

BEFORE THE ARBITRATOR

In the Matter of the  
Arbitration between

STATE OF  
MINNESOTA

And

BMS Case No. 14-PN-0525

MINNESOTA LAW ENFORCEMENT ASSOCIATION

**INTEREST ARBITRATION AWARD**

Appearances:

Attorney Carolyn J. Trevis, Assistant State negotiator, on behalf of the State of Minnesota.

Attorney James Michels, Rice, Michels & Walther, LLP, on behalf of Minnesota Law Enforcement Association.

**Authority of Arbitrator:**

Minnesota Law Enforcement Association, hereinafter referred to as MLEA, is the exclusive bargaining representative for approximately 700 employees in 13 job classifications covering all non-supervisory sworn law enforcement officers employed by the State of Minnesota, hereinafter referred to as the State in various departments such as the Department of Natural Resources, the Department of Public Safety, the Department of Corrections, and the Department of Commerce. The job classifications include but are not limited to State Trooper, Conservation Officer, Special Agent, Fugitive Specialist and Commerce Insurance Fraud Specialist. The State Patrol Troopers constitute roughly two-thirds of the bargaining unit, with Conservation Officers making up about 22% of the unit.

The parties have negotiated a series of collective bargaining agreements throughout the years, the duration of said agreements being two years mirroring the State's fiscal biennium, running from July 1 of each odd-numbered year to June 30 of the next odd-numbered year. The parties entered into negotiations for a successor agreement for fiscal years 2014 and 2015. They resolved all but four issues. The Commissioner certified all four issues to binding interest arbitration. Prior to the hearing, the State requested, and the MLEA agreed to permit it, to withdraw Issue 3, a proposal with respect to the Early Retirement Incentive – Article 29. During the hearing the Employer requested and the MLEA agreed to withdraw Issue 4, Injury on Duty Benefits – Article 17. The only issues to be decided are the wage rates for each year of the agreement, fiscal years 2014 and 2015.

The parties selected the undersigned from a panel provided by the BMS. Hearing was held in Shoreview, Minnesota at 9:00 a.m. on September 4 and 5, 2014. No issues of negotiability were raised. All parties were given the opportunity to appear, to present testimony and evidence, and to examine and cross-examine witnesses. Additional amended exhibits were submitted. The parties completed their post-hearing briefing schedule on October 3, 2014 and the record was closed. Now, having considered the evidence adduced at the hearing, the arguments of the parties, the contract language, and the record as a whole, the undersigned issues the following Award.

### **FINAL POSITIONS OF THE PARTIES**

#### **Wages:**

#### **Union Position – Article 28 – Wages**

General Wage Adjustment FY 2014

Effective on the first day of the fifth pay period of Fiscal Year 2014 **3%** wage adjustment to all steps of all job classifications

Effective on the first day of the fifth pay period of Fiscal Year 2015 **3%** wage adjustment to all steps of all job classifications

Effective on the first day of the twenty-fifth pay period of Fiscal Year 2015 **2%** wage adjustment to all steps of all job classifications

#### **State Position – Article 28 – Wages**

Effective on July 1, 2013, **3%** across the board (ATB) General Adjustment

Effective on July 1, 2014, **3%** across the board (ATB) General Adjustment

Employees shall convert to the new compensation grid as provided in Section 1.B and 2.B (conversion). If an employee is over the new maximum, the employee does not receive an increase.

In sum, the State believes that the wage rates should be adjusted by 3% on the first day of each year in strict adherence with the adjustments that it voluntarily negotiated with its other internal bargaining units. It believes that external market comparisons should not be a decisive factor. The MLEA's position is that external market factors should be considered and should result in the arbitrator's awarding an additional wage enhancement of 2% at the conclusion of fiscal year 2015 to address a significant disparity in wages that has developed between the MLEA officers and Officers in the comparison group.

## **APPLICABLE LEGAL STANDARDS**

Arbitrators in interest arbitrations in Minnesota generally consider the following factors: (1) internal pay equity, (2) external market comparisons, (3) the employer's ability to pay, (4) the cost of living and purchasing power, and (5) other economic factors such as the difficulty in hiring, turnover, retention rates, state of the national, state and local economies, etc. They may also consider other relevant factors such as bargaining history.

