

IN THE MATTER OF ARBITRATION) **INTEREST ARBITRATION**
)
 between)
) **Non-Licensed Essential**
 Lyon County, Marshall,) **Supervisors - Jail**
 Minnesota) **Sergeants**
)
 -and-) **BMS Case No. 13-PN-0672**
)
 Law Enforcement Labor)
 Services, Inc.) **December 9, 2013**
)))))))

APPEARANCES

For Lyon County

Susan K. Hansen, Attorney, Madden Galanter Hansen, Plymouth, Minnesota
Loren Stomberg, Administrator
Carolyn McDonald, Human Resources Director
Mark Goodenow, Commissioner
Rick Anderson, Commissioner

For Law Enforcement Labor Services, Inc.

Adam Burnside, Business Agent
Steve Sammons, Steward

JURISDICTION OF ARBITRATOR

Law Enforcement Labor Services Inc. (hereinafter "LELS" or "Union") is the exclusive representative for a bargaining unit consisting of seven essential non-licensed supervisors or Jail Sergeants employed by Lyon County (hereinafter "Lyon," "County" or "Employer") in the Lyon County Sheriff's Department (hereinafter "Sheriff's Department").

The County and Union (hereinafter referred to as the "Parties") are signatories to an expired collective bargaining

agreement that was effective January 1, 2010 until December 31, 2012.

The Parties entered into negotiations for a new three-year collective bargaining agreement for the 2013, 2014 and 2015 calendar years. The Parties were able to during bargaining and mediation to resolve all but one outstanding issue, which is a credit and tribute to the Parties' collective bargaining committees. As a result, on July 2, 2013, the Bureau of Mediation Services ("BMS") received a written request from the Union to submit the unresolved issue to conventional interest arbitration. On July 8, 2013, the BMS determined that the following item was certified for conventional interest arbitration pursuant to Minn. Stat. § 179A.16, subd. 2 and Minn. Rule 5510.2930:

1. Vacation Accrual - What Changes, If Any, Should Be Made To The Vacation Accrual Schedule - Article 15.1

The Arbitrator, Richard John Miller, was selected by the Parties from a panel submitted by the BMS. A hearing in the matter convened on November 12, 2013, at 9:00 a.m. in the Commissioner Rooms 1 and 2 (2nd floor) at the Lyon County Government Center, 607 West Main Street, Marshall, Minnesota. The Parties were afforded full and ample opportunity to present evidence and arguments in support of their respective positions with regard to the one outstanding issue.

The Parties' representatives elected to file electronically post hearing briefs, with an agreed-upon submission date of November 27, 2013. The post hearing briefs were submitted in accordance with those timelines, and exchanged electronically by the Arbitrator, after which the record was considered closed.

BACKGROUND

The Employer is a rural county in southwest Minnesota. The Employer employs 132 employees in various capacities to operate and manage the County's resources in order to serve their citizens.

The County operates a Sheriff's Department with approximately 41 employees. The Union is the exclusive representative of 7 of these employees in a bargaining unit in the classification of Non-Licensed Essential Supervisors or Jail Sergeants ("LELS Jail Sergeants"). LELS is also the exclusive representative of 12 Licensed Essential Deputies ("LELS Deputies") and 22 Non-Licensed Essential Jailers/Dispatchers ("LELS Jailers/Dispatchers") in the Sheriff's Department, with each bargaining unit having separate collective bargaining agreements with the County. All other County employees are non-union.

The County has a history of amicable labor relations with the LELS Jail Sergeants bargaining unit, with this being the first arbitration between the Parties.

