

Applicable Standards of Determination
In Interest Arbitration

Interest arbitrators routinely rely on four factors to determine a fair and appropriate resolution of the issues certified for disposition. Those factors or standards which will be relied on in these proceedings are:

1. The employer's ability to pay;
2. Internal equity;
3. External or market comparisons; and
4. Other economic or non-economic factors.

ISSUE NO. 1: Wages

Article 12

- A. Wage Rates for 2012
- B. Wage Rates for 2013

MNPEA proposes a two percent general increase for the calendar and contract year 2012, retroactive to January 1, 2012, and a two percent general increase for the calendar and contract year 2013, retroactive to January 1, 2013. The ARC proposes a one percent increase for those same years. According to the ARC, a two percent increase in wages costs the ARC \$69,040.

Argument

Union: Ability to Pay. At the end of 2011, the most recent financial balance sheets provided by the ARC, show it had a \$4.3 million General Fund Balance. This means that the general increase proposed by the Union amounts to only 1.6% of the total Fund balance. Conveniently, the General Fund had \$70,125 that was "unassigned" at the end of 2011, to be used "at the discretion of the ARC Board." This is not the only money available to the ARC Board. Rather, the "unassigned" fund is merely money for which the ARC did not find a designated purpose – a slush fund. Further, the ARC rightly maintains a cash and investments balance ready to compensate its employees should they need to cash out their sick time. This Compensated Absences Fund balance at the end of 2011 was \$3,224,340. Assuming that the ARC is investing that money, a minimal one percent return on the employee's own sick time reserve amounts to \$32,243 per year, about half the difference between the Union's and the Employer's positions.

The ARC gets the majority of its revenue from the counties, so the financial health of the member counties is a relevant issue. In 2012 and 2013, the ARC budgeted for about 84% and about 86% respectively, of the county costs (totaling \$13.5 million, and \$14.5 million, respectively) to be assigned to St. Louis County. What follows then shows the improving financial health of the member counties. In 2012, St. Louis County reported a 1.8% levy increase (an increase of \$1,945,324), and in 2013, a 1.5% levy increase (\$1,675,037). If

approximately 85% of MNPEA's proposed increase is also allocated to St. Louis County, this \$58,684 increase amounts to only three percent of the new money available to St. Louis County.

The ARC did not present any persuasive reasons why it would have difficulty in increasing the budget costs, it submits to the member counties for the upcoming budget years. A two percent increase can easily be accounted for in the upcoming budget cycle.

Employer: The first reason to award the Employer's final position of 1% for 2012 and 1% for 2013 is ARC's financial status. The Minnesota State Auditor's latest Financial Statement for ARC describes ARC's strained financial status, citing the following concerns:

- Total net assets decreased \$0.9 million to \$6.1 million;
- Total fund balance decreased \$1.8 million to \$4.3 million;
- Expenditures exceeded revenues by \$1.5 million for the year; and
- ARC had an unassigned fund balance of only \$70,125 at year end (which on a budget of \$22,471,466 is only .3%).

These statistics generally require no elaboration – ARC is in tight financial straits. It is worth noting that MNPEA has claimed in other proceedings that the change in net assets is an important barometer of financial health. (See, City of Cottage Grove v. Cottage Grove Police Federation, BMS Case No, 10-PN-1602. In the case of ARC, net assets declined 13% in one year (\$.9/\$7.0 M).

PELRA provides, at Minn. Stat. Sec. 179A.16, subd. 7, in pertinent part, that “In considering a dispute and issuing its decision, the arbitrator or panel shall consider the statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations.” In recent interest arbitration awards, arbitrators have interpreted Minn. Stat. Sec. 179A.16, subd. 7 to intend that arbitrators have the statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations.” In recent interest arbitration awards, arbitrators have interpreted Minn. Stat. Sec. 179A.16, subd. 7 to intend that arbitrators exercise fiscal prudence and financial restraint when the employer is in difficult financial straits.

Analysis and Conclusion

As regards the Ability to Pay factor, MNPEA presents the more persuasive data and argument in support of its position on the Wage Issue. The data showing a decrease in Total Fund balance for the preceding fiscal year does not reflect the fact that tax levies in member counties register substantial gains in revenues available to ARC.

