

IN THE MATTER OF ARBITRATION)	INTEREST ARBITRATION
)	
between)	
)	
Blue Earth County, Mankato,)	Non-Licensed Essential
Minnesota)	Correctional Officers
)	
-and-)	
)	BMS Case No. 14-PN-0203
Minnesota Public Employees)	
Association, Roseville,)	
Minnesota)	November 5, 2014
))		

APPEARANCES

For Blue Earth County

Susan K. Hansen, Attorney, Madden Galanter Hansen, LLP,
Plymouth, Minnesota
Robert W. Meyer, County Administrator
Krista Amos, Human Resources Director

For Minnesota Public Employees Association

Robert J. Fowler, Attorney, Fowler Law Firm, Little Canada,
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Joe Ditsch, Attorney, Fowler Law Firm, Little Canada,
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Tom Perkins, Vice President
Darrin Ewert, Custody Officer, Steward
Kurt Konz, Custody Officer
Jim Fox, Consultant, Fox Lawson & Associates, St. Paul,
Minnesota
Kip Bruender, County Commissioner

JURISDICTION OF ARBITRATOR

Minnesota Public Employees Association (hereinafter referred to as the "Union" or "MNPEA") is the exclusive representative for non-licensed essential Correctional Officers employed by Blue Earth County (hereinafter referred to as "County" or "Employer"). This bargaining unit includes 5

Sergeants, 1 Records Coordinator, 1 Part-Time Custody Officer, and 27 Full-Time Custody Officers.

The County and the Union (hereinafter referred to as the "Parties") currently operate under the terms of a previously negotiated collective bargaining agreement effective from January 1, 2013 through December 31, 2013.

The Parties entered into negotiations for a successor collective bargaining agreement. The Parties were unable to during bargaining and mediation to resolve all of their outstanding issues. As a result, on January 7, 2014, the Bureau of Mediation Services ("BMS") received a written request from the Union to submit the unresolved issues to conventional interest arbitration. On April 1, 2014, the BMS Commissioner determined that the following items were certified for arbitration pursuant to Minn. Stat. § 179A.16, subd. 2 and Minn. Rule 5510.2930:

1. Insurance - What changes, if any, should be made to the amount contributed by the Employer for each year of the CBA? - Article 15
2. Duration - What should the duration of the CBA be? - Article 25.1
3. Sick Leave - What changes, if any, should be made to the sick leave language? - Article 16
4. Sick Leave - What changes, if any, should be made to this section? - Article 16.5D
5. Wages - What changes, if any, should be made to the salary structure in the form of a general increase and/or a market adjustment, for each year of the CBA? - Article 18 & Appendix

6. Wages - Step Schedule Modification: What changes, if any, should be made to the salary schedule? - Article 18.1 & Appendix
7. Lead Correction Worker's Compensation - What changes, if any, should be made to the Lead Workers Compensation Rate? - Article 18.4
8. Shift Differential Rates and Hours - What changes, if any, should be made to the Shift Differential Compensation rates and hours? - Article 18.7
9. Post Licensure - What should the language be, if any, regarding employment opportunities outside of the Employer for Post License Employment? - Article 18.4

The Parties' final positions with respect to the nine impasse issues that were certified by the BMS Commissioner were due in this proceeding within 15 days from the date the Commissioner certified the matter for arbitration. The 15 day timeline is a mandatory statutory requirement outlined in Minn. Stat § 179A.16, subd. 3. In this regard, the Commissioner's Certification to Arbitration stated the Parties' final positions were due no later than February 20, 2014. The Commissioner's Certification to Arbitration states:

The failure of a party to submit timely final positions in a conventional arbitration matter shall be noted by the arbitrator(s) and may be considered by the arbitrator(s) in weighing the testimony, evidence, and overall good faith behavior of that party with respect to the issues in dispute.

(Employer Exhibit #2; Minn. Rule 5510.2930, subpart 6). The County's final positions were timely submitted on February 19, 2014. (Employer Exhibit #3). The Union's final positions were not submitted until March 31, 2014, some five weeks later.

(Employer Exhibit #5).

The Arbitrator, Richard John Miller, was selected by the Parties from a panel submitted by the BMS. The County asks the Arbitrator to consider the fact the Union's final position was five weeks late in weighing the testimony, evidence and overall good faith behavior of the Union with respect to the issues in dispute. The Arbitrator has considered the County's position in this regard, but finds that the County was not prejudiced by the Union's delay in submitting their final positions. The County has adequate time to prepare their arbitration case even though the Union's final positions were delayed by five weeks.

