
<p>In the Matter of Interest Arbitration</p> <p style="text-align: center;">Between</p> <p>LAW ENFORCEMENT LABOR SERVICES, INC., LOCAL #159 (“LELS” or “Union”)</p> <p style="text-align: center;">and</p> <p>THE COUNTY OF SHERBURNE, MINNESOTA, ELK RIVER, MINNESOTA (“County”)</p>	<p>*</p>	<p>BMS Case No. 14-PN-0713</p> <p>Court Transport/Security Officer/Licensed Correction Officers Bargaining Unit</p> <p><u>Award and Opinion of:</u></p> <p style="text-align: center;">Lon Moeller, Arbitrator</p>
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Preliminary Statement

An interest arbitration hearing was held on October 24, 2014, at the Maple Room Conference Room, at the Sherburne County Government Center, located in Elk River, Minnesota. The parties appeared through their designated representatives and offered evidence through exhibits and the testimony of witnesses. The record of the proceedings was closed upon the Arbitrator’s receipt of the parties’ post-hearing briefs on November 7, 2014.

Appearances

For the Union:

Adam Burnside, Business Agent and Spokesperson
 Scott Tillman, Steward
 Kelly Sobon, Steward

For the County:

Greg Wiley, General Counsel, Sheriff’s Civil Division, and Spokesperson
 Felix Schmiesing, County Commissioner
 Steve Taylor, County Administrator
 Roxanne Chmielewski, Human Resources Director

I. Background and Facts

This interest arbitration arising under Minn. Stat. §179A.16 involves the County's court security/transport officer/licensed correction officers bargaining unit. Thirty-one employees are included in the bargaining unit. The parties' most recent collective bargaining agreement went into effect on January 1, 2011 and expired on December 2013 (County Exhibit Book I, Exhibit 4). Prior to 2011, the court security/transport officer/licensed correction officers job classifications were covered by the County's collective bargaining agreement with the patrol deputies and investigators.

The following items were certified by the Minnesota Bureau of Mediation Services for arbitration:

- Article IX – SENIORITY, Section 9.5 – Should the June 1st date be eliminated?
- Appendix A – MISCELLANEOUS COMPENSATION PLAN PROVISIONS – Call Back Time – Should employees be compensated for travel time when called back?
- Article XXIII – TRAINING, 23-- Training – How should travel time be compensated for off-site training?
- Appendix A-1 – Wages for 2014 – What should be the salary schedule for 2014?
- Appendix A-1 – Wages for 2015 – What should be the salary schedule for 2015?
- Appendix A – MISCELLANEOUS COMPENSATION PLAN PROVISIONS – How should employees progress through the range?
- Appendix A – MISCELLANEOUS COMPENSATION PLAN PROVISIONS – Should range movement decisions be grievable? (Union Exhibits 2 and 3; County Exhibit Book I, Exhibits 1, 2, and 3).

II. Discussion

A. Article IX – SENIORITY, Section 9.5 – Should the June 1st date be eliminated?

The Union's Position

LELS proposes deleting the following sentence from Article IX – SENIORITY, Section 9.5:

- 9.5 Senior employees will be given preference once each year to bid a shift within their classification, effective at the beginning of the calendar year, subject to employer approval and the needs of the Department.

When a bargaining unit member leaves employment, senior employees within the classification will be given preference to fill the resulting vacancy in a shift under the following conditions:

- Switching on the same shift will not be allowed.
- ~~This policy will apply only to changes occurring before June 1st of each year...~~

The Union argues that the June 1st date of Section 9.5 is an “arbitrary and needless” deadline because “[t]here is an unlimited chance for movement the first five months of the year (January 1 to May 31) but zero chance of movement the last seven months of the year (June 1 to December 31)” (LELS Brief, p. 9). After June 1st, a senior employee interested in bidding into a vacant position must wait seven months before the senior rebid occurs. The Union concludes there is “no operational necessity for preventing senior members of the organization to move into a preferred position when an opening occurs.”

The County’s Position

The County proposes to maintain the current language of Section 9.5. County Director of Human Resources Roxanne Chmielewski testified the June 1st date was added to Section 9.5 during negotiations for the parties’ last collective bargaining agreement (2011-2013). She further testified, based on discussions with the jail scheduler, removing the June 1st date from Section 9.5 would be “disruptive” to scheduling in the jail.

