

STATE OF MINNESOTA
BUREAU OF MEDIATION SERVICES
IN THE MATTER OF INTEREST ARBITRATION BETWEEN

CROW WING COUNTY, MINNESOTA,

EMPLOYER,

-and-

LAW ENFORCEMENT LABOR SERVICES, INC

UNION.

ARBITRATOR'S AWARD
BMS Case NO. 14-PN-1127
INTEREST ARBITRATION

ARBITRATOR:	Rolland C. Toenges
DATE OF BMS CERTIFICATION TO IMPASSE:	September 2, 2014
DATE ARBITRATOR NOTIFIED OF SELECTION:	September 2, 2014
DATE OF HEARING:	January 23, 2015
DATE OF POST HARING BRIEFS:	February 6, 2015
DATE OF AWARD	February 28, 2015

ADVOCATES

FOR THE EMPLOYER:

Pamela R. Galanter, Attorney
Madden Galanter Hansen, LLP
505 North Highway 169, Suite 295
Plymouth, MN 55441-6444

FOR THE UNION:

Andrew J. Masterman, Bus. Agent
Law Enforcement Labor Services
327 York Avenue
St. Paul, MN 55130-4090

WITNESS

Tamra Laska, Human Resources Director, Crow Wing County

ALSO PRESENT

Patrick Pickar, Deputy/Steward
Eric Stangler, Deputy/Steward

ISSUES IN DISPUTE

ITEM #1. Wages for 2014.

ITEM #2. Wages for 2015.

ITEM #3. Wages for 2016,

ITEM #3. Duration of Agreement

ITEM #4. Insurance – Plan Availability and Employer Contribution, if any.

ISSUE SETTLED BY THE PARTIES PRIOR TO HEARING

1. ITEM #4. Insurance for 2014 and 2015. Subject to negotiation if duration of Arbitrator's Award includes 2016.¹

JURISDICTION

The instant matter came on for hearing pursuant to a determination by the Commissioner, Minnesota Bureau of Mediation Services (BMS), that the Parties had reached an impasse in their attempt to negotiate an agreement setting forth certain terms and conditions of employment for years 2014, 2015 and 2016.

The Parties selected Rolland C. Toenges to arbitrate the issues in dispute and bring resolution to the matter.

Arbitration of the instant matter is being conducted in accordance with the provisions of the Minnesota Public Employment Labor Relations Act, as amended, 179A.01 – 179A.30 (PELRA). Under PELRA, 179A.16, the employees at issue are

¹ The Parties stipulated that existing language in the CBA is to be carried forward for 2014 and 2015, but if a third year is awarded (2016) insurance is to be open for negotiation.

defined as “Essential Employees.” An impasse involving Essential Employees is required to be resolved via compulsory binding arbitration, as Essential Employees are barred from conducting a work action.

A hearing on the issues at impasse was conducted on January 23, 2015 in the offices of Crow Wing County, Brainerd, Minnesota. The Parties were afforded full opportunity to present evidence, testimony and argument bearing on the matters at impasse. Both Parties submitted voluminous binders in to evidence, containing documentation supporting their respective cases.

Being there was no request for other than conventional arbitration, the Arbitrator has the authority to award the final position of either party, or to fashion an award that the Arbitrator believes will best serve the interests of the Parties.

There was no request for a stenographic record of the hearing. The Parties agreed to submit Post Hearing Briefs on or before February 6, 2015.

BACKGROUND

Crow Wing County (Employer) is located in central Minnesota. The County has a population of approximately 62,500, which increases significantly during the tourist season. The Employer provides traditional county government services, including law enforcement. The employees at issue, in the instant matter, are members of the County’s Sheriff Department. The Employer has somewhat in excess of 400 total employees, of which some 125 are employed in law enforcement. The employees at issue in the instant matter consist of some 27 Patrol Officers and 5 Investigators.

Law Enforcement Labor Services, Inc. (Union) is the certified exclusive representative of Patrol Deputies and Investigators.

The bargaining impasse, leading to the instant case, occurred during the Parties negotiations for a collective bargaining agreement (CBA) succeeding their most recent CBA, which expired December 31, 2013.