ISSUE ONE: VACATION ACCRUAL – WHAT CHANGES, IF ANY, SHOULD BE MADE TO THE VACATION ACCRUAL SCHEDULE – ARTICLE 15.1

POSITION OF THE PARTIES

The County's position is to maintain the current vacation accrual language in Article 15.1 as follows:

<u>Months Worked</u>	<u>Vacation Hours</u>	<u>(Equivalent Vacation Days)</u>
0-35 months	80 hours	10 days
36-179 months	120 hours	15 days
180 months +	160 hours	20 days

The Union's position is to change the current vacation accrual language in Article 15.1 to read as follows:

<u>Months Worked</u>	<u>Vacation Hours</u>	<u>(Equivalent Vacation Days)</u>
0-35 months	80 hours	10 days
36-83 months	120 hours	15 days
84-179 months	136 hours	17 days
180 months +	160 hours	20 days

The Union's final position is retroactive to January 1, 2013.

AWARD

Effective January 1, 2014, the vacation accrual language in Article 15.1 shall read as follows:

<u>Months Worked</u>	<u>Vacation Hours</u>	<u>(Equivalent Vacation Days)</u>
0-35 months	80 hours	10 days
36-83 months	120 hours	15 days
84-179 months	136 hours	17 days
180 months +	160 hours	20 days

RATIONALE

At first blush the Arbitrator thought he was in heaven, as it has always been the Arbitrator's dream case to have only one issue not related to wages or health insurance. The outstanding

issue of vacation accrual, however, has turned from a dream to reality in that the Arbitrator must determine whether internal consistency is more important than external comparability.

In Lyon, all County bargaining unit employees (LELS Jail Sergeants, LELS Deputies and LELS Jailers/Dispatchers) currently have the same vacation accrual schedule. County bargaining unit employees currently accrue 10 days of vacation in their first three years of employment; at their 3rd anniversary employees accrue 15 days of vacation; and at their 15th anniversary employees accrue 20 days of vacation. This vacation accrual schedule has been voluntarily agreed to and maintained by the LELS Deputies bargaining unit and LELS Jailers/Dispatchers bargaining unit in their 2013-2015 collective bargaining agreements. Accordingly, the LELS Jail Sergeants are the only County bargaining unit seeking to enhance the current vacation accrual schedule for 2013-2015, the duration of the new collective bargaining agreement.

Currently, Lyon County non-union employees have a lesser vacation accrual at the beginning of the schedule but reach 20 days at the 14th anniversary. Specifically, non-union employees accrue 5 days of vacation in their first year of employment; at their 1st anniversary employees accrue 10 days of vacation; at their 4th anniversary employees accrue 15 days; and at their 14th anniversary employees accrue 20 days of vacation.

The County's Personnel Policies are scheduled for a complete revision in 2014. The proposed revisions to the non-union vacation accrual schedule would conform the non-union vacation accrual schedule to the bargaining unit vacation accrual schedule. The union and non-union schedules would then be identical, if the County's position in this case is awarded by the Arbitrator.

The Union's final position provides for a vacation accrual schedule for LELS Jail Sergeants that is greater than that being received by any other County employee. For example, a LELS Jail Sergeant with 7 years of service has historically accrued 15 days of vacation per year. Under the Union's final position, such an employee would accrue 17 days of vacation per year - a 13% increase in the accrual. This would create an enhanced benefit for the LELS Jail Sergeants. No other County employee has the extra tier of vacation accrual whereby employees at 84 months (7 years) to 179 months (14 years, 11 months) of employment accrue 17 days of vacation.

The effect of awarding the Union's vacation accrual position is that four of the seven members of the LELS Jail Sergeants bargaining unit would accrue additional days of vacation. These four members of the LELS Jail Sergeants bargaining unit have some of the highest vacation accruals currently on the books. The average vacation accruals for the

entire seven members of the LELS Jail Sergeants bargaining unit is 103.03 hours. Three of the four members that would benefit from increased vacation accruals are above the average of the LELS Jail Sergeants bargaining unit.

