

Employer or the County. The Union and the County have been engaged in contract negotiations for a successor agreement, but have been unable to agree on all issues to reach an agreement.

The Issues

The Minnesota Bureau of Mediation Services certified ten (10) unresolved issues for interest arbitration:

1. Shift Differential - What shall be the amount of shift differential? - Art. XII, §12.3
2. Overtime – How shall overtime be calculated? – Art. XII, §12.4
3. Holiday – How shall holiday pay be calculated? – Art. XIV, §14.2
4. Vacation – What shall be the maximum amount of vacation accrual? – Art. XVII, §18.2
5. Vacation – What shall be the maximum of vacation paid out upon termination of employment? – Art. XVII, §18.4
6. Health Insurance – What shall be the amount of Employer contribution each year of the contract? – Art. XIX, §19.1
7. Health Insurance – What shall be the language related to the potential impact of implementation of the Affordable Care Act, if any? – Art. XIX, §19.1
8. Compensation Plan – Shall a merit pay plan be implemented? – If yes, what shall it be? – Art. XXIII, §23.3
9. Duration – What shall be the term of the contract? – Art. XXVI
10. Compensation – What shall be the general wage increase in each year of the contracts? – Appendix A

At the hearing in this matter the Union withdrew its objection to the County proposal at item 6, above, and the Union accepted the County contribution as presented by the County during negotiations. Also at the hearing the County withdrew its request to implement a merit pay plan at item 8, above. Further, at the hearing the County made a modified proposal of its position at item 7, above by adding to its proposal the phrase “provided that there will be no decrease in benefits to the employees”. The Union opposes this modified language. Thus, eight (8) issues remain to be decided.

The Parties agreed at the conclusion of the hearing that additional exhibits would be received into the record which are pay equity compliance reports run by the County to be in compliance under the Local Government Pay Equity Act (LGPEA). The County then submitted

Employer Exhibit 5-1 based on the pay levels if all employees were paid based on the County's final position. It also submitted Employer Exhibit 6 based on LELS Deputies receiving 9% (3% per year for 3 years) while other employees receive the already settled for amounts reflected in the County's final position. At the Arbitrator's request the County later submitted LGPEA equity reports run for a 2 year time period.¹ Employer Exhibit 7 is based on the pay levels if all employees were paid on the County's final position over two years. Employer Exhibit 8 is based on the pay levels if the Deputies were paid based on the Union's final position over two years and the remaining employees were paid based on the County's final position over two years.

Guiding Principles

Numerous Minnesota Interest Arbitration Awards have set out the guiding principles that are followed in Awards. Although not all are present in any particular case or issue and there can be other principles, they generally include the considerations below.

The central goal is to ascertain what the agreement is that the parties themselves would have reached if they had concluded a voluntarily negotiated settlement.

Arbitrators consider the employer's ability to pay, relevant internal comparisons, relevant external comparisons and, other economic or noneconomic considerations such as the cost of living, the general state of national, state and local economies, problems of attraction or retention and significant changes in underlying job duties. Absent compelling reasons to do so, arbitrators avoid awards that significantly alter the bargaining unit's standing either internally or externally.

Arbitrators must consider the Minnesota Pay Equity Act. Minn. Stats. §§471.991 – 471.999.

Generally, an arbitrator should not alter a longstanding contractual arrangement in the absence of a compelling reason to do so, and will place the burden on the party proposing a change to demonstrate the need for it by clear and compelling evidence or a quid pro quo.

BACKGROUND

Benton County is located in central Minnesota within Region 7W of the Minnesota Development Commission Counties. It has a population of approximately 38,451. The County seat is Foley and the closest sizable city is St. Cloud. It has the smallest population and smallest geographical area of the four Counties in Region 7W. Among the five contiguous Counties it ranks third in population with still the smallest geographical area. The County's bond rating is AA by Standard and Poor's, with two adjoining Counties rated higher.

LELS is the exclusive representative of 19 of the approximately 27 employees in the County Sheriffs Department. There are six other organized bargaining units of County

¹ The County has proposed a three year agreement and the Union has proposed a two year agreement.

employees. There are approximately 184 union members and 73 non-union employees of the County. The County and the Union have had interest arbitrations in 2004 and 2005 with a previous lengthy history of generally amicable labor relations.

Further background and facts are set out in the following Discussion and Award involving the various issues.

DISCUSSION AND AWARD

Issue 1. Shift Differential - What shall be the amount of shift differential? - Art. XII, §12.3

Union Position: All employees covered under this contract shall receive a \$1.00 per hour shift differential for hours actually worked between the hours of 5:00 p.m. to 7:00 a.m.

County Position: No change from current contract provisions.

Current contract: “All employees covered under this contract shall receive a \$.60 per hour shift differential for all hours actually worked between the hours of 7:00 p.m. and 7:00 a.m.”

Union Argument

In summary, the Union argues that the afternoon shift begins at 5:00 p.m., so under the current contract two hours of that time do not qualify for the differential, while all of the evening shift, which begins at 9:00 p.m., does. The Union argues that all officers working shift work should be treated equally. The known effects of doing shift work, as seen in the studies of health effects of shift work and extended hours of work, demand proper compensation. The addition of two hours for 2 to 3 Deputies would be a few thousand dollars for the duration of the calendar year and is a small price to ensure equal treatment. The County’s own information shows many Counties cover more than the traditional 12-hour slot and all but one in the County’s compensation study starts at 1900.

As to amount of the differential, there is no internal pattern. Of the neighboring Counties, the average shift differential is \$.80 per hours, 33% higher than Benton County. The Union seeks to be more commensurate. For the Counties in the compensation study, currently Benton County is at or near the bottom for Deputies who work the evening hours.

County Argument

In summary, the County argues that the length of a shift should not qualify for the differential, but the period from 9:00 p.m. to 7:00 a.m. – the time when most people are asleep - is disadvantageous. The Union argument simply costs more money. Given the County’s economic climate, this is not the time to increase the differential. There are no compelling

reasons or need to increase the coverage and amount. In comparison Counties the hours and amounts paid vary greatly. The status quo should be retained. External comparisons are misplaced here. The Licensed Supervisors, who supervise the Deputies, receive the same differential and same period as the Deputies. Correctional Officers and their Supervisors receive \$.10 less. Changing the differential for the Deputies would create an inequity with the Licensed Supervisors Unit.

