

IN THE MATTER OF ARBITRATION ) INTEREST ARBITRATION  
 )  
 between )  
 )  
 County of Anoka, Minnesota ) Investigators Unit  
 )  
 -and- ) BMS Case No. 14-PN-1156  
 )  
 Law Enforcement Labor )  
 Services, Inc. ) December 17, 2014  
 ))

**APPEARANCES**

**For County of Anoka, Minnesota**

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David Schaps, Attorney, Barna, Guzy & Steffen, Ltd., Coon Rapids, Minnesota  
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**For Law Enforcement Labor Services, Inc.**

Andrew J. Masterman, Business Agent  
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Adam Burnside, Business Agent  
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Patrick O'Hara, Detective, Sheriff's Office

**JURISDICTION OF ARBITRATOR**

Law Enforcement Law Services (hereinafter "LELS" or "Union") is the exclusive representative for all Investigators of the Anoka County Sheriff's Department ("Sheriff's Department" or "Sheriff's Office") employed by the County of Anoka (hereinafter "Employer" or "County"). There are approximately 15-17 Investigators in the Sheriff's Department, Criminal Investigation Division, employed by the County. This is an

Essential Bargaining Unit under state law, which culminates in interest arbitration to resolve all outstanding impasse issues between the Parties.

The City and LELS (hereinafter referred to as the "Parties") are signatories to an expired collective bargaining agreement that was effective January 1, 2012 through December 31, 2013, and continues in effect by operation of law. Minn. Stat. § 179A.16, subd. 4.

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 July 31, 2014, the Minnesota Bureau of Mediation Services ("BMS") received a written request from the Union to submit the unresolved issues to conventional interest arbitration. On August 11, 2014, the BMS determined that the following items were certified for conventional interest arbitration pursuant to Minn. Stat.

§ 179A.16, subd. 2 and Minn. Rule 5510.2930:

1. Duration - Length of Contract - Whether to award a one (2014), two (2014-2015) or three year (2014-2016) agreement - Article 30
2. Compensation - Amount of general increase for 2014, if any - Article 24 and Compensation Plan
3. Compensation - Amount of merit increase for 2014, if any - Article 24 and Compensation Plan
4. Compensation - Amount of general increase for 2015, if any - Article 24 and Compensation Plan
5. Compensation - Amount of merit increase for 2015, if any - Article 24 and Compensation Plan

6. Compensation - Amount of general increase for 2016, if any - Article 24 and Compensation Plan
7. Compensation - Amount of merit increase for 2016, if any - Article 24 and Compensation Plan
8. Compensation - Whether to adjust Minimum, Range Maximum and Performance Range maximum during contract term - Article 24 and Compensation Plan

The Arbitrator, Richard John Miller, was selected by the Parties from a panel submitted by the BMS. A hearing in the matter convened on November 19, 2014, at 9:00 a.m. at the Sheriff's Office, 13301 Hanson Boulevard Northwest, Andover, Minnesota. The Parties were afforded full and ample opportunity to present evidence and arguments in support of their respective positions.

The Parties' legal counsel elected to file electronically post hearing briefs, with receipt by the Arbitrator no later than December 3, 2014. The post hearing briefs were submitted in accordance with that deadline date. The Arbitrator then exchanged the post hearing briefs electronically to the Parties' legal counsel on December 5, 2014, after which the record was considered closed.

**ISSUE ONE: DURATION - LENGTH OF CONTRACT - WHETHER TO AWARD A ONE (2014), TWO (2014-2015) OR THREE YEAR (2014-2016) AGREEMENT - ARTICLE 30**

**POSITION OF THE PARTIES**

The County is seeking a two year (2014-2015) agreement. In contrast, the Union is seeking a three year (2014-2016) agreement.

**AWARD**

A two year (2014-2015) agreement.

**RATIONALE**

The Union argues that their requested three year contract (2014-2016) is warranted based upon inconsistency because the three previously negotiated collective bargaining agreements consisted of two contracts with two year duration and a contract with a one year duration. If anything, the evidence pertaining to past bargaining history supports the Employer's position for a two year contract since none of the three prior contracts were for three years and two of the three prior contracts were for two years.

There is approximately 80% of the County's workforce that are non-union. There are nine currently organized bargaining units at the County. Six of these groups are in the Sheriff's Office. The name of the bargaining unit and exclusive representative, the number of incumbents, job number (both based on the most recent pay equity report), and the duration of the current contract for the bargaining units are as follows:

1. Sheriff's Office Essential Investigator Unit (CID) - LELS - 15 employees, job 238. This is the bargaining unit in the current interest arbitration for 2014 and 2015.
2. Sheriff's Office Licensed Officers - LELS - 90 employees, job 129. A 2014-2015 contract duration settled during negotiations.