The current bidding process generally takes five days per bid; removing the June 1st date from Section 9.5 would, according to the County, create an administrative burden caused by additional days of re-bidding during the year. The County adds that scheduling is an “inherent managerial right,” removing the negotiated June 1st date from Section 9.5, should not be made through interest arbitration “without a quid pro quo,” and LELS has failed to demonstrate the requisite compelling reason to make this change (County Brief, p. 35).

Analysis and Award

The role of the arbitrator in an interest arbitration proceeding is to determine the settlement that best approximates the voluntary settlement the parties would have reached had they been able to do so. When looking at proposed contract language changes, the interest arbitrator is guided in that determination by a variety of factors, including comparisons with other public sector employers, internal comparability, and the parties’ bargaining history. As a general rule, the party proposing contract language changes in interest arbitration has the burden to show a compelling reason to make the proposed changes.

Here, there is no evidence that the Union’s proposal is supported by comparisons with other county employers. The parties’ bargaining history suggests the June 1st date was added during the parties’ last round of negotiations. There is no specific evidence in this record to show that the June 1st date of Section 9.5 has caused operational problems for the County. That being the case, maintaining the current language of Section 9.5 is reasonable. The County’s final offer on this item is, therefore, awarded.

B. Appendix A – MISCELLANEOUS COMPENSATION PLAN PROVISIONS - Call Back Time – Should employees be compensated for travel time when called back?

The Union’s Position

LELS proposes to add the following sentence to Appendix A – MISCELLANEOUS COMPENSATION PLAN PROVISIONS:

Employees called to duty who live in the County will be paid travel time in addition to call back pay. Those employees who live outside the County will be paid travel time from when they enter the County.

LELS maintains that bargaining unit employees called in to work, and particularly when they are called back to serve as a medical guard for prisoners, should be paid for their travel time. It further maintains this change to Appendix A is supported by the Fair Labor Standards Act (FLSA) which requires compensation of “travel time of an on-call employee called to an emergency” (Union Exhibit 6, p. 2). LELS is of the view that situations when employees are called back for medical guard service, are “emergency situations” for FLSA purposes. The Union points out that Article VII – SAVINGS CLAUSE states that the provisions of the parties’ collective bargaining agreement are “subject to the laws of the United States, the State of Minnesota and the County of Sherburne, Minnesota” (Union Exhibit 7; County Exhibit Book I, Exhibit 4, p. 8).

The County’s Position

The County proposes to maintain the current language of Appendix A. It points out bargaining unit employees are not “on-call employees.” If employees are called back to work, they receive a minimum three hours of pay at the time-and-one-half rate. The *status quo* language is supported by comparisons with the comparator counties (County Exhibit Book I, Exhibit 10).¹ LELS’ proposal, by contrast, is not supported by comparisons with other comparable employers (*Id.*).

Next, the County argues that the Union’s proposed change to Appendix A is not mandated by the FLSA. The FLSA does not require that employees be paid for travel time to and from work. Bargaining unit employees “have the *option* of coming in, whereas, for an on-call list they do not” (County Brief, p. 36). Because the Union’s proposal is not supported by the FLSA or by the comparator counties, the County submits that there is no compelling reason to add paid travel time to the provisions of Appendix A.

Analysis and Award

The Union relies on a 2009 Wage and Hour Division opinion letter to support its proposed change to Appendix A. The employees covered by that opinion letter were assigned on-call work on a rotating basis and were given “a mobile telephone and a vehicle with necessary

¹ The parties have used the following counties as their comparator group: Anoka, Benton, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Stearns, Washington, and Wright.

tools, should they need to respond to an emergency” (Union Exhibit 6, p. 1). The Wage and Hour Division opined:

Therefore, if the employee travels a substantial distance to an emergency site, the travel time would be compensable. As to the situations where the employee is called to a regular work site, including a regular client site, the Wage and Hour Division (WHD) takes no position whether such time is compensable (Union Exhibit 6, p. 2).

The Union and County both offer reasonable interpretations of the FLSA as it relates to the medical guard assignments, and whether those assignments fall within the scope of the Wage and Hour Division’s opinion letter concerning on-call employees who are required to travel “a substantial distance” to respond to an “emergency situation.” That being the case, the FLSA, standing by itself, does not compel selection of the Union’s final offer on this item.

Under Article XV – CALL BACK TIME, an employee “who is called to duty during his/her scheduled off-duty time shall receive a minimum of three (3) hours pay at one and one-half times the employee’s base pay rate” (County Exhibit Book I, Exhibit 4, p. 12; Union Exhibit 5, p. 12). The employee’s travel time associated with the call-back work assignment is not paid.