Discussion

Both Parties recognize the added stress and health concerns for shift work. That is why there is a shift differential. The issues are length of shift and amount of differential. Concerning the shift times or length to be paid the differential, the internal comparisons favor the County. Union Exhibits 9, 10, and 11, for the respective units all have a 7:00 p.m. to 7:00 a.m. time period for the differential. The inequity in the two hour difference between shifts of Deputies is lessened by what would become an inequity between the Deputy unit and their supervisors, the Licensed Supervisor's Unit, who work the same time periods. Upsetting the internal pattern would be potentially disruptive to collective bargaining in the County. In view of the internal comparisons starting at 7:00 p.m. and the wide variety of starting times seen in the external ranging from 2:00 p.m. to 6:00 p.m., the internal are more persuasive and a compelling need has not been demonstrated to move the start time to 5:00 p.m.

As to the amount of the differential, the internal comparables again favor the County. The Deputy Unit here is paid \$.10 more than the Non-Licensed Supervisory Unit (Union Exhibit 9) and the Unit of Dispatcher, Detention and Recreation officers (Union Exhibit 11). They are paid the same differential as the Licensed Essential Supervisor Unit (Union Exhibit 10). Although neighboring County comparables show this Unit's differential is about 33% below the \$.80 average, retaining the current \$.60 keeps them in the same relative position, third out of four. There is a slightly greater discrepancy when compared to the Counties in the County compensation study, \$.88, and to those of the contiguous Counties, \$.85. These comparisons do not support the Union request for \$1.00 and do not outweigh the internal comparables. Even though Benton County is among the lowest in its differential, no other compelling reasons are present to place the differential at \$1.00.

Award: The County's position is awarded.

Issue 2. Overtime – How shall overtime be calculated? – Art. XII, §12.4

Union Position: No change to current language

County Position: Employees will be compensated in cash at one and one-half (1 ½) times the base rate for hours worked in excess of the hourly total in the work period established in policy by the Sheriff ~~eighty (80) hours in a pay period or in excess of the regularly scheduled shift.~~

Current contract: “Employees will be compensated in case at one and one-half (1 ½) times the base rate for hours worked in excess of eighty (80) hours in a pay period or in excess of the employees regularly scheduled shift.”

Union Argument

The Union argues this is a spiteful attempt by the County to scare the Union and impose draconian changes to overtime rules. The Sheriff would set the policy for all hours to work before being eligible for overtime. Deputies could be held over for hours after their normal shift without extra compensation for the disruption to their lives. The Sheriff would have carte blanche to change the hourly total in his/her policy at any whim. It could be used as punishment and be coercive. It is writing a contract, which arbitrators do not do. The Sheriff himself was not at the hearing and didn't testify if he even wanted this. The County conceded that the only reason this is on the table is because the Union asked for a wage increase greater than the County wanted to pay. The County position is retaliatory in nature and shows a toxic negotiation environment.

No other group had this language in its contract. It is a threat to public safety as it would constrict the ability of the Sheriff's office to get Deputies to work needed overtime. If awarded work have a chilling effect on negotiations as it would embolden the Employer to merely threaten another grab at the arbitration table to coerce compliance to their demands. The County Fair Labor Standards Act argument is a minimum standard, like a minimum wage.

County Argument

The County argues that its proposal applies the Fair Labor Standard Act's Section K exemption to the bargaining unit, and cannot be deemed a scare tactic. The Union correctly notes the language does not exist in any other law enforcement contract. If the County's wage position is awarded, the internal comparisons suggest the proposed language would not have been negotiated into the contract. Conversely, if the Deputies were successful in negotiating a nine percent increase which would affect overtime rates it is likely the County would have demanded language to control overtime costs as a quid pro quo.

Discussion

The County has proposed a major change in contract language that would greatly alter the relationship between the Parties, leaving overtime subject to the unilateral change of policy rather than the negotiated 80 hours in a pay period or in excess of a regularly scheduled shift as in the current contract. This not the type of change that arbitrators normally make through awards, as the Union notes. The County does not demonstrate how the current language does not meet the FLSA. Importantly, no other County unit has this type of language in their collective bargaining agreements. No internal comparables support this language, nor do external comparables support of it. This is further evidence that the Parties would not have agreed to this language at the bargaining table. With no other bargaining units having this language, the County has not demonstrated a compelling need for it and it offers no quid pro quo. The County

arguments about the ability to control overtime costs in the event the Union's wage proposal and contract duration terms are awarded are speculative and not persuasive.

Award: The Union's position is awarded.

Issue 3. Holiday – How shall holiday pay be calculated? – Art. XIV, §14.2

Union Position: No change to current language.

County Position: Because of the nature of seven (7) day coverage required for law enforcement work, employees shall not observe holidays on the calendar days on which they normally appear. To provide the holiday benefit, the Employer shall make a cash payment to full time employees on the first pay period in December in each calendar year on the basis of straight time. The amounts shall be prorated for new employees. Part-time employees as defined in the County Personnel Policies shall not be eligible for holiday pay as provided in this Section. In addition, on the payroll period during which each holiday occurs, each employee will be compensated for all hours actually worked between 0001 hours and 2400 hours on the designated holiday at one and one-half (1-1/2) times the normal hourly rate. ~~for the normal schedule shift and at two and one half (2-1/2) times the normal hourly rate for all hours worked between 0001 hours and 2400 hours on the designated holiday which are in addition to the normal scheduled shift.~~

Current contract: “Because of the nature of seven (7) day coverage required for law enforcement work, employees shall not observe holidays on the calendar days on which they normally appear. To provide the holiday benefit, the Employer shall make a cash payment on the first pay period in December in each calendar year on the basis of straight time. The amounts shall be prorated for new employees. In addition, on the payroll period during which each holiday occurs, each employee will be compensated for all hours actually worked between 0001 hours and 2400 hours on the designated holiday at one and one-half (1-1/2) times the normal hourly rate for the normal schedule shift and at two and one half (2-1/2) times the normal hourly rate for all hours worked between 0001 hours and 2400 hours on the designated holiday which are in addition to the normal scheduled shift.”