## **BACKGROUND**

In addition to the unit which is currently in interest arbitration, there are several other certified bargaining units represented by several other labor organizations with whom the State must bargain. In June of 2013, the State reached an agreement with five bargaining units represented by AFSCME Council 5 and the unit represented by the Minnesota Association of Professional Employees with wage offers identical to that set forth in the instant offer to the MLEA. Three other essential bargaining units also agreed shortly thereafter to these terms: the supervisors, the correctional officers, and the radio dispatchers. The State then granted these wages to its unrepresented employees including State Patrol and DNR Division of Enforcement Supervisors. In late fall of 2013, the State reached agreement with the residential teacher and engineering bargaining units, with the state registered nurse bargaining unit agreeing to the wage proposals in early winter. The engineers and nurses bargaining units are also essential units. At the time of this arbitration, twelve of thirteen bargaining units represented by eight of the nine unions representing approximately 35,000 employees had agreed to the State's wage offer. The wage increases agreed to were authorized by Governor Dayton.

## **SUMMARY OF THE STATE'S ARGUMENTS:**

According to the State, the crucial factor to be considered is the internal pattern established with the other MMB-bargained bargaining units. It cites arbitral precedent to the effect that the internal pattern is the principal but not exclusive factor relied upon by most Minnesota interest arbitrators in deciding issues of wages, benefits, and other terms and conditions of employment. The State also points out that the Minnesota statutes governing compensation and bargaining considerations require internal equity. Of the five factors to consider in determining compensation, four are related to internal comparisons. The internal factors usually "trump" the external factors and the external factor is only relevant when high turnover, recruitment problems or other such problems exist. This is not the case with the instant bargaining unit.

The State cites arbitral precedent to argue that external factors are only relevant if the bargaining unit employees are substantially underpaid as compared to proper external comparables or there is a "compelling reason" to depart from the internal pattern. Here there is no showing that State Troopers are substantially underpaid. State witness Rush testified that there is a low turnover rate in the unit and there is no market factor causing employees to seek employment elsewhere nor are there problems with recruitment.

Deviations from the consistent internal pattern can also have serious negative consequences to the employer, including a negative impact on labor relations with the unit that settled, lower morale for these employees and a “whipsawing” effect on bargaining. Not only would a union be more reluctant to settle early, but essential units will be more motivated to seek interest arbitration. Maintaining an internal pattern is far and away the most important factor in securing voluntary settlements.

According to the State, applicable law does not require consideration of the CPI and purchasing power and should not be determinative in this case. The State also notes that MLEA’s offer includes pay increases beyond the general adjustments. Most MLEA employees moving within the range will receive an additional 4% each year as a progression step on top of the 3% general increase. As of September 2013, about 40% of the unit was eligible to receive an automatic step increase. The general wage increases along with the step increases are well above any cost of living increase.

The State cites a recent award by Arbitrator Jay C. Fogelberg relating to the State’s registered nurses. Denying the MNA’s request for an inequity adjustment above the internal wage pattern, he relied upon the fact that the vast majority of the bargaining units had settled for the 3% increase in each year and the fact that external factors like retention did not support any extra adjustment despite a 10% turnover rate.

The State also asserts that its offer is generous when compared to general increases other Minnesota public sector groups negotiated in 2013 and 2014. Of the 11 cities reported to the League of Minnesota Cities survey, 64% reported increases of 2%. Looking at the MLEA’s data, in 2013 (a year where the State already agreed to a 2% increase on January 2, 2013 and another 3% effective July 2, 2013, 18 of 26 police units settled for 2%. For 2014, many are settled at around 2% or not yet settled.