Prior to the start of the hearing, the Parties resolved three of the certified issues. These resolved issues, as numbered by the BMS are: 1) Insurance; 2) Duration (agreeing on a two-year agreement, effective January 1, 2014 through December 31, 2015); and 4) Sick Leave, Article 16.5D.

A hearing in the matter convened on June 3, August 18 and September 24, 2014, at the County's Historic Courthouse, 204 South Fifth Street, Mankato, Minnesota. The Parties were afforded full and ample opportunity to present evidence and arguments in support of their respective positions.

The Parties' representatives elected to file electronically post hearing briefs, with an agreed-upon postmark date of October 16, 2014. The post hearing briefs were submitted in accordance with those timelines. The Arbitrator then exchanged

the briefs electronically to the Parties' representatives on October 17, 2014, after which the record was considered closed.

ISSUE THREE: SICK LEAVE - WHAT CHANGES, IF ANY, SHOULD BE MADE TO THE SICK LEAVE LANGUAGE? - ARTICLE 16

POSITION OF THE PARTIES

The current contract language in Article 16.5B, Sick leave Usage, states the following:

B. Sick leave may be used to provide care to a member of the employee's immediate family (including minor dependent children not living in the employee's household) when the following conditions are met:

1. when the employee is the only person available to care for the child;
 2. sick leave will only be used for illness or injury;
- and

The County seeks to update Section 16.5B to comply with the 2013 and 2014 legislative amendments to Minnesota Statute 181.9413 through the inclusion of the following language:

Sick leave may be used by an employee for their own or a child's actual illness, injury, medical condition or to attend medical or dental appointments. Sick leave may also be granted to an employee to care for a sick family member due to an illness or injury for such reasonable periods as the employee's attendance with the family member is necessary. The amount of sick leave an employee may use for this expanded group is up to 160 hours of accrued sick time. Family member in this expanded category is defined as: spouses, siblings, adult children, parents, mother-in-law, father-in-law, grandchild, grandparents and stepparents.

The Union proposes to retain the current contract language in Section 16.5B or, in the alternative, proposes language that at least complies with Minnesota Statute 181.9413 as follows:

Employees may use accrued sick leave due to an illness or injury to an employee's child, adult child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent, for reasonable periods of time as the employee's attendance may be necessary, on the same terms upon which the employee is able to use sick leave benefits for the employee's own illness or injury. Sick leave for this purpose shall be for the time actually required by the employee, shall not be withheld arbitrarily or unreasonably, and shall be charged against the employee's sick leave account. Employees may use accrued sick leave for Safety leave for the Employee or relative of the Employee as described for sick leave use above. Safety leave is defined as leave for the purpose of providing or receiving assistance because of sexual assault, domestic abuse, or stalking.

AWARD

The Union's alternative language for inclusion in Section 16.5B is awarded.

RATIONALE

The framework of the Employer's position is modeled after the 2013 and 2014 legislative amendments to Minnesota Statute 181.9413. The amendments to Minnesota Statute 181.9413 allow employees to use sick leave benefits to care for a sick family member and the statute provides that the employer may limit such use of sick leave to no less than 160 hours of accrued sick leave. The 2013 amendment defined family member as spouses, siblings, adult children, parents, grandparents, and stepparents. The 2014 amendment expanded the definition of family member to include mother-in-law, father-in-law and grandchild.

The Union objects to the County's position because the County desires to impose a new limitation on the number of banked sick leave hours (160) that Union members can use. The County presents this limitation as conformance with Minnesota Statute 181.9413, but this is not so. Because the statute trumps contract language, Union members can presently use their banked sick leave for any purpose provided by the statute, without limitation. Thus, the statute permits, but it does not require, employers to cap the number of hours available for use on extended family members. The Employer's position seeks to add a cap that is not currently present in the contract.

There are eight bargaining units in the County. They include 95 Courthouse employees represented by AFSCME Council 65, 119 Human Services employees represented by AFSCME Council 65, 7 Assistant County Attorneys represented by AFSCME Council 65, 28 Highway employees represented by IUOE Local 49, 17 Deputies represented by LELS, 17 Dispatchers represented by Teamsters Local 320, 18 Probation Officers represented by Teamsters Local 320, and 33 Correctional Officers represented by MNPEA. There are also 87 non-union employees working for the County.