Union Argument

The Union reiterates the arguments it made for Issue 2, above as to this issue. In addition, it argues that no contract in the County excludes part-time employees from this benefit. Part time employees do the same work as full time employees. The County is attempting to force the contract to look to policy without spelling out what the specific language is, and policy can be changed at the whim of the County. The current language was mutually agreed to by both parties and to remove it should require the same level of mutual agreement. There is no quid pro quo for eliminating the benefit. Current language provides an incentive to work a scheduled holiday off and ensures public safety. The County proposal is a potential threat to public safety as deputies would not be enticed to leave their families on holidays.

County Argument

The County argues that the benefits it seeks to eliminate are costly and not reflected in any of the contracts in comparison counties. The non-law enforcement bargaining units do not receive this benefit. The County did not negotiate elimination of language with the Detention Deputies and Dispatchers and with the Non-Licensed Supervisors. The County concedes if the Deputies receive the same general wage adjustment the County negotiated with its other units, it is unlikely that the current language would have been eliminated in the negotiation process.

Discussion

Internal comparables, especially those in law enforcement, favor the Union in that the units are not split or divided internally in what benefits they receive. Normally, but not without exception, a division in the wages, benefits and working conditions received by different members of the same bargaining unit is the result of mutual agreement of the Parties. That is not the case with the County proposal and no exceptional circumstances have been demonstrated by the County. The County's proposed reliance on policy, as opposed to firm contract language, is a slippery slope. The County has offered no quid pro quo for taking away the benefit from part time Deputies and taking away the 2-1/2 time benefit from all Deputies. These factors are not outweighed by the language absence in external comparables (Employer Exhibit pp. 118-120). The external comparables generally have higher wages than does Benton County. Similar to the situation in Issue 2, above, the County position here is a speculative attempt to obtain something it may not get in the general wage issue, and is not persuasive.

Award: The Union position is awarded.

Issue 4. Vacation – What shall be the maximum amount of vacation accrual? – Art. XVII, §18.2

Union Position: Vacation credit shall be allowed to accumulate to a maximum of ~~two hundred eighty-eight (288)~~ three hundred twenty-four (324) hours. Vacation accrual shall be posted for each employee on a quarterly basis.

County Position: No change from current contract provision.

Current contract: “Vacation credit shall be allowed to accumulate to a maximum of two hundred eighty-eight (288) hours. Vacation accrual shall be posted for each employee on a quarterly basis.”

Union Argument

There have been occasions when members pushed up against the maximum vacation accrual limit of 288 hours and were in jeopardy of losing out on the benefit hours due to this. In a 24 hour, 365 day a year environment with minimum staffing, getting time off is often a challenge. There was a grievance over this. Granting the accrual maximum to 324 hours would provide the flexibility that virtually all other employees are not in need of. The Union is not asking for more money, simply flexibility. There is no direct cost to the County and the Union also proposes to keep the severance pay of vacation hours at 288.

County Argument

Arbitrators generally look to internal comparables when considering benefits, and all the County’s bargaining units receive the same paid leave benefits. There is no internal support for the Union’s demands. The County’s benefit is superior to those in comparable counties. The Union’s rationale for increasing the accrual is specious. Raising the limit just gives them more vacation to use without solving the problem. It potentially adds cost through loss of productivity and increased overtime to fill positions of vacationing employees.

Discussion

Internal comparables favor the County as all have the same benefit even if others do not have a minimum staffing level. Scheduling may at times be a challenge, but one grievance does not make a compelling need to make the change the Union seeks. As noted by the County, increasing the maximum accrual will, eventually, not solve the problem as the limit may again be approached. Despite the Union argument that the increase would not cost the County any dollars, the indirect costs to the County are real costs.

Award: The County position is awarded.

Issue 5. Vacation – What shall be the maximum of vacation paid out upon termination of employment? – Art. XVII, §18.4

Union Position: Upon termination of employment for any cause, regular employees with more than one (1) year of service shall be paid for any accumulated vacation credits, including pro-rata payments for periods of less than one (1) year. This payment shall not exceed two hundred eighty-eight (288) hours.

County Position: No change from current contract provisions.

Current contract: Upon termination of employment for any cause, regular employees with more than one (1) year of service shall be paid for any accumulated vacation credits, including pro-rata payments for periods of less than one (1) year.

Union Argument

The Union’s argument is to include the limiting language of 288 hours to show that it was not seeking an increase in payments under its position in Issue 4, above, on maximum accrual. Either way the maximum severance pay out of vacation hours would be 288.

County Argument

The Union’s proposed language is necessary only in the event the accrual is increased, in order to maintain the current severance payout.

Discussion

Because the related Issue 4 was awarded in the County’s favor and the vacation accrual was not increased, the Union argument for adding the limiting language is not needed. Adding the proposed language could also have the potential for future ambiguities to develop in the collective bargaining agreement as maximum accruals would be referred to in two different places.

Award: The County position is awarded.

Issue 6. Health Insurance – What shall be the amount of Employer contribution each year of the contract? – Art. XIX, §19.1

Union Position: Note: At the hearing in this matter the Union agreed to the insurance premium contribution as listed in the County’s final position. The Union had previously sought to increase the employer contribution towards health care in a dollar amount equal to premium increases in 2014 and 2015.

County Position: Employer contribution as recommended by the Benefits Advisory Committee:

\$500/\$1,000 Deductible Plan	
Single Monthly Premium	\$290.25
Family Monthly Premium	\$427.00
\$1,500/\$3,000 Deductible Plan with VEBA	
Single Monthly Premium	\$411.00

Monthly VEBA Contribution	\$62.50
Family Monthly Premium	\$1,018.92
Monthly VEBA Contribution	\$125.00
\$3,000/\$6,000 Deductible Plan with VEBA	
Single Monthly Premium	\$420.99
Monthly VEBA Contribution	\$125.00
Family Monthly Premium	\$1,106.98
Monthly VEBA Contribution	\$250.00

The County will pay one-half of any premium increase in 2015. Further, any decrease in premiums will be shared 50/50 between the County and bargaining unit members. Actual 2015 County contributions will attach to this agreement when finalized.