The County argues that this evidence establishes that there is no need for an increase in the vacation accrual schedule. The amount of the current vacation hours accrued by members of the LELS Jail Sergeants bargaining unit should have no bearing on whether this benefit should be increased. Some employees decide to keep their vacation accruals higher for personal reasons, such as taking longer vacations or saving vacation accruals for severance payouts upon leaving the County's employment, as noted in Article XXV, Termination and Severance, of the contract. Whatever may be their reason for retaining their current vacation accruals should not be used against the LELS Jail Sergeants seeking more accrued vacation hours, since Article 15.7 of the collective bargaining agreement allows for a maximum vacation accrual of 240 hours, and none of the LELS Jail Sergeants are close to that maximum (LELS Jail Sergeant Brandon Athen has the highest vacation accrual rate at 151.32 hours). In fact, the average vacation accruals for the entire seven members of the LELS Jail Sergeants bargaining unit is less than one-half of the maximum vacation accrual allowed under the contract.

There are four well-established factors that experienced arbitrators apply in interest arbitration. 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 first factor for consideration is the County's ability to pay the Union's economic proposal for increased vacation accruals for LELS Jail Sergeants. The County initially contended that the cost of the Union's position for the four eligible members of the LELS Jail Sergeants bargaining unit would be approximately \$36,966 per member. The Union costed their position to be approximately \$2,724 per member. The County concedes that the Union's costing methodology was correct, and so the cost for four LELS Jailer Sergeants eligible for increased vacation accruals would be \$10,896. There is no evidence whatsoever that the County cannot afford to pay this amount or would be financially harmed.

In addition, there is also the possibility that the County can reduce or eliminate the cost by not filling the vacation day being taken off by a LELS Jail Sergeant. There is also the possibility that the County could pay overtime to fill the slot. Whatever may be the case is unknown, as the County did not provide any definitive information as to how they will cover an absence for an employee taking a vacation.

The second factor is internal comparability. The County's position to maintain the existing vacation accrual schedule preserves the internal consistency among all County bargaining units. The County's position rests with internal consistency being the most important factor to be considered by the Arbitrator.

The third factor is external comparability. The totality of the Union's argument for the additional vacation accruals for eligible LELS Jail Sergeants is predicated on the comparison of County LELS bargaining units with law enforcement employees in the Economic Region 8 counties (Cottonwood, Jackson, Lincoln, Murray, Nobles, Pipestone, Redwood, and Rock), plus the contiguous county of Yellow Medicine. This external comparability group has been established through a series of interest arbitration cases with the LELS Deputies and the LELS Jailers/Dispatchers. There is no dispute between the Parties that if external comparability is deemed to be a valid factor in this case that the Economic Region 8 counties, plus Yellow Medicine County is the appropriate comparability group.

The reason that all law enforcements employees in the comparable counties are needed for comparison purposes with the LELS Jail Sergeants is that eight of the nine comparison counties do not even have a Jail Sergeants classification. There is a Jail Sergeants classification in Nobles County.

Moreover, six of the nine comparison counties have county-wide uniform vacation accruals schedules with the only exception being Jackson, Pipestone and Yellow Medicine.

This Arbitrator, like most other interest arbitrators, have historically relied upon internal comparisons when determining fringe benefits, such as vacation accrual schedules. This philosophy maintains fairness by treating all employees within a jurisdiction in the same manner and provides ease of administration for the employer. However, to render an award "solely upon internal settlement patterns without the application of other comparators, would be a disservice to the parties and, at its extreme, could effectively eliminate the need to bargain over the subject at all." Law Enforcement Labor Services, Inc. and Anoka County, BMS Case No. 07-PN-1013 (Fogelberg 2007).

As a result of this sound philosophy, most arbitrators require a high threshold of evidence in order to overcome the presumption of uniformity with respect to fringe benefits. In other words, there must be both a compelling and convincing reason to justify departure from internal consistency with regard to fringe benefits, with the burden of persuasion being placed on the party proposing the change. In this case, the heavy burden of persuasion rests with the Union who is proposing the modification to the vacation accrual schedule contrary to

the internal settlements of other County law enforcement bargaining units.

One noted compelling and convincing reason for deviating from the internal settlement pattern is that the external comparison is so much greater or superior than that being received by the internal comparison group. In this case, the overwhelming evidence establishes that the current vacation accruals being received by the LELS Jail Sergeants are so egregiously below those being received by the external comparison group.

