

IN THE MATTER OF INTEREST ARBITRATION BETWEEN

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County of Dakota

BMS Case No. 13-PN-0089

“Employer” or “County”

Decision and Award

and

Law Enforcement Labor Services Inc.

John W. Johnson, Arbitrator

Local No. 247 (Licensed Supervisors)

“Union”

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Date of Hearing:

March 20, 2013

Date of submission of Post Hearing Briefs:

April 19, 2013

APPEARANCES

For the Union:

Dennis Kiesow, Business Agent

For the Employer:

Frank Madden, Madden, Galanter and Hansen, LLP

Matt Smith, Deputy County Administrator

Nancy Hobach, Employee Relations Director

## PRELIMINARY STATEMENT

The parties were unable to resolve certain issues in the course of negotiating a collective bargaining agreement, and requested of the Bureau of Mediation Services that the contract negotiations be submitted to interest arbitration.. The Bureau of Mediation Services certified 10 issues to binding interest arbitration pursuant to Minn. Stat. 179A.16 subd. 7, by letter dated October 29, 2012. The parties settled all but four of these issues prior to the start of the Hearing.

## ISSUES PRESENTED

A. Wages – Wage adjustment, if any for 2012 – Appendix A & B

### Union Position

2% general increase to the 2011 salary ranges

“Any Sergeant or Captain working in the Dakota County Sheriff’s Office as of the date of execution of this Memorandum of Understanding, and who at the date of execution of this memorandum of Understanding is not being paid at the current salary range maximum for the classification shall be entitled to a one time increase of 5% of the control point of the current salary range effective January 1, 2012, ” (Final Position of Union) provided that no employee’s salary be increased on the base above the salary range maximum.

### Employer Position

No general wage increase for 2012.

B Merit Matrix – What, if any, increase for 2012 – Appendix A & B

Union Position

Employees below the maximum of the salary schedule shall be eligible for a merit increase on the employee's anniversary date in class subject to the following:

Role Model Performance Rating	4%
Achiever Performance Rating	3%
Contributor Performance Rating	2%
Learner/Corrective Performance Rating	0%

Employer Position

No Merit Increase for 2012

C Wages – Wage adjustment, if any, for 2013 – Appendix A & B

Union Position

A 2% general increase to the salary ranges established for 2012.

Employer Position

A 1% general wage increase for 2013

D. Merit Matrix – What, if any, increase for 2013 – Appendix A & B

Union Position

Employees below the maximum of the salary schedule shall be eligible for a merit increase on the employee's anniversary date in class subject to the following:

Role Model Performance Rating	4%
Achiever Performance Rating	3%
Contributor Performance Rating	2%
Learner/Corrective Performance Rating	0%

Employer Position

Role Model Performance Rating	1.0% base + 1.0% lump sum + \$500 lump sum
Achiever Performance Rating	1.0% base +1.0% lump sum
Contributor Performance Rating	0.5% base + 1.0% lump sum
Learner/Corrective Performance Rating	0%

DISCUSSION

The Union and the employer each cite other Arbitrators regarding what the task of an interest arbitrator is. The Union cites Arbitrator Miller, who states in one award, “The role of an interest arbitrator in cases dealing with essential employees, including licensed police officers who are forbidden to strike, is to fashion awards the parties would have negotiated themselves to end a strike.” Law Enforcement Labor Services and Cottonwood County, BMS 01-PN-1423, (Miller, 2002.) The Employer included in its written presentation several arbitration awards. One of these, also from Arbitrator Miller, states the interest arbitrator’s role as “to determine what the parties would have agreed to voluntarily in negotiations”. Teamsters Local No. 320 and Dakota County, BMS 01-PN-879, (Miller, 2002) Another of the arbitration awards included in the County’s presentation states “The standard in determining an appropriate interest award is indeed to try to determine, based on the best evidence available, what the parties would have negotiated for themselves in the absence of interest arbitration.” Teamsters Local No. 320 and Dakota County BMS 11-PN-0466 (Jacobs, 2011) Similarly, Arbitrator Bognanno has stated “The Central