The Parties have a lengthy history of collective bargaining. The issues being arbitrated in the instant matter will be part of a CBA effective January 1, 2014 through December 31, 2015, or 2016.

ISSUES TO BE ARBITRATED

ITEM #1. Duration – effective dates of Contract. Article 21.1

ITEM #2, Wages for 2014 – amount of increase. Article 18.1

ITEM #3, Wages for 2015 – amount of increase. Article 18.1.

ITEM #4, Wages for 2016 – amount of increase. Article 18.1

ISSUE SETTLED PRIOR TO ARBITRATION HEARING

ITEM #5. Insurance (Subject to negotiation in 2016, if a three year contract is awarded).

FINAL POSITION OF THE PARTIES

UNION POSITION, ITEM #1:

Article 21.1. Except as otherwise indicated, this Agreement shall be effective January 1, 2014 and shall continue in full force and effect until December 31, 2016, and shall continue hereafter until modified or amended by mutual agreement of the parties. Either party desiring to amend, modify or terminate this Agreement shall notify the other in writing at least sixty (60) days prior to the termination date or any anniversary thereof.

EMPLOYER POSITION, ITEMS #1:

Article 21.1. Except as otherwise indicated this Agreement shall be effective January 1, 2014 and shall continue in full force and effect until December 31, 2015 and shall continue thereafter until modified or amended by mutual agreement of the parties. Either party desiring to amend, modify, or terminate this Agreement shall notify the other in writing at least sixty (60) days prior to the termination date or any anniversary thereof.

UNION POSITION ON ITEMS #2, 3 & 4:

Amend Article 18.1 to provide a 3% wage increase on all steps in 2014.

Amend Article 18.1 to provide a 3% wage increase on all steps in 2015.

Amend Article 18.1 to provide a 3% wage increase on all steps in 2016.

EMPLOYER'S POSITION OF ITEMS #2, 3 & 4:

Employer position is for no (0%) increase for 2014.

Employer position is for no (0%) increase for 2015.

Employer position is for no (0%) increase for 2016, if a three-year contract is awarded.

EXHIBITS²UNION EXHIBITS:

- U-1. Current CBA (1/1/12 – 12/31/13)
- U-2. Issues certified to arbitration.
- U-3. Final position of Union
- U-4. Final position of Employer
- U-5. Duration – effective dates of contract

² While it is customary for the Arbitrator to reference each exhibit entered into evidence, some will be summarized by subject in the instant matter due to the volume of exhibits presented.

- U-6. Wages – amount of general increase, 2014, 2015 & 2016
- U-7. Ability to pay (cost, CAFR, CPA)
- U-8. Internal Equity (Pay Equity)
- U-9. External Equity (Comparable Counties)
- U-10. Current Economic Factors (cost of living/CPI)
- U-11. Insurance – plan availability and Employer contribution, if any
- U-12. Referenced Collective Bargaining Agreements
- U-13. Arbitration Award – LELS and County of Wright (Gallagher 2006)
- U-14. Arbitration Award – LELS and City of Bemidji (Gallager 2007)
- U-15. Arbitration Award – LELS and City of Ely (Orman 2012)
- U-16. Arbitration Award – LELS and County of Lyon (Miller 2013)
- U-17. Arbitration Award – LELS and County of Anoka (Fogelberg 2007)
- U-18. Arbitration Award – LELS and County of Crow Wing (Soloman 1986)

EMPLOYER EXHIBITS:

- E-1. Collective Bargaining Agreement between Crow Wing County and LELS (1/1/2012 – 12/31/13)
- E-2. Bureau of Mediation Services Certification to arbitration
- E-3. Crow Wing County final position on issues in dispute, 8/18/2014
- E-4. Crow Wing County's revised final positions, dated 12/24/14
- E-5. LELS' final positions, dated 8/14/14
- E-6. Letter to Arbitrator confirming appointment, 9/2/14
- E-7. Letter to Arbitrator confirming scheduling of hearing, 10/7/14
- E-8. Crow Wing County Information
- E-9. Employer's exhibits on wage issues
- E-10. Employer's exhibits on insurance issues
- E-11. Employer's exhibits on duration issues
- E-12. Prior Crow Wing County arbitration Awards
- E-13. Crow Wing County and External Comparison Data

THE UNION'S POSITION ON "DURATION" IS SUPPORTED WITH THE FOLLOWING:

- Previously negotiated agreements have primarily been three-year agreements, with 9 of the last 16 years being covered by three-year agreements.
- Longer-term agreements are desirable to allow a "cooling-off" period.
- The circumstances leading to the instant arbitration, involving failed negotiations and an adversarial relationship, support a longer-term agreement.

