

IN THE MATTER OF ARBITRATION )  
 )  
 between )  
 )  
 Pine County, Pine City, )  
 Minnesota )  
 )  
 -and- )  
 )  
 Minnesota Teamsters Public )  
 & Law Enforcement Employees' )  
 Union, Local No. 320 )  
 August 1, 2013  
))

**APPEARANCES**

**For Pine County**

Margaret A. Skelton, Attorney, Ratwik, Roszak & Maloney,  
Minneapolis, Minnesota  
Robin Cole, Sheriff  
Matt Christenson, Human Resources & Payroll Specialist  
John K. Carlson, Attorney  
Cathy Clemmer, Auditor

**For Minnesota Teamsters Public & Law Enforcement Employees'  
Union, Local No. 320**

Paula R. Johnston, General Counsel  
Michael Kopp, Business Agent  
Terry Neuberger, Business Agent  
Ben Neel, Deputy  
Barry Sjodahl, Deputy  
Sara Samuelson, Deputy

**JURISDICTION OF ARBITRATOR**

Minnesota Teamsters Public & Law Enforcement Employees'  
Union, Local No. 320 (hereinafter referred to as "Teamsters  
Local No. 320" or "Union") is the exclusive representative for  
Essential Licensed Deputies (hereinafter "Deputies") employed by  
Pine County (hereinafter referred to as "County" or "Employer")

in the Pine County Sheriff's Department (hereinafter referred to as "Sheriff's Department").

The Union became the exclusive representative for the Deputies on May 30, 2012. Prior to that time the Deputies were represented by Law Enforcement Labor Services, Inc. ("LELS"). The County and LELS were signatory to a labor agreement (also referred to as "contract") which endured from January 1, 2010 through December 31, 2011. Accordingly, this is the first contract between the County and Teamsters Local No. 320 (hereinafter referred to as the "Parties").

The Parties entered into negotiations for their first contract. The Parties were unable to during bargaining and mediation to resolve all of their outstanding issues. As a result, on April 8, 2013, the Bureau of Mediation Services ("BMS") received a written request from the Union to submit the unresolved issues to conventional interest arbitration. On April 11, 2013, the BMS determined that the following items were certified for arbitration pursuant to Minn. Stat. § 179A.16, subd. 2 and Minn. Rule 5510.2930:

1. Uniforms - Allowance, Effective January 1, 2012 - Article 15
2. Uniforms - Allowance, Effective January 1, 2013 - Article 15
3. Compensation - Wage Increase, If Any, Effective January 1, 2012 - Article 17
4. Compensation - Wage Increase, If Any, Effective January 1, 2013 - Article 17

5. Overtime, Call Out - New Field Training Officer Pay - Article 17 - NEW
6. General Provisions - Stipend For Travel To Assigned Patrol Fleet Locations - Article 20 - NEW

Prior to the start of the hearing, the Union withdrew Issue Five (Overtime, Call Out - New Field Training Officer Pay - Article 17 - NEW). Similarly, with respect to the third and fourth issues in Article 17 with regard to wages, the Parties have mutually agreed to a wage increase of 1.5% effective January 1, 2012, and a wage increase of 1.5% effective January 1, 2013.

The Arbitrator, Richard John Miller, was selected by the Parties from a panel submitted by the BMS. A hearing in the matter convened on June 25, 2013, at 9:30 a.m. at County Government Center, Pine City, Minnesota. The Parties were afforded full and ample opportunity to present evidence and arguments in support of their respective positions.

The Parties' representatives elected to file electronically post hearing briefs, with an agreed-upon submission date of July 10, 2012. The post hearing briefs were submitted in accordance with those timelines, and exchanged by the Arbitrator on July 11, 2013, after which the record was considered closed.

**ISSUE ONE: UNIFORMS - ALLOWANCE, EFFECTIVE JANUARY 1, 2012 - ARTICLE 15**

**ISSUE TWO: UNIFORMS - ALLOWANCE, EFFECTIVE JANUARY 1, 2013 - ARTICLE 15**

## **POSITION OF THE PARTIES**

The Employer seeks to maintain the current contract language in Article 15 that "[e]mployees shall receive an annual uniform allowance up to \$700.00 for the maintenance of uniforms." The Union is seeking in Article 15 that "[e]mployees shall receive an annual uniform allowance up to \$725.00 for the maintenance of uniforms" effective January 1, 2012. In addition, the Union is seeking in Article 15 that "[e]mployees shall receive an annual uniform allowance up to \$750.00 for the maintenance of uniforms" effective January 1, 2013.