The County will pay one-half of any premium increase in 2016. Further, any decrease in premiums will be shared 50/50 between the County and bargaining unit members. Actual 2016 county contributions will attach to this agreement when finalized.

Union Argument

The Union agrees to the County position on health insurance contributions.

County Position

All the County’s other bargaining units, including three essential units, have settled for the County’s final position on health insurance contributions for 2014, 2015, and 2016. At the hearing the Union agreed to accept the County’s positions on health insurance contributions.

Discussion

The Parties having agreed on this issue, it will be included in the collective bargaining agreement.

Award: The County position is to be included in the collective bargaining agreement.

Issue 7. Health Insurance – What shall be the language related to the potential impact of implementation of the Affordable Care Act, if any? – Art. XIX, §19.1

Union Position: No change to current language.

County Position: Note. At the hearing the County modified its position to add a clause at the end of its proposed language after the word “compliance” so that it reads:

In the event the health insurance provisions of this Agreement fail to meet the requirements of the Affordable Care Act and its related regulations or cause the Employer to be subject to penalties, taxes or fines, the parties agree to meet immediately to negotiate revisions to this Agreement that will restore the Employer's health insurance plan to compliance provided that there will be no decrease in benefits to the employees.

Union Argument

There is a myriad of laws and regulations that the County and the Employees must follow and there cannot be a contract provisions to comply with the laws, regulations and rulings for every possible permutation. The Minnesota Pay Equity Act is a good example whereby if the County is out of compliance that does not force the Union back to the table. The Affordable Care Act does not include language like the County seeks. The County did not provide a quid pro quo for its inclusion; if it feels it needs the language it can bargain for it. There would also be a chilling effect on negotiations if the County can get at interest arbitration what it could not get during negotiations. This language was not in the other law enforcement contract and should not be in this one. There is no clear determination who decides if a provision fails to meet requirements. There is potential for a massive decrease in health insurance benefits which demands an addition such as this be by mutual agreement, as arbitrators do not write contracts.

County Argument

The Union conceded at the hearing that similar provisions have become commonplace due to the uncertainties of the Affordable Care Act. The County settlements with three of its bargaining units contain such language, as does the Arbitrator Jacobs' Award regarding the Licensed Supervisors (Emp. Ex. 5 at 16). Since the County language is the outcome that was negotiated with other units, the Arbitrator should determine that this language would have been the outcome through negotiation in the absence of arbitration.

Discussion

The County's proposed language by its terms only provides that the Parties will "negotiate" revisions to the Agreement, not that they will "agree" to changes in the provisions of the Agreement. Thus, the proposed language does not guarantee any specific benefit to the County in that there could be no decrease in benefits to the employees. This is new language for the Agreement. The record does not demonstrate that the County is out of compliance with the Affordable Care Act, so there is no evidence of any compelling need to add this language to the Agreement. There has been no quid pro quo offered for it. While other County bargaining units may apparently have similar language in their Agreements, it is not known if a quid pro quo was granted in any of the negotiated settlements. In the Jacobs' Arbitration Award both parties had suggested similar language and it was only the final clause that was at issue. The fact that the parties were not able to agree there and the matter went to arbitration suggests that an agreement to this language would not be a likely outcome in negotiations in the instant case. Also in the Jacobs' Award is the existence of a "savings clause" provision that would require the parties to

negotiate for the purpose of arriving at a mutually satisfactory replacement of any provision found to be invalid by operation of law. An examination of the instant Parties' collective bargaining agreement does not reveal similar savings clause, and neither Party has pointed to one. While one might expect the Parties to voluntarily negotiate with each other if a compliance problem should arise, that is different than adding a mandatory provision to their Agreement. Arbitrators are reluctant to add new provisions to contract language that the parties do not mutually want absent a compelling need or a quid pro quo. Neither is present in this case and it is not clear that the Parties would have agreed to any such language in negotiations.

Award: The Union position is awarded.

Issue 8. Compensation Plan – Shall a merit pay plan be implemented? – If yes, what shall it be? – Art. XXIII, §23.3

Union Position: No change to current language.

County Position: Note. At the hearing the County withdrew its proposal to add new § 23.2 to establish a merit pay plan.

Union Argument

The proposal is not in any other law enforcement contracts, it is writing a contract by the arbitrator, and it shuts out wage increases for 2014. There are other ways to address employee conduct rather than loss of pay. There is no way to challenge a review and it has a chilling effect on negotiations.

County Argument

In recognition of the fact that its negotiated agreements with other bargaining units does not include the qualification on step increases expressed in Issue 8, the County withdraws this issue.

Discussion

The County having withdrawn its proposal, it will not become part of the collective bargaining agreement.

Award: The merit pay plan will not be included in the collective bargaining agreement.

Issue 9. Duration – What shall be the term of the contract? – Art. XXVI

Union Position: This Agreement shall be in full force and effect from January 1, 2014 to December 31, 2015, and shall automatically be renewed from year to year thereafter unless either party shall notify the

other in writing by June 1, prior to the anniversary date, that it desires to modify or terminate this Agreement.

County Position: January 1, 2014 – December 31, 2016.

Union Argument

The Union seeks a shorter duration than the other settled bargaining groups because it will allow them the opportunity to deal with issues that come up over that length of time. Law enforcement groups will agree to longer deals if incentives exist, but the County has provided no incentive. The County has a disincentive with its paltry increases. There is no harm in having more opportunities to negotiate. Since 2004 this Unit's duration has varied from one to three years. Internal settlements alone should not dictate outcomes for another Union and, law enforcement does not share similar duties, hours, shifts, risks and job requirements as other units, citing arbitral authorities.

County Argument

The County and all of its bargaining units negotiated three year contracts for 2011 through 2013. Continuing that practice, it negotiated three year agreements covering 2014 through 2016 with all six of its other bargaining units. It is clear the County has a pattern of agreements for 2014-2016. The Union conceded at hearing that the negotiation climate with the County was not the best, and more adversarial than normal. A longer contract duration is more conducive to stable and productive labor relations as it minimizes time spent negotiating. Having all bargaining units on the same negotiation cycle is of paramount importance. It prevents whipsawing and the resulting antagonism among employees of various bargaining units, citing arbitral authority.