St. Louis County alone reported an increase of \$1,945,324 in tax revenues for 2013 on a levy increase of 1.8% and yet another increase of \$1,675,037 on a raise of 1.5% on its levy for 2013. Such data shows the growing ability to pay consistent with the recovering economic condition of the member communities following the recent years of the Recession.

The Union currently points out that while the effects of the Recession lingered in the region and ARC member counties were adversely affected, MNPEA members subject to the instant arbitration experienced a virtual freeze on their wage structure. The Cost of Living Index for the preceding two fiscal years, however, continued to rise resulting in a decrease in their real wages. In connection with the Employer's ability to pay based on the foregoing data and analysis, there should remain no serious question that ARC can certainly manage a virtual catch up for the period when rising cost of living eroded real wages.

It must be noted at this point in the review, however, that the more weighty factor in this wage determination lies in the comparison data – however limited these may be in the instant case. The arguments of the parties on internal comparables, accordingly, are essentially derivative, i.e., traced largely from bargaining history rather from like-situated wage patterns within the same employing entity.

The reason for that is that the instant MNPEA group is the first such unit to reach a level of settlement represented by this present arbitration. In short, no other comparable classification of employees has yet resolved its wage structures for the time period here involved. Therefore, this review now turns to the arguments presented at the hearing and in the post-hearing briefs based on wage comparisons.

MNPEA Argument. This case is about more than just whether the MNPEA members have earned a pay raise to match the increase given to the essential employees of St. Louis County. If it were, there would be no need for arbitration. Instead, this arbitration was necessary to show that the MNPEA members have lost ground relative to their essential counterparts across the State of Minnesota and to see fair recovery.

The most appropriate comparable workplace for the MNPEA members should be those that have comparable job duties, with comparable working environments, comparable stresses, and comparable standards. It makes sense that only people working in similar population base can be compared. Many union members live and work in St. Louis County, and the working conditions for essential employees in St. Louis County should be taken into account. However, St. Louis County is not the only relevant comparison. St. Louis County is the state's 6th largest county by population. Corrections officers in larger areas must deal with similar issues of mental health, poverty, drug use, and criminality, and those counties should be included in determining the external comparables.

MNPEA has presented ample evidence to show that a true comparison must include agencies outside of St. Louis County. The ARC is governed by a Joint Powers Agreement among five counties, and St. Louis County itself is compared with six other counties in recent arbitration decisions. Simply because St. Louis County provides the majority of the Revenue and Expenditures for the ARC does not mean it is the only relevant comparison.

St. Louis County is a relevant comparison, even though only 32% of represented employees in St. Louis County have settled for the current contract year (five of eleven units). What did the St. Louis County Jail/911 unit and the St. Louis County Licensed Deputies receive in the current contract cycle? More than the ARC is offering how to the union members. Both

units received one percent in 2012, but both received one and one-half percent increase in 2013. Further, the Jail/911 unit received a full two percent increase in 2014. So, while the ARC stresses that it can only give union members the same amount it is giving to St. Louis County units it is not even offering that amount.

The seven county Arrowhead Region is only one external comparison area for these essential employees. Generally, the Arrowhead Region contracts with the ARC to provide corrections services, so the largest remaining essential groups in those counties would be the licensed deputies. On average, the deputies got more than the ARC is now offering its essential employees. On average, the licensed deputies received a 1.36% increase in 2012, and a 1.375% increase in 2013 for those with settled 2013 contracts. Contrast this with the ARC's proposal for only one percent in each year for union members. Cook, Itasca, and Koochiching Counties gave their essential employees from two to three percent for 2012.

Corrections employees working for the State of Minnesota are also a relevant comparison for the ARC because the ARC contracts with the State to provide corrections services. Money from State Subsidies (\$3.7 million in 2013), Grant Income (\$2.6 million in 2013), and Other Income (\$1.5 million in 2013) amounts to about 35% of the ARC income. MNPEA members are performing jobs similar to many performed by state corrections employees. It must be relevant then to compare ARC union members with state corrections employees who do similar work. Minnesota Department of Corrections employees recently settled 2013 and 2014 contracts for a three percent increase in both years, 50% more than MNPEA's proposed two percent increase.