Four of the County's bargaining units representing 75% of the unionized workforce agreed to update their sick leave articles based on legislative amendments to Minnesota Statute

181.9413, including the AFSCME Council 65 Courthouse unit, AFSCME Council 65 Human Services unit, LELS Deputies unit, and Teamsters Local 320 Probation Officers unit. The County's final position seeking language that the amount of sick leave an employee may use for this expanded group is "up to 160 hours of accrued sick time" is identical to the language voluntarily agreed to by the LELS Deputy unit. None of the other bargaining units agreed to same contract language as proposed by the County. Thus, the County has not met its burden of establishing an absolute identical internal pattern with respect to this issue.

ISSUE FIVE: WAGES - WHAT CHANGES, IF ANY, SHOULD BE MADE TO THE SALARY STRUCTURE IN THE FORM OF A GENERAL INCREASE AND/OR A MARKET ADJUSTMENT, FOR EACH YEAR OF THE CBA? - ARTICLE 18 & APPENDIX

ISSUE SIX: WAGES - STEP SCHEDULE MODIFICATION: WHAT CHANGES, IF ANY, SHOULD BE MADE TO THE SALARY SCHEDULE? - ARTICLE 18.1 & APPENDIX

POSITION OF THE PARTIES

The County's position includes a 2.5% general wage increase in 2014, a 2.5% general wage increase in 2015, no market adjustment and maintenance of the existing salary structure. The Union's position is for a 2.5% general wage increase in 2014 coupled with a 2.5% market adjustment, a 2.5% general wage increase in 2015 coupled with a 2.5% market adjustment, and modifying the salary structure by eliminating the bottom two

steps and adding two 3.0% steps (Step 11 and 12) at the top of the salary schedule.

AWARD

The County's position is sustained.

RATIONALE

There are four well-established factors that most interest arbitrators apply in arbitration. Those factors are: 1) the employer's ability to pay for the union's proposals since it is assumed that the employer can afford their own economic proposals; 2) internal equity among the workforce; 3) external or market comparisons; and 4) other economic or non-economic factors, such as Consumer Price Index ("CPI") and attraction and retention of employees.

The first factor for review is the Employer's ability to pay for the Union's wage proposals. This is essentially a non-issue since the Arbitrator awarded the Employer's wage proposals based upon the other three factors that interest arbitrators usually apply in arbitration. In any event, PELRA requires arbitrators in interest arbitration proceedings to consider the "obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations." Minn. Stat. § 179A.16, subd. 7. The Arbitrator has adhered to this statutory requirement.

Based on the County's costing model, the Union's wage position for 2014 and 2015 will cost \$111,563.35 more than the cost of the County's final position for 2014 and 2015. (Employer Exhibits #69-71). While these costs become fixed permanent ongoing costs, the County could afford them. The County budget in 2014 is \$85.9 million. The 2014 estimated increased cost of the Union's proposal of \$51,777 is just four hundredths of one percent (.04%) of the total 2014 budget. The County desires to point out that of the \$90,172,870 fund balance at December 31, 2012, only 3.9% of it was unassigned. (Employer Exhibit #72). However, 3.9% of \$90 million is still \$3.51 million. Just a year later, in 2013, the County had 7% of \$102,639,619 unassigned, or \$7.18 million. In fact, the County could afford to pay these increases just from its "windfall" savings from the recent exemption to State sales and use tax of over \$495,000 from just the year 2014. (Union Exhibit #8).

The County's Annual Financial Report, Year Ending December 31, 2012, stated, "Blue Earth County ranks among the lowest per-capita spenders of Minnesota's 87 counties." (Union Exhibit #10, p. 23). Further, the report stated, "Blue Earth County property tax per capita remains lower than the eight-county average." Id. While one cannot fault the County's conservative approach to budgeting with the goal of maintaining core services and infrastructure through cautious budgeting

strategies, the County clearly has the ability to pay the Union's proposed wage and market increases had they been warranted.

