

**IN THE MATTER OF INTEREST ARBITRATION BETWEEN**

Minnesota Public Employees Association

and

**BMS Case No. 13-PN-0781**

Wilkin County

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**NAME OF ARBITRATOR:** George Latimer  
Assistant James St. Peter

**DATE AND PLACE OF HEARING:** December 13, 2013  
Breckenridge, MN

**BRIEFS RECEIVED;** January 3, 2014

**DATE OF AWARD:** January 29, 2014

**APPEARANCES**

**FOR THE COUNTY:** Susan Hansen, Attorney for Wilkin County  
John Blaufuss, Wilkin County Commissioner  
Neal Folstead, Wilkin County Commissioner  
Bob Perry, Wilkin County Commissioner

**FOR THE UNION:** Rob Fowler, Attorney for MNPEA  
Joe Ditsch, Attorney for MNPEA  
Joshua Nack, Chief Deputy  
Kurt Hodges, Deputy  
Tom Perkins, MNPEA Business Agent

## **INTRODUCTION**

This is an interest arbitration arising under Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. § 179A.01-30. Minnesota Public Employees Association (Union or MNPEA) is the exclusive representative for the Licensed Deputies Unit employed by the Wilkin County (Employer or County).

Members of this bargaining unit are essential employees under PELRA and as such do not have the right to strike, but do have the right to submit unresolved bargaining issues to binding arbitration before a neutral arbitrator selected by the parties. (Minn. Stat. § 179A.16).

The parties are signators to a collective bargaining agreement, signed on June 14<sup>th</sup>, 2011. This collective bargaining agreement between the parties expired on December 31, 2012. The parties negotiated for a successor agreement and agreed to some but not all provisions. Pursuant to Minn. Stat. § 179A.16, subd. 2, and Minn. R. 5510.2930, on July 18, 2013, the Bureau of Mediation Services certified the following issues for interest arbitration:

- 1. Duration: Length of Agreement – Art. 23**
- 2. Salaries 2013 – General Wage Increase, If Any, For 2013 – Art. 17**
- 3. Salaries 2014 – General Wage Increase, If Any, For 2014 – Art. 17**
- 4. Salaries 2013 – Grade 21 Chief Deputy Schedule For 2013 – Appendix A**
- 5. Salaries 2014 – Grade 21 Chief Deputy Schedule For 2014 – Appendix A**
- 6. Salaries 2013 – Market Adjustment, If Any, For 2013 – Art. 17**
- 7. Salaries 2014 – Market Adjustment, If Any, For 2014 – Art. 17**
- 8. Overtime/Comp Time –Maximum Accumulation of Comp Time – Art. 11.1**
- 9. Uniforms – Change From A Draw System To A Cash System – Art. 15.1**
- 10. Shift Differential – Rate For Shift Differential – Art. 19**

**11. Premium Pay –Supplemental Pay For Field Training Officer Duties – (New)**

**12. Premium Pay –Supplemental Pay For SWAT Team Assignment – (New)**

A hearing was held on December 13, 2013, at the Wilkin County Courthouse, in Breckenridge, Minnesota. Both parties had full opportunity to submit documents and arguments into the record. On December 20, 2013, the Arbitrator received printed copies of the internal and external contracts from the Employer. Written closing briefs were received by the Arbitrator on January 3, 2014 and the record was closed.

**UNION FINAL POSITION**

1. Duration: Length of Agreement – Art. 23

The parties have agreed that this is no longer an issue and the Agreement will be effective until December 31, 2014.

2. Salaries 2013 – General Wage Increase, If Any, For 2013 – Art.

A 3% general increase, retroactive to January 1, 2013.

3. Salaries 2014 – General Wage Increase, If Any, For 2014 – Art. 17

A 3% general increase, effective beginning January 1, 2014

4. Salaries 2013 – Grade 21 Chief Deputy Schedule For 2013 – Appendix A

An additional \$1.00 per hour for employees acting as Chief Deputy, retroactive to January 1, 2013.

5. Salaries 2014 – Grade 21 Chief Deputy Schedule For 2014 – Appendix A

An additional \$1.00 per hour for employees acting as Chief Deputy, effective January 1, 2014.

6. Salaries 2013 – Market Adjustment, If Any, For 2013 – Art. 17

A \$2.00 per hour increase in all base wages, retroactive to January 1, 2013.

7. Salaries 2014 – Market Adjustment, If Any, For 2014 – Art. 17

A \$2.00 per hour increase in all base wages, effective January 1, 2014.

8. Overtime/Comp Time –Maximum Accumulation of Comp Time – Art. 11.1

An increase in Comp Time to 80 hours.

9. Uniforms – Change From A Draw System To A Cash System – Art. 15.1

The Employees are to receive \$800.00 per year for uniform allowance plus \$150.00 per year as boot allowance.

10. Shift Differential – Rate For Shift Differential – Art. 19

An increase of \$0.15 cents per hour.

11. Premium Pay –Supplemental Pay For Field Training Officer Duties – (New)

An additional \$3.00 per hour for employees acting as Field Training Officer and training new employees.