- In-as-much as the first year of the agreement has already passed, it basically makes the agreement going forward a two-year contract covering 2015 and 2016.
- An Arbitrator has pointed out, "Adoption of a three-year duration will promote better labor relations by providing an additional year in which bargaining is not the focus of the parties." "In most circumstances, the longer three-year duration would be preferable to provide the parties with a longer period of stability free of pressures of bargaining."³
- Another Arbitrator commented, "Both parties agree that if the Arbitrator awards a contract duration of two years the parties will immediately be back into negotiations (sic) after an already prolonged period of negotiations to reach the impasse which is before this Arbitrator . . . therefore the Arbitrator decision based on discussion above is for a three year duration. . ." ⁴
- The Employer's argument for a two-year agreement is further proof of its intent to use a shorter duration as a tool to force this unit into a performance based pay system that the membership clearly does not want.
- The Employer's argument that there is lack of comparable wage data for 2016 is without merit, as its wage freeze position does not rely on comparable data.
- The Unions position for a three-year duration free of the constraints of internal/external constraints hopefully will result in recouping some of the lost ground suffered due to previous years of 0.0% wage increases.

³ Law Enforcement Labor Services v. Wright County, BMS 06-PN-0743 (2006) Gallagher, Arb.). Law Enforcement Labor Services v. City of Bemidji, BMS 07-PN-0300 (2007) Gallagher, Arb.).

⁴ Law Enforcement Labor Services v. City of Ely, BMS 11PN1163 (2011) Orman, Arb.).

THE EMPLOYER'S POSITION ON "DURATION" IS SUPPORTED WITH THE FOLLOWING:

- There is no clear pattern on duration in Crow Wing County for contracts have varied from one to three year durations.
- Equally important, the three most recent contracts with this unit were each for two-year terms, which reflects the mutuality for a two-year term.
- Only three of the seven contracts with this unit in the last 15 years were for a three-year duration.
- The Union's characterization of the relationship between the Parties as adversarial is not accurate – the Arbitrator would be aware that there is a positive relationship by the interactions of the Parties during the arbitration hearing.
- Negotiations and mediation are normal processes and are not evidence of an adversarial relationship – there are many and varied reasons parties are unable to reach a negotiated settlement.
- The Arbitrator's award referenced by the Union in County of Wright was based on large part on the history within Wright County of three-year contracts and the internal pattern of three-year contract settlements for the term of the contract at issue – in Crow Wing County, there is neither a clear history of three-year contracts nor an internal pattern of three-year contracts this round of negotiations.
- In the matter of "City of Bemidji" referenced by the Union, the Arbitrator favored the Union's position for a two-year contract on the basis that there was a lack of external wage comparison information for a third year.
- The Bemidji Award favors the Employer's position for a two-year contract because only three out of seventeen comparison counties have settlements for 2016.
- In the matter of "City of Ely" referenced by the Union, a three-year contract was awarded because the parties were in agreement that they would "immediately" be back in negotiations for the successor agreement.
- If the Arbitrator awards the Employer position for a two-year agreement, the Parties will not be immediately back in negotiations for a successor agreement.
- The only contracts within Crow Wing County that are settled for a term extending beyond 2015 have wage provisions that include either a complete

performance based pay system or components of a performance based pay system.

- There are internal comparisons with other Crow Wing County units with performance based pay models upon which the Arbitrator could base an award for a three-year agreement, but there is no external data upon which the Arbitrator can base a award for a three-year contract because there are only three settlements for 2016 among the 17 comparison counties.

