

**IN RE ARBITRATION BETWEEN:**

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**AFSCME COUNCIL 65**

**And**

**PIONEERLAND REGIONAL LIBRARY SYSTEM**

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**DECISION AND AWARD OF ARBITRATOR**

**BMS 14-PN-0356**

**JEFFREY W. JACOBS**

**ARBITRATOR**

**July 16, 2014**

IN RE ARBITRATION BETWEEN:

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AFSCME Council 65

and

DECISION AND AWARD OF ARBITRATOR  
BMS Case # 14-PN-0356

Pioneerland Regional Library System

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**APPEARANCES:**

**FOR THE UNION:**

Teresa Joppa, Attorney for the Union  
Cindy Hendricks, Branch Mgr. at Appleton  
Kathie Behrens, Branch Mgr. at several locations  
John Anderson, Union Representative

**FOR THE COUNTY:**

Frank Madden, Attorney for the County  
Mark Ranum, Executive Director

**PRELIMINARY STATEMENT**

The parties were unable to resolve certain issues concerning the terms of the collective bargaining agreement and requested mediation from the Bureau of Mediation Services. Negotiation sessions were held and the parties negotiated in good faith but were ultimately unable to resolve certain issues. The Bureau of Mediation Services certified 6 issues to binding interest arbitration pursuant to Minn. Stat. 179A.16, subd. 7 by letter dated June 13, 2014.

The hearing in the above matter was held on June 20, 2014 at the Willmar City Hall in Willmar, Minnesota. The parties submitted briefs that were received by the arbitrator on July 8, 2014 at which point the record was closed.

**ISSUES PRESENTED**

The issues certified at impasse by the BMS were as follows:

1. Wages 2014 – by what amount, if any, should wages increase for 2014?
2. Wages 2014 – by what amount, if any should steps increase for 2014?
3. Wages 2015 – by what amount, if any, should wages increase for 2015?
4. Wages 2015 – by what amount, if any should steps increase for 2015?
5. Sick Leave – what changes, if any, should be made to the sick leave language? Resolved at the hearing.
6. Holidays – what changes, if any, should be made to the holiday language?

The parties were able to resolve issue #5, sick leave, at the hearing. In addition, AFSCME submitted to the Bureau and the Arbitrator the issue of Health Insurance Contributions for 2015. The Bureau did not certify that issue and there was considerable disagreement over how to address that matter and whether the arbitrator had jurisdiction to determine an issue not certified by the BMS. However, the parties agreed to make the issue a reopener for 2015 and resolved the issue in that manner. Accordingly, no decision is necessary on that issue.

### **WAGES – 2014 AND 2015 STEPS IN 2014 AND 2015**

The BMS certified wage issues for both a general increase as well as an additional step on the wage schedule for each bargaining unit employee. These issues will be discussed together for determination here.

### **UNION'S POSITION**

The union argued that the members of this bargaining unit are significantly underpaid when compared to the appropriate external market and that in order to keep pace with the market a two percent (2%) cost of living adjustment is appropriate for both 2014 and 2015. In addition, the union seeks an award that each bargaining unit member moves one full step on the wage scale on January 1, 2014 and again on January 1, 2015. In support of its position the union made the following contentions:

1. The union put on several witnesses who described their work and the long hours they put in to make the library system a success and meet the needs of the public. Some managers actually manage as many as four facilities and put in long hours, many of which are unpaid, and frequently travel long distances to visit each facility they manage. Their jobs require a wide variety of skills as they must maintain the books and facilities, update technology, track usage and submit reports to several different public bodies, just to name a few of their duties.

2. The union also asserted that the economy is much better than it was several years ago and that the economy in this particular area of the State of Minnesota is recovering well. Unemployment is down, tax base is sound, businesses are expanding and hiring new workers and the general outlook for growth is good. See union exhibits 60 through 73. The union noted that the general recovery of the economy means more funding for amenities like libraries from both the State as well as local governmental units and more job opportunities for library employees.