Discussion

Internal comparables favor the County and may suggest what a probable agreement would have been but, they do not, as argued by the Union, dictate what result there should be without further analysis. All of the give and take of those negotiations and what incentives may have been offered is not in this record. The Deputies unit here had durations generally less than three years since at least 2004, with 2011-2013 being the lone exception (Union Exhibit 38). This Union's members do face different working conditions than many of the other bargaining units. The factors militate against simply following an internal pattern.

The County cites the Holmes Award in *LAW ENFORCEMENT LABOR SERVICES, INC. AND BENTON COUNTY, BMS CASE NO. 05-PN-504 (HOLMES, 2005)*, for the proposition that having all its units on the same bargaining cycle prevents whipsawing and is of paramount importance in establish labor relations stability. However, Arbitrator Holmes noted that a two year contract was clearly the norm for the Union and the County. In that case the Union was seeking a two year term and the County sought a one year term. According to that Award, during contract negotiations the relationship between the Employer and the Union was more adversarial than normal. In the instant case the County argues that having the same negotiating cycle for all

bargaining units is of paramount importance. However, the County does not seem to be willing to offer anything in terms of wages and benefits much removed from other units in order to gain that which it argues is of paramount importance. It has not offered the incentive that might normally be associated with a longer term contract. The record does not demonstrate any past negative repercussions from whipsawing that concerns the County. The Holmes Award selected a one year contract despite the adversarial negotiating environment. And the previous Award, *LAW ENFORCEMENT LABOR SERVICES, INC, AND BENTON COUNT, BMS CASE No. 04-PN-359 (OLSON, 2004)* resulted in a one year award, noting that a fairly quick return to the negotiating table need not disrupt labor relations.

Both Parties appear to recognize the bargaining climate has not been a good one for them. The Unions arguments in the face of this are more persuasive. More communication between the Parties through negotiations rather than less communication is not a bad thing. Two years is more of a norm for this unit, with three years being an exception. The County does have an ongoing concern over the challenging nature of the economy and its ability to fund County operations. A longer contract term in conjunction with its wage proposal would give it some financial stability and a more clear economic foundation. But it cannot be ignored that the general state of the economy both nationally and in the State of Minnesota is improving (see, e.g., Union Exhibit 39), which does bode well for improved County finances. This economic reality suggests an earlier rather than later renewal of negotiations because economic conditions are changing.

The County's arguments are insufficient to support its claim of a need for a three year contract in the face of the more traditional two year contract with this bargaining unit.

Award: The Union position is awarded.

Issue 10. Compensation – What shall be the general wage increase in each year of the contracts?
– Appendix A

Union Position: 3% increase to each cell of the wage table for pay grades for Court Security Deputy, Deputy, and Detective.

County Position: One percent (1%) increase effective 1-1-14.

One percent (1%) increase effective 1-1-15. Point two five percent (0.25%) increase effective 7-1-15.

One percent (1%) increase effective 1-1-16. Point two five percent (0.25%) increase effective 7-1-16.

Union Argument

The Union's argument is based on the County's financial health, internal equity, external market comparisons, and cost of living with other factors.

The County finances are healthy. It had an ample unassigned fund balance of \$9,364,407 for 2012, which is 66% of the general fund; well within the 35-50% recommendation of the Auditor of Minnesota. The County general fund expenditures increased by \$500,000.00 for 2014 with a \$500,000.00 increase in County Program Aid from the State, indicating an improved budget climate. The difference between the Parties' proposals over three years is only \$112,971.22, just over 1% of the balance for 2012. It is less per year. The County's arguments calculate as if every employee got the same amount as the Union proposal, which is laughable. The County can also reserve funds if it knows, as it does, what big expenses they have coming up. The County did not talk about its current unreserved fund balance. One should suspect it is higher than 66%. The County is not in a dire financial situation. The County complains it can't be compared to larger, wealthier neighbors like Wright, Sterns and Sherburne Counties, but then uses those Counties in their Exhibits 4 to 22 as comparables. The Union stipulated those Counties were not good comparisons. Those Counties are not comparable. Contiguous Counties used by the Employer still include Sterns and Sherburne. The County compensation study it uses still includes Sherburne and Sterns counties. It then uses these Counties to argue for its tax capacity, per capita tax capacity, total taxes paid, percent of increase/decrease, etc. By including Sherburne and Sterns the County dramatically overinflates the averages. This makes their averages meaningless. The County also used old information in its exhibits, leaving us to wonder what 2014 looks like. There is nothing inherently unique about the financial situation of Benton County compared to all 87 Counties in Minnesota.

As to internal equity, simply awarding the same increase that other groups agreed to would have a ruinous effect on labor negotiations. The Union's 3% increase has no material impact on compliance with the Pay Equity Act. The Act requires consideration of the equitable relationship standards together with other standards appropriate to interest arbitration. Minn. Stat. §471.992, Subd. 2 (2011). Using the Department of Employee Relations software, a jurisdiction must maintain an underpayment ratio of 80 or higher to stay in compliance with the Act. The January 24, 2013 Pay Equity Report had a ratio of 90.68 (Union Exhibit 69). Updated reports were not provided at the hearing and the record was kept open to receive them. The County then provided inaccurate information in the updates. It explained "for Exhibit 7 that *'county 2 yr prop ii (Employer Exhibit 7) which is based on the pay levels if all employees were paid based on the County's final position over two years. In 2015, the underpayment ratio would again be 90.68 and the County would be in compliance with the LGPEA.'* For Exhibit 8, he states *'2 yr lels prop (Employer Exhibit 8) which is based on the pay levels if the Deputies were paid based on the Union's final position over two years and the remaining employees were paid based on the County's final position over two years. In 2015, the underpayment ratio would be 73.08 and the County would be out of compliance with the LGPEA.'*" This cannot be possible if the only change from Exhibit 8 from Exhibit 7 is using 3% for Deputies alone. Only one male class would change from "below predicted pay" to "at or above predicted pay" (Job #55 Deputies Sheriff) and none of the other male classes would change. The underpayment ratio would actually be 86.37 ($50.00/57.89 = 86.37$) and not the 73.08 the County report purports to show. 86.37 is within compliance. Increasing Deputy pay, which has 0 female classes, 3 male classes and 1 balanced class cannot reduce the number of female classes at or above predicted pay by 6 classes as Exhibit 8 claims to show. It defies logic. As has just been proven, the underpayment remains within compliance levels with an award of 3% increase each year.