12. Premium Pay –Supplemental Pay For SWAT Team Assignment – (New)

An additional \$1.00 per hour for employees on assignment to the SWAT Team.

**EMPLOYER FINAL POSITION**

1. Duration: Length of Agreement – Art. 23

The parties have agreed that this is no longer an issue and the Agreement will be effective until December 31, 2014.

2. Salaries 2013 – General Wage Increase, If Any, For 2013 – Art.

3% general increase effective January 1, 2013.

3. Salaries 2014 – General Wage Increase, If Any, For 2014 – Art. 17

2% general increase for 2014.

4. Salaries 2013 – Grade 21 Chief Deputy Schedule For 2013 – Appendix A

Retain current salary schedule. The County is opposed to a modification in the salary schedule for Chief Deputy beyond the general wage increase identified in Item 2 above.

5. Salaries 2014 – Grade 21 Chief Deputy Schedule For 2014 – Appendix A

Retain current salary schedule. The County is opposed to a modification in the salary schedule for Chief Deputy beyond the general wage increase identified in Item 3 above.

6. Salaries 2013 – Market Adjustment, If Any, For 2013 – Art. 17

The county is opposed to any market adjustment.

7. Salaries 2014 – Market Adjustment, If Any, For 2014 – Art. 17

The county is opposed to any market adjustment.

8. Overtime/Comp Time –Maximum Accumulation of Comp Time – Art. 11.1

Retain current contract language.

9. Uniforms – Change From A Draw System To A Cash System – Art. 15.1

Retain current contract language.

10. Shift Differential – Rate For Shift Differential – Art. 19

Retain current contract language.

11. Premium Pay –Supplemental Pay For Field Training Officer Duties – (New)

The County is opposed to the inclusion of this new item.

12. Premium Pay –Supplemental Pay For SWAT Team Assignment – (New)

The County is opposed to the inclusion of this new item.

**UNION ARGUMENTS: WAGE INCREASE AND MARKET ADJUSTMENT**

The Union argues the Wilkin County licensed deputies are underpaid for doing inherently dangerous law enforcement work, regardless of the analysis used. The four factors applied in the analysis are: external or market comparisons, internal equity, other economic or non-economic factors, and the employer's ability to pay.

## **1. External Market Comparisons**

The most appropriate comparable workplace for the Wilkin County Deputies should be those that have comparable job duties, with comparable working environments, comparable stresses, and comparable standards. Thus, neighboring counties should be included when determining the external comparables because deputies in those counties deal with similar issues (i.e. mental health, drugs, poverty, etc.). The union argues that the appropriate external comparison group should be Grant County, Otter Tail County, Stevens County, and Traverse County.

To support its inclusion of Otter Tail County the Union argues that Otter Tail County is contiguous with Wilkin County and is in the same Economic Development Region. Both counties are represented by the West Central Initiative, and deputies from both counties work together on the same SWAT Team. Furthermore, Wilkin County Deputies patrol some of the areas located within Otter Tail County.

Using the Unions comparison group, the average starting wage among Stevens, Grant, Traverse, and Otter Tail Counties in 2012 was \$19.62 per hour, compared to Wilkin County's \$16.52. The starting wage in Wilkin County would need to be increased 18.8% in order to reach the average starting wage in this comparison group. Even if the Arbitrator used the County's comparison group, Wilkin County Deputies start earning 12.3% below the average of Stevens, Grant, Traverse, and Norman Counties. This is \$4,232 less in the first year alone. Thus, the 3% proposed increase by the County barely addresses the disparity among a starting wage analysis. It is for this reason that the Union proposes a \$2.00 per hour market adjustment increase in all base wages in 2013, in addition to the County's proposed 3% increase. This would amount to a total hourly increase of \$2.50 for 2013. While some might consider this a significant jump in

pay, in actuality it would still be \$0.60 per hour below the average starting wage in the County's comparison group for 2012. The Union argues that if the County's 3% proposal is implemented the gap between Wilkin County's starting wage and the average starting wage grows larger than it is currently.

If the Arbitrator awards the Union's wage increase for 2013, the disparity in pay among the comparison group is still significant. It is for that reason that the Union proposes another 3% increase in 2014, or \$0.58 on top of the 2013 increase. These increases would place the Wilkin County Deputies in 2014 just below the average 2012 starting wage of the comparison group. In addition, the Union proposed another \$2.00 per hour market adjustment increase for 2014. The Union contends that its members work no less hard than their counterparts in the neighboring counties that make up the comparison group. The increases and market adjustments would put a newly hired Wilkin County deputy on par with Otter Tail County and much closer to that of a newly hired deputy in Stevens County.

When examining the lifetime earning potential of a Wilkin County employee, the Union argues that the steps the County uses on its wage scale are not annual, and therefore are better characterized as longevity increases. The Union contends that the fairest and easiest way to understand the comparison is to analyze yearly earnings over time, through a career.