3. ABILITY TO PAY: The union went through the employer's financial situation and asserted that it has unreserved funds well above what it would take to cover the small cost of granting these increases. In fact, the union noted, the employer budgeted a 1.88% general wage increase, which is virtually what the union is seeking here. See union exhibit page 38A and 109.

4. The union asserted that the library system has a permanent endowment fund of some \$5.58 million that it can use for any purpose. The union asserted that the financial position of the system is quite strong and that the modest increases it seeks will neither adversely affect neither the budget nor its overall financial picture.

5. The employer's revenues were up over \$385,000.00 between 2012 and 2013, while expenses were down \$13,000.00 in a total budget of over \$4.5 million. The union further noted that the employer's assets were up \$576,000 from 2012. See union exhibit at page 32. The union pointed to the budget, set forth at both pages 38A and 109 of the union book and noted that while revenues from the State are down, the overall budget shows the expenses down over \$234,000.00. Moreover, wages are budgeted to increase by approximately \$39,000.00 from 2013 to 2014.

6. The union also noted that the actual amount this adjustment would cost is minimal and small in comparison to the overall budget of the Pioneerland Library System. The overall budget is some \$4 million. The union suggested that the total cost of their proposal is only \$19,115.20 more than the employer's proposal and argued that this figure is miniscule when compared to the overall budget and can easily be shouldered by the employer.

7. EXTERNAL COMPARISONS: The union looked to other regional library systems and compared the Pioneerland system to those. The union noted that the Great River System and Southeast system are similar and should be used as comparisons for pay for their managers. Great River granted increases of 2% for 2014 with a wage reopener for 2015. See union exhibit page 117. In fact, the union noted that the 2% increase in Great River was negotiated with the same employer representative as represents this employer here.

8. The union noted too that the vast majority of interest awards throughout the State have granted 2% increases for cost of living adjustments for both law enforcement and other types of employments. The union asserted that the arbitrator should follow this clear pattern and grant the 2% adjustments requested by the union here. See union exhibit at page 120.

9. The union asserted that there is some difficulty recruiting for these positions when they come open. The union noted that the Willmar facility has been without a manager for months and that the system has advertised twice for the position increasing the salary offered.<sup>1</sup> The Benson Head Librarian position was also open within the past year.<sup>2</sup>

10. The union noted that the real issue here is the very low starting salary of these positions in comparison to comparable jurisdictions. See union exhibit at page 106. The union also noted that many bargaining unit employees have been with the system for more than 20 years yet are still not at the top salary. The union again pointed to the large number of duties and responsibilities these employees have and argued that their pay needs to be adjusted to reflect that. .

11. The union also noted that Pioneerland is the only library system to pay based on the size of the library facility. This is a novel approach but results in an artificially low pay scale for the managers. The union asserted that in order to bring the pay scale into line with comparable systems, the employees need to be moved up the pay scale by a step each year.

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<sup>1</sup> Union Exhibit Book pages 110, 130 and 131.

<sup>2</sup> Union Exhibit Book at page 132.

12. **INTERNAL FACTORS.** The union noted that the Executive Director and Director of Library Operations both received substantial pay increases or “signing bonuses” in 2012 2013<sup>3</sup> but the branch managers who run the libraries did not. The union noted the duplicity of granting the top manager a 12.6% increase while expecting those who perform the day to day operations – some of whom run more than one facility – to take only a 1% increase in pay. The union also noted that this enormous increase undercuts the claim by the employer that it is financially strapped and cannot afford to pay these increases.

13. The union noted that in past years, employees have received step increases as part of the negotiated settlements with this employer. See union exhibit at page 115. The union also compared the top pay here to that same level in Great River and Southeast and noted that Pioneerland is significantly lower at all levels and should be increased. See union exhibit at page 105.

Accordingly, the Union asserted that the wage increases of 2% per year effective January 1, 2014 and January 1, 2015 are justified and should be awarded.