As for other internal equity factors, there is much wrong with the County's "internally consistent pattern". A wage award based solely on internal settlement patterns would be a disservice to the parties and could effectively eliminate the need to bargain the subject at all, citing *LAW ENFORCEMENT LABOR SERVICES, INC. AND COUNTY OF ANOKA, BMS CASE NO. 07-PN-1013(FOGELBERG) AND AFSCME COUNCIL NO. 65 AND CARVER COUNTY, BMS CASE NO. 10-PN-423 (FOGELBERG, 2011)*. This highlights the danger of an Employer claiming internal pattern and then ceasing negotiations on wages. This is what Benton County is attempting to do. The door should not be shut to the external need for an increase based on the County's flawed information on internal pattern.

External markets show a deviation from the internal pattern is warranted. The comparison Counties used by the Union are identical to those used in the last arbitration and were not challenged by the County as inappropriate. Union Exhibit 54 shows the decline in average wages of the Deputies compared to the comparable Counties. The average comparisons are statistically meaningful. Exhibit 59 shows how the County's paltry 1% pushes the Benton Deputies below the average for the first time. The Union's 3% has the net effect of reversing the downward slide. In contrast, other law enforcement groups in the County are well above the average. Dispatchers made 6.94% more, Corrections Officers 8.77% more, and Sergeants 17.32 % above average. The Union's wage request will not come close to an equitable wage to average ratio of the other Sheriff's Office employees. There is no equity in the current system to upset. The only thing to do is to award the Union position on wages. The Minnesota Public Employee Labor Relations Act require that the equitable compensation relationship standards and the standards under Minn. Stats. §471.993 (2011) be considered together with other standards appropriate to interest arbitration. The External market demands an adjustment upwards from what the County is offering.

Other economic forces include the general cost of living as a consideration, though usually not controlling, citing arbitral authority. The Consumer Price Index has increased by 8.5% since 2010, while Deputies' wages increased 2.5%. The buying power of the paycheck has greatly diminished. Awarding the County position will continue the drain on wages, balancing the budget on the backs of the Employees and their families. As to the rising cost of health care, the Union agreed to split the health insurance premium increase. Because of the size of the 2014 increase, the lion's share of the County's wage increase will simply cover the Employee's share of premium increase. Exhibit 61 show that with a 1% wage increase no Deputy will receive much of a wage increase, and most plans result in small take home paychecks. The arbitrator cannot award the amount demanded by the County on this fact alone. Arbitrators in the past recognized that when external comparisons create inequity in a geographical region, the internal pattern must be secondary to the external pattern, citing arbitral authorities. And labor is like any other purchase an employer makes. Deputies have recently left employment with the County for higher paying jobs.

County Argument

The Union's wage demands cannot be justified by an examination of the economic climate of the region, the comparable Counties, the ability of the County to attract and retain

employees or the negotiated settlements in Benton County. Significantly, the Union increases cannot be supported given the internal equities between County employees.

The appropriate comparison group is at some issue in this case. The Union presented data on six Counties in the east central area of Minnesota; some contiguous to Benton County and some not. The County presented data on the four Counties in Region 7W and the four Counties in central Minnesota that are contiguous with Benton County. The County data on the nine Counties used in its compensation study were considered by the arbitrator in past arbitrations, citing *LAW ENFORCEMENT LABOR SERVICES, INC. AND BENTON COUNTY, BMS CASE NO. 00-PN-1261 (OLSON, 2000)*. Counties were generally assigned to various Regional Development Commissions with other Counties that share similar market conditions and constitute a general economic region. They might be reasonably expected to provide competitive pressure on each other on each of the public sector employers within the region, citing arbitral authorities. However, Benton County is an anomaly in Region 7W. It is the smallest in area, only half the region average. It is the most rural with 58% of the average density. It has the smallest population, less than one half the average of Region 7W. It is contiguous to Morrison County in Region 5 and Mille Lacs County in Region 7E.

The Department of Revenue utilizes “tax capacity” as a good indicator of County economic health. Benton County has one of the lowest tax capacities in the area, the lowest in Region 7W at 25% of average. The per capita tax capacity is the lowest at 80% of average. The County tax capacity decreased at an above average rate from 2012 to 2013. It is only 43% of average for the contiguous Counties. It is greater than that of Mille Lacs and Morrison but greatly less than that of Sherburne and Sterns. Benton County’s taxes are 38% of the Region 7W average, but the County per capita tax levy is the highest at 20% above average. Sterns and Sherburne Counties have higher Standard and Poor’s ratings than Benton County, reflecting they have a stronger fiscal condition. Benton County’s per capita tax levy is above the contiguous County average and the Compensation Study Counties average. The tax burden is increasing. Its tax capacity is 26% above the Region 7W average, 20% above contiguous Counties and 22% above the Study average. In 2012 the County’s second largest taxpayer, VERSO paper mill, permanently closed after an explosion. Taxable market value fell \$15 Million and property taxes fell \$753,582. County tax capacity has fallen about \$5 Million, a reduction of 16 percent. In 2014 Quad/Graphics announced the closing of its plant in St. Cloud with a loss of 280 jobs, which will have a negative impact on Benton County revenue.

The growth rate in compensation cost has outpaced the growth rate of the tax base yearly since 2008. Employee compensation and benefit increase costs, without wage increases, equate to a need to raise the property tax levy at least 2-3 percent. The County has the lowest tax capacity in Region 7W, below the contiguous and Compensation Study average, and its per capita tax burden is above the comparison County averages. It has the sixth highest tax rate on a \$200,000 house in the State. Region 7W is no longer a valid comparison group. Benton County is in a more dire financial condition than the majority of the Counties in the contiguous and Compensation Study groups.