As to the second factor of internal comparisons among County employees, the record is clear that the County has historically maintained a uniform wage system County-wide. Every classification within the County has been evaluated pursuant to the Decision Band Method ("DBM") of job evaluation to determine the comparable Band and Grade of the classification in relationship to other classifications within the County. Every classification falling within a specific Band and Grade are assigned to a specific salary grade. Employees are paid wages according to that specific salary grade and the accompanying step structure regardless of their status as a non-union employee or membership in a particular bargaining unit. The salary ranges have been uniform across the County. There are no exceptions. (Employer Exhibits #49, 50). Historically, from at least 1992 through the present, the County has maintained a consistent pattern of general wage increases and step structures for all of its employees for more than 20 years. (Employer Exhibits #47, 49, 50). The County's position in this proceeding is absolutely consistent with the internal wage pattern. The County's wage position for 2014 is identical to the internal County settlement pattern set by six

of the eight Blue Earth County bargaining units, including the AFSCME 65 Courthouse unit, AFSCME 65 Human Services unit, IUOE Local 49 Highway unit, LELS Deputies, Teamsters 320 Dispatchers and Teamsters Local 320 Probation Officers. The County's wage position is also identical to the wage increases provided to non-union employees. These settlements represent 90.5% of the County's total workforce. The AFSCME Council 65 Assistant County Attorneys and the MNPEA Correctional Officers are the only units without wage settlements for 2014. (Employer Exhibits #46, 49).

The County's wage position for 2015 is identical to the internal County settlement pattern set by 74.5% of Blue Earth County union employees, including the AFSCME 65 Courthouse unit, AFSCME 65 Human Services unit, LELS Deputies, and Teamsters Local 320 Probation Officers. The AFSCME Council 65 Assistant County Attorneys, IUOE Local 49 Highway employees, Teamsters 320 Dispatchers and non-union employees are not settled for 2015. (Employer Exhibits #46, 49).

Based upon this historic relationship, all County bargaining unit employees with settled contracts received 2.5% general wage adjustments in 2014 and 2015. Non-union employees received the same compensation package as bargaining unit employees in 2014 and they are expected to receive the same package as bargaining unit employees in 2015.

While the Union proposes market adjustments and changes to the salary structure, no other County employees have received any market adjustment or wage increase beyond the 2.5% general wage increase negotiated for 2014 and the 2.5% general wage increase negotiated for 2015. In addition, no other County employees have received any modification to the salary structure for 2014 or 2015. All bargaining unit employees eligible for step movement on the salary step structure continued to move up the 3.0% steps.

The Union seeks a market adjustment for Union members and focused much of their presentation on the Parties' Memorandum of Agreement ("MOU") dated August 7, 2012 to have the positions of Custody Officer and Custody Sergeant participate in the reclassification process in 2012.

The County's Reclassification Process Policy ("Policy") establishes that reevaluations are based on significant changes in the job duties and responsibilities required of the position. Position Band and Grade are determined based on an analysis of a position's job duties and responsibilities and other factors:

A classification level is determined based on the decision-making authority, duties, and responsibility of a given job, using the Decision Band™ classification methodology. Positions are classified based on the job duties and responsibilities assigned and exercised. In addition, the job's level is based on knowledge required for the position, work direction received, decision making, organizational impact of actions, supervision of others, software or other technology knowledge required by the

position, key contacts, and access and relationship to sensitive and/or confidential information.

(Employer Exhibit #57A). The Policy also sets forth a comprehensive process by which employees may request to have their positions reclassified. Fox Lawson has been the consultant hired by the County for many years with respect to the determination of classification and reclassification of positions within the County using the DBM.

In the Spring of 2012, the County and the Union negotiated over the terms of a successor collective bargaining agreement to that one that expired December 31, 2011. The Union first presented its proposals for that contract, which included a "discussion item" of "Wage study." (Employer Exhibit #59A). County Administrator Robert Meyer testified that he understood that the Union wanted the County to take a look at "wages." Mr. Meyer's notes from the negotiation session includes "want a Fox Lawson Review." Id. However, when Mr. Meyer summarized the tentative agreement on April 5, 2012, he changed the language from "wage study" or "Fox Lawson Review" to "MOU on Reclass." Id. As he suggested he would during negotiations, Mr. Meyer drafted the MOU that would compel a Fox Lawson reclassification review.

Attached to the successor collective bargaining agreement, effective January 1, 2012 through December 31, 2012, was the MOU

drafted by Mr. Meyer, dated August 7, 2012. The MOU is "relating to the reclassification process." The terms of the MOU were:

1. The County agrees to have the positions of Custody Officer and Sergeant participate in the reclassification process in 2012.
2. A committee will meet to prepare and review the materials. The committee will be made up of three (3) union members and two (2) supervisors in the Sheriff's Department.
3. The committee will meet to complete the initial portion of the Reclassification review form which asks for employee input.
4. While the job description is developed and maintained by the County, (sic) The committee will review the job description and provide feedback of recommended changes to accurately reflect the functions of the positions.
5. The committee will be allowed to present in front of the Reclassification Committee prior to forwarding the material to Fox Lawson for final review.
6. This Memorandum of Agreement represents the full and complete agreement between the parties regarding this matter.