In its brief, the Union included four charts based on a hypothetical deputy working his entire career in Wilkin County, compared with another hypothetical deputy starting at the same time in any of the other comparison counties (Otter Tail, Stevens, Grant, and Traverse). These charts all assume that the County's position of a 3% general increase in 2013 and a 2% general increase in 2014 were awarded. In addition, the relevant increases have been factored into the comparison counties. The results of this analysis highlight that over a 23 year career, a Wilkin

County deputy will earn \$295,864.66 less than that of an Otter Tail County deputy. When compared to the hypothetical deputy in Grant County, over a 25 year career the Wilkin County deputy earns \$160,180.47 less. And, when compared to Stevens and Traverse, the Wilkin County deputy earns \$141,655.17 and \$100,274.49 less than the hypothetical deputy, respectively. Therefore, the Union argues that the increase in pay over time is almost irrelevant for a Wilkin County Deputy because the pay is so low before they reach those steps that few employees are willing to work long enough to earn them. For example, the Union asserts, a first year deputy in Steven's County earns the same as a nine year veteran in Wilkin County.

## **2. Internal Equity**

The Union argues that there is no internal pattern of settlements. In 2013, of the six bargaining units represented in Wilkin County, only three have settled their contracts. In 2014, no bargaining units in Wilkin County have settled their contracts. Furthermore, the Union vehemently contends that allowing this factor of internal equity or internal pattern of settlements to be the overriding factor in an arbitration award allows employers to "game the system." As the Union's brief states,

"A County can choose to first negotiate with a non-essential bargaining unit with only the right to strike, not arbitrate. Public employees rarely choose to strike, so a County can aggressively negotiate a low increase for that unit...By the time the negotiating process reaches the essential units, with only the right to arbitrate, the County has a firmly established pattern of increases. The County can point to these settled contracts in arbitration, saying that it would be 'unfair' to the other County employees to give the essential unit more than that everyone else received." (Union Brief, p. 12-13).

Therefore, where the rigid application of internal pattern or internal equity is applied, the consequence leads directly to the problem of gross disparities in the actual real world market comparisons.

### **3. Other Economic or Non-Economic Factors**

Wilkin County Deputies start behind their counterparts in other counties and never catch up. So it is not surprising that most do not stay long. Of the five employees in question in this arbitration, the longest-tenured employee has been with the County since 2003, and he has received a promotion to Chief Deputy. Among the four remaining deputies, the average tenure with the County is only 5.5 years. (Union Ex. 10). Therefore, highlighting Steps 10-14 on the pay scale are almost irrelevant because deputies are not paid enough to stay long enough to ever reach them. Furthermore, should a Wilkin County deputy ever reach retirement while working for the County, because the top of the pay scale is so much lower than that of neighboring counties, his or her retirement benefits from PERA will also be proportionality lower. (Union Brief, p. 10). Thus, deputies earn less now, and will continue to earn less into retirement.

### **4. Employer's Ability to Pay**

The County has the ability to pay the Union's proposals. The group of deputies represented by the Union is only five people. Any rate of increase will have a very limited cumulative financial effect on the County. The County's Unrestricted Fund Balance in 2011 was 57% of budgeted expenditures, which exceeds the State of Minnesota's recommendation that the County keep 35-50% of budgeted expenditures in reserve. In addition, the County's revenue sources are in no danger of drying up. "The value of Agricultural land and commodities are still at or near historical highs, and County tax revenue follows the value of land." (Union Brief, p. 16). Therefore, the Union argues that there is no indication that the County cannot pay the requested increases.

## **UNION ARGUMENTS: GRADE 21 CHIEF DEPUTY SCHEDULE**

The Union seeks an additional \$1.00 per hour increase in the Chief Deputy's wage schedule. Currently, the Chief Deputy receives a premium of roughly 15% more per hour than the line of Deputies at the same step. However, Article 17 of the Agreement provides that a Deputy promoted to Chief Deputy must go back to the bottom of the Chief Deputy Step Scale. (Union Tab 2, Emp. Ex. 1). At Step 6 of the Deputy Sheriff wage scale a deputy begins earning more than the Chief Deputy. At most, a deputy promoted from Step 6 to Chief Deputy will receive only a 5% pay increase. In 2012, the Wilkin County Chief Deputy earned \$22.54 per hour or \$46,883 annually. Compared to the earnings of Chief Deputies in Stevens County (\$67,412), Traverse County (\$58,470), and Grant County (\$62,358), an average of \$62,746, the Wilkin County Chief Deputy would need an extra \$7.63 per hour to earn that figure. An extra \$1.00 per hour would nowhere near cut into this, but at a minimum acknowledge that the County values this individual's extra work.

## **UNION ARGUMENTS: OVERTIME/COMP TIME – MAXIMUM ACCUMULATION OF COMP TIME**

The Union requests an increase in the maximum allowable accumulation of Comp Time from 40 hours per year to 80 hours per year, which necessarily includes a corresponding 80 carry over matching the internal pattern of the other bargaining units.

