IN THE MATTER OF THE ARBITRATION BETWEEN

WRIGHTCOUNTY DEPUTIES ASSOCIATION,	)	
Union,	)	**INTEREST ARBITRATION AWARD**
and	)	
WRIGHT COUNTY,	)	
Employer.	)	**BMS Case No. 12-PN-0968**

Arbitrator: Stephen F. Befort

Hearing Date: March 27, 2013

Post-hearing Briefs submitted: April 25, 2013

Date of Decision: May 24, 2013

Appearances:

For the Union: Robert J. Fowler

For the County: Frank J, Madden

INTRODUCTION

This is an interest arbitration proceeding arising under Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. §§ 179A.01 - 179A.30. The Wright County Deputies Association ("Union") is the exclusive representative of a unit of licensed sergeants and deputy sheriffs employed in the Wright County Sheriff's Department ("County"). The unit currently consists of 137 employees.

The parties previously negotiated a collective bargaining agreement for 2009-11. The

Union and the County have engaged in negotiations for a successor agreement, but they have been unable to reach an agreement. The Bureau of Mediation Services ("BMS") certified sixteen unresolved issues for interest arbitration:

DISCUSSION AND AWARD

INTEREST ARBITRATION PRINCIPLES

1. **Replicate Voluntary Agreement**. The central goal of interest arbitration is to ascertain the agreement that the parties themselves would have reached if they had continued bargaining and concluded a voluntarily negotiated settlement. *See* AFSCME Council 65 and County of Carver, BMS Case No. 10-PN-423 (Fogelberg, 2011).

2. **Criteria for Determination**. In general, arbitrators consider the following factors in determining interest arbitration awards: the employer's ability to pay and other economic considerations, relevant internal comparisons, and relevant external comparisons. Since the adoption of the Minnesota Pay Equity Act, Minn. Stat. Sec. 471.991 - 471.999, the principal, but not exclusive, factor relied upon by most Minnesota interest arbitrators in deciding issues of wages, benefits, and other terms and conditions of employment has been internal consistency with the settlements negotiated with respect to the other bargaining units in the same jurisdiction. *See* e.g., Law Enforcement Labor Services, Inc. and McLeod County, BMS Case No. 03-PN-613 (Kircher, 2003); Law Enforcement Labor Services, Inc. and Chisago County, BMS Case No. 95-PN-54 (Berquist, 1995).

3. **Burden on Proponent for Change**. As a general proposition, an interest arbitrator should not alter longstanding contractual arrangements in the absence of a compelling reason to do so. Accordingly, most interest arbitrators will place the burden on the party proposing a change in the parties' relationship to demonstrate the need for such change by clear and

compelling evidence. *See* Human Services Supervisors Association and County of Dakota, BMS Case No. 97-PN-837 (Wallin, 1997).

1.– 3. WAGES 2012, 2013, 2014

A. Positions of the Parties

Union:

3.0% general wage increase for 2012, 3.0% general wage increase for 2013, and 3.0% general wage increase for 2014.

Employer:

0.0% general wage increase for 2012, 0.0% general wage increase for 2013, and 1.0% general wage increase for 2014.

B. Discussion

Union Arguments

The Union contends that the County has the ability to pay the requested salary adjustments based upon recent budget surpluses, the size of the County's unrestricted reserve fund, and the improving economy. The Union points out that the Wright County Sheriff's Office is the fourth largest county law enforcement entity in the state and that Wright County is the second fastest growing county in population. As such, the Union argues that the largely rural Economic Region 7W and Applicable Contiguous Counties no longer represents an appropriate external comparator group. The Union instead urges an external comparison group consisting of the more suburban counties of Anoka, Carver, Dakota, Scott, Sherburne, Stearns, and Washington. When this comparison is drawn, the Wright County starting wage for deputies lags behind the comparator average by 14.06% for 2012 and by 15.34% for 2013. The Union additionally argues that the County's argument in favor of an internal pattern should be rejected for three reasons: 1) an internal pattern has not yet been established since wages are set for this

period for only about one-half of all County employees, 2) more than 20% of all County employees have received wage increases as the result of a job classification study, and 3) giving primacy to internal consistency in all instances essentially would eliminate the duty to bargain.