ARC presented several charts to show what a "prime wage" it paid during the latter part of their working career, a \$0.70 more per hour than their counterparts in other essential bargaining units. Money in hand today, however, is far more valuable than a year from now. The same data and charts on ARC Exhibit page 158, and simplifying the calculations by excluding overtime. MNPEA calculates that without an increase, its members would earn \$6,353 less than a St. Louis County Corrections Officer over a 33 year career. During the first year of employment, MNPEA members earn \$4,500 less than St. Louis County Corrections, and about \$20,000 less during the first five years. ARC employees never catch up, despite the fact that they earn marginally more during each of the final two thirds of a working career.

Since this arbitration takes place 19 months after the start of what should be the start of the new contract year, we also have the benefit of hindsight to know what the inflation already cost union members in buying power. In 2012, inflation consumed another 1.7% of union income, and yet in 2013, another 2.0% of buying power. For the current contract years, members are down 3.7%. Over the last four years, they are down 8.2% because of inflation.

All of this takes place in the same space as the nation and state-wide economic recovery. Minnesota State tax revenues for the 2012-2013 budget year exceeded projections by \$463 million. Minnesota unemployment rate is the lowest in the nation at 5.2%, and the rate of jobs grown outpaces the national recovery at 2.6%.

ARC Argument: St. Louis County is “the most relevant comparable” and the St. Louis County pattern of settlement is 1% for 2012 and 1.5% for 2013, the Employer’s Final Position in this arbitration 1% for 2012 and 1% for 2013 rather than 1.5% for 2013?

St. Louis County has recently settled with some units, including the Corrections/911 Unit represented by AFSCME, for a three year contract covering 2012-2014. The pay plan increase for 2012-2013 reflects the county pattern of 1% for 2012 and 1.5% for 2013 but a third year, 2014, is added in which, in return for accepting reduced paid leave for new hires, the bargaining unit received 2% plus \$500 cash plus 70% paid LTD. 2014 is not a certified issue in this arbitration.

There are three reasons why the Arbitrator should award the Employer’s Final Position of 1% for 2012 and 1% for 2013, slightly less than the St. Louis County pattern of settlement:

ARC is substantially higher paid. ARC is already paid substantially higher than St. Louis County Corrections Officers. At most years of service, ARC Corrections Counselors are paid 3% more than St. Louis County Corrections Officers. Thus, for 2012, if a 1% increase were to be awarded, ARC Corrections Counselors would be paid \$.63 to \$.73 per hour more than St. Louis County Corrections Officers, or 3% more at 6 years of service and a similar percentage higher at 10 years of service and above.

2012 Wage Comparison*
ARC/St. Louis County
Corrections Counselor/Corrections Officer

Years of Service	SLC	ARC	Difference	Percentage Difference
6	\$22.03	\$22.68	\$.65	3%
10	\$22.90	\$23.53	\$.63	2.8%
16	\$24.66	\$25.36	\$.70	2.8%
20	\$25.60	\$26.33	\$.73	2.9%
24	\$26.61	\$27.31	\$.70	2.6%

*excerpted from ER 158

For 2013, with another 1% increase (1% for 2012 + 1% for 2013) ARC pay would remain well ahead of St. Louis County. At 6 years of service, ARC would be paid \$.55 per hour or 2.5% more than St. Louis County for comparable employees and the same percentage higher at 10 years of service and above.

ARC’s higher wages are directly attributable to “career ladders” and additional steps in the ARC pay plan. ARC employees move up in annual steps through Step 7 (approximately 3.5% per step) whereas St. Louis County has five annual steps. In addition, ARC employees move up in career ladders, so that a Corrections counselor moves from Grade 15 at time of hire to Grade 16 at two years of service and Grade 17 at five years of service. Each increase in grade is also equal to approximately 3.5%. The Corrections Counselor is eligible for both the step increase and the grade increase in the same year.

ARC exceeds the average by \$3.25 per hour or 14.7%; and at 20 years of service, ARC exceeds the average by \$3.88 per hour, or 17.3%.