DISCUSSION - DURATION

Both Parties present cogent arguments in support of their respective positions. However, it must be determined which, on balance, offers the most practical alternative, all things considered. It is axiomatic that the longer-term agreement minimizes collective bargaining, which by its nature can be adversarial. A longer term agreement allows the Parties to concentrate on administering their agreement in a constructive and productive manner. Also to be considered is whether there is sufficient data for the Arbitrator to determine what an equitable third year wage increase should be. Arbitrators strive to render an award that best represents what informed and reasonable parties find mutually agreeable. This, of course, requires evidence of settlements achieved under these conditions.

Crow Wing County has negotiated settlements with seven of the County's 11 bargaining units, six of which have established wage rates for 2016.⁵ Although these settlements are, to some degree, tied to a performance based pay system, they represent what Crow Wing County and the bargaining units have mutually found acceptable. Although there are several 2016 settlements among the external comparison group of counties, they are not sufficient to establish a clear settlement pattern.

⁵ Employer Exhibits #36, 37, 38 & 45. It is unclear whether the County has 11 or 12 bargaining units as the record shows both at different times.

A significant consideration is what appears to be the primary cause of the negotiations impasse that has led to the instant arbitration proceeding. This is the Employer's position for a 0.0% increase if the Union does not agree to a performance based pay system and the Union's position to retain the existing pay system with three percent annual increases. If the Arbitrator's Award applies only to 2014 - 2015, negotiations for 2016 would likely begin within several months. Based on the positions of the Parties in the instant proceeding, there is good reason to believe that negotiations for a 2016 contract would also result in an impasse. Awarding a three-year agreement would provide the Parties with additional time to re-evaluate their respective positions in preparation for the next round of bargaining.

AWARD - DURATION

The duration shall be three-years, January 1, 2014 through December 31, 2016.

THE UNION SUPPORTS IT'S POSTION ON "WAGES" WITH THE FOLLOWING:

- The Union has shown that its wage position is not excessive and the Employer has the ability to fund it.
- The County has reduced its tax levy for the past five consecutive years, which is a sign of its financial health.
- The County has received 2014 financial aid in an amount three times the amount received in 2011 and will receive more in 2015.
- The County's financial health is evident by its "AA" bond rating.
- Crow Wing County has the second lowest county tax as compared to four nearby counties and is ranked 9th lowest in the state.

- The County's General Fund has a positive balance more than 3.5 times the cost of the Union's wage position.
- The County is in compliance with The Local Government Pay Equity Act and the Union's wage position will not cause non-compliance.
- An Arbitration award based only on internal comparisons does not recognize the unique duties and conditions encountered by law enforcement employees.
- External comparison of law enforcement employees working for similarly situated employers more accurately reflects the different work standards, hours, responsibilities and hazards unique to law enforcement.
- Numerous arbitrators favor external comparisons over internal comparisons for law enforcement employees.
- There is no clear settlement pattern in Crow Wing County for it reports four different settlement models with varying terms and conditions.
- The Union's position for a 3.0% annual wage increase is supported by external market comparisons:
- The County and Union have historically drawn external wage comparisons from a "Two Ring" county group, of which Crow Wing County ranks 4th in population, 3rd in overall tax capacity and 4th in tax levy.
- Over the last five years, Crow Wing Deputies and Investigators have seen their wage standings fall among the external comparison group.
- The County position for a zero increase would cause further erosion of their wages, possibly by double digits.
- The County's position will result in one half of employees receiving no increase because they are currently at the top of the pay range.
- What the County does not acknowledge with its zero increase position, especially considering past negotiations, is that there is no consideration for the increase in the cost of living.

- The current Consumer Price Index (Minneapolis/St. Paul Metro Area 2010-2013) increased 10.7% while the employees at issue in this arbitration received a wage increase of only 3.5%.
- The Consumer Price Index for Urban Wage Earners in the Midwest Urban Class B/C Group, of which Crow Wing County is included, saw an increase of 9.8%.
- The noted increase in Consumer Prices more than justifies a 3.0% annual wage increase for 2014, 2015 and 2016.
- The County's position of zero increase is a tactic being used as a way to force the Union into accepting a performance based pay system.
- The Union requests that its position be awarded.