Employer Arguments

The Employer asserts that both the general economy and public sector budgets continue to be stressed and likely will remain in that condition for the foreseeable future. The County urges that the determinative factor relied on by most Minnesota interest arbitrators with respect to wages is internal consistency. The County points oput, in that respect, that five of the seven Wright County units already have settled for wage adjustments identical to the County's position. The County also maintains that the recent job classification study was not a market-based survey and that the resulting job evaluation point values did not warrant an upward adjustment in deputy sheriff and sergeant salaries. Finally, the County contends that Economic Region 7W and Applicable Contiguous Counties (*i.e.*, Benton, Carver, McLeod, Meeker, Sherburne, and Stearns counties) remain the appropriate external comparison group for Wright County. In terms of this comparison, the County alleges that Wright County deputies would earn 5.14% below the average starting wage for the comparator counties in 2012, but 6.08% above comparator wages at the maximum end of the wage schedule. A similar comparison is forecast for 2013, with Wright County starting pay 6.58% below the six-county norm, but with maximum pay 5.64% above the comparator average.

C. Analysis

Economic Considerations

The Union certainly is correct in contending that the County has the ability to fund the Union's wage proposal and that the economy is starting to improve. Nonetheless, the current

economic recovery is weak, and local government finances remain in a precarious position. Local government units typically experience a time lag in rebounding from a period of recession, and budgetary projections for the next few years still show red ink. Under these circumstances, a cautious approach to personnel costs is warranted.

External Comparisons

Prior interest arbitration decisions involving Wright County have recognized Economic Region 7W and Applicable Contiguous Counties as the appropriate external comparison group. *See, e.g.*, Wright County and Teamsters Local No. 320, BMS Case No. 06-PN-0882 (Ver Ploeg, 2007). The Union argues that this comparator group should be abandoned because of the high population growth rate for Wright County. While there is some merit to the argument that Wright County's eastern exurban growth at some point should warrant a comparison group that does not rely so heavily on predominantly rural, adjacent counties to the west, the Union's alternative proposal is premature. The Union seeks to exchange the largely rural counties of Meeker, McLeod, and Benton for the suburban metropolitan counties of Dakota, Anoka, and Washington to the comparator mix. But, the latter three counties are not currently comparable to Wright County in terms of population or tax base. As an example, the average population of those three counties is more than two and one-half times the current population of Wright County.

The County's wage proposal is competitive with the average wages for deputies and sergeants in the Economic Region 7W and Applicable Contiguous Counties comparison group. The County's proposal would place deputies slightly below the average beginning wage for deputies, but slightly above average at the maximum end of the range. The County's proposal would place sergeants at above average at both the starting and maximum ends of the range.

Internal Comparisons

Most Minnesota arbitrators view internal consistency as the most important consideration in determining wage adjustments. This view dominates for two principal reasons. First, an award consistent with an existing internal wage pattern most often replicates the bargain that the parties would have struck through a voluntarily negotiated agreement. Second, an award that deviates from an internal pattern is likely to set off an undesirable ripple effect in future rounds of bargaining.

In this instance, a clear internal pattern has been established by the fact that five of the County's other bargaining units have settled for the same package as the County's final position. In addition, the importance of internal consistency is illustrated by the fact that all County employees have received identical wage adjustments for every year since 1997. In short, internal comparisons provide strong support for the County's position.

D. Award: The County's position is awarded.

4. TIMING OF STEP INCREASES

A. Positions of the Parties

Union: Proposes that all step increases should be effective on the anniversary date of appointment.

Employer: Retain current language.

B. Discussion

At present, unit employees advance through the first four steps of the wage schedule on January 1 of each year at the discretion of the County Sheriff. For the remaining six steps, employees advance automatically on the anniversary date of their appointment.

The Union contends that the arrangement should be changed so that all step advancements occur automatically on the employee's anniversary date. The Union claims that

this change will eliminate confusion and delayed step increases. The Employer argues that these first four steps are promotional in nature and should not be granted unless the Sheriff believes that the employee is making adequate progress in their position.

The Union's proposal on this issue seeks a substantive change in the terms of the parties' agreement. As noted above, such a change normally should be left to the parties' voluntary negotiations, and an arbitrator should not alter an existing contractual arrangement absent a compelling reason. Here, the Union has not advanced a compelling reason to support this proposed change.