The Union argues the positions of Custody Officer and Custody Sergeant are improperly evaluated and it believes the positions should be reclassified upward. The Union introduced extensive arguments regarding the duties, responsibilities and risks of the Custody Officer position. All of this information was specifically presented to Fox Lawson in detail, with employees input, as part of the 2012 reclassification process. (Employer Exhibits #67). Fox Lawson evaluated the information and determined that the positions were appropriately evaluated, with Custody Officer being properly rated at B23 and

Custody Sergeant being properly rated at B32. (Employer Exhibits G, H).

The Union understood a quid pro quo for accepting the County's 2012 wage proposal, which was accepted by all other County employees, was that the County would study the wages earned by the Custody Officers and compare them to the wages paid by the comparison region counties. The Union, however, claims that the County never intended to do such a study, despite permitting the Union to believe that it was going to look to wages.

Custody Officers and Custody Sergeants were notified via memo dated December 20, 2012 that Fox Lawson recommended no change in the Band and Grade for their positions. (Employer Exhibits G, H). No employees filed grievances alleging a violation of the August 2012 MOU. Moreover, in mid 2013 MNPEA settled the January 1, 2013 through December 31, 2013 collective bargaining agreement with the County knowing the results of the Fox Lawson reclassification decision. (Employer Exhibit #1, p. 17). Therefore, the Union's arguments alleging a violation of the August 2012 MOU are stale and not persuasive.

This Arbitrator has previously ruled in a Blue Earth County interest arbitration proceeding involving essential employees who are employed in an elected official's office or department (Assistant County Attorneys) that the statutory factors found in

the elected officials' salary and budget appeals statutes are not applicable in an interest arbitration proceeding:

The Union argues that there is justification for the Arbitrator to intervene now because the provisions of Minn. Stat § 388.18 (related to the standards that a district court must apply in a salary appeal by the county attorney) should apply in an interest arbitration. Minn. Stat. §388.18, Subd. 6 states that "[t]he county attorney, if dissatisfied with the action of the county board in setting the amount of the county attorney's salary or the amount of the budget for the office of county attorney, may appeal to the district court on the grounds that the determination of the county board in setting such salary or budget was arbitrary, capricious, oppressive, or in unreasonable disregard for the responsibilities and duties of said office, and the county attorney's experience, qualifications, and performance."

The statutory process for a salary appeal is much different than interest arbitration. The focus on a statutory budget appeal is the record of the county board's action and whether it establishes (or failing to establish) that the county board considered the statutory factors in Minn. Stat § 388.18, Subd. 6 in setting and maintaining salaries for County employed attorneys. Amdahl v. County of Fillmore, 258 N.W.2d 869 (Minn. 1977); Stensland v. County of Faribault, 365 N.W.2d 224 (Minn. 1985).

In a more recent case, the Minnesota Court of Appeals In the Matter of the Appeal of the Crow Wing County Attorney on his 1993 Office Budget, as the said Budget relates to the Compensation of Assistant County Attorneys, 552 N.W.2d 278, (Minn. App. 1996) dealt with the legal issue whether Minn. Stat. § 388.18, Subd. 6 conflicts with Minn. Stat § 179A.07, Subd. 4, part of the Public Employment Labor Relations Act ("PELRA") governing this interest arbitration.

The Appeals Court reasoned "that the legislature meant for these two provisions - Minn. Stat § 388.18 and PELRA - to co-exist, rather than for the latter provision to supersede the other by implication." The Appeals Court concluded:

Reading Minn. Stat § 388.18 and PELRA together, we believe that the legislature intended a two-tier

system to determine salaries for the staff of the county attorney's office. Practically, this means that the employees get "two times at bat" with regard to their salary negotiations, one with the union and county board and the other with the county attorney and district court.

Crow Wing County Attorney, 552 N.W.2d 278, 280 (Minn. App. 1996). While this statutory process under Minn. Stat. § 388.18 may affect salaries, it does not supersede the procedures under PELRA. In fact, the Minnesota Court of Appeals in the Crow Wing County case noted that this statutory salary appeal is a different "tier" in a "two-tier system" to determine salaries for the staff of the county attorney's office with the PELRA process being one of the tiers. In other words, the statutory standard applies only to district courts that review a budget appeal. It is not the standard that applies to arbitration under PELRA and LGPEA (Local Government Pay Equity Act). Consideration of the statutory factors in the budget appeal process under Minn. Stat S 388.18 for Assistant County Attorneys is outside of the Arbitrator's authority in this interest case. The Assistant County Attorneys can get "two times at bat" as they have the statutory right in district court to have their appeal heard and considered by a judge using the statutory factors mandated by Minn. Stat § 388.18 and relevant court decisions if they are displeased by the results of this PELRA interest arbitration proceeding.