State agencies have severe budget constraints and any additional increases impact their ability to conduct their operations. This factor, i.e., the ability to efficiently manage and conduct their operations, must be considered in any interest arbitration award. Agencies are prohibited from spending money that they do not have and the legislature has accepted this as a basis for rejecting an interest arbitration award that would have created an adverse financial impact on the State and thereby put public safety in jeopardy. The agencies have not received additional funds from the legislature for the compensation of current employees and are prohibited from requesting new money. The State’s proposed increases have to be absorbed within the existing agency budgets in addition to significant additional costs of the mandated increases in the State-as-the-employer pension contributions for law enforcement personnel. The State points to numerous reductions which the various agencies have made or are planning to make given the existing budget pressures.

Although the State concedes that the MLEA’s final wage proposal to slightly delay the first 3% adjustment and the second 3% adjustment to pay for the additional 2% at the very end of the biennium results in lower cost for this two year period, the position

has significant “tails” and is not funded. Since the agencies have receive no appropriations for the next biennium and the amount of future appropriations is uncertain, the two million dollar “tail” for the next biennium will be overwhelming and will seriously impact public services. Such a settlement is unprecedented and the State has never voluntarily agreed to a general adjustment like this in the past with any bargaining unit and would not do so at this time with this unit.

The State maintains that there is no evidence that MLEA employees are substantially underpaid so as to warrant a deviation from the established internal pattern and therefore, MLEA arguments based upon external comparisons should be ignored. Even assuming that external comparisons should be considered, the MLEA analysis is flawed because it focuses only upon wages and not total compensation. No consideration was given to other benefits available or for any concessions the comparison group parties may have made in exchange for higher base wages. If overtime compensation, the tax benefits from deferred compensation, additional money contributed to health insurance benefits, and the early retirement incentives are considered, the State offer is most reasonable. None of the comparables but the State offer such a rich benefit to new hires and only three offer some variation to a limited number of law enforcement personnel with most programs being phased out. The MLEA also ignores the various premium assignments with specialty pay attached. It uses the rate of pay for the lowest paid State Trooper with no premium pay as the “comparable.” In the same vein, it ignores premium assignments in other classifications such as Natural Resource Specialist 3 and Commerce Insurance Fraud Specialist, both of which are higher paid than an entry-level State Trooper.

The State also stresses that there is no requirement that the State’s compensation of its law enforcement personnel be at any fixed percentage of the Stanton V group or other comparables utilized by the parties. At best the Stanton V is a guide and not an absolute guarantee. Even if the Stanton V comparisons are utilized, the State compensation is at about 89.3% of the Stanton V average which is not out of line with metro police departments. The State notes that it is not losing law enforcement personnel to suburban police departments. Thus no measurable disparity exists even assuming the 2006 compensation analysis set forth by the MLEA.

According to the State, this bargaining unit has no retention or recruitment problems and therefore no compelling reason to receive a deviation from the internal pattern. The turnover rate in this unit is extremely low. There is no evidence that MLEA bargaining unit employees are leaving due to the pay offered.

Finally, the State alleges that recent bargaining history with the MLEA supports the State’s final offer. For at least the last five contracts, the general adjustments have been consistent across most bargaining units and with the MLEA since 2003. No market adjustments were made, but rather there was an elimination of the bottom step on the salary schedule and the establishment of a new top step at 3% in the 2006-2007 biennium. There was no market issue as alleged by the Association. The parties made a similar adjustment in the next round of bargaining, the 2008-2009 biennium, to make the

top step 4%, identical to all of the other steps on the schedule for State Troopers. Furthermore, not all members of the bargaining unit received these increases, only those at the bottom or top step. In its offer here, the MLEA claims that every single bargaining unit member should receive an extra 2% general adjustment because of the “market.”

In conclusion, the State has settled with 98% of its unionized work force, including five other essential units. The pattern has been set and there is no compelling reason to offer this unit anything other than what the other unit received.