C. Award: The County's position is awarded.

5. LONGEVITY

A. Positions of the Parties

Union: Proposes to add a longevity step at 15 and 20 years of service, respectively, with a 2% increase in pay for each step.

Employer: Retain current language.

B. Discussion

The parties' collective bargaining agreements have not provided for any longevity pay since 1997. At that time, negotiations for the 1997-99 contract resulted in the parties trading a ten-year longevity step for an extra step on the wage schedule.

The Union contends that Wright County is experiencing difficulty in retaining long term deputies. The Union argues that the addition of two longevity steps accompanied by 2% pay increases is appropriate as a financial retention incentive.

The County denies the existence of any retention problem and asserts that the Union did not submit any evidence to support that claim. The County also points out that no other group of County employees receive longevity pay and that a majority of Economic Region 7W and

Applicable Continguous Counties do not provide longevity pay for their deputies. In addition, the County maintains that the current arrangement was established through voluntary negotiations and that an award of the Union's proposal would work a substantive change in that arrangement. I find the County's arguments on this issue to be persuasive.

C. Award: The County's position is awarded.

6. ON-CALL PAY

A. Positions of the Parties

Union: Proposes that investigators in the unit receive $50 per day for standby pay.

County: Retain current language.

B. Discussion

The on-call pay provision in the parties' 2009-2011 agreement provides as follows:

> Investigators assigned to be on standby for a 7-day week will receive $30 per day as standby pay for those days that the employee is scheduled to work (Monday through Friday), and $40 per day for each day of the weekend.

The Union seeks to increase on-call pay for investigators to $50 per day. The Union points out that social workers in the County's Human Services unit currently receive $50 a day in on-call pay. The Union contends that unit employees should receive at least a commensurate rate of pay since social workers typically handle on-call work tasks over the telephone, while unit investigators generally are required to leave their home in order to undertake investigative services.

The County spins this argument in a different direction. The County maintains that since investigators typically are required to leave their home premises when called to duty while social workers are not, the investigators more often are eligible for overtime pay and there is less need to provide them with a higher rate of on-call pay.

In this instance, I believe that the internal comparison supports the Union's request for a higher rate of on-call pay.

C. Award: The Union's position is awarded.

7. WORK SCHEDULES – ISSUE WITHDRAWN

8. COURT TIME

A. Positions of the Parties

Union: Proposes to increase minimum court time pay to three hours.

County: Retain current language.

B. Discussion

Under the parties' 2009-11 collective bargaining agreement, a unit employee "who is required to appear in court during the employee's scheduled off-duty time shall receive a minimum of two hours pay at one and one-half times the employee's base pay rate." The Union seeks to increase the contractual minimum for court time to three hours which would equate with 4.5 hours of pay. The Union justifies this proposed change on the grounds that most comparable counties provide this higher rate of court-time pay for deputies.

Internal comparisons, however, do not support this proposal. Other County employees who are subject to potential court-related duty, such as correctional officers and dispatchers, receive two hours at the overtime rate of pay.

C. Award: The County's position is awarded.

9. UNIFORM ALLOWANCE

A. Positions of the Parties

Union: Proposes to increase uniform allowance to $700 for 2012, $750 for 2013, and $800 for 2014..

County: Retain current language.

B. Discussion

Deputies and Sergeants currently receive $650 per year as a uniform allowance. The Union argues that this amount should be increased because the cost of a basic uniform package exceeds the current allowance and because most comparable counties provide a more generous uniform allowance.

This unit historically has received the same uniform allowance as the Sheriff's Essential Supervisors unit. That unit's 2012-14 contract provides for a uniform allowance of $650 for 2012, $675 for 2013, and $700 for 2014. I believe that the deputies and sergeants should receive a comparable adjustment.

C. Award: The contract should provide for a uniform allowance of $650 for 2012, $675 for 2013, and $700 for 2014.

10. AMOUNT OF VACATION ACCRUAL

A. Positions of the Parties

Union: Proposes to increase vacation accrual to 192 hours after 16 years of service.

County: Retain current language.