## **AWARD**

The Union position is sustained.

## **RATIONALE**

There are four well-established factors that experienced arbitrators apply in interest arbitrations. Those factors are: 1) the employer's ability to pay; 2) internal equity; 3) external or market comparisons; and 4) other economic or non-economic factors.

The cost of the Union's final position is very low and affordable to the County. If each of the 28 bargaining unit members received the uniform allowance increase, the total cost to the County would be \$1,400.00 over the life of the contract. It could be even less than that if every Deputy does not actually use the full amount of the uniform allowance increase.

There is no convincing evidence that the County is financially unable to pay that amount or would be financially harmed in light of their current financial situation.

Internal factors also support the Union's position. The only other bargaining unit in the County that receives a uniform allowance is the non-licensed essential jailer/dispatch unit. That unit currently receives \$600.00 per year. This lesser amount is due to the differences in the uniform requirements for the licensed versus the non-licensed staff. The Deputies are required to wear some different and more costly clothing items than the employees in the non-licensed essential unit.

The issue of which counties constitute the appropriate external comparison group has been settled by the Parties. The Parties agree that the following counties are the appropriate external comparison group: Aitkin, Mille Lacs, Kanabec, Chisago, Carlton, and Isanti.

External comparables clearly support the Union's position. Of the comparable counties which provide a uniform allowance, only Kanabec has a smaller allowance than the Deputies in this case. Further, Kanabec County, with a uniform allowance of \$500 is not settled for 2013, and it is not known whether an increase in this benefit will be negotiated. In any event, all of the other comparable counties which provide a uniform allowance do so in significantly greater amounts than Pine. The average

among all of the comparable counties is \$738.50. The Union's position of \$725.00 in 2012 and \$750.00 in 2013 is very close to that average, and closer than the average proposed by the County (\$700.00). Because both Kanabec and Isanti Counties are not settled for 2013, the average for that year may be slightly higher, making the Union's position even more reasonable.

The average uniform allowance of the comparable counties excluding Kanabec is \$818.00. When reviewing the actual dollar amounts among the other counties, the Union's proposal is actually very low. Chisago deputies currently receive \$775.00, Isanti deputies receive \$869 and Mille Lacs deputies receive \$810. If the Union's position is awarded, the members of this unit will still be well behind their contemporaries in the majority of other comparable counties.

County Sheriff Robin Cole issued Special Order No. 13-007 ("Order") to all licensed and non-licensed essential employees regarding upcoming changes in uniform wear. (Union Exhibit #4). The Order states that current uniform items remain in effect. The Order also states that "[t]his does not modify any existing policy requirements, but allows for the following additional uniform items to wear as 'optional' until made a permanent part of the policy manual." Id. While this Policy has not yet been implemented by Sheriff Cole, it is clear that the uniform changes will become permanent. The implementation date of the

Policy is solely within the discretion of Sheriff Cole, and he has not announced an effective date, which could occur at any time, including during the duration of the new contract (2012-2013).

The changes in the Policy are mainly focused on the uniform shirts. Currently, the Deputies wear Eibeco brand shirts with brown pocket flaps and epaulettes. The new uniform shirts will be 5.11 brand. The cost of the 5.11 shirts starts at about \$50.00 per shirt and increases from there depending on factors such as size and length.

A complete uniform set has, at a minimum, two long-sleeved shirts and two short-sleeved shirts. At the time of hire, new Deputies are given two of each sleeve length. The cost to replace the four shirts with even the most inexpensive 5.11 shirts would be approximately \$200.00. An increase in the uniform allowance of \$50.00 over the life of this contract is extremely reasonable given the actual cost of the items that will be replaced.

Even if there were no impending uniform changes, the Union's position is still reasonable. The uniform allowance has increased by only \$75.00 since 2003, when it was implemented. Further, when the last uniform allowance increase was granted in 2010-2011, it increased by \$50.00, which is consistent with the same increase sought by the Union for 2012-2013.