County of Blue Earth and AFSCME Council 65, BMS Case No.

12-PN-0334 (Miller, 2012), pp. 8-10. These same principles apply in the present case. As an elected official, the Blue Earth County Sheriff is covered by an elected official's salary and budget appeal statute which, similar to the statute applicable to the Blue Earth County Attorney, requires the County Board to consider certain statutory factors such as the responsibilities and duties of the office and the elected official's experience, qualifications and performance in setting

the individual's salary. Minn. Stat § 387.20, subd. 7. The Sheriff has a statutory right to appeal the salary set by the County Board based on the County's application of the statutory factors to his salary, budget and the salary of individuals within his office. In 2013 the County Attorney availed himself of this statutory option on behalf of the Assistant County Attorneys and prevailed in District Court, and in 2014 prevailed in the Minnesota Court of Appeals. (Union Exhibits #51, 52).

This has not occurred in the Blue Earth County Sheriff's Office. As this Arbitrator recognized in County of Blue Earth and AFSCME Council 65, BMS Case No. 12-PN-0334 (Miller, 2012), the standards utilized in elected officials salary and budget appeals under Minn. Stat. § 388.18, Subd. 6 ("...the determination of the county board in setting such salary or budget was arbitrary, capricious, oppressive, or in unreasonable disregard for the responsibilities and duties of said office, and the county attorney's experience, qualifications, and performance.") are not applicable in interest arbitration proceedings. Moreover, there are no known interest arbitrators that have adhered to the standards utilized under Minn. Stat. § 388.18, Subd. 6, dealing with Assistant County Attorneys, in any essential employee interest arbitration case. Until the state legislature amends Minn. Stat. § 388.18, Subd. 6 to include other essential employees under PELRA, the standards utilized

under this statute only apply to Assistant County Attorneys and not to Custody Officers.

To the extent that external data is relevant for this case, the appropriate comparison group for the County is the historical Economic Region 9 comparison group. This comparison group includes the counties of Brown, Faribault, Le Sueur, Martin, Nicollet, Sibley, Waseca, and Watonwan. Arbitration precedent establishes that this is the appropriate external comparison group for Blue Earth County.

The Parties, however, recognize to some extent, that since Blue Earth has a population of 65,528 for 2013, which is almost twice as large as next county in Economic Region 9 (Nicollet), and is growing at a faster population rate than any of the other counties, and that the City of Mankato is a large hub in the County, that Blue Earth may no longer compare with the smaller counties in Economic Region 9. For example, the Union's new comparison group is composed of Beltrami, Clay, Crow Wing, Itasca, Nicollet, Olmstead, Otter Tail, and Winona counties. The primary reason for this new comparison group are changing county populations, the opening of the new County jail and a change in the exclusive representative for the bargaining unit.

The County, on the other hand, proposed retaining all of the Economic Region 9 counties, with the addition of regional

hub counties of Beltrami, Chisago, Clay, Crow Wing, Goodhue, Otter Tail, Rice, and Winona.

It would appear that the Parties are very close in choosing a comparability group that includes some or all of the Economic Region 9 counties and some larger counties with large hubs such as Mankato. Unfortunately, neither Party presented their revised or amended comparability groups during bargaining for this contract. This Arbitrator has recognized the importance of parties having the opportunity to attempt to reach an agreement on a comparison group in negotiations before an arbitrator intervenes and chooses an appropriate comparability group. Clearly, the Parties should have the first opportunity to let the bargaining process work toward reaching an agreement on comparables before intervention by an arbitrator. Until such time, the best comparability group are those counties in Economic Region 9.

The external settlement data supports the County's position. The County's position for 2.5% general wage increases in 2014 and 2015 exceeds the average general wage increases provided in the comparison Economic Region 9 counties. (Employer Exhibit #91).

The County's position results in an extremely competitive wage with the average minimum and maximum wage rate paid to Custody Officers in the comparison counties. County Custody

Officers will exceed the average minimum and maximum wage paid in the comparison counties based on the County's final position. (Employer Exhibit #92). A comparison of Step 7 indicates County Custody Officers will exceed the average Step 7 wage by \$1.45 per hour based on the County's final position. (Employer Exhibit #94).