B. Discussion

The parties' 2009-2011 collective bargaining agreement contains the following vacation accrual schedule:

0 through 3 years	96 Hours
4 through 5 years	104 Hours
6 through 15 years	128 Hours
During the 16th year	136 Hours
During the 17th year	144 Hours
During the 18th year	152 Hours
During the 19th year	160 Hours
During the 20th year and thereafter	168 Hours

The Union proposes to increase the vacation accrual schedule by upwardly adjusting the accrual amount at year 16 and thereafter to 192 hours. The Union did not provide any rationale for this change.

The County primarily relies on internal consistency in opposing this proposal. The County points out that five other Wright County units all accrue 168 hours, or less, of annual vacation during the 20th year of service. While the Assistant County Attorneys and non-union employees accrue 192 hours of vacation at the maximum step of the vacation accrual schedule, that accrual rate does not occur until after 20 years of employment. No County employees accrue 192 hours of vacation at the 16th year.

C. Award: The County's position is awarded.

11.-12. VACATION/SICK LEAVE USE

A. Positions of the Parties

Union: Retain current language.

County: Proposes that vacation and sick leave may not be used until after the end of the pay period in which such leave was accrued.

B. Discussion

The 2009-2011 contract permits unit members to use accrued vacation and sick leave in the pay period during which it was earned. The County's proposal would delay the use of such leave until after the expiration of the pay period during which such leave was earned.

The County offers two justifications for this proposed change. First, the County claims that all other County employees are subject to contract or policy language providing that vacation and sick leave may not be used until after it is accrued. Second, the County argues that

this change would avoid the possibility of employees having a negative balance in their vacation and sick leave accounts.

While the County's arguments are not without some merit, they do not provide a compelling basis to support the proposed substantive change in contract benefits.

C. Award: The Union's position is awarded.

13. SICK LEAVE – DEFINITION OF A CHILD

A. Positions of the Parties

Union: Retain current language.

County: Proposes to add a definition of a "child" as a biological, adopted, foster or step-child who is under the age of 18, or an individual under 20 who is still attending secondary school.

B. Discussion

The County's proposed change would define a "child" consistent with the Minnesota Parental Leave Act, Minn. Stat. sec. 181.940, subd. 4. The County maintains that this definition already applies to all other County employees.

The Union objects to this change, primarily because, as proposed, it also would modify the right to bereavement leave. The Union is concerned that a literal reading of this language would not entitle employees leave to attend the funeral of adult children.

The County's proposed language provides a fair and useful description of sick leave availability, and it is consistent internally. The Union has a legitimate concern, however, that the definition of a child for sick leave purposes should not unduly limit the availability of bereavement leave. This tension can be reconciled by modifying the County's proposed definition of a child so as to explicitly state that it is applicable only for purposes of sick leave.

C. Award: The County's proposed language is awarded with the modification that such definition shall be applicable only with respect to eligibility for sick leave:

> For purposes of sick leave, a child is a biological, adopted, foster or step-child who is under the age of 18, or an individual under 20 who is still attending secondary school.

14. SEVERANCE PAY

A. Positions of the Parties

Union: Proposes to increase severance pay to 35% of accumulated sick leave.

County: Retain current language.

B. Discussion

Unit employees currently are entitled to receive severance pay in the amount of one-third of accumulated sick leave upon honorable separation from County employment. The Union seeks an increase in that amount to 35% of accumulated sick leave. The Union asserts that this change would provide parity with the assistant county attorney contract which authorizes 35% of accumulated sick leave as severance pay after a minimum of sixteen years of service.

The County argues that the Union's proposal is not supported by internal comparisons. The County asserts that five other County units receive severance on the same terms as the parties' 2009-2011 contract. The County acknowledges that the assistant county attorneys and non-union employees are eligible for severance pay in the form of 35% of accumulated sick leave, but this benefit is available only after sixteen years of service.

C. Award: The County's position is awarded.

15. BEREAVEMENT LEAVE

A. Positions of the Parties

Union: Proposes language to clarify availability of bereavement leave for immediate family members of an employee's spouse.

County: Proposes language that would provide for leave up to 24 hours for funeral attendance of an immediate family member as defined in County Personnel Policy.