## **SUMMARY OF THE MLEA’S ARGUMENTS:**

MLEA insists that the relationship between the wages of MLEA members to wages of employees in similar positions outside of state service must be considered in establishing wage rates for fiscal years 2014 and 2015. It cites arbitral precedent where arbitrators have rejected the argument that they are bound to strictly adhere to an employer’s “pattern” wage settlement. It cites precedent to the effect that they are not bound solely by the Employer’s wage pattern to the exclusion of all other factors. The State would have the arbitrator ignore all other factors and consider only the purported internal wage pattern. This is contrary to the requirements of Minnesota Statutes and common sense. It cites arbitral precedent to suggest that internal wage pattern is only one factor. Here the State has remained completely inflexible and its tactics must not be allowed to stand. The award must reflect all of the relevant factors and the MLEA’s offer does just this, while the State’s offer does not.

With respect to bargaining history, two prior arbitrations in 1988 and 1992 have had significant impact. These awards held that the appropriate external comparison for this unit were patrol officers employed by police departments from metropolitan suburbs (Stanton V), and the University of Minnesota, that the existing wage relationship in comparison was not reasonable and needed improvement, and that compensation comparison considered by arbitrators should be based on wages but not health care costs or retiree benefits. The two awards lead to an agreement in 1994 reaffirming the comparison group and the established components of compensation that arbitrators would consider. Expressly, the value of the early retirement incentive was not specifically referenced in the agreement. At that time in 1994, a joint compensation study completed a wage assessment gathering wage and other information regarding elements of compensation such as the employee’s cost of health care, retiree insurance and specialty premiums. However, the only components of compensation that the parties agreed to use in their “career earnings” formula were base wages, longevity pay and education incentive.

The MLEA maintains that over the next 10 years, the parties utilized the ratio between the career earnings of a State Trooper and the average of the career earnings for the metro comparison group and a University of Minnesota patrol officer. According to the MLEA, in four out of five settlements, the parties negotiated to include some enhancement above and beyond the cost of living adjustments, including restructuring the

salary schedule, implementing the job classification studies (Hay Studies), adding money to the top step of the schedule and making other adjustments to improve the ratio of the Trooper career earnings to the career earnings of these comparables. As of the 2002-2003 biennial agreement, the bargaining unit finally achieved parity with the external comparables. This relationship to the comparables over this ten year period was clearly one of the primary factors in reaching a series of negotiated settlements. Acknowledging that the next ten-year period was overwhelmingly influenced by difficult economic times, MLEA notes that there was no wage increase for fiscal years 2004 and 2005 based upon an arbitral award in which the arbitrator found that “inability to pay” trumped other factors, although the suburban metro police officers continued to receive increases during this period.

According to the MLEA, in the next two rounds of bargaining, the State agreed to restructure the MLEA wage schedule to increase the Trooper career earning relative to the external comparables and this was memorialized in a Letter of Agreement appended to the labor agreement. Despite the State witness’s attempt to characterize the adjustments as being agreed to solely to bring balance to the wage schedule without consideration of the external market, the MLEA notes that the evidence does not support this. There would have been no need to do a wage study and execute the new Letter of Agreement committing to use the external market to “guide negotiations” if the only goal was to balance the steps in the existing grid. Furthermore, MLEA members paid for the adjustments by agreeing to delay implementation of the across the board wages increases that other State employees were receiving, which it would not have done had the State been solely interested in schedule adjustment.

The next negotiation occurred during the recession where the State insisted on no wage increases for both fiscal year 2010 and 2011 and for the first year and a half of the following biennial, fiscal years 2012 and 2013. Again, in recognition of the poor economic climate and the ruling of Arbitrator Miller that “ability to pay” trumped all other factors, the MLEA accepted the same wage package as other state employees.

The MLEA submits that the bargaining history for the last twenty years is clear. When the State had money to offer wage increases in both years, the parties relied on market considerations to provide wage enhancements targeted to narrow the earnings gap with the agreed upon comparables. When the State did not have money, the ability to pay trumped the external market as a factor. It stresses that there have been no exceptions.

