasonable to assume that any other policy having the effect of discipline should follow this process. The Association's proposed language removes the artificial distinction between disciplinary actions, which have a "shelf-life" in an employee's personnel file and the quasi-disciplinary notations (Counseling Sessions and PIP's) which do not, and are therefore permanent. Moreover, without the restrictions that exist for disciplinary issues, even a reference by a manager to these processes noted in a personnel file can have the force and weight of discipline without any of the protections for actual disciplinary actions. The County is trying to circumvent the negotiated process, and the result is a situation where serious discipline may be treated less onerously than referral to a counselor. The County's rules on this matter lack reason, are arbitrary, capricious or otherwise impact the terms of employment of the members of the Association. The Association's proposed language eliminates this false distinction between discipline and quasi-discipline, and should be adopted.

The remainder of the proposed changes in Section 34 relate to the length of time a disciplinary action remains part of a personnel file. Based on the onerous conditions the Deputies have been under, with the quasi-disciplinary actions serving to circumvent the bargained for discipline process, the Association asserts that these changes represent a reasonable quid pro quo. The Association's position also serves as a reasonable quid pro quo for the prolonged morale and retention deterioration evidenced by testimony. There is no evidence that the prolonged effects of the disciplinary notations serve a compelling managerial purpose or that the Association's position would interfere with the management of the Unit.

County Position

The current contract provision has uniform county-wide application and is nearly identical in all of the County's labor agreements including those in other essential unit contracts. In its proposal, the Association is seeking to put the onus on the County rather than the employee to remove various disciplinary and performance-related documents from the employee's personnel file once certain timelines have elapsed. It is also seeking to shorten the time period for removal of documents and expand the list to include non-disciplinary items such as Counseling Sessions and PIP's. Finally, the Association is seeking to define the term "personnel record" to include the employee's "County Human Resources file, and any other office personnel file, division file or other files maintained by the County and its representatives" thereby making these documents disappear from the public record permanently.

The Association's desire to change the current labor contract appears to be driven by two concerns. First, the Association's leadership is concerned that its members in seeking employment at another law enforcement agency may be harmed by certain information contained in the employee's County personnel files. Second, the Association is worried that Counseling Sessions, PIP's and other low level discipline will be used as evidence in subsequent arbitration proceedings involving the discipline of a Deputy.

The Association did not provide any compelling reasons to make this change. There was no concrete evidence provided at the hearing that any Deputy has been adversely affected by the current provision or the County's long-standing and uniform procedure for maintaining employee work records.

The Association's proposal to remove discipline from the public record is contrary to law. The Minnesota Data Practice Act provides that final discipline of a public employee is public information. This includes oral and written reprimands. The State Department of Administration has opined on several occasions that any labor contract provision that attempts to affect the public's right to gain access to disciplinary information is void as a matter of public policy. Further, the practical application of the current provision related to the removal of low level discipline is debatable because state law requires the County to maintain these disciplinary records somewhere even if the employee requests that the documents be removed from the employee's "main" or "primary" HR file. In many respects, the provision is obsolete due to the requirements of the Data Practices Act.

The Association's proposal is also contrary to the public's interest. As management negotiators, the County's Labor Relations staff not only represents the interests of the County Board but the people. The Association's proposal, if adopted, would hide the truth and would not provide a complete picture to a prospective law enforcement employer concerning the applicant's work record. This is contrary to the interest of the public. Full and complete background checks must be conducted by local, state and federal law enforcement agencies in order to hire individuals for highly secure and classified positions.

The onus for requesting that certain low level disciplinary documents be removed from the personnel file and be placed elsewhere in the public record best falls on the employee. Employees are best situated to keep track of their own discipline and the timeframe provided by the contract for removing the discipline from their main personnel file. For the County to be responsible for the removal of low level discipline and other performance-related documents as proposed by the Association would require the development of an elaborate and costly tracking system. This is

an unnecessary burden to be placed on the County when the employee can easily make this request for themselves. Finally, the Association certainly did not offer a quid pro quo for its proposed change or any compelling reason for its proposal. The Association's proposal should be rejected, on either basis alone.

Discussion and Award

Internal consistency supports the County's position. This provision has uniform county-wide application and is nearly identical in all of the County's labor agreements. All of the contracts have the same time limitation periods and all put the onus on the employee to request removal of material. Further, all of the contracts reference disciplinary actions and none of the contracts reference non-disciplinary actions such as Counseling Sessions or PIP's.