The fourth consideration recognized by interest arbitrators is other economic or non-economic factors, such as Consumer Price Index ("CPI") and attraction and retention of bargaining unit employees.

Despite the low CPI since 2000, Custody Officers have received general wage adjustments and step increases that exceeded the CPI. For example, even when the County's general wage adjustment dipped below the CPI for 2011, a reality faced by all Minnesota public sector employers due to the economy, the general wage increases and step increases provided to Custody Officers still exceeded the CPI by 27.9% from 2000 to 2013. (Employer Exhibit #76).

The Union claims that Union members need a market adjustment based upon employee turnover experienced in the unit. The turnover rate is approximately 50%. The Union believes that the turnover problem is rooted in low wages, and they have been working diligently for years to try and find a mutually agreeable method for granting a market increase, to no avail.

Thus, according to the Union, the Arbitrator has a duty to correct this injustice.

Unfortunately, the Union's belief that the high turnover rate is a function of low wages being paid to Custody Officers was not substantiated by the evidence. The MNPEA unit includes many part-term employees who have left employment with the County for full-time employment elsewhere. Many of the Custody Officers who have left employment with the County pursued other types of careers or accepted employment closer to their homes. (Employer Exhibit #79; Revised Employer Exhibit #79).

The evidence does not establish that most Custody Officers are leaving the County because of low wage rates as suggested by the Union. Moreover, when the County has filled vacancies in the Custody Officer position, the County has received many applications per vacancy. (Employer Exhibit #78). This data is indicative of the County's competitive wage and benefits package. There is no evidence, nor any justification, to support a market adjustment for Custody Officers based on the turnover rate.

ISSUE SEVEN: LEAD CORRECTION WORKER'S COMPENSATION - WHAT CHANGES, IF ANY, SHOULD BE MADE TO THE LEAD WORKERS COMPENSATION RATE? - ARTICLE 18.4

POSITION OF THE PARTIES

The current contract language in Section 18.4 reads as follows:

18.4 When a ranking officer in the Blue Earth County Sheriff's Department is not on duty, a Correctional Officer will be assigned in the jail division, based on practice, to the position of lead worker. This employee will assign and direct the work of the other employees on the shift with the assistance of on-call shift supervisors during critical incidents.

Currently the policy assigns the senior Correctional Officer on the shift to the lead worker position. For all hours when a Correctional Officer is the lead worker on a shift without a supervisor on duty, a lead worker employee will be paid lead worker pay of two dollars and fifty cents (\$2.50) per hour in 2011.

Officers unable to perform full custody officer duties because of medical or administrative limitations will not be eligible for lead worker pay in the absence of a sergeant. Therefore, the next most senior custody officer on duty will have responsibility for lead worker and collect lead worker pay as determined by Jail Administration.

The County proposes to retain the current contract language in Section 18.4. The Union seeks to increase Lead Worker pay to \$4.00 per hour in 2014 and 2015.

AWARD

The Union's position is sustained.

RATIONALE

The basis for the Union's position to increase the Lead Worker payment to \$4.00 per hour is the \$4.00 per hour Lead Worker payment in the LELS Deputies contract and Teamsters Local 320 Dispatcher contract. Historically, Deputies and Dispatchers have received a higher hourly Lead Worker payment than Custody Officers. This difference is primarily related to the

organizational structure of the Sheriff's Office. There are more supervisory positions in the Jail than in Dispatch. While there is a supervisor (Sergeant) scheduled on each shift in the Jail, this is not the case in Dispatch. Deputies are sworn personnel who work independently in the field. Deputies who are assigned as Lead Workers must make critical decisions in the field versus assigning and directing the workforce.

Despite these differences in the organizational structure, Lead Correction Officers are part of the same paramilitary structure in the Sheriff's Office. They are responsible for making many of the same decisions as to assigning and directing the workforce and also making other critical decisions in the Jail. Thus, in order to provide for equal treatment of employees in the Sheriff's Office, Lead Corrections Officers should also receive the same Lead pay as their counterparts. This maintains internal equity among all Sheriff s Office law enforcement employees.

ISSUE EIGHT: SHIFT DIFFERENTIAL RATES AND HOURS - WHAT CHANGES, IF ANY, SHOULD BE MADE TO THE SHIFT DIFFERENTIAL COMPENSATION RATES AND HOURS? - ARTICLE 18.7

POSITION OF THE PARTIES

The Union seeks to add a new economic benefit providing a \$0.75 per hour shift differential for all hours worked between 5:00 p.m. and 5:00 a.m. The County is opposed to any shift differential payment.