According to the Union, federal law permits government employers to grant Comp time in lieu of paying overtime, up to 240 hours per employee. Time off through Comp time is valuable to all peace officers because of the high-stress job they perform. All the Union's request seeks is that the County allows the deputies to take time off at a later date. The Comp Time program is already established. However, with only 5 employees in the bargaining unit, there are not enough opportunities to schedule comp time off without being called upon to work

an extra shift. Increasing the maximum Comp time will correspondingly increase the chances that the deputies will be able to actually take the time off.

**UNION ARGUMENTS: UNIFORMS – CHANGE FROM A DRAW SYSTEM TO A CASH SYSTEM**

The Union proposes that Wilkin County deputies be given \$800 in uniform allowance per year, plus \$150 as a boot allowance per year. Currently in Wilkin County, deputies are provided some uniform parts directly by the County upon request. The switch, the Union contends, would allow deputies to buy the items they need for work. The current system is inadequate for the deputies because, although the Chief Deputy cannot recall any uniform request ever being denied, the requests are often delayed until the start of a new budget year. Furthermore, there are many required uniform parts that are not issued by the County. For example, deputies are required to purchase their own duty belts. In addition, they buy nearly everything on the belt with their own money. A change from the current system to a cash system would allow the deputies to spend the money as they need to on the items they need.

**UNION ARGUMENTS: SHIFT DIFFERENTIAL – RATE OF SHIFT DIFFERENTIAL**

The Union requests an increase in the shift differential of \$0.15 per hour, from \$0.85 to \$1.00 per hour. A shift differential is a meaningful tool to incentivize employees to work during times which the average person is either sleeping or with their families. The comparable counties of Stevens, Grant, and Otter Tail provide an extra \$1.00 per hour as a shift differential, while Traverse provides \$0.95 per hour. Wilkin is clearly lagging in the comparable market when it comes to paying a shift differential, and should therefore be increased.

**UNION ARGUMENTS: PREMIUM PAY – SUPPLEMENTAL PAY FOR FIELD TRAINING OFFICER DUTIES**

Every time Wilkin County loses another Deputy, those that remain are given the responsibility of training a new Deputy. Training is a crucial part of this job, especially when interaction with law enforcement can be a time when a citizen's Constitutional protections are implicated. For this reason, many employers have voluntarily designated the training officer as a Field Training Officer, who is compensated accordingly. The Union believes that the proper amount for this Field Training Officer is \$3.00 per hour.

**UNION ARGUMENTS: PREMIUM PAY – SUPPLEMENTAL PAY FOR SWAT TEAM ASSIGNMENT**

The tri-county SWAT Team was created in 2009. The Team involves deputies from Otter Tail County, Wilkin County, and Grant County. The Union seeks an extra \$1.00 per hour compensation for Wilkin County deputies who are called out on a SWAT assignment, just like Otter Tail deputies are. As testimony at the hearing confirmed, the SWAT Team calls are infrequent, perhaps with only three per year on average. If one of these assignments lasted 8 hours, this would amount to only an extra \$24 per year cost for the County, a rather insignificant cost for the additional call of duty.

In Summary, the licensed deputies that make up this bargaining unit are too far behind their peers in terms of equitable and fair wages. The Union is not asking to be bumped up a lot in the wage comparison rankings, but just not so far at the bottom.

**EMPLOYER ARGUMENTS: WAGE INCREASE AND MARKET ADJUSTMENT, GRADE 21 CHIEF DEPUTY SCHEDULE**

The County argues that its position best represents the settlement the parties would have reached had they been able to do so through the collective bargaining process. The County's final position for a 3% wage increase in 2013 with no market adjustments mirrors the internal

settlement pattern established for other bargaining units within the County. The County's final position for a 2% wage increase in 2014 with no market adjustments results in competitive salaries for the Wilkin County Deputy unit.

### **1. External Comparisons**

The County argues that the appropriate comparison group for Wilkin County includes Grant, Norman, Stevens, and Traverse counties. These counties were recognized as the appropriate comparison group in a 2007 interest arbitration proceeding between the County and the Deputy Unit. (Emp. Ex. 56). This historical comparison group is made up of the counties in Economic Region 4 and the surrounding area with populations close in size to Wilkin. Furthermore, the size of the Sheriff's offices in these counties is also comparable.

At the hearing, the Union relied heavily on comparing Wilkin County with Otter Tail County. While the County recognizes that Otter Tail County, along with Clay and Becker counties, border Wilkin, it rejects the proposal that it should be included in the comparable group. Furthermore, according to the testimony of County Commissioner Neal Folstad, Otter Tail County has never been utilized by Wilkin County for market comparison purposes. Moreover, just because the deputies from Otter Tail and Wilkin counties serve on a joint SWAT Team does not substantiate its inclusion. Therefore, the Union has not demonstrated a significant change in the circumstances relative to Otter Tail County to warrant its inclusion in the comparison group.

The County's final position for a 3% general wage increase in 2013 exceeds the average general wage increaser of 1.75% in the Grant, Norman, Stevens, and Traverse historical comparison group. In addition, the County's final position for a 2% general wage increase in 2014 exceeds the existing settlement in the comparison group of a 1.5% increase. (Emp. Ex. 28).