A party requesting to change or add new language to a long-standing provision in a collective bargaining agreement bears the burden of proof by clear and convincing evidence or by quid pro quo that the new or changed language is justified. In this case the Association has failed to submit any compelling evidence or reason or quid pro quo to justify the need for its proposal. Further, there is no evidence that the retention of any "removed" document prejudiced a Deputy.

I can appreciate the concerns of the Association that disciplinary materials removed from the Deputy's personnel file are retained elsewhere in the County's system. Whether or not the retention of these disciplinary actions in other files is mandated by the Data Practices Act is not within the purview of this Arbitrator. It is something that the parties need to resolve in another forum. The parties also need to resolve through the give and take of the collective bargaining process whether Counseling Sessions and/or PIP's should be covered by this provision. The same can be said for any change in the current time line provisions.

Finally, the Association's concerns that non-disciplinary employment actions such as Counseling Sessions and PIP's are being or will be used in subsequent disciplinary actions is not relevant in this forum. The grievance arbitration process is the proper forum to raise this issue.

The County's position is awarded. The language in this provision will remain unchanged in the new Agreement.

ISSUE 8—OFF DUTY EMPLOYMENT—OFF DUTY EMPLOYMENT OPPORTUNITIES
ART. 35 SEC. 1

The existing language:

An employee may work in off-duty employment in non-liquor establishments with the approval of the EMPLOYER. Employees may utilize their uniform, badges and equipment in such off-duty employment with the approval of the EMPLOYER.

The Association proposal:

An employee may work in off-duty employment in non-liquor establishments with the approval of the EMPLOYER. Employees may utilize their uniform, badges and equipment in such off-duty employment with the approval of the EMPLOYER. EMPLOYER cannot unreasonably withhold, delay or condition EMPLOYER'S approval of off-duty employment and must provide Employee, in writing, the reasons for failing to approve such off-duty employment.

The County proposal:

County proposes no change to the language contained in Article 35, Section 1:

Association Position

The policy decision as to whether the County allows Deputies to engage in off-duty employment is not open to arbitration; however, the manner for determining and effectuating this approval affects terms and conditions of employment and thus is appropriate for interest arbitration. Deputies Al Saastamoinen and Shari Bukkila testified that the Sheriff's failure to approve off-duty employment, especially during the time of step and wage freezes, has adversely affected the morale and well-being of the Deputies.

The Sheriff's Office's failure to provide for a reasonable and rational process to provide for off-duty work opportunities has allowed it to act in an arbitrary and capricious manner in denying off-duty employment opportunities for its Deputies. Other law enforcement jurisdictions allow their employees to obtain off-duty employment without the arbitrary restrictions placed on the County Deputies.

The failure to allow off-duty employment opportunities not only affects the Deputies' current pocket book, but also affects their total earnings under PELRA for retirement purposes. While the County presented a worksheet showing that the

Deputies have overtime opportunities to supplement their basic wages, most of this overtime is in the jail.

County Position

The current provision has remained unchanged since it first went into the labor agreement in 1983. This proposal is not about employees knowing the specific reasons why their off-duty employment application was denied. Only two employees of the Sheriff's Office out of hundreds of applicants have been denied off-duty employment in the past three years. These two employees certainly knew the reason their off-duty employment application was not approved.

This proposal is a mere subterfuge for the Association's real goal of securing the ability for its members to work off-duty in a Deputy's uniform while carrying a gun. That goal, not readily apparent from the language proposed by the Association, became crystal clear as evidenced by the testimony of the Association's leadership during the arbitration hearing.

By making this proposal, the Association is trying to crack open the door, ever so slightly, to wearing the Deputy uniform off-duty for a private entity. By attempting to add language that the County may not condition or unreasonably withhold the approval of off-duty employment, the Association is hoping to get a case in front of a grievance arbitrator where the Sheriff has denied off-duty employment for a Deputy desiring to wear the uniform and/or carry a gun and badge while performing work for a private concern.

The determination of whether Deputies may wear the Deputy uniform while working for someone else is an inherent management right under PELRA. As a result, the Arbitrator in this matter is without legal authority to grant the Association's demand on this issue.

Further, as was true with the Association's previous proposal on removing documents from the personnel file, the Association has not offered any quid pro quo to entice the County to change this provision which has remained unchanged for thirty years despite the Association's many repeated attempts to convince the

County to let its Deputies work off-duty in uniform. As a result, the Association's proposal should be rejected on this basis alone.