### **EMPLOYER’S POSITION**

The employer’s position is for a 1% general wage increase for both 2014 and 2015. In support of this position the employer made the following contentions:

1. The employer asserted that there is a vast difference in the funding mechanisms an organizational structure of the Pioneerland System and other systems throughout the State. There is a difference between a consolidated system and a federated system and that comparisons between the two are not accurate and may be misleading.

2. **ABILITY TO PAY.** The employer asserted that in fact revenue is down from prior years and that State funding has been cut substantially. The employer also pointed to its budget document and noted that while expenses are down, revenues are down even more such that the overall budget amount is less for 2014 than it was in 2013.

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<sup>3</sup> Executive Director Ranum received a signing incentive or bonus pay of 12.6% in 2013. See union exhibit page 121

3. The employer also pointed to its very strong history of internal consistency and noted that the union's claim that the increase is "small" is misleading as well. If this is granted, i.e. a step and a COLA increase; the other units will certainly want that as well. Thus, the seemingly small increase would turn into an unmanageably and fiscally irresponsible one when spread over the entire staff, both union and non-union. The employer asserted that the union cannot have it both ways and is seeking something well beyond the fiscal capacity to grant.

4. The employer noted that step increases range from 2.7% to 4.6% in 2014 and from 2.7% to 4.6% in 2015. If, as discussed below, the arbitrator were to award an additional step the total increase over the term of the contract would be approximately 13% for some employees. See, Employer Exhibits 25 and 32. This is untenable and shows what the union is really asking for.

5. Further, even though some revenues have increased that was due to the "catch-up" provisions under State funding from 2010 to 2013. Thus these increases were really nothing more than payments of past due funds from prior years.

6. The employer pointed out that Great River is the sole true comparable and the settlement reached there was of a 2% increase in COLA with no steps. Thus the only external comparison undercuts the union's claim for both a step and a COLA increase.

7. The employer also countered the claim that there is some sort of endowment, as asserted by the union, see union exhibit page 108. The employer asserted that there is no endowment and that the money cited by the union is a reflection of the 2013 total net position, which includes total net assets, reserves and investment in capital assets such as physical materials and books. The employer asserted that the union is simply wrong in its claim that there is any endowment fund here.

8. Further, as with any responsibly financed public entity, the employer noted that it must maintain a reserve cash fund of at least 3 months to deal with any unexpected costs or capital outlays. The State Auditor's office recommends it and thus should not be used to fund the union's request.

9. **EXTERNAL COMPARISONS:** The employer asserted that external comparisons are not a true reflection of the market. Pioneerland is a consolidated regional public library system. The counties and cities that are signatories to the joint powers agreement have granted the regional library board authority over its budget, staffing, operations, services and policy. The Board has exclusive control over funding, including funds to pay library staff costs for salaries and benefits. In contrast, federated library systems have local library boards and the cities and counties in such a system actually run their own libraries. See, Employer Exhibit 13. Thus, a comparison to federated systems provides an inaccurate and inappropriate measure for comparison. See also, pages 8 and 9 of the Employer's post-hearing brief herein describing the funding mechanisms and the rules relative to providing services in order to qualify for funds. There is also little predictability and funding varies greatly from city to city and county to county.

10. The employer further asserted that many of the library systems proposed by the Union as comparisons do not employ Head Librarians, which further negates the validity of the union's comparison data. For example, East Central Regional Library, Lake Agassiz and Southeastern do not employ Head Librarians. The union's comparisons are thus inapplicable since there was no evidence of how the functions of these positions compared to those present within the Pioneerland System.

11. **INTERNAL FACTORS:** The employer noted that there is both a strong general policy within the State to award requested increases based on internal patterns as well as a very strong history of such bargaining in this bargaining unit. The employer pointed to the longstanding history of granting wage increases based on a pattern – applicable to this unit as well. Where there were step increases granted there were no wage/COLA increases. Conversely in the past, where there were COLA increases no step increases were paid. Here the union wants both, which is a deviation from the longstanding history within this unit but also a deviation with other units within this employer.