Consideration of external compensation relationships is mandated by state law. While the statute does not specify the weight to be given to each factor, all factors must be considered and none can be ignored. MLEA asserts that the State’s arguments against consideration of external factors are absurd and should be rejected. The suggestion that failure to follow the internal pattern results in internal strife among bargaining units should be rejected based upon the bargaining history set forth above and the fact that there was no problem when Minneapolis police officers received significant market adjustments and went beyond the parameters of its internal negotiation pattern. Moreover, arbitrators have rejected this argument by employers in the absence of any real

evidence that one union's wage increase was based on a prior arbitration award granted to another bargaining unit. The State's attempt to distinguish its granting of market increases to certain AFSCME classifications based solely on hiring/retention problems must fail based on the statutory mandate to consider external comparisons. MLEA has shown that the turnover rate has risen steadily and significantly since 2011 from one employee in 2011 to twelve employees in 2014. A ten percent turnover problem in this unit (the number which the State claimed it might be forced to address) for this unit would mean that there is no problem until 70 employees per year are leaving at a cost of \$50,000 per new employee for training and outfitting.

MLEA disputes the State's contention that the 1994 and 2006 Letters of Agreement do not require external consideration because the language provides that external comparisons are only "a guide." A factor ceases to be a guide if it is ignored. Citing testimony from various State administrators that they do not have the money to pay the 3% per year wage increases in the State's offer, the MLEA points out that its offer costs nearly half a million dollars less than the State's proposal during this biennium.

MLEA argues that the existing internal and external compensation relationships as measured by metrics are unreasonable. It cites arbitral precedent in support of this contention. Arbitrator Berquist observed that while the wages for state job classifications in other State bargaining units have kept up with the average wages of their metro counterparts, the wage ratio of Troopers to other metro wages was only 87%. Despite the parties embarking on a ten year attempt through negotiations to "catch up," as of the end of 2012, the ratio of Trooper to metro wages was 86.3%. The ratio of Trooper career earnings to University of Minnesota patrol officer career earnings for the same time period was 88.9%. MLEA notes that the State compensates non-law enforcement employees at or near the University of Minnesota average, but also compensates its law enforcement supervisors closer to what University of Minnesota and metro supervisors earn, State Patrol and DNR Supervisors earning 96.3 % of the Metro average with Chiefs of both agencies earning 101.9% of the metro average. The disparity exists throughout the bargaining unit. Currently experienced BCA Special Agents earn less than detectives with 16 years in law enforcement.

Today a Trooper earns \$246,071 less than a University of Minnesota patrol officer over a 25 year career. This is not a reasonable compensation relationship. The State attempts to hide this reality by asserting that comparability should be measured by total compensation, i.e., health care costs and retiree insurance. The argument should be rejected because historically the parties have based their negotiations on wages and not total compensation. The parties have not included retiree insurance because they have never agreed upon the value of the insurance. Inclusion of retiree insurance would constitute a significant change in the measuring stick that the parties have used for years in successful resolution of several labor agreements. Even including retiree health insurance would only reduce the 25-year career earning disparity from \$246,000 to \$220,000 and not materially change the unreasonableness of the current compensation relationship. If post-employment benefits like retiree health insurance are to be

considered, so should pension benefits, which completely offset the value of the retiree's health insurance even if that insurance is valued at the unfunded post retirement amount.

The MLEA claims that the best predictor of what should have been achieved at the bargaining table is what has previously occurred. Again it points to past bargaining history where delays in the implementation of across the board increases were used to offset the additional cost of the external market considerations. The Association's offer does exactly this. It is also consistent with the Berquist and Reynolds awards. The modest enhancement proposed would only push the ratio of State Trooper to average metro law enforcement wage to 91%. It would also preserve the historical practice of bargaining toward the external market when the State's finances permit this.

The MLEA does not disagree that the State's offer of 3% and 3% is generous, but alleges that it cannot be considered in a vacuum. It notes that from 2006 to the present, the average wage increases for metro police officers have been 2.46% per year while the State's wage averages for the same period have only been 2.13%. The MLEA proposal only raises this to 2.33%. During the same period the State agreed to wage enhancements for bargaining unit members over and above its wage pattern even when the wage pattern was 3.25% and 3.25% for each year of that biennium, which is even more generous than the State's current offer.