**ISSUE THREE: COMPENSATION - WAGE INCREASE, IF ANY,  
EFFECTIVE JANUARY 1, 2012 - ARTICLE 17**

**ISSUE FOUR: COMPENSATION - WAGE INCREASE, IF ANY,  
EFFECTIVE JANUARY 1, 2012 - ARTICLE 17**

**POSITION OF THE PARTIES**

The current contract language in Article 17 with respect to shift differential states the following:

A shift differential of ninety-five cents (\$.95) per hour shall be paid for the years 2010 and 2011 to all employees for all hours worked between the hours of 5:00 p.m. and 5:00 a.m.

The Union's position is to modify the existing contract language with respect to shift differential by including the following to the contract:

17.2 A shift differential of ninety-five cents (\$.95) per hour shall be paid for the years 2012 and 2013 to all employees for all hours worked between the hours of 5:00 p.m. and 5:00 a.m.

The County's position is that the Union's shift differential position was not properly certified to the BMS and, therefore, the current contract language in Article 17 relating to shift differential for 2010 and 2011 should not be altered. The County's position would essentially eliminate any shift differential payments to Deputies for the duration of the 2012-2013 contract.

**AWARD**

The Union's position is sustained.

## **RATIONALE**

The Employer claims that the Union acknowledges that the issue of shift differential was not properly certified to the BMS and, therefore, the Arbitrator lacks jurisdiction to modify the contract in this regard.

The Union, on the other hand, argues that while it mentioned, as an aside, that there may be a question as to the appropriateness of the County's final position eliminating shift differential, it specifically did not raise the issue of arbitrability. In fact, the Union notes that it specifically waived the arbitrability argument and presented evidence in support of its final position. The Union argues that even if it had made an arbitrability argument, it would have been unsuccessful because Article 17 in its entirety was certified by the BMS as an issue. The Union concludes that because the entire Article 17 was certified as an open issue, the shift differential issue is properly before the Arbitrator.

The procedures for submitting issues to interest arbitration are set forth by Minnesota Statutes Section 179A.16, which requires a written request for arbitration to "specify the items to be submitted to arbitration." Minn. Stat. § 179A.16, subd. 1. The Union submitted such a written request on April 5, 2013, to the BMS. In regard to Issues 3 and 4, the Union only requested certification of the following issues: "3.

COMPENSATION - Article 17, Wage Increase, effective 1/1/2012" and "4. COMPENSATION - Article 17, Wage Increase, effective 1/1/2013." (Union Exhibit Background, p. 3). These were the exact issues certified pursuant to the Union's request.

The Commissioner of the BMS (Mr. Josh Tilsen) required final positions in this matter to be submitted no later than April 29, 2013. Despite this deadline, the Union did not submit its final positions until May 10, 2013.

Pursuant to Minnesota Administrative Rule 5510.2930, subp. 6 an arbitrator must note the untimely submission of final positions and may take such an untimely submission into consideration when "weighing the testimony, evidence, and overall good faith behavior of that party with respect to the items before the panel or arbitrator."

While it is undisputed that the Union was untimely in submitting their final positions to the BMS, the Arbitrator has carefully weighed "the testimony, evidence and overall good faith behavior of the" Union and concludes that the issue of shift differential is properly before him for decision.

When the Union submitted its final positions, albeit late, it is clear that they intended to encompass all current contract language in Article 17, including compensation (salary increases) and shift differential. The Union's submitted final position with respect to shift differential was simply to change

the dates pertaining to the shift differential, which currently read 2010 and 2011, to 2012 and 2013, respectively and add section numbers to this provision. The Union was not seeking in their final position any shift differential increase, but simply sought to maintain the current amounts for the 2012-2013 contract years.

The justification for the Union's final position to add section numbers to Article 17 is evident in the previous paragraph. If the wage schedule is labeled "17.1" and the shift differential paragraph is labeled "17.2", the Parties will be able to indentify precisely that language in negotiations and contract administration. This would make the contract easier to read, and would assist the Parties in future negotiations and grievances. The County made no arguments and presented no evidence to contradict the usefulness of the Union's position.

The Employer's argument that the Union intentionally or unintentionally sought to remove shift differential is without merit. The members of this bargaining unit have received a shift differential for at least 21 years. Over that considerable period of time, the Parties have gradually agreed to increase the benefit from \$.15 in 1992 to \$.95 in 2004 and simply seek to maintain that benefit for 2012-2013.