Of the comparison counties, only Lyon is limited to three tiers of vacation accrual for all of its unionized employees. Yellow Medicine has three tiers of vacation accrual for its LELS members, and five tiers for other county employees. What this means is that in all of the comparison counties, law enforcement employees are afforded an increasing number of vacation days they may accrue every 5 years. However, in Lyon County, law enforcement employees remain at the second tier of vacation accrual, currently 15 days per year, for over a full decade. No other comparable county leaves an employee at a mid-tier vacation accrual level for so long. By granting the Union's request for an additional vacation accrual tier, LELS Jail Sergeants will finally begin to enjoy the benefit of earning additional vacation time off from a demanding and often

dangerous job commensurate with the marketplace in this profession.

Beyond the issue of time at each vacation accrual tier, Lyon County law enforcement employees also accrue the fewest hours at the highest level of the vacation accrual schedule. The average for the comparable counties is nearly 28 days per year, yet Lyon County employees receive just 20 days per year. While this is something that the Union is not looking to change in this arbitration, it is worth noting that beyond the low number of vacation accrual tiers compared to comparable counties, Lyon County also grants fewer days of vacation than all but one other county in the comparison group. And in that one other county, Cottonwood, has the same number of days of vacation at the top of the vacation accrual schedule.

In most comparison groups there is the "leader", those comparisons near or at the "average" or "mainstream" (which usually is the majority of the comparables), and finally there is the "trailer." Prudent interest arbitrators will not award a "catch-up" increase or "market adjustment" that would propel the "trailer" to the "leader." Normally, an interest arbitrator will render an award that brings the "trailer" to the "average" or "mainstream," at best.

In this case, by awarding the Union's position, LELS Jail Sergeants will still be below the average in every single year

of employment, except for six years, and in half of those years, they will only be above the average by three hours total for the entire year! The Union is woefully behind in vacation accrual in comparison to neighboring counties. The Arbitrator's award will not even bring the LELS Jail Sergeants to near the "average" or "mainstream." They will remain the "trailer" by a wide margin.

The final consideration in interest arbitration is an analysis of relevant economic and non-economic factors.

The County correctly points out that in addition to paid vacation, LELS Jail Sergeants are also provided with compensatory time up to a maximum of 40 hours (Article IX, § 9.5); paid sick leave up to a maximum of 960 hours, with accumulation for full-time employees at the rate of 8 hours of sick leave per month and in addition, one-half day per month shall be added to a bank used only to compute severance compensation (Article XVII, § 17.1); personal leave time at a rate of four hours per year (Article XVIII); up to three days of paid bereavement leave (Article XIX, § 19.3); and 9 paid holidays plus 2 floating paid holidays (Article XXI). The fact remains, however, that the LELS Deputies and LELS Jailers/Sergeants receive these same benefits. Thus, the argument cannot be successfully made that LELS Jail Sergeants are receiving greater fringe benefits than other County

bargaining units that would justify awarding the County's vacation accrual position. There is also no evidence that these benefits are substantially better than the external comparables, which would justify awarding the County's position.

In the final analysis, the Union has met its burden of persuasion by establishing through the evidence both compelling and convincing reasons to justify departure from internal consistency with regard to vacation accrual. The result of the Union's proposal is that the LELS Jail Sergeants will still remain significantly below the comparison group with regard to vacation accruals. As a result, the Union's proposed vacation accrual modification is justified and so awarded.

The reason for making the award retroactive to January 1, 2014, is simply because over eleven months have expired in 2013, the first year of the new 2013-2015 contract. It is generally the practice of interest arbitrators in deciding multiple year contracts to grant wage increases retroactive to the effective date of the contract, but increases in fringe benefits, such as holidays, shift differential, court time, call back, including vacation accrual, are effective to the beginning of the nearest year of the contract duration. In this case, the nearest year of the agreed-upon three year contract for 2013-2015 would be January 1, 2014, the beginning of the second year of the contract duration.

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.

Richard John Miller

Dated December 9, 2013, at Maple Grove, Minnesota.