According to the MLEA, its position is affordable and manageable. Its offer is less expensive than the State's for the years in question. The only real issue is the State's ability to absorb the additional costs in future biennia. According to the MLEA, when the Legislature convenes to consider the 2015-2016 biennium it will have the benefit of a projected budget surplus of \$2.6 billion. The MLEA's offer costs less than five-one hundredths of one percent of this surplus. This is a statistically insignificant amount and is less than the supplemental appropriations provided by the Legislature to employ additional MLEA members during the present biennium. Moreover, the State's most recent economic update is more favorable than the conditions when the \$2.6 billion was projected. The taxpayers' burden is projected to be the lowest in 25 years.

MLEA asserts that its proposed additional 2% is the same as the market adjustments provided by the State to other employees in this biennium. These adjustments were not delayed until the end of the contract. The MLEA's proposal results in the lowest percentage of new money during the biennium for all of the State's bargaining units (Hubinger Number for MLEA being 3.93%, average for other units at 4.55%). Even the additional tails costs are within the parameters of the percentage increase in base cost (Merriam Number for MLEA being -7.71%, average for other units -6.69%). The State's ability to pay should not be confused with its desire to pay.

The MLEA asserts that an award adopting the State's request to reject external compensation relationships and grant the same wage increase that the other internal bargaining units settled for would undermine both the past and future collective bargaining process for MLEA members. It believes that the evidence overwhelmingly

demonstrates that its position reflects the terms and conditions upon which the parties should have reached a voluntary agreement.

## DISCUSSION

This case reflects stark contrasts in how the parties view the most reasonable offer. The State relies almost exclusively upon the strong internal pattern that it has established with its other bargaining units, including the essential units stressing that there is no reason to agree to an additional market incentive. Conversely, the MLEA relies almost entirely upon the external market comparisons and a bargaining history which the State disputes in pertinent part. The undersigned is not the first interest arbitrator faced with such contrasting positions. The outcome, however, depends upon an analysis of **all** of the statutory factors.

Ability to Pay – The MLEA is correct in that there is a difference between the ability to pay and the willingness of the State to pay. The evidence presented at hearing, especially the testimony of the State’s administrative witnesses, makes it clear that the Legislature has asked the various agencies in which MLEA members are employed to do the same with less funds, i.e., to absorb additional costs including additional wage increases into set budgets. Given the uptick in economic conditions, both nationally and regionally, and the *projected* budget surplus for the next biennium, it is concluded that the State has the ability to pay both offers.

Internal Pay Equity - There is no question that a strong settlement pattern exists internally within the State’s other bargaining units, i.e. they have all accepted the 3% and 3% across the board wage increase offered by the State. The only exception to this internal pattern appears to be salary adjustments to certain AFSCME positions, specifically eight employee classes, which received adjustments in their salary ranges over and above the 3% across the board increases. The Minnesota Management and Budget listed the reason for these additional adjustments as internal inequities and market situations. The State provided its rationale for making these particular adjustments. The classifications involved certain trades and health care employees, such as LPNs. The employees receiving the adjustments were at the top of the range and the State had either been experiencing a high turnover, e.g., 21% for LPNs, or difficulty in finding and retaining certain trade classifications. This strong internal settlement pattern favors the State’s offer.

External Comparables - The external comparables and comparisons clearly support the MLEA’s offer. Notably prior to the recession in 2008, in the 2002-2003 biennium, this bargaining unit sought and achieved some form of parity with the University of Minnesota patrol officers through schedule and wage adjustments. This was accomplished over an approximate 10 year period of voluntary agreements. During the difficult economic times that followed, this bargaining unit saw its position erode again as compared to the Metro and University of Minnesota comparables., That depending upon the comparison, it is significant that the ratio of Trooper wages as of 2012

compared to these external Metro or UM law enforcement employees ranged from 86% to 89%, depending on which group is compared. The comparison of 5-year and 25-year career earnings with the external comparables, when considering the base pay of at least the State Troopers, also favors the MLEA's offer. This is only a slight preference with respect to non-Trooper bargaining members of the unit.