Not all political subdivisions can pay above average wages. Financial condition is the most appropriate determinate of which jurisdictions should pay less than average. If the

employer's financial health ranks below average, so too should the wages it pays, citing *LAW ENFORCEMENT LABOR SERVICES, INC. AND THE CITY OF OSSEO, BMS CASE NO. 98-PN-475 (GALLAGHER, 1998)*. Benton County pays slightly below the average for Deputies if Region 7W is eliminated. Employer Exhibit BK. pp. 111-114 (Average except Sterns, Sherburne and Wright Counties), Union Exhibit 54). External comparisons provide no support for the Union's wage demand.

Since the passage of the Local Government Pay Equity Act arbitrators placed the greatest weight on internal consistency in wage patterns rather than external market factors for essential employees. Absent compelling circumstances, deference to internal relationships is the prevailing rule, citing arbitral authorities. There are no compelling circumstances to deviate from the internal settlements here. The County has six bargaining units in addition to the Deputies. The Licensed Supervisors and arbitrator recognized and accepted the internal pattern of settlements as the general adjustment for a three year agreement in *TEAMSTERS LOCAL NO. 320 AND BENTON COUNTY, BMS CASE NO. 14-PN-0551 (JACOBS, 2014)*. Non-Licensed Supervisors settled for the internal wage pattern after the July 18th hearing. All of the other County bargaining units have settled for the County's final position on wages for 2014, 2015 and 2016. Yet the Union brazenly asserts it should receive an additional 5.5%. Even the *CARVER COUNTY, FOGELBERG Award* cited by the Union ultimately determined to follow the established settlement pattern, noting to allow one group a greater increase through arbitration could possibly have an adverse impact on morale. Treating the Deputies differently here will undermine the morale and the County's credibility with its employees. The Union has failed to carry its burden to establish compelling reasons for its exorbitant proposal.

As to market forces, the County has no problem attracting and retaining qualified individuals for Deputy positions. Only two left for wage related reasons from 2009 through 2013 and they had wage increases while serving on the drug task force. In filling the vacancies there were 186 applications and 15 interviews. This demonstrates the County is not experiencing a need to deviate from the internal pattern of settlements. The Union's data on comparable Counties shows that for 2014 the County internal pattern places the Deputies within the salary range of the externals. The wages also fall within the Compensation Study ranges. Since the wages fall within the ranges of comparable Counties, the external comparisons fail to provide a compelling reason to deviate from the internal compensation relationships.

The Union's wage demands would subvert the LGPEA. The County bargaining units have the same salary schedule, reflecting the historic maintenance of a consistent pattern of wage settlements. The Union demand would raise the Deputies 5.5% above the top of the County's pay equity compensation structure. This would force the County out of compliance with the LGPEA under a three year or two year scenario. The minimum requirement is an underpayment ratio of 80% or more. The County wage proposal for either a three year or a two year contract would be 90.68 and is in compliance. Under a three year contract and Union position the ratio is 76.83; for a two year contract and Union position it is 73.08. Under both scenarios the Union position results in non-compliance under the LGPEA. That would expose the County to substantial liability of reductions of five percent state aid or a fine of \$100 per day. Minn. Stats. §471.999 (2012). There would be additional costs in increasing salaries for female classes to maintain compliance. An award for the Union position will cost the County much more than

\$179,460. The arbitrator must consider the LGPEA equitable compensation relationships in fashioning an award. An award that is in conflict with it or causes a penalty to be incurred has no force or effect and must be returned to make it consistent with the law. This mandates denial of the Union position.

Union arguments about County finances are misleading. An adequate fund balance for taxes received by the end of June is the primary source of funds during the first five months of the next fiscal year. This funds expenditures and avoids short term borrowing. An adequate fund balance is not in itself reason to favor the Union wage proposal. Maintaining a fund balance should not resort in a penalty compelling it be spent on raises. That an employer can spend money doesn't mean that it should, citing *HENNEPIN COUNTY AND HENNEPIN COUNTY DEPUTY SHERIFF'S ASSOCIATION, BMS CASE NO. 10-PN-0776 (JACOBS, 2010)*. The arbitrator should reject the spendthrift argument by the Union. The Union arguments ignore the fact the County does not have the ability to absorb an increase in tax burden. The high County property taxes already discouraged a St. Cloud builder from future developments in the County. The per capita debt is higher than average and workers compensation premiums increased 35 percent. Jail costs are above average. Financial circumstances weigh against a decision to impose increased expenditures.

The current salary schedule is the result of negotiations. Arbitrator Olson maintained the County wage structure. *LAW ENFORCEMENT LABOR SERVICES, INC. AND BENTON COUNTY, BMS CASE NO. 04-PN-359 (OLSON, 2004)*. Union wage demands would require, through arbitration, a different structure than was negotiated with five other bargaining units and undermine the process of collective bargaining in Benton County. It would be a windfall to the Union and allow the other bargaining units to whipsaw the County in negotiations. The wage outcome most likely through negotiation in the absence of arbitration mandates a rejection of the Union final position. Those proposed wage increases would not have resulted from the negotiation process at work within the County as demonstrated by the negotiated settlements.

Discussion

Because the award at Issue 9, above, set the term of the agreement at two years the wage issue is limited to 2014 and 2015. For those years, as pointed out by the Union, the difference between the Parties in dollar amounts is approximately \$20,000 in 2014 and \$37,000 in 2015.