LELS’ proposal may be the more reasonable of the two positions if supported by comparisons with other counties; however, County Exhibit 10 shows that none of the comparable counties pay travel time associated with call-back work assignments, and three hours of call-back pay is consistent with the call-back pay of six of the comparables (Anoka, Benton, Carver, Hennepin, Stearns, and Washington), and exceeds the call-back pay of three of the comparables (Chisago, Isanti, and Wright), which offer two-hours of call-back pay.

The County’s final offer on this item is the more reasonable and is hereby awarded.

C. Article XXIII – TRAINING – How should travel time be compensated for off-site training?

The Union’s Position

The Union proposes to revise Article XXIII – TRAINING, Section 23.1 as follows:

The Employer shall provide sixteen (16) hours of in-service training annually for each covered employee. Employees on duty may be assigned to attend as part of the scheduled shift. Employees who are not on duty shall be compensated at the overtime rate for all hours involved in such training, including travel time, ~~provided that employees will be paid, at a maximum, the hours of the employee’s full shift for off-duty training and travel time.~~ Some training may be mandatory and, if so, the employees will be so notified. All sessions not declared mandatory shall be voluntarily attended by those who wish to attend. Travel time shall be work time under the following circumstances: Travel time to and from the

main work site to approved training or conferences is compensable work time. Travel to and from home to alternate work sites, conferences, or training is work time only to the extent it exceeds the normal commuting time to and from the employee's main work site.

LELS maintains that its proposed change to Section 23.1 is supported by the FLSA, which requires travel time for the benefit of the employer to be compensable work time (Union Exhibit 8). In further support of its position, LELS offers Arbitrator Befort's decision in *Wright County*, BMS Case No. 10PA0058, 2010) (Union Exhibit 9),² and the Ninth Circuit Court of Appeal's decision in *Imada v. City of Hercules* (1998) (Union Exhibit 10).³ The training programs bargaining unit employees attend generally provide Peace Officer Standards and Training (P.O.S.T.) credits and "[e]mployees earn enough relicensure credits that those that may be earned in the mandated training are inconsequential." LELS further emphasizes that the County's non-union employees are paid for "[t]ravel time to and from the main work site to approved training or conferences" (Union Exhibit 11, p. 2).

The County's Position

The County proposes to maintain the current language of Section 23.1. All of the bargaining unit employees are licensed peace officers. They receive P.O.S.T. credits for their required off-site training. As such, and consistent with the FLSA, the County maintains it is not required to pay for travel time "because such training is a necessary and incidental part of any officer's job" (County Brief, p. 37). Additionally, the County maintains its position is supported by the Ninth Circuit Court of Appeal's *Imada* decision, which stands for the proposition that law enforcement officers are not entitled to receive compensation for travel time to and from mandatory off-site training under the FLSA because P.O.S.T.-approved training "is at least equally beneficial to the officers, who must attend POST-approved training in order to meet and maintain state law enforcement certification requirements" (*Imada v. City of Hercules*, 138 F. 3d 1294, 1297 (9th Cir. 1998)) (Union Exhibit 10).⁴ Again, the County maintains, since there is no compelling reason to change the current language of Section 23.1, its final offer on this issue should be accepted.

Analysis and Award

LELS' proposed changes to Section 23.1 speak to travel time associated with approved conferences and training. The knowledge and skills bargaining unit employees gain from attending such approved conferences and training provides a benefit to the County. The Union's

² Arbitrator Befort held the "non-shift travel time" of two Wright County detectives – one to testify "in a matter related to her work as a Wright County detective," and the other "to attend a training program on interviewing victims of child abuse" – was "compensable under the FLSA" (Union Exhibit 9, pp. 4, 10).

³ The Ninth Circuit Court of Appeals held in *Imada* that the commuting time of police officers attending mandatory P.O.S.T.-training was not compensable under the FLSA, because the training "was at least equally beneficial to the officers, who must attend POST-approved training in order to meet and maintain state law enforcement certification requirements" (Union Exhibit 10, p. 4).

⁴ The County adds that Arbitrator Befort's *Wright County* decision (County Exhibit Book I, Exhibit 10) supports its position inasmuch as the travel time that was held as compensable in *Wright County* was truly for the benefit of the employer, as opposed to P.O.S.T.-credited training.

reliance on Arbitrator Befort's award is well placed as one of the grievants in that case claimed that out-of-shift travel to a required training program was compensable time and related to his assigned work with Wright County. LELS also notes that the FLSA provides travel time related to "special one-day trip assignments" is compensable time.