AWARD

A \$0.25 per hour shift differential for all hours worked between 5:00 p.m. and 5:00 a.m.

RATIONALE

As the proponent of this new economic provision, MNPEA has the burden of establishing a compelling reason(s) for the addition of the shift differential payment. The Union has met this burden.

County law enforcement employees, including Custody Officers, have never received shift differential. While there is an internal pattern to not grant shift differential payment, there is also an overwhelming external pattern among Economic Region 9 counties to provide this benefit. While arbitrators usually adhere to internal settlement patterns among employees when dealing with fringe benefits, a noted exception to that concept is when the external comparables are so overwhelming as to nullify the internal relationship.

Since the last arbitration for this bargaining unit in 2009, more employers in Economic Region 9 have granted a shift differential. The trend is to grant this extra compensation. Now, a majority of the counties surrounding Blue Earth County (five out of eight) provide a shift differential at some level. Among contiguous counties, only Nicollet and Faribault counties fail to provide this benefit. The amount of differential

granted does vary considerably, from nothing up to and extra dollar per hour. The hours included in this extra pay varies considerably, too, from just weekend to 3 p.m. to 6 a.m. seven days per week.

Admittedly, the award of \$0.25 per hour for shift differential is at the lower end of the comparable counties. It simply represents a floor in which the Parties can negotiate higher amounts in successor contracts.

The award is also affordable to the County in that the estimated cost for shift differential for the two-year duration of this contract is only \$13,140, compared to \$39,420 had the Union's position been awarded.

Shift differential certainly increases the take-home pay for employees, so considering the fact that the majority of other comparable employees receive this benefit puts Union members even further behind.

Shift differential also helps in recruitment, retention and it compensates employees for the additional health risks associated with shift work.

The current shift differential contract language is a "me too" clause with the County Deputies, in that if a shift differential is granted to the Deputies, this bargaining unit would get the same differential pay. Now, the Union seeks to push the issue on its own since this unit is represented by a

different Union. The Union has presented compelling and convincing reasons to justify the inclusion of shift differential for this new Union.

ISSUE NINE: POST LICENSURE - WHAT SHOULD THE LANGUAGE BE, IF ANY, REGARDING EMPLOYMENT OPPORTUNITIES OUTSIDE OF THE EMPLOYER FOR POST LICENSE EMPLOYMENT? - ARTICLE 18.4

POSITION OF THE PARTIES

The Union proposes the following new contract language:

Employer shall allow unit employees, if they are POST Licensed, to work in part-time outside employment jobs that require a POST licensure.

The County is opposed to the Union's proposal. The County objects to this issue and submits this is a matter outside the jurisdiction of the Arbitrator pursuant to Minn. Stat. § 179A.16, subd. 5. By submission of this final position, the County does not waive its right to challenge the arbitrability of this matter.

AWARD

The County's position is sustained.

RATIONALE

Whether or not the County's position that a restriction on outside employment is an inherent managerial right pursuant to Minn. Stat. § 179A.07, subd. 1, and is therefore not negotiable and non-arbitrable, is subject matter properly before the courts and not the Arbitrator. The courts have the absolute jurisdiction to make this statutory determination.

Meanwhile, there is compelling evidence in the record to sustain the Employer's position. The Blue Earth County Sheriff has never allowed full-time Custody Officers, Custody Sergeants or Dispatchers to engage in outside law enforcement employment as a peace officer. The basis for the Sheriff's restriction relates to liability concerns for the County as the primary employer. In the event of a lawsuit arising out of or related to the employee's outside employment, the County, as the primary employer who is responsible for training, would in all likelihood be named as a defendant in the lawsuit.

In addition, the Sheriff's procedures are consistent with the County's personnel policies which require prior approval for outside employment. County policy establishes that an employee's position with the County is the employee's primary employment. The policy requires employees to obtain prior approval from the County Administrator before engaging in any employment activity where there may be an actual, potential or creation of the appearance of a conflict of interest. The County Administrator has deferred to the Sheriff's judgment on the issue of outside employment for law enforcement employees.

The Parties are to be complemented on their professional conduct at the hearing and the comprehensiveness of their oral presentations and their written post hearing briefs.

Richard John Miller

Dated November 5, 2014, at Maple Grove, Minnesota.