12. The employer asserted that even though most of the employees of the Pioneerland System are non-union, arbitrators still look to internal consistency as the major determinative factor in rendering wage awards. The employer cited a string of cases, all involving Lyon County, wherein the internal pattern of settlements was awarded even though some 92% of the workforce was non-union.

13. The employer asserted that the general policy is to grant only those awards that the parties would likely have negotiated for themselves in the absence of interest arbitration. Here there is little question that the parties would never have negotiated a payment of a 2% wage increase and a step increase for only these employees.

14. These same parties negotiated voluntary settlements in the last three years without step increases. There is thus no basis or evidence to believe or support the claim that they suddenly would have negotiated any step increases now.

15. The employer countered the claim by the union that the system has a problem with retention or attraction of candidates. The employer pointed out that this bargaining unit includes long-term employees, many of whom have been employed for more than 35 years. See, Employer Exhibit 21. When employees separate from employment, it is generally due to retirement. See, Employer Exhibit 28. Pioneerland has also had outstanding attraction of new applicants and has more applicants due to its competitive wage structure and benefits package.

16. The employer also countered the claim that the cost is a mere \$19,115.00 and asserted that it is in fact nearly \$83,000.00 more when all factors are considered, including the step increases. The employer re-asserted that it has a long history of internal consistency would certainly work to bring other groups to seek that same increase which would make the total cost much higher.

17. The employer also countered the claim by the union that the Executive Director received a large 13.6% increase. The employer asserted that the Executive Director has a contract with the Library System and renegotiated that contract to reflect his expertise and experience in running library systems of this nature. He simply received a signing incentive of \$5,500.00 for the 2013-14 contract, but received no such bonus or incentive for that 2014-15 contract.

18. The employer also countered the union's claim that somehow the employees should get an unwarranted increase due to their job duties. The employer noted that this is hardly the basis of a wage increase since all public employees face similar workload issues. This is neither uncommon nor is it particularly persuasive in interest arbitration. Moreover, these employees have been doing the same or similar jobs for years at the pay rates established by the CBA and showed no evidence that their duties had increased significantly since the last agreement.

19. Further, the employer is conducting a job evaluation study that may well address these workload issues. Thus there is no need for the arbitrator to address it and no basis on which such large increases should be awarded anyway.

20. Finally, while the employer's final position to the BMS remains for a 1% increase in each of the contract years, the employer proffered a compromise for a 2.0% general wage increase in 2014 and 2015 but no step increases in either year.

The employer seeks and award of a 1% increase in each of the contract years, effective January 1st of each year and for an award denying the step increases as requested by the union.

#### **DISCUSSION OF WAGE INCREASES AND STEP INCREASES FOR 2014 AND 2015**

The union request both a 2% COLA in both contract years as well as an additional step for both years. The union based much of its argument on the fact that these employees work long hours and are responsible in some cases for multiple facilities. There was little question that these employees are diligent and very hard working people and that without their efforts the library system would not be as successful as it is.

That factor alone though did not swing the case in the union's favor. This same argument could well be made of every public employee. The employer also made the valid point that these employees have been doing the same or similar jobs for years at the pay rates established by the CBA and showed no evidence that their duties had increased significantly since the last agreement.

Without evidence that the job duties have somehow changed, there was insufficient evidence to support the claim that the increases were warranted due to their duties alone. It was apparent that the managers work long hours and responsible for operating and managing their respective library facilities. There was little evidence that this has changed appreciably over the course of time however.

Further, the union made the point that many employees have been with the system for 20 or more years but still have not reached the top step on the salary schedules. This appears to be true but it is also a reflection of the salary schedule negotiated by these parties. There was little evidence to support the claim that there should be either a jump on the schedule, since the parties negotiated it, or that the schedule should somehow be changed, which was not even requested by the union. Thus, the mere fact that it takes a long time to reach the top step was unpersuasive on this record. The analysis now turns to the factors typically used to determine the appropriate wage increases on this record.