Finally, there is an indemnity and liability issue. The County Board has made it perfectly clear to the Association that it will not authorize Deputies to work-off duty in uniform for a private entity unless the County is indemnified for the liability risks associated with such activities. There have been substantial monetary judgments imposed against public entities for the actions of their licensed police officers while working off-duty for a private company. The liability and indemnification issue is extremely complex and not easily resolved. It is best left to the parties to work through these complex liability and indemnification issues to see if a workable solution can be found rather than have the Arbitrator attempt to address them in an interest arbitration setting.

Discussion and Award

The County's position is awarded. The party requesting to change or add new language to a collective bargaining agreement bears the burden of proof by clear and convincing evidence that the new or changed language is justified. In this case, the Association has failed to submit any compelling evidence or reason to justify the need for its proposal. Based upon the County's current indemnification and liability policy, there is no evidence that the County is acting unreasonably or arbitrarily or capriciously in approving off-duty employment. County records (Exhibit 5-4) disclose that 57 of the 58 off-duty employment requests were approved in 2010; all 59 requests were approved in 2011; and as of October 2, 2012, 39 of the 40 2012 requests were approved. A review of this Exhibit discloses that almost all requests are approved within a two-week period with a substantial majority being approved within seven days. This is hardly an inherent delay especially when you consider that the approval goes up the chain of command from Commander to Inspector to Chief.

With this provision, the Association is attempting through interest arbitration to change an inherent management function with regard to its indemnity and liability policies so that Deputies will have more opportunity for off-duty employment in order

to supplement their current income and enhance their retirement income, assuming the off-duty employer is under PELRA. The Deputies look around and see other law enforcement jurisdiction police officers doing off-duty work that they are qualified and capable to perform. I sympathize with the Deputies; however, I have no authority to compel the County to relinquish an inherent management right granted under PELRA. This has to be addressed at the bargaining table or by other joint means if the County is unwilling to act unilaterally.

ISSUE 9—RETROACTIVITY—RETROACTIVITY OF ECONOMIC ISSUES—ALL APPLICABLE—ART. 38:

The existing language:

Except as otherwise provided in this AGREEMENT, all provisions of this AGREEMENT which were changed from the prior Agreement shall become effective upon this AGREEMENT's execution date. The retroactive provisions of this AGREEMENT shall apply to all employees of record as of the execution date.

The Association proposal:

This AGREEMENT shall be in full force and effect from January 1, 2012 to December 31, 2013, and shall be automatically renewed from year to year thereafter unless either party shall notify the other, in writing, by June 1 prior to the anniversary date that it desires to modify or terminate this AGREEMENT.

The County proposal:

The issue of retroactivity is moot if the arbitrator awards the County's economic position. Otherwise, the County's position is that there shall be no retroactivity.

Association Position

The Association wants the effective date for all awarded economic items retroactive to January 1, 2012.

County Position

The County does not want retroactivity on any economic item, if awarded.

Discussion and Award

In view of my previous awards, retroactivity is not in issue. The 1.5% wage increase and the merit step increases will be effective January 1, 2013. The 2012 \$500.00 lump sum payment will issue on the first full pay period following the execution date of this Agreement

AWARDS

Issue 1 2012 Steps. The County's proposal is awarded. There will be no in-range merit step increases for 2012.

Issue 2 2013 Steps. The parties agree that the in-range merit step increase that had been suspended will be reinstated effective January 1, 2013.

Issue 3 2012 Wage Increase. There will be no general wage increase for 2012; however, a \$500.00 cash lump sum shall be paid to all benefit earning employees of record on the execution date of the AGREEMENT. The \$500.00 cash lump sum will be payable the first full payroll period that follows the execution date of the AGREEMENT.

Issue 4 2013 wage increase. The parties agree that a general wage increase of 1.5% will go into effect on January 1, 2013.

Issue 5 Shift Differential 2012-2013. The County's proposal is awarded. The current shift differential of \$.80 per hour will remain in effect during the term of the new Agreement.

Issue 6 Weekend Differential 2012-2013. The County's proposal is awarded. The current weekend differential of \$.60 per hour will remain in effect during the term of the new Agreement.

Issue 7 Change in Contract Language. The County's proposal is awarded. The current contract language will remain in effect during the term of the new Agreement.

Issue 8 Change in Contract Language. The County's proposal is awarded. The current contract language will remain in effect during the term of the new Agreement.

Issue 9 Retroactivity. This Issue is moot since no economic items, with the exception of the \$500.00 bonus, were awarded for 2012. All awarded economic items for 2013 will become effective January 1, 2013.

Issue 10 New Steps 2012-2013. The County's proposal is awarded. There will be no new in-range merit steps in the new Agreement.

Dated: December 31, 2012

Richard R. Anderson, Arbitrator