Bargaining History – In the more recent bargains, the parties disagree as to the reasons for making schedule adjustments to this unit's salary schedule which other bargaining units did not receive. They agree that on the schedule for State Troopers, they eliminated the bottom step on the salary schedule and established a new top step at 3% in the 2006-2007 biennium and then increased the top step to 4%, in the 2008-2009 biennium. The MLEA maintains that this was reverting to the old bargaining pattern of paying "catch-up" with the external comparables, which it "paid for" by delayed implementation, while the State claims that it was merely making equity adjustments in the Troopers internal schedule so that raises would be equal at each step, stressing that not everyone in the unit received the schedule adjustment increases. Probably both reasons favored making internal adjustments to the Troopers schedule during those bargains and the undersigned does not conclude that the bargaining history favors either offer.

Purchasing Power/Cost of Living - The State's offer of 3% and 3% is more than sufficient to address any purchasing power/cost of living arguments inasmuch as the COLA for 2013 is 1.5%.

Other Economic Factors - The undersigned agrees with Arbitrator Fogelberg in BMS Case No. 10-PN-423 (Carver County) p.12, that a pattern of internal settlements alone should not dictate the outcome of any interest arbitration, but that where a consistent voluntary settlement pattern is demonstrated, it cannot be ignored. He observed that permitting the bargaining unit in question which represented 1.5% of the employer's work force in that case, to receive the additional compensation in the form of a 4.5% step movement and permitting it to be the only bargaining unit to obtain it through arbitration would quite possibly have an adverse effect on the morale of the other bargaining units.

While the undersigned would not go so far as Arbitrator Jeffrey Jacobs did in BMS Case No. 14-PN-0551, Benton County, p. 9, in ruling that there must be a compelling reason for granting additional increases or adjustments when there is a strong internal pattern of settlements, the factors that he cites for determining whether such a deviation is warranted are appropriate. There has been no change in the duties of the bargaining unit which would justify such an additional adjustment. There is insufficient evidence to establish that the State has a hiring or a retention problem with employees in this bargaining unit despite evidence that the State Troopers in this unit are being paid anywhere from 13% to 11% less than their Metro and UM counterparts. The situation is not as dire with the BCA special agent pay as compared to the Metro comparables until one looks 16 years out. (Union Exhibit 67). The real question here is whether or not this underpayment extends across all the positions in the bargaining unit to such a sufficient degree so as to suggest that these employees are being left behind economically. While there are bona fide concerns with the degree of underpayment that at least the Trooper

classification is experiencing vis-à-vis their counterparts, given the lack of hiring and retention problems, it cannot be concluded that a market adjustment in the form that the MLEA is proposing is warranted.

Another, and perhaps more significant, reason for rejecting the MLEA's proposal, is the very form and nature of the proposal itself. It is an-across-the-board increase for every member of the bargaining of an additional 2% with delayed implementation to minimize the cost of the increase. Even accepting the MLEA's version of the bargaining history, there is no evidence of the parties agreeing to this type of increase across the board. Rather, they have adjusted the wage schedule for Troopers or other classifications experiencing market difficulties. If indeed the true test is what the parties would have agreed to voluntarily, the State has established that it would never have voluntarily agreed to such an additional across-the-board per cent increase for every member of the unit. While the MLEA has provided evidence of anticipated future surpluses which could be used to pay for the increase, this is just speculation and conjecture at this point. Under these circumstances, it is imprudent to mandate that the parties "kick the proverbial can down the road" by adopting an offer that will require payment from future budgets.

In conclusion, internal equity, public policy, and other economic factors strongly support the State's final position on this issue.

### **Summary of Conclusions**

The State's wage proposal offer is awarded.

### **AWARD**

**Effective on July 1, 2013 the State's offer of 3% across the board (ATB) General Adjustment is awarded.**

**Effective on July 1, 2014, the State's offer of 3% across the board (ATB) General Adjustment is awarded.**

Dated this 28th day of October, 2014, in Madison, Wisconsin.



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Mary Jo Schiavoni, Arbitrator