#### ABILITY TO PAY

Initially the question is the appropriate increase for a COLA increase. The evidence and arguments favored the union here. There was evidence that despite the loss of revenue from the State, that the expenses are decreasing as well and that the employer has already budgeted a 1.88% increase in wages for its employees.

The evidence showed that there is sufficient revenue available to fund the 2% increase sought by the union. The overall budget is approximately \$4 million and the budgeted increase was approximately \$39,000.00. While that alone is not the sole determinative factor, it was clear that the request increase is not out of line with the funds available for it.

On the other hand, there was less persuasive evidence to support the step increase. The employer showed that the true cost of granting these increases would be far higher than posited by the union for a number of reasons.

First, the step increases would be 2.7% to 4.6% in each year. That of course, did translate to an approximately 13% increase over time, when coupled with the COLA increase of 2% and would create a very difficult budgetary situation for the employer.

Second, it was clear that there is a strong internal policy of granting similar increases to all employees here. The employer's concern that granting such an increase here would create a ripple effect throughout the system was well taken. As discussed more below, such internal patterns are important and interest arbitrators must take into account all such costs across the employer's operation – not just the cost for granting the requested increases for this one unit.

Accordingly, while there was an ability to pay shown for the COLA, as evidenced but the clear fact that the employer has already budgeted 1.88% for salary increases, there was less persuasive evidence that the step increases could be easily absorbed in an already tight budget. This was especially true in light of the loss of State revenue on these facts. As always though, the essential question is not whether the employer can pay the requested increase but rather, whether it should be based on a number of other factors both external and internal.

#### EXTERNAL COMPARISONS:

The evidence showed that there is a vast difference in the funding mechanisms between federated and consolidated library systems in the state of Minnesota. Mr. Ranum did an excellent job of outlining these differences and the challenges those respective systems face in securing funding and steady revenue sources to continue their operations.

Moreover, there is also a vast difference in the governance structure between the two types of systems. The evidence further showed that the Pioneerland structure does not compare easily to other systems and that it is therefore difficult to compare wages for managers here to other similarly named positions in other systems. Accordingly, comparisons between the two were not terribly helpful in comparing the wage structure.

About the only system that appeared to be comparable was Great River in terms of an external comparison. The union showed that the Great River System and its unions negotiated a 2% COLA increase for similarly situated employees and who perform similar functions. Thus the best measure externally favored the 2% increase sought by the union.

#### INTERNAL FACTORS

Generally a strong internal pattern of settlements can be a very important factor in deciding the appropriate wage increase award.<sup>4</sup> The evidence showed that over time there has indeed been a pattern of settlements between these parties. Where there was a COLA increase there was no step increase. Likewise, where there was a step increase negotiated by the parties in the recent past, there was no COLA increase. The pattern showed that the parties voluntarily negotiated one increase but not both.

As noted above, the employer offered a reasonable compromise of a 2% COLA increase (instead of its final position of 1%) but without a step increase for either 2014 or 2015. This was not only seen as a reasonable way of resolving this issue but was also amply well supported by the evidence in the case

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<sup>4</sup> The employer relied heavily on statements from other cases that supported the claim that even where the vast bulk of employees are non-union, the internal pattern should almost literally be the sole determinative factor. That question did not arise on these facts and caution must be exercised in accepting that argument without a thorough examination of all relevant factors in any particular case. Otherwise the underlying notion of collective bargaining might be compromised if that were accepted blindly and would allow an employer to argue that wage increases granted to employees without any collective bargaining power should control the awards for those who do. As noted herein, the main reason for the wage award was indeed an internal pattern that showed that where a COLA was granted there was no step increase and vice versa. That however applied to union employees and was based on a pattern of negotiated settlements between these parties over time.