The Ninth Circuit's *Imada* decision provides that travel time to P.O.S.T.-approved training used by a law enforcement officer to "meet and maintain state law enforcement certification requirements" is not required to be compensable time under the FLSA. *Imada* does not prohibit parties to a collective bargaining agreement from going beyond the legal minimum of the FLSA, particularly when the employer benefits from the employee's attendance at the training or conference.

The Union has demonstrated a reason to look at changing the language of Section 23.1. Its proposed change is supported by the County's Personnel Rules and Policies, which state "[t]ravel time to and from the main work site to approved training or conferences is compensable work time," and "[t]ravel time to and from home to alternate work sites or training" is compensable work time if "it exceeds the normal commuting time to and from the employee's main work site" (Union Exhibit 11, p. 2). Based on this record, the Union's final offer on this item is the more reasonable and is awarded.

D. Appendix A-1 – Wages for 2014 – What should be the salary schedule for 2014?

The Union's Position

The Union proposes to increase wages for the 2014 contract year as follows:

<u>Year</u>	<u>Minimum</u>	<u>Job Rate</u>	<u>Maximum</u>
2014	\$22.04	\$29.76	\$33.06

LELS argues that the appropriate comparison group for the 2014 wage rates are the following counties: Anoka, Carver, Chisago, Dakota, Hennepin, Ramsey, Scott, Washington, and Wright (Union Exhibit 13). These counties are appropriate comparables for Sherburne County because they have "similar jobs and have similar licensure requirements" (Union Exhibit 12).⁵ Based on this comparable group, Sherburne County transport/court security/licensed corrections offers are well below the comparable average at the maximum wage rate (\$3.35 under comparable average) (Union Exhibit 13).⁶ By contrast, and using this same subset of comparables, Sherburne County deputies are .01 under the comparable average for maximum wage rate (Union Exhibit 14), \$1.01 under the maximum rate for the sergeant job classification (Union Exhibit 15), and \$2.31 under the comparable maximum wage rate average for the

⁵ LELS emphasizes including non-licensed staff in the comparisons (e.g., Benton, Chisago, Isanti and Stearns transport officers) "dramatically skews the averages" because they "make between \$5.00 and \$10.00 less PER HOUR" (LELS Brief, p. 5).

⁶ The Union also notes that the 2013 maximum wage rate for Carver County (population 89,615) for the transport/court security/licensed correction officer classifications is \$33.09, compared to Sherburne County's (population 88,499) wage rate of \$29.52 (Union Exhibit 17).

dispatch job classification (Union Exhibit 16). Moreover, this bargaining unit is under the 90% comparable wage target established by the County, while the deputies, sergeants and dispatchers are above the 90% target (Union Exhibits 14-16). Lastly, wage rates for this bargaining unit have been below the rate of inflation, “thus eroding [their] purchasing power” (LELS Brief, p. 8).

The Union additionally argues that the County has the ability to pay its proposed 12% wage increase for the 2014 contract year. The County has generally maintained a static or reduced levy rate since 2010 (Union Exhibit 19), it maintains a reserve at the upper level (47%) (Union Exhibit 20) of the State’s recommendation (35% - 50%) (Union Exhibit 21, p. 2), the County’s 2014 budget “shows growth and enough resources to cover the projected cost of the Union’s request” (Union Exhibit 22), county program aid from the State of Minnesota has increased (Union Exhibit 23), and the County generates significant profits (approximately \$900,000) from its contract to house federal prisoners, immigration detainees, and Minnesota Department of Corrections prisoners (Union Exhibit 25, p. 3).⁷

LELS adds that its proposed wage increase will not place the County out of compliance with the Minnesota Pay Equity Act (Union Exhibits 28-30), and that the County’s strategic priority to be the “Employer of Choice” in the area and to “[c]ontinue to offer strong benefits and competitive wages” (Union Exhibit 27, p. 5) supports its position. Lastly, LELS emphasizes while its wage offer is approximately \$300,000 higher than the County’s wage offer (Union Exhibit 31), awarding LELS’ position “will have little impact on the County’s bottom line” inasmuch as \$300,000 “is only 2% of the Unreserved Fund Balance.”

The County’s Position

The County proposes that “[e]ffective January 1, 2014 individual employees shall receive a two percent (2%) increase” (County Exhibit Book I, Exhibit 3, p. 2). Under its final offer, the minimum wage rate would be \$20.07, the job rate would be \$27.10 and the maximum wage rate is \$30.11.