3. Sheriff's Office Essential Licensed Sergeants - LELS - 13 employees, job 248. An expired 2013 contract as the parties have not completed negotiations for a successor agreement.
4. Sheriff's Office Supervisors - LELS - 9 employees, job 327. A 2014 contract duration settled during negotiations.
5. Sheriff's Office Detention Deputies - LELS - 67 employees, job 42. A 2014-2015 contract duration settled during negotiations.
6. Sheriff's Office Detention Sergeants and Lieutenants - LELS - 9 employees, jobs 176 and 302. A 2014-2015 contract duration settled during negotiations.

The three remaining bargaining units at the County are in Community Corrections, Highway and Parks, and Dispatch. The collective bargaining agreement reference, the number of incumbents and job number (both based on the most recent pay equity report), and the duration of the current contract for the bargaining units are as follows:

7. Community Corrections Department Work Release/Juvenile Detention Officers - LELS - 41 employees consisting of 19 juvenile detention officers, 19 work release officers, and 3 shift coordinators, jobs 32, 36, and 121. This bargaining unit recently had its 2014 and 2015 wages established by interest arbitration.
8. Highway and Park Maintenance - Local No. 49, International Union of Operating Engineers - 82 employees with various job numbers. A 2014-2015 collective bargaining agreement duration settled during negotiations.
9. Dispatchers - LELS - 34 employees, jobs 72, 120 and 171. This is a new union that does not yet have a first contract.

While the Union's argument that a two year contract for 2014 and 2015 would place the Parties back to the bargaining table sooner than a three year contract is correct, their position would be contrary to the foregoing evidence that establishes there are no three year agreements in place with most contracts having the same 2014-2015 duration that the County is proposing for this bargaining unit. In fact, the significantly larger licensed deputy and detention duty units in the Sheriff's Department, represented by LELS, have the same 2014-2015 duration proposed by the County. Thus, having the contract duration period end in 2015 rather than 2016 would place the majority of County unionized employees on the same "playing field" for negotiations for successor contracts since no union or non-union groups have the three year 2014-2016 term the Union is seeking.

There is no disagreement between the Parties as to the appropriate external comparable counties. The Parties agree that Anoka County has been appropriately and historically compared to Dakota, Ramsey, Scott, and Washington Counties. Unfortunately, only Scott County has Investigator wages established for 2016. Clearly, with only one of the four established comparables settled for 2016 there is not sufficient external market data to render a 2016 wage award with any certainty.

There is also no valid data on how the national, state, and local economies will be performing in 2016. This economic data is important as to the financial health and stability of the County for 2016 who depend upon available state and local revenues to fund wages for all County employees, including the Investigators.

Finally, it would be unfair to the Union to be saddled for three years (2014-2016) without a general wage increase, which is being proposed by the Employer. In addition, the Employer is proposing no merit increase for 2016, unlike 2014 and 2015. Accordingly, a two year contract for 2014 and 2015 allows the Union to bargain once again for both a merit and general wage increase in 2016 and other wage and economic demands.

**ISSUE TWO: COMPENSATION - AMOUNT OF GENERAL INCREASE FOR 2014, IF ANY - ARTICLE 24 AND COMPENSATION PLAN**

**ISSUE THREE: COMPENSATION - AMOUNT OF MERIT INCREASE FOR 2014, IF ANY - ARTICLE 24 AND COMPENSATION PLAN**

**ISSUE FOUR: COMPENSATION - AMOUNT OF GENERAL INCREASE FOR 2015, IF ANY - ARTICLE 24 AND COMPENSATION PLAN**

**ISSUE FIVE: COMPENSATION - AMOUNT OF MERIT INCREASE FOR 2015, IF ANY - ARTICLE 24 AND COMPENSATION PLAN**

**ISSUE SIX: COMPENSATION - AMOUNT OF GENERAL INCREASE FOR 2016, IF ANY - ARTICLE 24 AND COMPENSATION PLAN**

**ISSUE SEVEN: COMPENSATION - AMOUNT OF MERIT INCREASE FOR 2016, IF ANY - ARTICLE 24 AND COMPENSATION PLAN**

**ISSUE EIGHT: COMPENSATION - WHETHER TO ADJUST MINIMUM, RANGE MAXIMUM AND PERFORMANCE RANGE MAXIMUM DURING CONTRACT TERM - ARTICLE 24 AND COMPENSATION PLAN**

## **POSITION OF THE PARTIES**

In light of the Arbitrator's decision to award a two year contract for 2014-2015, Issue Six (amount of general wage increase for 2016, if any) and Issue Seven (amount of merit increase for 2016, if any) are no longer before the Arbitrator. In addition, since the Union and County are both proposing merit increases of two percent (2%) for 2014 and 2015, Issue Three and Issue Five have been agreed upon by the Parties. Thus, the only surviving issues are Issue Two, Issue Four, and Issue Eight.