THE EMPLOYER SUPPORTS IT'S POSITION ON "WAGES" WITH THE FOLLOWING:

- The Union is seeking wage increases significantly greater than received by other Crow Wing County employees.
- The Union wants a compensation system different than that agreed to by all settled bargaining units.
- All settled bargaining units have agreed to either a pure performance-based compensation system or components of performance-based compensation.
- None of the settled bargaining units provide both a step increase and a general increase, as the Union seeks in the present case.
- Crow Wing County has transitioned toward a cost effective performance-based compensation system in the interest of improving service and efficiency.
- The performance-based compensation system is also has the objective of recognizing and rewarding employee achievement.
- Crow Wing County's goal is to maintain competitive wages at 95% to 105% of the market.

- The Crow Wing County Board has approved a total base wage increase of approximately 3.0%, with flexibility in the manner in which the compensation system provides increases for each bargaining unit.
- The traditional pay range system with steps plus a 3.0% annual increase in the pay range sought by the Union results in a cost greater than approved by the County Board.
- Crow Wing County has established a “Managing for Results System” in the interest of improving service to its citizens and operating in an efficient and cost effective manner.
- The County has been flexible in its approach to transitioning away from a traditional step structure to a performance based pay system, allowing exclusive representatives to agree to some aspect of the system, but not other aspects.
- All but two bargaining units (the unit at issue in the instant case and Corrections Officers) have either agreed to complete performance based pay or a partial performance based pay.
- The maximum rate in the Matrix applicable to Performance-based pay was increased 2.5% in 2013 and by 2.44% in 2014.
- Four separate models have been created through negotiations for transitioning from a traditional step structure to performance based pay (PBP).
- The County is firm in its opposition to employees receiving both a step increase and a general wage increase.
- The County’s average cost of settlements in 2014 was 3.08%, based on a range of 2.5% to 3.89%.
- The cost of the Union’s position for 2014 of 3.0% plus step increases is 5.9% compared to the cost of the County’s position of 2.29%.
- The County’s average cost of 2015 settlements thus far is 2.43% and 2.33% for 2016.

- In comparison, the cost of the Union's position is 5.71% for 2015 and 5.05% for 2016.
- The County has no difficulty attracting qualified applicants for Deputy Positions and there is no evidence that employees have left because of wages.
- Approximately, 40% of employees who left employment did so because of retirement.
- The Union's position on wages would result in Deputies and Investigators (male dominated classes) exceeding the pay of comparable female dominated classifications.
- The combined general increases and step increases employees received from 2009 through 2013 have far exceeded the Cost of Living Index rise.
- For external comparisons, the County and Union have utilized the same comparison group – The Two Tier Counties.
- The County's position will maintain a competitive position with the external market – 101% of the average in 2014 and 97% in 2015, which is consistent with the County policy of 95% to 105%.
- There are only three settlements among the Two Tier comparison group for 2016, an insufficient number for a meaningful comparison.
- The Crow Wing County Board is committed to a fiscally responsible budget and tax levy.
- The tax levy has been reduced each year beginning in 2011, but personnel services costs have continued to increase by 4.4% in 2013, 3.7% in 2014 and an additional 0.9% in 2015 budget.
- The County experienced a revenue decline of about 10 million (12.9%) in 2013 and has experienced a dramatic decline in market value and new construction (21%).
- Between 2008 and 2013, County staff was reduced by 42.9 FTE's (9.4%) due to budget constraints.
- The County's Fund Balance and Reserves are consistent with recommendations of the State Auditor.

- The County's unemployment rate stood at 6.7% in 2013, in comparison to 8.0% nationally and 5.1% for our state.
- The average per capita income in Crow Wing County was \$34,873 in 2012, well below the wage of Deputy sheriff, which ranges from \$47,195 to 58,994.
- Based upon all the evidence and arguments, and for all the forgoing reasons, the County urges the Arbitrator to reject the Union's position.
- An award of anything other than the County's final position should be consistent with the compensation models negotiated with all the other bargaining units.

DISCUSSION – WAGES

The underlying issue, with respect to the wage dispute, is the Union's position to retain the traditional pay range with step increases while the Employer's position is to replace it with a performance based pay system. The Union position calls for a 3.0% annual increase in the traditional pay range plus step movement. The Employer position calls for 0.0% increase in the traditional pay range, but allows step movement. The Union bases its position on internal and external economic factors while the Employer considers the cost of step movement alone comparable to the cost of performance based pay, such as has been negotiated with some other bargaining units.