Thus, based on the factors set forth above, i.e. that while there was a demonstrated ability to pay the 2% COLA increase but less evidence that the system could easily absorb the cost of the COLA and a step increase, the lack of truly comparable external comparisons and strong evidence of an internal pattern of settlements over time, the award here is for a 2% COLA increase effective January 1, 2014 and for a 2% COLA increase effective January 1, 2015 but no step increases for 2014 or 2015.

## **FLOATING HOLIDAY - ARTICLE 9**

### **UNION'S POSITION**

The union sought the addition of one additional floating holiday be added to the Holiday Schedule for the Branch Managers. In support of this the union made the following contentions:

1. The union noted that there are currently 10 listed holidays and one floating holiday provided for in Article 9.1 of the CBA for a total of 11 holidays. The union noted that these managers work long hours, sometimes traveling many miles between facilities. The managers are essentially “on-call” for a wide variety of issues year-round and are frequently called in for various reasons. An additional floating holiday would cost the employer very little but would give each of the managers more flexibility in their personal life. The union argued that people who work this hard deserve time off to maintain a balanced work and personal life and that this additional floating holiday would help

2. The union also pointed to external systems and noted that Lake Agassiz provides for 10 listed holidays and 2 floating holidays. These employees simply seek a similar benefit.

The union seeks an award for an additional floating holiday.

### **EMPLOYER'S POSITION**

The employer's position is for no change in the current language and no additional floating holiday. In support of this position the employer made the following contentions:

1. The employer based its argument on internal consistency among employees and noted that all employees receive 10 scheduled holidays and 1 personal floating holiday. The Library's position on this item maintains internal consistency among employees. See, Employer Exhibit 38.

2. The employer argued that the current holiday schedule and number of floating holidays has been voluntarily agreed to by the parties in their predecessor collective bargaining agreements since 2003. These voluntary agreements demonstrate the number of holidays is reasonable and appropriate. See, Employer Exhibit 37.

3. The employer also argued that the union offered no compelling reason for this change and again asserted that the long hours and hard work alone do not justify an additional floating holiday. There was also no quid pro quo offered by the union for this additional benefit – and its attendant additional cost. Typically there must be one or both of these factors shown and here there was neither.

The employer seeks an award for no change in the existing language.

#### **DISCUSSION OF FLOATING HOLIDAY – ARTICLE 9**

There was insufficient evidence to support the union's claim here. As the employer argued, there is a strong policy in favor of internal consistency of fringe benefits of this nature. Here granting the additional day would certainly compel other employees to seek this without sufficient justification for it. Internal consistency on this record is a strong factor in favor of the employer's position.

Further, this benefit was voluntarily negotiated into the CBA long ago and there was no evidence that there have been problems with employees not being able to have sufficient time to deal with personal matters. There are other leave benefits available in the labor agreement to which the employees can use if they need to. In addition, there was no evidence of a quid pro quo or other offer in exchange for the requested benefit. While that may not be strictly required if there are other compelling reasons for such a change, there were no such facts on this record.

Finally while external comparisons are not a major factor in this analysis, the vast majority of other systems have 11 holidays while only one has 12. On this record, there was simply insufficient support for the requested change.

#### **AWARD ON FLOATING HOLIDAY– ARTICLE 9**

The employer's position is awarded.

## **SUMMARY OF AWARD**

### **AWARD ON WAGES - COLA ADJUSTMENT**

The union's position is awarded. 2% wage increase effective January 1, 2014 and 2% effective January 1, 2015.

### **AWARD ON REQUESTED STEP INCREASES FOR 2014 AND 2015**

The employer's position is awarded.

### **AWARD ON FLOATING HOLIDAY – ARTICLE 9**

The employer's position is awarded.

Dated: July 16, 2014

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Jeffrey W. Jacobs, arbitrator

AFSCME and Pioneerland Library System Interest award