As to Issue Two and Issue Four, the County is proposing no general wage increase for 2014 or 2015. The Union, on the other hand, is proposing a three percent (3%) general wage increase for 2014 and a three percent (3%) general wage increase for 2015.

As to Issue Eight, the County is proposing to increase the range minimum (5<sup>th</sup> year Step) by the same amount as the merit increase (two percent (2%) in 2014 and two percent (2%) in 2015). In contrast, the Union is seeking to increase the range by three percent (3%) for 2014 and three percent (3%) for 2015.

## **AWARD**

The County's position on the three wage issues is awarded.

## **RATIONALE**

There are generally four factors considered in any interest arbitration case. Those factors include: 1) the employer's

ability or willingness to pay for union economic demands; 2) internal equity; 3) external market comparisons; and 4) cost-of-living and other considerations, such as attraction and retention of employees.

As to the first factor, with the national, state, and local economies stabilizing or even improving for 2014 and 2015, there really is no true inability to pay argument, but rather an interest arbitrator should consider the employer's obligation to efficiently manage and conduct its operations within the legal limitations surrounding the financing of these operations. Minn. Stat. § 179A.16, subd. 7. In reality, employers are now relying upon the argument of "financial restraint" or "financial constraint" rather than an inability to pay argument when it comes to paying for union economic demands.

The Union estimates that the cost of their economic proposals is \$245,592.28 more than the County offer for the three years of 2014, 2015, and 2016. The evidence establishes that the County has considerable funds in its fund balances and had nearly \$254 million in cash and investments on December 31, 2013, to fund the Union's wage proposals for three years, let alone two years, which is the duration of this successor contract. The County realized investment earnings in excess of \$13 million in 2013; a rate of return averaging 5.56%. The Union's request for a 2.0% merit increase and a general wage

increase of 3.0% for 2014 and 2015 is a minimal portion of the County's annual investments.

In addition, Public Safety expenditures were \$215,951 less than budgeted for 2013. This amount alone would pay for the Union's wage proposals for 2014 and 2015.

The County has a General Fund balance of \$46.9 million, and will receive an increase in County Program Aid in 2014 of over \$3.6 million. An additional \$639,000 in County Program Aid will be received in 2015.

The evidence establishes that the County is experiencing budgetary growth and net worth expansion. Clearly, the County can afford the Union's economic demands for two years, let alone three years had that duration been awarded without adversely affecting its right and obligation to efficiently manage and conduct their operation.

The Arbitrator gave no consideration to the County's argument that there was justification for their wage proposals based on the fact that the County did not budget for any wage increases for 2014-2016. The mere fact that the Employer did not budget for any wage increases does not automatically preclude the Union from receiving wage increases, especially when the evidence establishes that the County can afford the Union's wage proposals whether budgeted or not. The choice to budget or not for wage increases is the right of the County, but

not budgeting is not justification in and of itself to preclude wage increases. If this was the case all the Employer would have to do is to not budget for wages and expect employees to accept that proposal without collective bargaining or resort to interest arbitration.

The finding that the County can afford the economic demands of those unions engaging in interest arbitration is a shared opinion. In a recent interest arbitration involving the County and LELS (Community Corrections Department Work Release/Juvenile Detention Officers), Arbitrator James A. Lundberg concluded that "[t]he County's financial health is sound...and the Arbitrator concludes that the County has the ability to pay for any of the financial proposals made by the parties in this arbitration."

County of Anoka and LELS, Inc., BMS Case No. 13-PN-0286

(November 9, 2014, Lundberg) at pages 12-13.

This opinion is significant in that it involved 41 County employees in that bargaining unit and Arbitrator Lundberg awarded a general wage increase. Thus, if the County was found to be able to adequately fund that larger bargaining unit with general wage increases, the same conclusion that the County has the ability to pay holds true for the smaller Investigator bargaining unit who will receive no general wage increases.

Another consideration in interest arbitration is Consumer Price Index ("CPI"). The CPI-All Urban Consumers as of

September 2014 (the latest available data) is 1.7%. The 2% merit adjustments agreed to by the Parties for 2014 exceeds the 1.7% CPI-All Urban Consumers, and since it appears that the CPI is leveling off at 1.7%, it will not exceed the 2% merit increase for 2015. In addition, the 2% adjustment to the range maximum and performance range maximum proposed by the County, and awarded by the Arbitrator, will have a significant impact on this bargaining unit given that its lowest paid members are at the range maximum. Thus, it appears that the County's wage proposals will equal and, in all likelihood, exceed the known and anticipated CPI for 2014 and 2015.