The traditional pay range with steps, as it appears in the 2012-13 CBA, consists of eight steps, including the initial step (step 1). Full time employees who have not yet reached step eight move up on January 1 each year to the next higher step, eventually reaching the top step (8). Although the percentage difference between steps varies somewhat it averages 3.2%, being somewhat greater at the lower steps and somewhat less at the higher steps. Therefore, if a new employee starts at step one, the employee can expect to reach step eight in seven years. The dollar spread between step one and step eight is about a 25%.

In theory, the traditional pay range with steps is designed to recognize improvement in performance quality and efficiency as the employee gains experience. Upon reaching the top step in the pay range, the employee is expected to be at the full performance level. Although this theory may generally be accurate, in reality one can expect exceptions. Some employees may achieve full performance in less than seven years. Some employees may take longer to reach full performance. Some employees may never reach full performance, however this is not likely as new employees serve a one-year probationary period during which their capability and potential is closely evaluated. Employer Exhibit #49 shows that several new employees did not meet expectations and were terminated. Although employees meeting or exceeding expectations can expect to progress up the salary range as noted above, an underperforming employee or employee guilty of misconduct may be subject to termination for cause, under terms of the CBA. All employees in good standing are treated the same with respect to salary advancement.

The Employer has negotiated, either partially or fully, a performance based pay system with certain bargaining units that sets the pay of each employee, within a given pay matrix, based on the individual employee's performance. In theory, this approach would maximize efficiency by paying the employee no more or less than what they produce. Such a system must rely on a system of performance measurement that is understandable, quantifiable, creditable, uniformly and fairly administered. Although there is nothing in the record detailing how performance of employees in the unit at issue would be evaluated, the Union's rejection indicates that it is not convinced Performance Based Pay is preferable to the traditional pay range with steps. Further, there is nothing in the record to indicate that the existing pay range step system results in less quality and efficiency than Performance Based Pay.

When attempting to compare the relative cost of these two pay systems, one must evaluate the actual cost of the traditional step system compared to the pay for performance system. While the Employer argues the performance based pay system will cost less, this may or may not necessarily be the case. The cost of employee advancement up the traditional pay range may be offset partially or fully by turnover gain (employees leaving employment who were at top of the pay range replaced by new employees at step one. This results in about a 25% reduction in cost for that position (the difference between step one and step eight). This turnover gain offsets the cost of step increases and is a consideration when calculating the cost of adjustments in the salary range. In the instant case about 50% of employees are eligible for a step increase, which based on the CBA 2013 salary range and step schedule represents an annual cost of about 1.3%. The record⁶ shows four resignations in 2013, which would have resulted in significant turnover gain.⁷ In 2014, the record shows two retirements, which may fully offset the step increase cost for this year.⁸

Although it is not known in advance what effect turnover gain will have on the cost of future salary range adjustments, past history provides some direction. Employer Exhibit #49 shows turnover for the past 10 years. Voluntary departures over this 10-year period averaged 1.6 per year. At least eight (42%) of the 19 voluntary departures were for retirement and undoubtedly were at step eight⁹. Although it cannot be determined from this exhibit, it is possible that departures for reasons other than retirement were also at step eight, or at a one of the higher steps within the pay range. Turnover gain may similarly impact the Employer's Performance

⁶ Employer Exhibit #49.

⁷ The salary step these employees were in at the time of resignation is not available in the record. Therefore a numerical figure cannot be calculated.

⁸ The actual effect is dependent on the 2014 adjustment in the salary range.

⁹ Three departures were employees terminated for failing probation.

Based Pay System, but the effect may be more difficult to determine than with the traditional step system.

Employer Exhibit #33 shows Crow Wing County's Performance Based Pay Matrix. This Matrix represents the findings of a classification and wage survey performed by an outside consultant for the County. The Matrix, which consists of some 30 job grades, includes a salary range for each grade and a guideline for determining the size of pay increases for employees subject to the Employer's Performance Based Pay System. For costing purposes, the Employer calculates the performance level as "Achieves," which appears to equate with meeting expectations. An employee at this performance level would be eligible for an annual percentage increase of 2% to 3.5%, depending on which quartile of the pay Matrix the employee is being paid. A 3.5% increase applies to an employee at the minimum of the pay range with a lower percentages applied if the employee's pay is higher in the pay Matrix.