In addition, the County notes that the shift differential currently costs the County \$16,416.00 per year and that cost has

resulted in the County's poor financial condition and the Sheriff's Department being over budget. There was no evidence presented that suggested the shift differential was the cause of the Sheriff's Department being over budget or the County was suffering economic peril in maintaining this benefit. If that were the case, one would presume that the County would have attempted to eliminate the benefit for the entire Sheriff's Office, including the non-licensed essential (jailer/dispatch) unit ("non-licensed unit") and not just the licensed Deputy unit. The County did not do so.

If the County's position had been awarded by the Arbitrator those Deputies who work the 5 p.m. to 3 a.m. shift would suffer a loss of \$1,976 per year, while those Deputies who work the 9 p.m. to 7 a.m. shift would lose \$1,581 per year. Thus, the elimination of a benefit that has been in place for over twenty years would simply be unconscionable, particularly when the County did not seek to eliminate the benefit for the non-licensed unit.

Both external and internal comparables support the Union's final position. The only other bargaining unit within the County to receive a shift differential is the non-licensed unit. The non-licensed unit's current contract contains the exact same benefit as the Deputies contract - \$.95 per hour for hours worked between the hours of 5 p.m. and 5 a.m. The non-licensed

unit also went to interest arbitration for its 2012-2013 contract. In that case, the County did not seek to eliminate the shift differential benefit.

In most interest arbitration cases, internal equity is the prime consideration when comparing benefits among employees in the political subdivision. The County offered no convincing explanation at the hearing as to why the non-licensed unit should retain the shift differential benefit but the licensed Deputy unit should have it removed from their contract.

Even if external comparable is utilized in this case, every one of the comparable counties provides a shift differential to its licensed essential employees. The external comparables clearly support the Union's final position.

The party seeking to eliminate a long standing benefit bears the burden of proving that the elimination is necessary. In this case, the County fell significantly short of doing so.

**ISSUE SIX: GENERAL PROVISIONS - STIPEND FOR TRAVEL TO  
ASSIGNED PATROL FLEET LOCATIONS - ARTICLE 20 - NEW**

**POSITION OF THE PARTIES**

The Union seeks to add new contract language to Article 20 as follows:

During the Labor Agreement period January 1, 2010 through December 1, 2011 PCSO discontinued the policy of take home vehicles for Full-Time Patrol Deputies. As of July 1, 2012 PCSO Full-Time Patrol Deputies shall receive a bi-weekly stipend of two hundred dollars (\$200) for travel to assigned patrol fleet locations.

The Employer opposes any stipend for travel to assigned patrol fleet locations.

**AWARD**

The County's position is sustained.

**RATIONALE**

The County is the thirteenth largest county in Minnesota, covering more than a 1,400 square mile area. Only Aitkin County is larger among the comparable groups. All of the other counties are roughly half to one-quarter the size of the County.

In July of 2011, Sheriff Cole eliminated the take home squad benefit for Patrol Deputies. Deputies living outside the County were not allowed to take home patrol cars beginning in January 2011 and other Deputies were not allowed to do so beginning in July 2011. Supervisors, Investigators and K-9 are still provided take home patrol cars.

In late July of 2011, the Patrol Deputies were assigned to one of three geographical divisions, with duty stations in Pine City (Southern), Hinckley (Central) and Sandstone (Northern).

The elimination of take home squads resulted in a significant financial loss to the Deputies. They must now drive their personal vehicles to their respective duty stations, where they are then assigned a squad for that shift.

According to the County's figures, the average one-way commute for a member without a take home squad is 19.1 miles.

Using the County's average commute of 19.1 miles each way, and using the average cost to own and operate a vehicle determined by the AAA study of 60.8 cents per mile, the average commute would cost a Patrol Deputy \$23.23 each time he or she drives to work. Since the Patrol Deputies work ten hour shifts, and the work year is typically 2,080 hours, it can be presumed that the Deputies work approximately 208 shifts per year. The cost of the average commute (\$23.23) multiplied by 208 shifts results in a net cost to the Deputy of \$4,381.84. Even if a Deputy had only a 20 mile round trip commute, his or her yearly cost would be approximately \$2,500 per year. These figures are estimates, and do not take into account the true financial impact of a Deputy having to buy a second car. Nor do they take into account the time that the Deputies have lost. With a take home squad car, the Deputies simply walked outside of their home, opened the car door and began their shift. Their work day has now been extended by the amount of time it takes to commute to their respective stations.