Employees in the ARC Essential Unit are well paid compared to all relevant comparables, whether it be St. Louis County, the ARC member counties, or the Region 3 counties. In an economic environment where the statewide average interest arbitration wage award for 2012 was .66% and the statewide average interest arbitration wage award for 2013 is .98% an award of 1% for 2012 and 1% for 2013 is more than fair. Despite the St. Louis County pattern of settlement of 1% for 2012 and 1.5% for 2013, an award of 1% for 2012 and 1% for 2013 is fiscally prudent and reasonable given the high wages paid to ARC employees; and the financial demands already incurred by the ARC member counties, whose contributions to ARC have increased by 20% over 2012-2013; and the financial status of ARC, which has only .3% of its budget remaining available in unassigned funds.

ARC Corrections Counselors experienced a 60% increase in pay from hire rate to top rate (3 grades, 12 steps) as compared to a 39% increase for St. Louis County Corrections Officers (1 grade, 10 steps).

County Contributions Already High. The second reason to award the Employer's final position on wages is that the member counties have already faced high increases in contributions for the 2012-2013 period. These contributions for 2012 and 2013 are above the rate of inflation and the rate of increases typical of local government spending. 13.19% for 2012 and 6.97% for 2013, a total of over 20.16% for the two years being arbitrated here.

It may be expected that MNPEA will point to the decrease in county contributions in 2010 but even taking that into account, county contributions increased 13.97% over the 2010-2013 period, or an average of 3.27%. ARC hourly rates remain high compared to wage rates paid to Corrections Officers in the member counties and in Region 3.

ARC Corrections Counselors, if awarded a 1% increase for 2012, would outdistance the 2012 average wage paid to Corrections Officers in the member counties by \$5.14 per hour at 24 years of service, a difference of over 23%. At 6 years of service, ARC pay exceeds the member county average hourly rate by \$2.11, or 10.3%; at 16 years of service, ARC pay exceeds the member county average hourly rate by \$2.11, or 10.3%; at 16 years of service, ARC pay exceeds the average pay in the member counties by \$3.66 per hour or 16.9%; and at 20 years of service ARC exceeds the average pay of the member counties by \$4.36 per hour, or 19.8%.

MNPEA offered no explanation for why ARC should be paid more than 20% above market. It suggested only that the arbitrator should ignore the fact that ARC's wages vastly outdistance the market and instead focus only on the settlement percentages in the member counties for 2012-2013. However, the average settlement computation is skewed by Cook County, which settled for 2.5% and 2.5%. Cook County is the lowest paid member county, with pay rates for Corrections Officers from \$3.00 to \$8.59 less per hour than ARC. Cook County's efforts to "catch up" with a settlement higher than the other member counties, should not be the basis for a wage award to ARC. Excluding Cook County, the average settlement in the member counties for 2012 is 1.08% and for 2013, 1.3%. Thus, with an award of the Employer's final

position of 1% for 2012 and 1% for 2013, ARC will easily maintain its pay ranking as highest among the member counties by a considerable margin.

Comparison with Region 3 Counties. A comparison between ARC Corrections Counselors and Corrections Officers in the Region 3 counties yields virtually the same result – pay at ARC ranks much higher when compared to Region 3 counties.

It should be noted at the outset that arbitrators have consistently recognized the Region 3 counties as the appropriate labor market for external comparisons in northeastern Minnesota. Arbitrators have rejected wage comparisons such as those suggested by MNPEA from metropolitan counties and counties outside of this region.

Analysis and Conclusion on Comparables

While little reliable data is yet available upon which to make internal comparisons, bargaining history provides a useful basis for comparing St. Louis County settlement patterns with ARC wage profiles. For instance, ARC settlements in 2008 and 2009, while varying in some details, generally coincided in amounts with the St. Louis County Corrections/911 unit. The ARC and MNPEA both offer as support for their respective positions, the arbitration award of Richard John Miller in St. Louis County and LELS, BMS Case No. 12-PN-0951, Sept. 28, 2012 which awarded 1% for 2012 and 1.5% for 2013.

The same pattern settlement was adopted in St. Louis County's negotiated contracts for the same period with IBT 320 (Public Works) and, significantly, with the Corrections/911 represented by AFSCME.

It should be noted that in regard to any comparable, the critical consideration is the extent to which the unit compared provides some logical basis for determining whether a same or similar results should be applied in the employment unit under review.