As has been the case in recent vintage, the improvement in the financial condition of employers due to the improved national, state, and local economies and the low CPI have resulted in the internal and external comparables being the predominant considerations in interest arbitration. This case follows that trend as both factors were reviewed in great depth in resolving the wage issues before the Arbitrator.

The legislature has established standards that interest arbitrators must use when resolving wage and salary issues:

In all interest arbitration involving a class other than a balanced class held under sections 179A.01 to 179A.25, the arbitrator shall consider the equitable compensation relationship standards established in this section and the standards established under section 471.993, together with

other standards appropriate to interest arbitration. The arbitrator shall consider both the results of a job evaluation study and any employee objections to the study.

Minn. Stat. § 471.992, Subd. 2 (2014).

These standards apply in the instant matter because the Investigator classification is male dominated as that term is used in the pay equity law. In addition to equitable compensation relationships, the standard referred to above requires the arbitrator to consider the extent to which:

Subd. 1 ...

- (1) compensation for positions in the classified civil service, unclassified civil service, and management bear reasonable relationship to one another;
- (2) compensation for positions bear reasonable relationship to similar positions outside of that particular political subdivision's employment; and
- (3) compensation for positions within the employer's work force bear reasonable relationship among related job classes and among various levels within the same occupational group.

Subd. 2 **Reasonable relationship defined.** For purposes of subdivision 1, compensation for positions bear "reasonable relationship" to one another if:

- (1) the compensation for positions which require comparable skill, effort, responsibility, working conditions, and other relevant work-related criteria is comparable; and
- (2) the compensation for positions which require differing skill, effort, responsibility, working conditions, and other relevant work-related criteria is proportional to the skill, effort, responsibility, working conditions, and other relevant work-related criteria required.

Minn. Stat. § 471.993 (2014).

Internal equity takes two main forms - consideration of pay equity and consideration of an internal pattern, if any exist.

The pay equity statute requires that the arbitrator "shall consider the equitable compensation relationship standards" and that "the arbitrator shall consider both the results of a job evaluation study and any employee objections to the study." Minn. Stat. § 471.992, Subd. 2 (2014). Thus, it is necessary to review the actual positioning of the bargaining unit's male dominated classification within the County's pay equity based classification and compensation system.

The Investigators are listed in job 238 in the County's pay equity report and in Grade 12 of the County's classification system (Grade 12 is comprised of positions between 320-374 points). This male dominated group is \$373.79/month above predicted pay, which is quite significant. In fact, because this classification is substantially above predicted pay, it is important to maintain this group at a level that does not increase the pay equity imbalance at the County. Statutory pay equity considerations do not support granting a wage increase above those in the County that moves a male dominated position already substantially above predicted pay by vast improvements in their relative position.

In addition to pay equity considerations, the internal settlement pattern is also highly relevant in fashioning any awards regarding economic and non-economic issues, including wages. The wage data establishes that four of the six

bargaining units in the Sheriff's Office have settlements and these settlements do not include any general wage adjustments. This includes the two large Sheriff's Office bargaining units - the 90 member Licensed Deputies and the 67 member Detention Deputies that are settled for 2014 and 2015. The Sheriff's Office Detention Supervisors settled for a 2014-2015 agreement covering with no general wage increase. The Sheriff's Office Licensed Supervisors settled for a one year agreement covering 2014 with no general wage increase. There are only 34 Dispatchers and 13 Licensed Sergeants in the Sheriff's Office that have not had their wages settled or resolved for 2014.

In addition, outside the Sheriff's Office, the other large bargaining unit at the County is the Highway and Parks bargaining unit. This group voluntarily agreed to a 2014-2015 agreement that did not contain a general wage increase for either year. While there was a general wage adjustment awarded by Arbitrator Lundberg to the Work Release/Juvenile Corrections group, this has historically been viewed by arbitrators (including multiple occasions by this Arbitrator) as an outlier in which wage adjustments for this group and other County groups do not bear any internal relationship.

This arbitrator has noted in previous interest arbitrations that smaller bargaining units should be viewed as "followers" rather than assuming a "leadership" role in terms of

establishing the settlement pattern for general wage adjustments. Since the Investigator bargaining unit has between 15-17 members, and is one of the smallest bargaining units in the County, this bargaining unit should not be awarded general wage increases different than the majority of larger bargaining units in the County that have settled for 2014-2015.