There is, the County maintains, no other county settlement or arbitration award that supports the Union’s “unprecedented” wage offer (County Exhibit Book I, Exhibit 20). The parties have used the same group of external comparables since 2006 – Anoka, Benton, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Stearns, Washington, and Wright – when the County Board adopted a new county-wide classification and compensation system (County Exhibit Book II, Exhibit 2).⁸ That same group of comparables has been used by arbitrators in two other Sherburne County interest arbitration awards involving the corrections bargaining unit and assistant county attorneys bargaining unit (County Exhibit Book II, Exhibit 18).

The Union’s wage offer, as testified by County Human Resources Director Roxanne Chmielewski, exceeds the County’s wage offer by \$364,227 over the 2014-2015 contract years.

⁷ LELS points out that the County has access to economic development funds of approximately \$900,000 (Union Exhibit 26).

⁸ The classification and compensation study steering committee included representatives from the County’s various bargaining units.

Factoring in merit pay and fringe benefit costs, the County's wage offer for 2014-2015 comes in at a 12.5% increase compared to the Union's two-year wage offer which costs out at 21.9% (County Exhibit Book I, Exhibits 7 and 8).

The County's 2% wage offer is supported by the established pattern of internal wage settlements. County Exhibit 3 shows that the County has, for the past 14 years, maintained a pattern of internal wage equity among its union and non-union employees (County Exhibit Book II, Exhibit 3).⁹ Arbitrators, since the advent of the Minnesota Pay Equity Act, have relied on the principle of internal wage consistency. County Commissioner Felix Schmiesing testified the County has "always been successful treating everyone the same," and a consistent pattern of internal wage settlements helps to "avoid the whipsaw that happens" when there is no pattern of internal wage consistency.

In 2014, the County's non-union employees will receive a 2% wage increase. The County's largest bargaining unit – health and human services – agreed to a 2% wage increase for 2014 as has the County's public health nurses and jail supervisors. Ms. Chmielewski testified that approximately 65% of the County's employees will receive a 2% wage increase for 2014.

A 2% wage increase will maintain the County's stated position of being at 90% of the comparable average and its wage position relative to the external comparables. This bargaining unit is ranked for wage comparisons 9th of the 13th comparable counties (County Exhibit Book I, Exhibit 6). This fact, the County submits is significant, given "Sherburne County is ranked 10th of 13 counties in population, and also 10th out of 13 counties in relative tax capacity" (County Brief, p. 23). Simply stated, the Union has failed to make a compelling case for the 12% requested "market adjustment."

Wage increases for this bargaining unit have, the County notes, exceeded the rate of inflation (County Exhibit Book I, Exhibits 12 and 13; County Exhibit Book II, Exhibit 4). The County, Ms. Chmielewski testified, is "retaining the employees we want," the County's turnover rate is low compared to average public sector turnover rates, and the County has "no trouble getting applicants" for vacant positions (See County Exhibit Book I, Exhibit 13 and County Exhibit Book II, Exhibit 7). These facts, Ms. Chmielewski concludes, shows that the County's "pay is appropriate."

The County additionally argues that the Union's wage offer would move positions in this bargaining unit from grade 11 to above 12 on the County's class and compensation scheme, which would place bargaining unit positions at a level higher than the County's patrol deputies and jail supervisors (County Exhibit Book I, Exhibit 9). The working conditions and job duties of the patrol deputies are significantly different than the County's transport and court security officers. As stated by the County, "[t]o the extent this group is seeking to attack its placement within the classification scheme, such a collateral attack on a county's class and compensation scheme is an inherent managerial right that is not arbitrable" (County Brief, p. 13). Also, "[i]f

⁹ The County also notes that it has maintained internal consistency for wage settlements over the past 20 years, with the exception of one year (1999) when an arbitrator awarded the corrections officer bargaining unit (represented by Teamsters Local No. 320) a 3% wage increase (County Exhibit Book II, Exhibit 3).

this group's pay were to jump more than a full paygrade as a result of an interest arbitration, there would be a domino effect that would wreak havoc on Sherburne County's class and compensation system" (County Brief, p. 14). Moreover, given that this bargaining unit is male-dominated (28 of the 31 positions are held by men), implementation of the Union's wage proposal "will likely create a gender pay equity problem" for the County under the Minnesota Pay Equity Act (County Brief, pp. 32-33).