B. Discussion

Both parties suggest language changes to Section 19.3 relating to bereavement leave. The County would modify this section as follows:

> Sick leave will be granted for serious illness (when required to be in attendance). ~~Bereavement will be granted for death in the immediate family (mother, father, spouse, children, brother, sister, grandparents of the Employee or his/her spouse) to a maximum of three (3) days, at the Employer's discretion. Effective the first day of the first full pay period following County Board approval of the Agreement, bereavement will not be deducted from accrued sick leave.~~ Funeral attendance not to exceed twenty-four hours for death of an immediate family member as defined in the County Personnel Policy manual. This leave shall not be deducted from employee's sick leave.

The Union would retain the current language of Section 19.3, but proposes the addition of language explicitly stating that qualifying leave may relate to the death of a spouse's "mother, father, children, brother, sister, [and] grandparents."

Two issues are at stake with respect to this section. The first relates to the duration of bereavement leave. The County proposes to reduce the available leave time from three days to one day, while the Union opposes any change in duration. The County argues that the shorter leave duration is consistent with the internal pattern. While the County's desire for such consistency is understandable, this alone does not provide a compelling basis to support the proposed substantive change in contract benefits.

The second issue concerns the identity of qualifying immediate family members. The Union claims that the County has very narrowly construed the current version of Section 19.3 so as to provide for bereavement leave in the event of the death of a spouse's grandparents, but not for any other spousal relatives. The Union proposes to correct this "hyper-technical" interpretation by explicitly providing leave eligibility with respect to the same members of a

spouse's family as apply with respect to members of the employee's family. The County proposes to incorporate the definition of "immediate family" as provided in the County Personnel Policy which covers:

> . . . The following persons and shall include step relationships: Spouse, Children, Parents, Siblings, Grandparents and Great Grandparents, Grandchildren and Great Grandchildren, Spouse's Parents, Spouse's Siblings, Spouse's Grandparents.

The only differences between the two proposals are that the Union proposes to include the death of a spouse's child, while the County proposes to include an employee's great grandparents. I believe that the Union's proposal more nearly reflects the parties' original intent in negotiating Section 19.3.

C. Award: The Union's position is awarded.

16. FLOATING HOLIDAYS

Positions of the Parties

Union: Retain current language.

County: Proposes language that would prorate floating holidays for late year new hires.

B. Discussion

Unit members currently are eligible to receive one floating holiday per year that must be used during that calendar year. Newly hired unit members also are eligible for that floating holiday, provided that they successfully complete their probationary period.

The County proposes to modify the contract language as follows:

> 17.3 In addition to the recognized holidays previously listed, eligible employees will receive ~~O~~one (1) ~~F~~floating ~~H~~holiday~~ is provided to the above schedule and may be taken in one, eight-hour increment or two, four-hour increments. The Floating Holiday must be taken during the~~ in each calendar year~~ in which it is earned or it will be forfeited~~. Employees who use the floating holiday during the probationary period and fail to complete the probationary period, for any reason, will have the hours used deducted from their final paycheck. An unused floating holiday will be

forfeited at the end of the calendar year. The following outlines the accrual rate for new hires and the procedures for use of the floating holiday:

1. Pro-rated floating holidays for new full-time hires.

If Hired	Eligible to Receive (hrs)
January – October	8
November	4
December	0

2. The floating holiday must be scheduled with prior approval of the employee's supervisor and can be scheduled only as a full day or half-day segments.

3. Floating holidays may be used during the first six months of employment; however, in the event an employee leaves County employment during that six month period, the amount of time taken shall be paid back to the County.

4. Floating holidays which have not been used prior to an employee's termination date shall be forfeited.

5. Floating holidays are pro-rated for part-time employees.

This language, among other things, would reduce or eliminate the floating holiday credit for late year hires. The County argues that this language is consistent with the internal pattern and addresses the possibility of an employee with only a few weeks tenure having the right to a full-day floating holiday.

The Union counters that the current language is reasonable and that it provides a helpful incentive in the hiring process. In addition, the Union contends that the County's proposal represents a substantive reduction in benefits which is not supported by any compelling rationale. I find the Union's arguments on this issue to be persuasive.

C. Award: The Union's position is awarded.

Dated: May 24, 2013

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Stephen F. Befort
Arbitrator