In the instant case, ARC has correctly used the terminology that MNPEA members have historically "tracked" St. Louis County wage settlements, despite the obvious differences in the two employment units. In short, the internal comparable need not be similar in every regard; rather a comparison may be useful, as it is in comparing ARC to St. Louis County, where one unit's settlement results historically is highly similar, or "tracks," with the other being compared.

The presumption in such cases is that the similarity in wage results arises out of economic and bargaining determinants which override such usual work and funding source in identifying the normal comparable. In the instant case, the same or similar wage decisions both from the bargaining table and from arbitration fully support the validity of tracking St. Louis County as an appropriate internal comparable for the purpose of determining the issue of wages for ARC employees.

By way of contrast, the Union seeks to broaden the comparison base to cover licensed deputies in the seven county Arrowhead Region. This proposal ignores the obvious differences

between the work of corrections officers and licensed law enforcement personnel and therefore lacks sufficient relevance.

Neither is the Union's effort to support its position by offering State Corrections personnel wages relevant. In the first instance the inmate population assigned to ARC employees does not include those sentenced to long prison terms for serious crimes and felonies. Thus, working conditions are not as dangerous nor do they require as close attention to security as at the State Corrections facilities. Further, the State Centers of Corrections are, for the most part, located closer to larger metropolitan areas than ARC is. Therefore, these facilities like Stillwater, St. Cloud, and Shakopee are strongly influenced by higher wages in metro areas.

For any and all the above reasons, the more reasonable conclusion on the wage issue favors ARC. The one remaining determinant that the Employer did not contest, however, was the extent to which MNPEA members' wage structure was degraded by the rise in the cost of living index over the preceding two years while wages were frozen. MNPEA presents good reason to provide some degree of catch up.

Award of the Issues of Wages for 2012 and 2013

The wage adjustment requested by MNPEA is for 4% divided equally over the two year contract period.

The ARC offered a 2% increase for the same period in equal increments.

I conclude that the relevant data on wage settlements for the comparables consulted runs to a pattern of 1% for 2012 and 1.5% for 2013. An additional weight of a half percent should be added to this pattern to partially restore the real wage loss experienced by members of the unit during the period of the wage freeze.

Award: Wages subject to this arbitration shall be adjusted by the following percentages:

2012 – 1.5%

2013 – 1.5%

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ISSUE NO. 4: Shift Differential

MNPEA Position: a \$.30 per hour increase
ARC Position: No shift differential increase

The Union argues that ARC's shift differential is substantially lower than the average of ARC member counties – ranging \$.13 to \$.16 less on comparable shifts. Further, Arbitrator Richard Miller, who ARC cites with approval on the Wage Issue, recently awarded an increase in shift differentials for the Sherriff's Deputy unit in St. Louis County. St. Louis County and LELS, BMS Case No. 12-PN-0951.

The Employer counters the Union case on shift differentials by pointing out that even after the Miller award in St. Louis County Sherriff's Deputies, this unit still trails ARC with respect to both shifts. The more important consideration, according to ARC, resides in the fact that hourly pay rates for MNPEA members already exceed ARC counties and the shift differential in this unit is already equal to or higher to those in effect in St. Louis County.

Award: Shift differentials shall remain unchanged in the contract years of 2012 and 2013.

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ISSUE NO. 6: Sick Leave Donation

Union members are already offered two different opportunities to donate earned benefits to a coworker. They may donate one day of Sick Leave to the Sick Leave Bank at the end of every year. This is valuable, but it is limited. The Sick Leave Bank can only build up at the end of the year. If two people have significant illnesses, there is no additional opportunity to donate time into the Sick Leave Bank until the end of the year. Member is seriously ill, the ARC emails all members to inquire whether they wish to donate up to three days of already earned vacation time to a coworker in need. Vacation time and sick time are different earned benefit programs with different purposes. The ARC allows for only current need donation of vacation time and not for current need sick time.

MNPEA's proposal to simply line up the program to allow for members to donate up to three days of their already earned sick leave as they currently do with vacation time. When Sick Leave Bank is empty, members want to be able to refill it for a coworker in need. Rather than asking only for vacation time donations, MNPEA requests that the ARC allow for the donation of sick leave time also.