In the present case, the non-union employees, representing approximately 80% of the workforce, did not receive a general wage adjustment in 2014 and will not receive a general wage adjustment in 2015. It should be noted that non-union employee wage increases are usually considered by interest arbitrators, but are generally given little or no weight as non-union employees are construed to be "followers" and not "leaders" since they have no collective bargaining strength or leverage. Non-union employees simply rely upon the "graces" of an employer in establishing terms and conditions of employment for those unorganized employees.

In this case, the Investigator bargaining unit should not be penalized or forced to accept terms and conditions of employment simply because the majority of other County employees chose not to be represented by unions or associations. In any event, the best internal comparables for Investigators is unionized County bargaining units, especially those in the Sheriff's Office.

Internal equity also strongly supports the County's position on Issue #8 - to increase the performance range by the same two percent (2%) as the merit increase. This is the same adjustment applicable to the large Licensed Deputy and Detention Deputy groups. It is also consistent with the two percent (2%) adjustment to the range minimum applicable to the merit based systems of the Licensed Supervisors for 2014 and the Detention Supervisors for 2014-2015.

The evidence clearly establishes that internal equity strongly supports the County's final wage positions.

The long history of interest arbitration at Anoka has established that Dakota, Ramsey, Scott, and Washington Counties are most comparable to Anoka. Due to unique relationship that exists between deputies and investigators in the comparable counties, the external market may be viewed in two ways. The first is using the pay difference between investigator and the deputy group in each jurisdiction. The second is to view actual pay of the Anoka Investigators among the comparable counties.

Under the first analysis, the majority of the comparables establish compensation for detectives to be a differential from the deputy pay rather than a separate classification. Dakota County compensates its "special duty" deputy and general duty deputy at the same rate. Ramsey County investigators are compensated with a premium pay of \$100/month in addition to

regular compensation. Scott County investigators are compensated with a premium pay of \$200/month in 2014 and \$210/month in 2015. Washington County investigators are also included in the general deputy contract as a "special duty" differential that is \$1.18/hour at the start rate and \$1.72/hour at the top rate above the deputy using 2014 rates. This translates to a Washington County "special duty" differential between \$204 (start) and \$298 (top) per month.

In contrast to the \$0 to \$298/month differential paid in the external comparable market, the Anoka Investigators have an approximate \$1,000 per month difference between Anoka Licensed Deputies and Investigators. This differential becomes even greater when the \$75/month differential applied to the Anoka Investigators who serve as the sexual assault coordinator, drug task force team leader, auto theft coordinator, canine handler/narcotics canine handler, SWAT team member, or Dive Team member is considered. This first analysis overwhelmingly supports the County's final wage positions.

Under the second analysis of viewing the external market, actual wages are considered. There is also no dispute that historically Anoka Investigators have been paid at a level greater than the comparables. For example, from 2004 through 2013, the Anoka Investigators have ranked 2nd in top pay to the investigators in other jurisdictions in six of those years, 3rd

in three of those years and ranked first once (in 2013). Accordingly, for the majority of these surveyed years, Anoka Investigators have ranked 2nd in top pay among the comparables. In reviewing the actual salary ranges, the external comparables using 2014 rates are as follows:

	<u>Start</u>	<u>Top</u>
Dakota	\$54,550	\$85,235
Ramsey	\$49,044	\$71,280
Scott	\$51,358	\$77,127
Washington	\$52,374	\$74,131
Average:	\$51,832	\$76,943
Anoka 2013	\$60,186	\$80,359
Awarded 2014 Range Increases	\$60,186	\$81,966

The Union's main justification for their proposed general wage increases for 2014 and 2015 is to begin to approach the top ranking again since Dakota County jumped significantly above the Anoka Investigators for 2014 in top pay. There was some dispute between the Parties as to whether the Dakota County settlement was a ten percent (10%) general wage increase. It would appear that the Dakota County top investigators wage increase is actually two percent (2%). The Dakota County 2014 maximum range increased by the ten percent (10%) as part of a Dakota County compensation overhaul on ranges (which does not correspond to the general wage increases at issue in this arbitration). However, even considering the massive jump by Dakota County's

top wage ranges in 2014, Anoka continues to pay its Investigators significantly above the external comparable average, above the external market average at the start for all groups, and well above the top wage for three of the four external comparable groups. Clearly, Anoka County with the wage awards will maintain its historical relationship of ranking 2nd among the comparables at top pay and first at starting pay.

Consideration of the external comparable market strongly favors the County's final wage positions.

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.

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Richard John Miller

Dated December 17, 2014, at Maple Grove, Minnesota.