None of the comparison counties are providing any type of a dollar per hour adjustment on top of the general wage increase, which the Union is proposing in this arbitration. Furthermore, when analyzed from a historical perspective, once Wilkin County's final positions of a 3% increase in 2013 and a 2% increase in 2014 are added to the salary chart, the total Wilkin County increase from 2010-2014 is 10%. This is the largest in the comparison group. (Emp. Brief, p. 10).

At the hearing, the Union highlighted the County's wage schedule and its 14 step schedule with the maximum wage reached after 23 years of employment. This wage system is uniform. Employees advance annually through Steps 1-9 and then progress every three years through Steps 10-14. Steps 10-14 are not designated as longevity steps and they have never been considered longevity steps. Even if one would consider these Steps longevity steps, the Union did not certify to impasse the structure of the wage schedule and therefore has voluntarily agreed to continue the existing wage structure and schedule.

Retention of employees is one valid test when assessing external market comparisons. The County has had good retention of its employees. The Deputy unit includes long-time employees, one of whom has been with the County since 2003 (Joshua Nack). (Emp. Ex. 10). In addition, in the last five years the County has had virtually no turnover. (Emp. Ex. 24). This indicates that the County's wage and benefits package is competitive. The County concludes that there is no justification for an award greater than that of the County's uniform internal pattern of a 3% general wage increase in 2013 and 2% general wage increase in 2014.

## **2. Internal Consistency**

There are a total of 104 employees in Wilkin County, comprised of six bargaining units and 25 non-union employees. (Emp. Ex. 11). Three of these bargaining units, as well as the 25 non union employees, have all reached voluntary, negotiated agreements with the County for a

3% general wage increase in 2013. These agreements represent 81% of the County's workforce, and it is the County's position to not deviate from this pattern and provide wage increases identical to the internal settlement pattern.

According to the County, "Since at least 2000, there has been a history at Wilkin County of uniform general wage increase adjustments among bargaining units and non-union employees." (Emp. Brief, p. 3, Emp. Ex. 13). The County's position on wages maintains the integrity of the historically uniform County-wide system. Although there are only five employees in the bargaining unit before this Arbitrator, a point the Union highlighted, this unit is only 5% of the County's workforce, and thus should not be awarded a different wage increase than what has been established as the pattern of negotiated settlements.

### **3. Employer's Ability to Pay and Other Economic Factors**

The Union's assertion that the County has the ability to pay is misleading. Due to fiscal challenges and cuts in state aids, the County had to utilize its fund balance to fund operations, and from the year ending 2011 to the year ending 2012, unreserved fund balances at Wilkin County decreased from 66.1% of expenditures in 2011 to 57% of expenditures in 2012. A general fund balance should not be used for on-going expenditures, such as wages. The County is required to have a fund balance in order to meet the recommendations of the State Auditor to have an unreserved fund balance. Fund balances reported at the close of the fiscal year can create an impression that the County has an excessive amount of funds held in reserve. The County's year end 2012 fund balance was at 57% of expenditures, very close to the recommended range of 35-50% of expenditures.

At the hearing, the Union contended that because this bargaining unit is so small that the cost of the Union's position is minimal. The County argues, however, that by awarding the

Union's position for great increases than those established by the internal settlement pattern will have a "ripple effect," which would thus create a labor relations problem for the County with other bargaining units. So while the deputy unit may be small in number, the costs of an award could be multiplied exponentially.

**EMPLOYER ARGUMENTS: OVERTIME/COMP TIME – MAXIMUM ACCUMULATION OF COMP TIME**

Currently, employees are allowed to accumulate up to 40 hours of comp time. The effect of the Union's position, which is to allow employees to accumulate up to 80 hours, will increase costs associated with comp time. Thus, this issue is an economic item, more than a workplace issue, and should be evaluated from the standpoint of the total comp time package.

The County has a uniform pattern of comp time maximums set forth in its contracts. All bargaining unit employees within Wilkin County have a comp time accrual maximum of 40 hours. (Emp. Ex. 41). Therefore, internal consistency supports an award of the County's position. Further, the Deputies' comp time provision stating that comp time may accrue up to a maximum of 40 hours, dates back to 2000. The historical nature of this article indicated that it is reasonable. Not even the Otter Tail County contract, heavily relied upon by the Union at the hearing, includes an 80 hour comp time accrual maximum.

**EMPLOYER ARGUMENTS: UNIFORMS – CHANGE FROM A DRAW SYSTEM TO A CASH SYSTEM**

Currently and historically, the County has purchased uniform items for employees and as a result, there has been no uniform allowance. Chief Deputy, Joshua Nack, testified at the hearing that if a deputy needed to get a uniform item replaced, the County would replace it. A deputy's request has never been denied, however, he or she might have to wait for a replacement item because of budgetary restraints within the Sheriff's office. (Joshua Nack Testimony, Emp.