Additionally, this bargaining unit's relative wage ranking among the comparables must, the County emphasizes, be viewed in light of the superior level of affordable health insurance benefits bargaining unit employees receive (County Exhibit Book II, Exhibits 15, 16 and 17). The County's employees have the lowest out-of-pocket costs for single health insurance coverage (\$0) and the lowest (or second to lowest) family coverage premiums. Also, the County pays cash to bargaining unit employees¹⁰ who select a health insurance plan that costs less than the contribution employees receive for their health insurance and other benefit coverage. Sherburne County is only one of three counties among the comparables that provides this benefit (County Exhibit Book I, Exhibit 10).¹¹

While the Union claims the County has the ability to pay a 12% wage offer, it ignores the fact that it would not be financially responsible for the County to do so. Sherburne County is "property poor" compared to neighboring counties relative to taxable market value of property (County Exhibit Book II, Exhibit 19) and during recent years has had high foreclosure and unemployment rates. As a result, the County has held the levy rate "flat or slightly lower from 2010 to 2014" (County Brief, p. 17).¹²

Commissioner Schmiesing testified the County has been using its general fund to balance the County budget over the past few years. Despite this fact, the County's fund balance (47.5%) does not exceed the state auditor's guidelines of maintaining a general fund balance equivalent to 35% - 50% of annual operating costs. County Administrator Steve Taylor and Commissioner Schmiesing emphasized using the County's general fund balance to pay for wage increases is not a sustainable budget philosophy since the County can only spend its fund balance once, while the implication of a wage increase is a "recurring cost." Mr. Taylor added that the County will be in a "\$1.7 million hole" as of January 1, 2015 (due to things such as unaccounted-for wage increases and health insurance costs) and the County's budget must also account for unexpected developments.

The Union's reliance on the jail enterprise fund, to support its "exorbitant" wage offer is, according to the County, misplaced. Jail enterprise funds are, for example, dedicated to other County expenses, and specifically one-time capital improvements. The County's contracts to

¹⁰ The County points out that "[i]n 2013, at least 21 of 31 bargaining unit members had their full health care insurance premiums paid for by Sherburne County, and received additional cash back. (Vol. I, Ex. 5)" (County Brief, p. 30).

¹¹ County Human Resources Director Chmielewski testified Sherburne County also provides benefits other neighboring counties don't provide, including a fitness incentive program (a per employee cost value of \$1,500), and the County provides more uniform pay than the comparators (County Exhibit Book II, Exhibit 5; County Exhibit Book I, Exhibit 10).

¹² The County notes, however, that the County Board decided to increase the tax levy rate to 2.5% for 2015 because of the improving local economy (County Brief, p. 18).

house prisoners do not guarantee an income stream for the County, and prisoner counts do fluctuate – a fact that has led to layoff of jail staff over the years, including the layoff of two members of this bargaining unit in September 2011.

Analysis and Award

The parties have agreed on a comparator group of counties for purposes of interest arbitration: Anoka, Benton, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Stearns, Washington, and Wright. In terms of population, Sherburne County is one of the smaller counties (10th of 13). Acknowledging where it has historically ranked for wage purposes with neighboring counties, the County has adopted a goal of being at 90% of the comparable average wage rates.

LELS argues for a 2014 wage adjustment to improve the standing of this bargaining unit relative to their wage rankings among the comparables. A 12% wage increase would certainly improve the relative position of this bargaining unit. Accounting for comparables that employ non-licensed staff, Union Exhibit 13 shows that bargaining unit employees are under the 2013 comparable maximum wage average and the Sherburne County 2013 maximum wage rate is under the County's target of 90% of the comparable average. County Exhibit 6, based on 2013 wage comparisons with the full comparator group, shows Sherburne County is ranked ninth of the 13 counties at the maximum wage rate for transport/court security positions, its maximum wage rate is \$1.13 under the comparable average, and its maximum wage rate exceeds the County's 90% goal.

LELS has argued that this bargaining unit is in need of some sort of wage "catch up." It has also argued (and shown) that the County has the financial ability to fund its final offer on the 2014 wage item.