task of the arbitrator is to determine what the parties would have bargained had their negotiations been successful, Minnesota Nurses Association and State of Minnesota, BMS Case No. 04-PN-160 (Bognanno,2004). Additionally, Elkouri and Elkouri state that the fundamental objective of interest arbitration is to formulate awards from the evidence which represents the agreement the parties would have ultimately reached, mindful of whatever influence a work stoppage might theoretically have provided, had the parties been able to continue negotiating to a successful conclusion. Elkouri and Elkouri, How Arbitration Works, 105 (5<sup>th</sup> ed. 1997). It is clear that the interest arbitrator's role is to determine, based on the evidence provided, what the parties would have negotiated, had they continued to settlement.

There is also significant agreement among arbitrators about what factors should be considered in reaching a decision in interest arbitrations. These factors include 1) ability to pay, or the economic circumstances of the employer, 2) internal comparisons, and 3), external comparisons. In Minnesota arbitrators are also required to consider pay equity. Minnesota Statutes Section 471.992, Subd. 2. states that in all interest arbitration involving a class other than a balanced class held under sections 179A.01 to 179A.25, the arbitrator shall consider the equitable compensation relationship standards established in this section and the standards established under section 471.993, together with other standards appropriate to interest arbitration. In this case pay equity issues are not raised by any of the positions of the parties. Pay equity, therefore, need not be addressed further in determining the award in this matter.

The evidence and arguments presented by the parties with respect to ability to pay, internal comparisons, and external comparisons are similar with respect to all four issues, and are addressed separately below.

### Ability to Pay

The Union summarized its arguments regarding the employer's ability to pay in Union Exhibit 10-1, and provided subsequent exhibits to support its arguments. The Union points out that the County is financially healthy as shown by its 2010 and 2011 financial reports (Union 10-13 and 10-14). The County's General Fund Balance at the end of 2011 was 73.64% of total General Fund expenditures, well in excess of the Minnesota State Auditor's recommendation that government agencies maintain an unrestricted fund balance of 35% to 50% of fund operating revenues in their general and special revenue funds. The Union further notes that the County had the lowest net tax capacity rate in the State, and the lowest in the Metro area. The County also has the third lowest taxes per capita in the State, and the lowest in the Metro area. Further, the County actually reduced the tax levy for 2013. The County has excellent bond ratings; Aaa from Moody's, and AAA from Standard and Poor's. Based on these and additional supporting points, the Union concludes that the Employer has the ability to pay. The Union also notes that the cost of its proposal, compared the employer's, is very small in relation to the employer's total budget.

The employer responded the Union's arguments and supporting documentation in part through the testimony of Matt Smith, Deputy County Administrator. Mr. Smith pointed out that the county is an agent of the State with respect to many of the County's functions, particularly those having to do with Human Services, Public Health and Criminal Justice, that the scope and delivery mechanisms for these services are mandated by State government, and that the County is heavily reliant on the State and Federal funding sources. (See Employer Exhibit 1A) Mr. Smith also asserted that the County must consider taxpayers' ability to pay, since 2/3 of the County's tax levy falls on its residents. And taxpayers in the County are concerned about taxes. An independent survey conducted in 2011 showed that a majority of the County residents identified "taxes" as either a major or moderate problem in the County, and that in response to the question

“What do you feel is the most serious issue facing Dakota County at this time” the most frequent answer was taxes.

In its budgeting for the years since the recession began, the County has attempted to respond to economic uncertainty by budgeting conservatively. This has continued into the development of the 2013 budget, even though there are some indications that the economic outlook is improving.