Brief, p. 15). Moreover, the external market data does not support the Union's position. Three of the four comparison counties do not provide a uniform allowance. (Emp. Ex. 44).

**EMPLOYER ARGUMENTS: SHIFT DIFFERENTIAL – RATE OF SHIFT DIFFERENTIAL**

In 2012, the Sheriff's office paid the five members of this bargaining unit a total of \$6,774.46 in shift differential. (Emp. Ex. 9A). If one takes this total and divides it by 5 (the number of employees in this unit), that equals \$1,354.89 per employee, each having worked 1,594 hours which qualified for shift differential. If the Union's increase in shift differential is granted, each employee would earn an additional \$239 per year in shift differential pay, a total of \$1,594 per employee. This increase in pay would be a direct result of a total compensation increase. Furthermore, the jailer/dispatcher bargaining unit in the Sheriff's office has had a shift differential that is equal to or slightly less than that of the Deputy shift differential. If the Union's position is granted, such an award would create a whipsaw issue within the Jailer/Dispatcher unit, thus costing the County more.

**EMPLOYER ARGUMENTS: PREMIUM PAY – SUPPLEMENTAL PAY FOR FIELD TRAINING OFFICER DUTIES**

The County argues that, historically, the Deputies' contract has never included Field Training Officer (FTO) premium pay and the unit has voluntarily agreed to settle a number of predecessor contracts without the inclusion of FTO premium pay. As a result, the exclusion of such a provision is reasonable and continues to be appropriate. The Union has not offered any significant evidence or change in circumstances related to training that would warrant the inclusion of a new provision granting FTO premium pay. Moreover, the external market data does not support the Union's position. None of the comparison counties in the historical comparison group provide a FTO premium pay.

## **EMPLOYER ARGUMENTS: PREMIUM PAY – SUPPLEMENTAL PAY FOR SWAT TEAM ASSIGNMENT**

The County contends that, historically, the Deputies' contract has never included a SWAT Team premium pay and the unit has voluntarily agreed to settle a number of predecessor contracts without the inclusion of SWAT Team premium pay. This, again, would indicate that the exclusion of such a provision is reasonable and continues to be appropriate. The Union has not offered any significant evidence or change in circumstances related to SWAT Team issues that would warrant the inclusion of a new provision granting such premium pay. Further, the Otter Tail contract, heavily relied upon by the Union, does not even include a SWAT Team premium pay provision.

In summary, the County argues that the Union's positions represent an effort to convince the Arbitrator to grant a compromise between the positions of the County and the Union, so as to achieve something for bargaining unit members that the Union could not have reasonably achieved in negotiations. Awarding anything other than the County's positions on all of the certified issues would encourage essential bargaining units in Wilkin County to proceed to interest arbitration in the future.

The Union's positions are excessive and are not warranted by the evidence presented in this case. If granted for 2013, the Deputies would increase their pay by 14.67% and the Chief Deputy by 17.27%. For 2014, the Deputies would increase their pay by 13.87% and the Chief Deputy by 15.87%. In total, this would be an increase of 28.54% for the Deputies and 33.14% for the Chief Deputy. Such an award would not only lead to morale problems within the County's workforce, but also create whipsaw bargaining.

## **ARBITRATOR'S ANALYSIS AND AWARD**

The parties have properly cited the four basic principles guiding the outcome of interest arbitrations: external comparisons, internal comparisons, ability to pay, and other economic and non-economic factors.

### **External Comparison**

The threshold question on addressing the external comparisons is the appropriate comparison group. There is some surface appeal in the Union argument that the economic region, including Otter Tail County, should prevail. The Employer cites its previous arbitration Minnesota Teamsters Public & Law Enforcement Employees Union, Local N. 320 and Wilkin County, (BMS Case No. 07-PN-0602), in addressing this issue. Although a previous arbitration award is not binding precedent, as is the custom in common law, the reasoning of Arbitrator Powers in the cited case is sound. The scale and population of Otter Tail County does not fit well with the traditional comparison group of Wilkin County. Otter Tail County is much larger, has a “significantly greater population (57,303 compared to 6,576), number of households (24,560 compared to 2,658), tax capacity (\$85,271,591 compared to \$12,907,101), net tax levy, (\$31,343,344 compared to \$6,133,921) total revenues (\$65,702,892 compared to \$14,690), total expenditures (\$45,847,484 compared to \$9,611,917), median value of homes (\$161,400 compared to \$103,300), and other demographic factors (i.e. persons below poverty level: 12.9% compared to 7.0%).” (Emp. Brief, page 7, Emp. Ex. 27.1 A-G).

The Union refers to the SWAT Team and other contacts with Otter Tail County. However, the minor and infrequent engagement between Wilkin and Otter Counties' law enforcement agencies does not justify including Otter Tail County as part of the comparison group.

All contracts submitted at hearing confirm a consistent pattern of Wilkin County's wage scale being low in comparison, including the lesser populated rural communities.