The low financial risk to the ARC is clear due to the many steps required for this benefit to come into use. First a seriously ill member must have insufficient sick time on their own stored up to cover their absence, and there are not enough union members willing to donate vacation time to cover the absences remaining.

If all of those conditions are met, the only way this proposal could possibly hurt the ARC financially is if the ARC does not currently budget for any earned sick leave time for employees at or near the sick time cap of 1900 hours. It is impossible to tell from the financial documents the ARC submitted whether this is the case, but it is easy to see what the consequences of such risk taking would be. Regardless of the change, the ARC must budget earned sick leave time for all employees who could not reach the cap during the budget year. For those few employees that could reach the cap during the current fiscal year, the ARC would then have to speculate what probability that the individual employee would not use any of their already earned sick time, and thereby be unable to accumulate any more during the year. If the ARC calculated incorrectly and the individual needed to use their own sick time for significant illness, the ARC would be required to pay out sick leave money it had failed to budget. This risk to be near the risk the ARC would incur by accommodating this change, making the new effect negligible.

ARC's position on Issue No. 6 argues that MPEA has failed to make a case for this proposed new benefit in light of the substantial sick leave benefits already provided its members. No comparables were offered to support such a new program.

1. ARC employees already enjoy fair sick leave accrual and accumulation benefits. They can accrue up to 18 days sick leave per year and can accumulate up to 1900 hours of sick leave.
2. ARC employees enjoy the benefit of a Sick Leave Bank, Art. 15, Sec. 7 from which they can draw if their sick leave is exhausted. The Bank administered by the committee of employees, which approves or denies requests and instructs the Employer when a deduction is to be made from each employee to fund the Bank. Employees must repay the sick leave drawn from the Bank out of sick leave accruals when they return to work.
3. In addition, ARC administers a vacation donation procedure for employees to ask other employees for a vacation donation.

The MNPEA program would have budgetary impact because employees are donating sick leave that they would not otherwise use. The most likely donors are those who have the maximum sick leave accumulation and would otherwise lose their accrual if they did not donate it.

Concluding Analysis and Award on Issue No. 6 Sick Leave Donation

The lack of data to show that any ARC unit or indeed any other public sector unit provides any such program to volunteer donations of unused sick leave to a seriously ill co-worker in need disposes this issue. In this light, it must be recognized that interest arbitrators have been cautioned by the courts to avoid "breaking new ground" in what is essentially a conservative process. The true rule in interest arbitration advises the where new or innovative items are to be entered into the collective bargaining agreement, the best interests of the parties are better served by having these adopted through direct negotiations.

Absent any track record that such volunteer sharing of unused sick leave time is an issue whose time has come, it must be said that such innovation is not yet ripe for inclusion in this labor contract.

Award: The ARC position in Issue No 6 is, hereby, awarded.

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ISSUE NO. 7: New Position

Union member Charles Voss testified on why this position is justified. Voss is a 20 year veteran with the ARC, and he has worked 14 years as Shift Coordinator. He explained that Shift

Coordinators are already heavily relied upon by the ARC. He said, "They depend on us to make good decisions. I report my decisions to the Shift Supervisor, and I have never been questioned." However, after years of working within the classification of Shift Coordinator, Union members like Voss are not compensated for their special expertise.

The ARC already created a comparable position within another working classification, Senior Shift Supervisor. The Senior Shift Supervisor position was created in 2006 (implemented in 2008) to distinguish those Shift Supervisors who have the requisite number of years experience and education. While the ARC in its case-in-chief stated that a job audit procedure is the appropriate method for creating such a position for union members, Voss testified that no such job audit was required to compensate the most highly skilled Shift Supervisors as Senior Shift Supervisors. This position might benefit nine union members, so the cost to the ARC is negligible.

The interest arbitrator is not empowered to award on this issue because the creation of a new position is a change in the Employer's organizational structure that is a management right. The arbitrator does not have jurisdiction if the employer does not put the matter in issue by submitting a final position.

Minn. Stat. § 179A.16, subd. 5 provides, in pertinent part,

Subd. 5. Jurisdiction of the arbitrator or panel. The arbitrator or panel selected by the parties has jurisdiction over the items of dispute certified to and submitted by the commissioner. However, the arbitrator or panel has no jurisdiction or authority to entertain any matter or issue that is not a term and condition of employment, unless the matter or issue was included in the employer's final position. Any decision or part of a decision issued which determines a matter or issue which is not a term or condition of employment and was not included in the employer's final position is void and of no effect...