The question before the Arbitrator is whether the Union's final offer on the 2014 wage item is the more reasonable of the two positions, and reflects a settlement point that approximates the point the parties may have gotten to through voluntary contract negotiations. Based on this record, the County has made the better case in support of its final offer on the 2014 wage item. Specifically:

- This bargaining unit is coming off of its first stand-alone collective bargaining agreement (2011-2013) with the County, and does not have a long-history of seeking market rate wage adjustments through negotiations.
- The reported 2014 wage settlements for the comparables, although limited in number, do not approach the wage increase called for in the Union's final offer on this item (County Exhibit Book II, Exhibit 11, p. 1, and Exhibit 20). The same is true in looking at reported county 2014 wage settlements on a state-wide basis (County Exhibit Book I, Exhibit 20 and County Exhibit Book II, Exhibit 11, pp. 3-4).
- The County has established a consistent and nearly lock-step pattern of internal settlements for 20 years (County Exhibit Book II, Exhibit 3). Since 1994, the highest internal settlement among the County's bargaining units has been in 2007

when all bargaining units received a 4% wage increase. The internal settlement pattern for 2014 among the bargaining units that have reached agreement with the County is 2%.

- Recent economic conditions have caused the County Board to use the fund balance to support its budget. The impact of these economic conditions on the County can be seen in its internal wage settlements for 2010 (0%), 2011 (0%), 2012 (1%), and 2013 (1.25% on 1/1 and 1.25% on 7/1).

The County's final offer on the 2014 wage item is the more reasonable and is awarded.

E. Appendix A-1 – Wages for 2015 – What should be the salary schedule for 2015?

The Union's Position

LELS proposes to increase wages for the 2015 contract year as follows:

<u>Year</u>	<u>Minimum</u>	<u>Job Rate</u>	<u>Maximum</u>
2015	\$22.48	\$30.35	\$33.72

The County's Position

The County proposes that “[e]ffective January 1, 2015 individual employees shall receive a two percent (2%) increase.” Under its final offer, the minimum wage rate would be \$20.47, the job rate would be \$27.64 and the maximum wage rate is \$30.71.

LELS' proposed increase, like that proposed by the County, is a two percent increase of the 2014 wage rates.

Analysis and Award

Since the parties both propose a 2015 wage increase of a 2% increase of the 2014 wage rates, the 2015 wage schedule will reflect a 2% increase of the parties' 2014 wage rates.

F. Appendix A – MISCELLANEOUS COMPENSATION PLAN PROVISIONS – How should employees progress through the range?

The County's Position

The County proposes to revise Appendix A as follows:

~~Delete paragraph 2: Range movement may be denied by the Employer for just cause. If denied, the affected employee shall be notified of the reasons therefore at least ten (10) days prior to the appropriate anniversary date, and the Grievance~~

Procedure shall apply if the employee contends that the reasons for denial are insufficient.

Amend paragraph 4: Each employee below Job Rate is eligible, based on a satisfactory the results of the performance evaluation, for a merit increase from zero to not more than four and three tenths (4.3%) performance pay increase on their anniversary date.

Amend paragraph 7: Each employee at or above Job Rate of their classification is eligible, based on a satisfactory the results of the performance evaluation, for a merit increase from zero to not more than two point four percent (2.4%) merit pay increase on their anniversary date. No award shall result in placement above the maximum of the range.

Amend paragraph 8: If a merit increase is ~~withheld in either year of the Agreement~~ awarded that is less than the maximum allowable increase as a result of the performance evaluation, ~~such employee will not be eligible for a merit pay increase until the following year.~~ an individual employee development plan will be prepared for the employee by the supervisor. The supervisor shall discuss the development plan with the employee and consider any employee comments on the plan. The employee's performance and progress with the requirements of the development plan will be reviewed and discussed with the employee and written reviews will be provided after three and six months. The employee will be eligible for the withheld merit increase effective as of the date of the review which indicates satisfactorily meeting the performance requirements of the plan. Said increases will not be retroactive and will not be considered after six months from the original eligibility date. Such matter Withholding of merit increases, all or in part, and requirements of the development plan shall not be subject to the grievance procedure (County Exhibit Book I, Exhibit 3, p. 3; Union Exhibit 3, p. 3).

The County is of the view that its proposal benefits the bargaining unit “because, under the current language, if an employee is denied a merit increase, the employee has no way to try and earn it through improved performance,” while the County’s proposal “provides not only the ability to reward outstanding performers, but also to reward employees that have not previously performed well but have improved” (County Brief, p. 39).

The Union’s Position

The Union proposes to maintain the current language of Appendix A. It argues there is no compelling reason to change the *status quo* language for range progression. The County has offered no examples of bargaining unit employees who were denied range/merit movement under Appendix A since 2009 (Union Exhibit 32), it has yet to develop a County-wide evaluation system, and no specific plan has been advanced by the County to show how it would train supervisors under this new proposed contract language. The County’s proposal “is a solution in

search of a problem” (LELS Brief, p. 12). Further, the “County currently has the tools to impact employee performance” without making its “major change to the current structure.”