An examination of the minimum and maximum salaries and hourly rates between the comparison groups reveals the following:

Minimum:

County	2012 Hourly Rate/Annual Salary	2013 Hourly Rate
Stevens	\$21.40 (\$44,512)	\$21.72 (\$45,178)
Traverse	\$18.62 (\$38,729)	\$18.99 (\$39,502)
Grant	\$18.43 (\$38,334)	\$18.80 (\$39,104)
Norman	\$16.57 (\$34,466)	\$16.82 (\$34,986)
Wilkin	\$16.51 (\$34,360)	Employer Position: \$17.01 (\$35,391) Union Position: \$19.01 (\$39,551)

(Figures taken from Union Ex. Tab 5, Emp. Ex. 29, 30)

The average minimum hourly rate in 2013 for the four counties is \$19.08. The County's position is well below the average, and the Union's position brings them within \$0.07 of the average. Noteworthy, however, is the fact that awarding the County's position would put Wilkin in fourth position out of five within the comparison group, moving them up from last position. If the Union's position were adopted, the bargaining Unit would move from last position in 2012 to second position out of five in 2013.

Maximum:

County	2012 Hourly Rate	2013 Hourly Rate
Stevens	\$24.08 (\$50,086)	\$24.44 (\$50,835)
Traverse	\$23.43 (\$48,734)	\$23.90 (\$49,708)
Grant	\$25.82 (\$53,706)	\$26.33 (\$54,766)
Norman	\$22.10 (\$45,959)	\$22.43 (\$46,649)
Wilkin	\$23.72 (\$49,330)	Employer Position: \$24.43 (\$50,810) Union Position: \$26.43 (\$54,970)

(Figures taken from Union Ex. Tab 5, Emp. Ex. 29, 30)

The average maximum hourly rate in 2013 for the four counties is \$24.28. The County's position is above this average by \$0.15. In addition, the 2012 maximum hourly rate ranks

Wilkin County in second position within its comparison group, Grant County being in first position. Granting the Union's position would move Wilkin County into first position, while granting the County's position would keep Wilkin in virtually the same second position, being just one cent short of that second position. Clearly this result falls outside the pattern previously bargained with other parties and is well beyond what could reasonably be expected to result from further negotiations by these parties at the bargaining table.

### **Internal Comparison**

As to the internal comparison, the perspectives of the parties are predictably at odds. The Employer cites the upper level of the wage scale in making market comparisons. The Union presents the starting wage in support of its argument, pointing out that none of the current bargaining unit members are near the maximum. In fact, only one bargaining unit member has more than seven years tenure. (Emp. Ex. 10). This employee is half way through the steps in the wage scale, but only a third of the way to the maximum on that same wage scale.

The County is very persuasive in the consistent pattern of settlement with other groups of Wilkin County employees, both union and non-union. The Union raises a proper and difficult question relative to the consistently identical increases granted to the internal comparison group employees. The risk of ignoring internal comparisons is, as stated by Arbitrator Befort in Wright County Deputies Association and Wright County, (BMS 12-PN-0968) that such a deviation from the internal pattern is likely to set off an "undesirable ripple effect in future rounds of bargaining." However, it is also true that an absolute adherence to a single settlement pattern for diverse groups naturally diminishes the negotiating power granted by the legislature to exclusive representatives of bargaining units. In its brief, the Union makes that point compellingly (above at page 7, Union brief p.12-13). So there is a tension presented by the competing values of

internal stability and an individual unit's bargaining rights. The evidence in this case presents an unbroken pattern since 2000 of uniformity in the internal comparison group. The following graph, which includes wage increases for all classes within the county, demonstrates this:

Bargaining Unit	2000	2001	2002	2003	2004	2005	2006	2007
Courthouse Employees (Employees Association)	2.0%	3.0%	3.5%	2.0% (1/1) 2.0% (7/1)	\$600	3.0%	3.0%	3.0%
Highway Unit (AFSCME Council 65)	2.0%	3.0%	3.5%	2.0% (1/1) 2.0% (7/1)	\$600	3.0%	3.0%	3.0%
Dispatcher/Correctional Officer (MNPEA)							3.0%	3.0%
Confidential Employees (Employee Council)	2.0%	3.0%	3.5%	2.0% (1/1) 2.0% (7/1)	\$600	3.0%	3.0%	3.0%
Professional Employees (Professional Employees Assoc.)	2.0%	3.0%	3.5%	2.0% (1/1) 2.0% (7/1)	\$600	3.0%	3.0%	3.0%
Non Union Employees	2.0%	3.0%	3.5%	2.0% (1/1) 2.0% (7/1)	\$600	3.0%	3.0%	3.0%
Sheriff's Essential Unit (MNPEA)	2.0%	3.0%	3.0%	2.5% (1/1) 2.0% (7/1)	\$600	3.0%	3.0%	3.0%