Minn. Stat. § 179A.03, subd. 19 defines "terms and conditions of employment" as follows:

Subd. 19. Terms and conditions of employment. "Terms and conditions of employment" means the hours of employment, the compensation therefore including fringe benefits except retirement contributions or benefits other than employer payment of, or contributions to, premiums for group insurance coverage of retired employees or severance pay, and the employer's personnel policies affecting the working conditions of the employees. In the case of professional employees the term does not mean educational policies of a school district. "Terms and conditions of employment" is subject to section [179A.07](#).

Minn. Stat. § 179.07 provides that the organizational structure is a matter of inherent managerial policy, stating in pertinent part as follows:

Subdivision 1. Inherent Managerial Policy. A public employer is not required to meet and negotiate on terms of matters of inherent managerial policy. Matters of inherent

managerial policy include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization and technology, the organizational structure, selection of personnel, and direction and number of personnel...

Award on Issue No. 7: The law clearly removes the matter of new position creation from the jurisdiction of an interest arbitrator.

ISSUE NO. 8: Discipline

The Union proposes that it would require the removal from an employee's file of a written reprimand after two (2) years in the absence of the same or similar discipline.

In support of the position, MNPEA Board member and Business Agent Thomas Perkins testified to the effect this change will have. Perkins worked in Corrections with Hennepin County starting in 1993 and was also a Business Agent and Representative with the Teamsters with 20 years' experience representing others. He testified that the overriding policy argument behind this contract change is to give the union members a "second chance." Written reprimands are "intended to correct behavior." He further testified that it is a goal of MNPEA to change this language in all of the 36 bargaining units MNPEA currently represents.

The ARC protests that the public nature of a union member's employment poses an obstacle to removing a reprimand once given. However, only the "final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the public body" are public data. Minn. Stat. § 13.43 Subd. 2(5). The solution is to make sure that disposition of discipline in the form of written reprimands is not deemed "final."

ARC Response: MNPEA provided no examples of its language being contained in the contracts of any relevant comparables. MNPEA's only support for the proposal seems to have been business agent Perkins' testimony that as a matter of policy MNPEA asks for this language in all of their contracts. He was not asked nor did he say in how many contracts he achieves the language.

Counsel for MNPEA attempts to amend the Union's Final Position at the hearing by adding that there should be clarification that the discipline would be removed if there had not been "same or similar" discipline in the two year period. No clarification of "same or similar" was offered, leading to the expectation that such language would only serve as grievance fodder in the future.

Where the proposing party has not shown a need for the language nor precedent among other contracts, the interest arbitrator should leave the parties to negotiate a resolution in future rounds of bargaining. The most immediate of reasons against this proposal is that it is unlawful under Minn. Stat. § 15.17 to destroy public records. Counsel for MNPEA dismisses this concern

by suggesting that the document be treated as “temporary” for the two year period. However, it will not be the responsibility of counsel for MNPEA to defend allegations against the Employer that public records were unlawfully destroyed or that the employer failed to produce the document in accordance with the Minnesota Government Data Practices Act, Minn. Stat. Chpt. 13, and the Employer does not believe that the legal interpretations of counsel for MNPEA are correct.

Analysis and Award on Issue No. 8
Discipline

The most reasonable method for dealing with the Union’s concerns over a reprimand remaining as a permanent part of an employee’s file is to adopt the common protections against the adverse consequences of such a reference in the employee’s file.

This protection can be afforded through the simple means of adding language to the labor contract stating that “After two years from the issuance of a reprimand, such notation may not be used to satisfy a step in a disciplinary progression if there has been no further discipline for the same or similar offense, nor may such record be used in an arbitration.”

Such language permits the record to be kept in compliance with the strictest rules against destruction of a public document. It also provides for the desirable closure, and a fresh start as a feature of a positive disciplinary policy.

It is hereby awarded that the parties’ labor contract be amended to contain the above cited language.

Signed this 23rd day of September, 2013.

John J. Flagler, Arbitrator