With respect to the Union’s points about Fund Balance, Mr. Smith testified, in reviewing Union Exhibit 10-50, that the unassigned fund balance was \$29,174,157, and that this was the amount available for unexpected expenses. The rest of the fund balance was either non-spendable, restricted, committed, or assigned. And the unassigned fund balance is for “financial shocks”, either a one time loss of revenue, or a one time cost. The employer’s point is that the majority of the fund balance referred to by the union is unavailable to finance increases in wages, and the remaining unassigned fund balance is needed for unexpected financial shocks.

Both the Union and the Employer make valid points. The County is in good financial shape. But it is in that condition because it has exercised financial prudence, and it continues to do so. While the County does, in my judgment, have the ability to pay the cost of this bargaining unit’s proposals on wages and merit pay, it does not necessarily follow that the Union’s proposals should be implemented. This would, in effect penalize the County for its responsible financial management. Also, awarding the Union’s proposal would encourage those bargaining units not yet settled for 2012 and 2013 to seek to equal or exceed the result for this bargaining unit, creating a ripple effect that would increase the County’s ongoing personnel costs over time.

### External Comparisons

According to Union Exhibit 13-5, The County's position would result in the top pay for Sergeants, in 2012, being fourth highest among the group of eight employers identified by the union as being comparable, and in 2013, also fourth. In both years, the top pay would be above the average top pay for the group. The Union's position would also result in 2012 top pay being fourth highest among the group, while the 2013 top pay would be third highest. Under either position, the top pay would remain competitive.

Union exhibit 13-6, percentage increases for Sergeants in the same group of eight Counties, shows that the average increase for the other Counties with settlements was 0.9% for 2012 and 1.3% for 2013. This exhibit also shows that the 4.2% increase in 2012 for Carver County brought its top rate closer to, but still significantly below the rates for the other Counties in the comparison group, which suggests that it may have been the result of an effort to bring Carver County more in line with the others. The average increase for the other five Counties, excluding Carver, that have settled for 2012 was 0.3%, with three of them getting 0.0% increases.

Based on these comparisons, the Union's proposal is less consistent with the increases received by comparable counties, while the employer's proposal is more consistent.

The Union also provided a comparison of Sergeant's pay between Dakota County and municipalities within the County. (Union Exhibits 13-7 through 13-10). These show that under the Union's proposal, the County's top pay would be fourth highest among the comparison group for both 2012 and 2013. Under the County's proposal, top pay would be sixth highest among the group in 2012, but would rise to fourth highest in 2013. These data show that either proposal would maintain Dakota County's position in the top half of this comparison group.

Internal Comparisons

The questions to be considered are; is there an internal pattern of wage increases for 2012 and 2013 for Dakota County, and if so, what is it?

The Union asserts that there is no internal pattern. Union Exhibits 12-2 through 12-4 compare increases for the bargaining units representing Dakota County employees. These exhibits show that, for 2011, 2 of the bargaining units received a 0.0% general increase and a 1.0% lump sum merit increase for the Role Model, Achiever, and Contributor category, while 6 bargaining units received neither a general nor a merit increase for 2011. For 2012, these exhibits show that four of 14 bargaining units got a general increase of 0% plus a \$1000.00 lump sum, and merit increases of 1.5% for the role model, achiever or contributor performance level. Two of the bargaining units got 0% general increase and 0% merit for 2012. The other bargaining units have not settled for 2012, according to these exhibits. The exhibits show one bargaining unit settled for 2013 with a general increase of 1.0% and merit increases as follows:

Role model      1% base + 1% lump sum + \$500.00 lump sum

Achiever        1% base + 1% lump sum

Contributor    0.5% base + 1.0% lump sum

Learner/Corrective      0%

The Union's exhibits also show a one time additional increase of 5.0% for Assistant County Attorney 4's for 2012.

The union also provided data on increases received by unrepresented employees, which do vary from employee to employee (Union Exhibits 12-11 through 12-20). The employer provided explanations for these increases (Employer Exhibit 124).