Analysis and Award

County Human Resources Director Chmielewski acknowledged that the County has not denied a merit wage increase to any member of this bargaining unit since the operative language of Appendix A has been in effect. There is no evidence in this record that the County’s position is supported by comparisons with other counties. This is not an issue that has been fully addressed through the parties’ collective bargaining process, nor has the County demonstrated a compelling reason to change the current language of Appendix A in the manner it proposes. The Union’s final offer on this item is, therefore, the more reasonable and is hereby awarded.

G. Appendix A – MISCELLANEOUS COMPENSATION PLAN PROVISIONS – Should range movement decisions be grievable?

The County’s Position

The County proposes to revise Appendix A as follows:

~~Delete paragraph 2: Range movement may be denied by the Employer for just cause. If denied, the affected employee shall be notified of the reasons therefore at least ten (10) days prior to the appropriate anniversary date, and the Grievance Procedure shall apply if the employee contends that the reasons for denial are insufficient.~~

Amend paragraph 4: Each employee below Job Rate is eligible, based on a satisfactory the results of the performance evaluation, for a merit increase from zero to not more than four and three tenths (4.3%) performance pay increase on their anniversary date.

Amend paragraph 7: Each employee at or above Job Rate of their classification is eligible, based on a satisfactory the results of the performance evaluation, for a merit increase from zero to not more than two point four percent (2.4%) merit pay increase on their anniversary date. No award shall result in placement above the maximum of the range.

Amend paragraph 8: If a merit increase is ~~withheld in either year of the Agreement~~ awarded that is less than the maximum allowable increase as a result of the performance evaluation, ~~such employee will not be eligible for a merit pay increase until the following year.~~ an individual employee development plan will be prepared for the employee by the supervisor. The supervisor shall discuss the development plan with the employee and consider any employee comments on the plan. The employee’s performance and progress with the requirements of the development plan will be reviewed and discussed with the employee and written reviews will be provided after three and six months. The employee will be

eligible for the withheld merit increase effective as of the date of the review which indicates satisfactorily meeting the performance requirements of the plan. Said increases will not be retroactive and will not be considered after six months from the original eligibility date. Such matter Withholding of merit increases, all or in part, and requirements of the development plan shall not be subject to the grievance procedure (County Exhibit Book I, Exhibit 3, p. 3; Union Exhibit 3, p. 3).

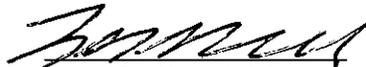
Ms. Chmielewski testified that the current language of Appendix is “confusing” as denial of range movement is subject to the contractual grievance procedure, while denial of a merit increase is not grievable. The County’s proposal addresses this “confusion” by not allowing bargaining unit employees to grieve denials of range movement or denials of merit increases.

The Union’s Position

LELS proposes to maintain the current language of Appendix A. Again, according to the Union, the County has failed to demonstrate the compelling reason to change the current language of Appendix A. Denial of range movement has historically been grievable (LELS Brief, p. 13; Union Exhibits 33-43). LELS emphasizes there have been “zero grievances” on denial of range movement since 2009. While the parties have negotiated changes to the pay scale – adding a maximum step in 1990 (Union Exhibit 34, p. 3), and changing steps to a minimum/maximum scale in negotiations for the 1996-1998 contract years (Union Exhibit 37, p. 3) – bargaining unit employees have retained the contractual right to grieve denials of step and range increases. LELS concludes while “range movement is grievable and merit increases are not” that difference “is not accidental, but deliberate” (LELS Brief, pp. 13-14).

Analysis and Award

The County has failed to demonstrate a compelling need to change Appendix A such that range movement disputes are not subject to the contractual grievance procedure. This bargaining unit has long had the contractual right to grieve denials of range movement; denials of a merit increase “as a result of the [employee’s] performance evaluation,” on the other hand, have not been subject to the grievance procedures (Union Exhibits 33-43). Given this long-standing contractual history, making the change to Appendix A as the County proposes is best dealt with at the bargaining table. Maintaining the current language of Appendix A as it relates to bargaining unit employee access to the contractual grievance procedure for denials of range movement is the reasonable position in this case. The Union’s final offer on this item is, therefore, the most reasonable and is awarded.


Lon Moeller, Arbitrator

Dated at Iowa City, Iowa this
24th day of November, 2014