The purpose of the travel stipend is to compensate the Deputies for commuting to work. Language related to the Deputies' use of patrol cars, and now the requested travel stipend has never been part of the contract. In fact, it appears that the exclusive bargaining representative at the time of the take home squad elimination (LELS) did not challenge the

removal of the take home patrol cars due to the lack of contract language referencing "use of patrol cars." Accordingly, it is the County's position that it has the management right to eliminate take home squad cars.

The Union's proposal is unique in that no such provision has ever been included in the contract between the Parties. Because the Union is seeking to insert new precedent-setting language, the Union also carries the burden of demonstrating a convincing or compelling reason for the new language. Such a convincing or compelling reason must be supported by clear and convincing evidence.

The County admits that the elimination of the take home squad cars was to reduce expenditures. The Employer estimates the cost of the Union's travel stipend proposal to be approximately \$100,000 to \$163,800 over the term of this contract.

Clearly, the reason for the elimination of the take home squad cars was purely economic. The Sheriff's Department simply could not afford to continue to allow Deputies to take home patrol cars. In 2011, the County's patrol car fleet was aging and there were insufficient funds to replace all of the vehicles. The estimated cost of replacing the vehicles was \$550,000-\$600,000, while the Sheriff's Department budget only allocated \$100,000 for vehicle replacement. To address this

economic reality, Sheriff Cole set a goal to reduce the fleet from 40 vehicles to 28. Sheriff Cole further determined that in 2010, the County spent \$33,133.15 on fuel for Deputies to commute to work, constituting 25.8% of the total Sheriff's Department budget for gasoline. Sheriff Cole testified that while the take home patrol cars had a substantial cost, there was no corresponding public safety benefit to the taxpayers. Unlike Investigators, Supervisors and K-9, there is no requirement that Patrol Deputies respond to calls once they are off-duty. Further, paying for the gas for a Deputy to travel home, particularly when the Deputy does not even live in the County, has no taxpayer benefit. In the tough economic times that the County currently faces, such a cost without a public safety benefit could no longer be sustained.

The State of Minnesota statute requires that the Arbitrator consider the County's rights and obligations to efficiently manage and conduct their operations. Minn. Stat. § 179A.16, subd. 7. One such obligation of the County is to maintain an appropriate unreserved fund balance. The State of Minnesota Auditor recommends an unrestricted fund balance of approximately 35-50% of fund operating revenues in their general fund. In 2010, the County's fund balance, including reserved and unreserved, was only 9.22%. In 2011, it only increased to a 12.40% total fund balance, which remains far below the State

Auditor's recommendation of 35-50% fund balance for unrestricted funds.

The County's bond rating was recently downgraded, which is a further indication of the County's financial woes. In addition, the County has suffered financially from the replacement of the Market Value Homestead Credit Program with the Market Value Homestead Exclusion.

The change in legislation and because of the number of low-value homesteads in the County, property taxes increased between 5% and 17% in 2012. In an effort to offset the impact on property owners in the County, the County Board lowered the tax levy for 2012, which impacted its ability to raise additional revenue.

In 2012, the Sheriff's Department was over budget by \$265,298. Thus, there is no money in the Sheriff's 2012 or 2013 budget to fund the Union's proposal, and if this proposal were awarded, it would be catastrophic to the Sheriff's Department. The County simply cannot afford to pay for the Union's proposal, as the County is experiencing financial problems.

Granting the Union proposal will significantly disrupt the internal consistency within the County. There are no longer any bargaining group within the County that receives payment for driving to work. Many County employees commute a long distance to work for the County. If the Deputies are awarded a travel

stipend for commuting to work, then all of the County employees have a basis for seeking a stipend for commuting to work.

The evidence submitted by the Union in support of its proposal fails to establish a convincing need for the new travel stipend. In reality, the evidence shows there is no justifiable basis for the Union's position. There is no evidence of a single county in the State of Minnesota that pays a travel stipend for deputies to commute to work. Nor have the Deputies offered any quid pro quo for the massive increase in pay for which they are seeking (compensation increase of between 11.2% and 14.2% for each Deputy in 2012, and between 11.0% and 14.0% for each Deputy in 2013, depending upon their step placement).

There simply is no evidence in the record whatsoever to support the Union's proposal, let alone clear and convincing evidence. Accordingly, the Union's position must be rejected.

The Parties are to be complemented on their professional conduct at the hearing and the comprehensiveness of their oral presentations and their written post hearing briefs.

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Richard John Miller

Dated August 1, 2013, at Maple Grove, Minnesota.