Bargaining Unit	2008	2009	2010	2011	2012	2013	2014
Courthouse Employees (Employees Association)	3.0%	0.0%	3.0%	0.0%	2.0%	3.0%	*
Highway Unit (AFSCME Council 65)	3.0%	0.0%	3.0%	0.0%	2.0%	3.0%	*
Dispatcher/Correctional Officer (MNPEA)	3.0%	0.0%	3.0%	0.0%	2.0%	*	*
Confidential Employees (Employee Council)	3.0%	0.0%	3.0%	0.0%	2.0%	3.0%	*
Professional Employees (Professional Employees Assoc.)	3.0%	0.0%	3.0%	0.0%	2.0%	*	*
Non Union Employees	3.0%	0.0%	3.0%	0.0%	2.0%	3.0%	*
Sheriff's Essential Unit (MNPEA)	3.0%	0.0%	3.0%	0.0%	2.0%	*	*

(Emp. Ex. 13)

Accordingly, in this case, I conclude that the internal comparison is in fact persuasive and reasonable.

### **Ability to Pay**

As to ability to pay, this is not a case which is principally determined by that issue. The County appears to be well run within its budgetary constraints, but by its very nature and size has resources that are limited.

Therefore, the Union's proposed wage increase is denied.

### **Maximum Accumulation of Comp Time**

Regarding the maximum accumulation of comp time, this Arbitrator is not persuaded by the Union's argument to increase the maximum accumulation from 40 hours to 80. The Union states that with only 5 employees in the bargaining unit, there are not enough opportunities to schedule comp time off without being called upon to work. The Union offered no convincing evidence that the change it recommends would solve the problem it claims. Moreover, since the maximum accumulation for comp time policy dates back to 2000 for the county, and is consistent county-wide, this Arbitrator finds for the County on this issue.

### **Uniforms**

Regarding the issue surrounding a change from a draw system to a cash system for uniforms, Stevens County is the only county in the comparison group which presently provides that benefit. In addition, no counties in the comparison group offer a boot allowance. There is not sufficient evidence to grant this, and therefore, the Union request is denied.

### **Shift Differential**

As to the issue of rate for shift differential, there is only one other bargaining unit that has a shift differential: the Dispatcher/Correctional Officer. Currently, the Dispatcher/Correctional Officer's shift differential is \$0.75 per hour. The external market comparison provides that Grant and Stevens Counties' shift differential is \$1.00 per hour, and Traverse County is \$0.85

per hour, increasing to \$0.95 in 2014. (Emp. Ex. 47). It is, therefore, not unreasonable to increase Wilkin County's shift differential to \$1.00 per hour to be comparable to these surrounding counties. The Union's position for an increase in shift differential is granted.

### **Supplemental Pay for FTO Duties**

Regarding the issue for supplemental pay for field training officer duties, no evidence was offered by the Union to demonstrate that training fellow officers was outside of their job description, or that training had significantly changed from the past. Furthermore, no evidence was offered that other comparison groups were providing FTO premium pay. As a result, I find for the County on this issue.

### **Supplemental Pay for SWAT Team Assignments**

As to the issue of supplemental pay for SWAT Team assignments, this Arbitrator understands the low potential cost associated with awarding the Union's position. However, as the County argues, not only has the Deputies' contract never included a premium pay for SWAT Team participation, the record is clear that at least one of the other counties (Otter Tail County) that makes up the Tri-County SWAT Team does not include a premium pay provision. Therefore, I find for the County on the SWAT Team premium pay issue.

### **FINAL AWARD**

- 1. Duration: Length of Agreement – Art. 23: The parties have agreed that this is no longer an issue and the Agreement will be effective until December 31, 2014.**
- 2. Salaries 2013 – General Wage Increase, If Any, For 2013 – Art. 17: There will be a 3% general wage increase effective January 1, 2013.**
- 3. Salaries 2014 – General Wage Increase, If Any, For 2014 – Art. 17: There will be a 2% general increase for 2014.**
- 4. Salaries 2013 – Grade 21 Chief Deputy Schedule For 2013 – Appendix A: Retain current salary schedule.**

- 5. Salaries 2014 – Grade 21 Chief Deputy Schedule For 2014 – Appendix A: Retain current salary schedule.**
- 6. Salaries 2013 – Market Adjustment, If Any, For 2013 – Art. 17: Retain current salary schedule. No market adjustment is awarded.**
- 7. Salaries 2014 – Market Adjustment, If Any, For 2014 – Art. 17: No market adjustment is awarded.**
- 8. Overtime/Comp Time –Maximum Accumulation of Comp Time – Art. 11.1: The current contract language is retained.**
- 9. Uniforms – Change From A Draw System To A Cash System – Art. 15.1: The current contract language is retained.**
- 10. Shift Differential – Rate For Shift Differential – Art. 19: An increase of \$0.15 cents per hour is awarded, bringing the shift differential from \$0.85 per hour to \$1.00 per hour.**
- 11. Premium Pay –Supplemental Pay For Field Training Officer Duties – (New): No supplement pay for field training officer duties is awarded.**
- 12. Premium Pay –Supplemental Pay For SWAT Team Assignment – (New): No supplement pay for SWAT Team assignment is awarded.**

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George Latimer, Arbitrator

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Date