The employer contends that there is a pattern. This pattern is tied to what decision the bargaining units made with respect to a proposed change in the insurance benefit for employees. Bargaining units that agreed to accept the plan that was less expensive for the County, obtained more favorable contract terms on wages than did bargaining units that did not agree to the lower cost insurance alternative. In 2011, the two bargaining units that accepted the lower cost plan, The Human Services Supervisors Association, and the Minnesota Nurses Association, got a 1.0% lump sum for Role Model, Achiever and Contributor performance categories. The other bargaining units that settled for 2011 elected to retain the higher cost insurance plan, and received 0.0% general increase and 0.0% lump sum. For 2012, the bargaining units that agreed to the lower cost insurance plan got a general wage increase of 0.0% + \$1000.00 lump sum as a general increase, and 1.5% merit increase for either the Role Model, Achiever, or Contributor performance level. The units that did not elect the lower cost plan as part of their agreement got a wage settlement of 0.0% general increase and 0.0% merit. For 2013, the settled bargaining units that have agreed to the lower cost insurance plan received a 2.0% general wage increase. The largest bargaining unit, AFSCME Local 306, settled for 2013 but did not agree to change to the lower cost insurance plan. This bargaining unit received a 1.0% general wage increase. All bargaining units that have settled for 2013, irrespective of their decision on the lower cost insurance plan, received the following merit increases:

Role model	1% base + 1% lump sum + \$500.00 lump sum
Achiever	1% base + 1% lump sum
Contributor	0.5% base + 1.0% lump sum
Learner/Corrective	0%

The LELS Licensed Supervisors unit did not agree to accept the lower cost insurance plan.

Although insurance is not one of the issues in this arbitration, the Union's decision on insurance does affect the assessment of how any pattern may apply to it.

To assess whether or not there is an internal pattern in settlements that should influence the outcome of this arbitration, the history of settlement consistency within Dakota County over time must also be considered. Dakota County has, for 22 years, had consistent settlements across all bargaining units (testimony of Hobach). Beginning with the year 2011, two distinct wage/benefit packages began to be implemented, as described above, depending on which insurance plan the bargaining unit chose. Although there are two patterns beginning in 2011, consistency is being maintained.

Based on the above, there is a sufficient pattern of consistency over time and into the present, that in order for the award with respect to the LELS Licensed Supervisors Unit to vary from that pattern, there needs to be some compelling reason. Although the Union points out correctly that there is variability among the wage increases given to unrepresented employees, I am satisfied that the employer has explained those sufficiently. I also do not find a basis in the external comparisons provided by the parties to award the Union's proposal with respect to general wage increases and merit increases.

There remains the question of an additional 5% increase for employees in the bargaining unit. The Union provides two justifications for this part of its proposal. First, the additional 5% would help change the circumstance that now exists, in which many of the current supervisors make less than those they supervise. Second, the Assistant County Attorney 4's received a 5% wage adjustment in 2012.

Several of the Current members of the Licensed Supervisors unit were promoted into their jobs relatively early in their tenure with the County, and supervise employees with considerably more

seniority, who, as a consequence, make more than their supervisors do . This situation will continue for many years for some supervisors. This however, is not unique to the LELS Supervisors bargaining Unit. All Dakota County employees are under a uniform salary range structure. This fact, and the fact that there had been consistency in wage settlements within the County over time, means that the phenomenon is found among other supervisors as well. (Employer Exhibit No.125).

As for the Assistant County Attorney 4's receiving a 5% salary adjustment, this was done to correct an error. The Assistant County Attorney 4's should have each received a 5% increase upon promotion to that title, and had not. The 5% increase corrected that error. Sergeants and Captains in the LELS Supervisor's bargaining unit did, however receive the 5% adjustment upon promotion. (Testimony of Hobach).

AWARD

Based on the above The Employer's Position is awarded on both the general wage increase and on merit pay, for both 2012 and 2013.

Dated: May 17, 2013

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John W. Johnson, Arbitrator