The financial ability of the County to pay these amounts is not as dire as the County argues. There has been a loss of a large taxpayer in the VERSO plant closure and the impending Quad/Graphics plant closure can negatively affect the County economy. The County's relatively small population and geographic size along with its weaker tax capacity, compared to some of its neighboring Counties, requires that its spending and budgeting be cautious. Its per capita debt is higher than average and it has other increased workers compensation premiums and above average jail costs. It has a large road project coming with up to a \$4 Million shortfall. However, those economic realities are offset by other economic realities. The relative population and size of the County has not been shown to have changed much over the years and it is in relatively the same position as it has been historically. See, e.g. *LAW ENFORCEMENT LABOR SERVICES, INC. AND BENTON COUNT, BMS CASE NO. 04-PN-359 (OLSON, 2004)*, *LAW ENFORCEMENT LABOR SERVICES,*

INC. AND BENTON COUNTY, BMS CASE NO. 05-PN-504 (HOLMES, 2005). Also, it is an economic reality that the national and State economies have been recovering. The County does have an adequate fund balance and need not necessarily increase taxes, although the County is correct in that on-going costs normally should not be funded by general fund reserves. It could designate those funds for its other projects. The record indicates a 2012 fund balance was \$9,364,407. It had an unassigned balance of 66%. That was at the end of the year after receiving half the yearly taxes and state aides. More current fund balance data is not in the record. The dollar difference between the Parties is not large. The County acknowledged at the hearing that it could pay the wage increase sought by the Union, but argued that it should not have to, given other considerations in interest arbitration. The County does have the ability to pay the wage increase requested by the Union. The County's economic conditions do not prevent it from paying those amounts.

The County's strongest arguments and position is when it comes to internal comparables and pay equity under the Minnesota Local Government Pay Equity Act. All of the other bargaining units in the County have settled for the County's position on wages. While it is true that this does not dictate what the outcome should be in this case, it is a very good indication of what a negotiated settlement might have been. An award for the Union would upset that internal pattern. This internal pattern is entitled to a great deal of weight.

More importantly, the undersigned is persuaded on this record that the Union proposal would run afoul of the Pay Equity Act, while the County's does not. The County presented four different exhibits for the proposed wages of each Party for three and two year terms. All resulted in the conclusion that the Union proposal of a 3% yearly increase put the County out of compliance with the required underpayment ratio of 80 or higher. The Union two year proposal results in 73.08; a three year contract would be 76.83. The County two year proposal results in 90.68; three years is 90.68. The Union recognized in its briefing that the State of Minnesota has a computerized software program that is required to be used in doing the pay equity calculations. There is nothing in the record to suggest that the County did not properly follow that formula and program. The Union contests the results but cannot say where the County went wrong (Union Brief p. 7). The Union presents its own analysis contending only one male class would change from below predicted pay to at or above predicted pay, and then calculated the underpayment to be 86.37 and within compliance. However, in comparing the Union analysis to the actual reports of the County, the results of the two approaches differs but there is nothing to show that the County did anything wrong in applying the computer software developed by the Minnesota Department of Employee Relations that is used to ensure compliance with the Pay Equity Act. Interest arbitration cannot result in an award that is in violation of the law. The Pay Equity Act analysis here is a strong, if not compelling, reason not to select the Union wage proposal.

The Union points out that the Pay Equity Act is only one of the factors to be considered in an award. That is true. If both Parties' proposals were in compliance with the Pay Equity Act then other factors would by necessity have to be determinative. But here the Union's proposal is out of compliance. There is also a very strong internal settlement pattern favoring the County. The Union also argues that a pattern of internal settlements does not automatically mean that pattern has to be followed. That is true, and there is some variation in this interest arbitration award in that the duration in Issue 9, above, awards a two year contract rather than a three year

contract for the reasons stated therein. The duration of the contract does not implicate the Pay Equity Act.

The Parties have pointed to different external comparables to support their positions. The County's are of lesser value because they include Counties such as Sterns and Sherburne which it admits are stronger economically than Benton County. The County argues that its wage proposal keeps the Deputies within the various ranges of comparables so there is no compelling need to accept their proposal. The Union's argument is that compared to those Counties most like Benton, it is steadily losing ground and going from above to below average in wages. Under the County proposal this would be the first time that Benton County Deputies would be paid below the average of these comparables. Those Counties are Chisago, Isanti, Pine, Mill Lacs, Kanabec and, Morrison. These are the same Counties that were found to be the appropriated comparison group for wages in *LAW ENFORCEMENT LABOR SERVICES, INC, AND BENTON COUNT, BMS CASE NO. 04-PN-359 (OLSON, 2004)*, *LAW ENFORCEMENT LABOR SERVICES, INC. AND BENTON COUNTY, BMS CASE NO. 05-PN-504 (HOLMES, 2005)*. Those comparables also show that the other law enforcement bargaining units in Benton County are at or near the top in wages. The Union makes a solid argument that these are the best external comparables to use and that they support the increase it proposes. The Union further argues that the difference in the Benton County law enforcement units when compared to externals shows there is an internal inequity with the Deputy unit. This is also true. But the wage increase under the County proposal is the same for all units and lessens the impact of this internal inequity argument of the Union. While these external comparisons favor the Union, they do not outweigh the internal settlement pattern and the Pay Equity Act requirements.

A similar conclusion has to be drawn concerning the Union's arguments about the cost of living and impact of health insurance premium payments by Union members. It is true that the wage increase proposed by the County is not supported by the rise in the consumer price index by 8.5% since 2010 while wages for Deputies increased only 2.5% during that time. Much if not most of the County's wage proposal increase will also be offset by the increase in health insurance premiums the members will pay. But at least currently all the other bargaining units and their members face the same CPI pressures and the same wage increase as proposed by the County. If the Deputy unit was to be considered alone and the settlement pattern did not exist then the CPI argument would be favorable for it. But there is no apparent reason to draw a distinction for the Deputy bargaining unit when it comes to the cost of living. Thus, the CPI does not support the Union proposal in the face the internal settlement pattern and the Pay Equity Act. The same applies to the payment of health insurance premiums.

Another factor that weighs in the County's favor is its ability to attract and retain qualified employees in the bargaining unit. There have only been two Deputies who left for higher pay in recent years and that was after their temporary assignment to a higher paying drug enforcement unit. The positions were readily filled and there were 186 applications with 15 interviews in 2013.

The Pay Equity Act, a strong internal pattern of settlement, and a general ability to meet the market price of labor favors the County proposal and outweighs the external comparables, cost of living increase and the County's ability to pay which would otherwise favor the Union.

Award: The County wage proposal for 2014 and 2015 is awarded.

Based upon the evidence and arguments presented by the Parties, I issue the **AWARD** contained herein.

Dated August 21, 2014

Paul Gordon, Arbitrator