The salary range shown for each grade in the Matrix reflects the results of the Employer's wage study and Crow Wing County's policy of paying within 95% and 105% of the market rate for comparable jobs. The Matrix was increased 2.5% in 2013 and 2.44% in 2014 to maintain a competitive position in the market. The top salary rate for Grade 17 (Patrol Deputy) is shown in the 2013 Matrix at \$60,469 and \$61,944 in the 2014 Matrix. The 2013 top salary rate in the CBA for Patrol Deputy is \$58,994, about 5.0% below the 2014 Matrix rate (2.5% below 2013 and 2.44% below 2014.)

ABILITY TO PAY:

This issue may need clarification, as there is a difference between "ability to pay" and "willingness to pay." It is clear from the Employer's position that it is not willing to pay the cost of the Union's position. Both Parties presented considerable evidence and argument regarding the economic condition of Crow Wing County. The evidence shows that in recent years the County has established a program to

improve quality of service and increase efficiency (Managing for Results System), which has produced notable results. The County has been able to reduce its tax levy, maintain a “AA” bond rating and maintain a reserve fund that is consistent with recommendations of the State Auditor. The Arbitrator is required by statute in Interest Arbitration to consider the “. . . obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations.”¹⁰ Based on the evidence and argument presented, it is reasonable to conclude that the position advanced by either Party will not infringe on the County’s obligations to efficiently manage and conduct its operations within the legal limitations surrounding the financing thereof.

COST OF LIVING:

The Union introduced excerpts from the Bureau of Labor Statistics report showing the Consumer Price Index (CPI), relative to the area where Crow Wing County is situated, increased 9.8% during 2010 to 2013, while the Union’s general wage increase was 3.5% during this same period. The Employer introduced excerpts from the Bureau of Labor Statistics, CPI, All Urban Consumers showing the index increased 8.0% from 2009 to 2013, while general wage adjustments including average step increases totaled 22.5%. The major difference between the Union’s data and the Employer’s data is average step increases are included in the Employer’s data while not included in the Union’s data. The latest CPI increase data appears well under the wage increase in either Parties position.

RECRUITMENT AND RETENTION:

A factor to be considered in determining whether the proposed wage rates are reasonable is to determine if the Employer has been able to recruit and retain employees at existing rates. The Employer introduced Exhibits #48 and #50

¹⁰ Minn Stat. S179A.16, subd. 7.

showing the number of applicants available to fill position openings and attrition. This data shows that for five job openings from 2011 through 2014 there were from seven to 14 qualified applicants for each. The data on attrition shows that from 2004 through 2014 an average of 1.6 employees voluntarily left each year. Some 42% retired, with most of the others going to higher-level positions or into their own business. The evidence shows that Crow Wing County's wage rates are sufficiently competitive for effective employee recruitment and do not cause undue turnover.

INTERNAL EQUITY:

The Employer has conducted a position classification and wage study. One of the results of the study is establishment of a Wage Matrix consisting of 30 pay grades with a salary range for each. The wage schedule for 2012 (Employer Exhibit #33) also has a Performance Base Pay Matrix showing the percentage of performance-based pay that applies for different levels of employee proficiency. The 2012 wage schedule was increased 2.5% for 2013¹¹. The 2013 wage schedule was increased 2.44% for 2014.¹² The Performance Base Pay Matrix was revised for 2013 by reducing the number of performance categories and increasing the performance pay percentages. The Employer's objective is to have all employees participate in its Performance-Based Pay Plan and paid in accordance with its salary Matrix and Performance-Based Pay System. Employer Exhibits #36, 37 & 38 show the degree to which the County's bargaining units have agreed to participate, which varies widely.

The Employer entered Exhibit #45, which shows the estimated cost of wage increases with County bargaining units settled for 2014, 2015 and 2016. . These estimates predict wage increases of 3.08%, 2.43% and 2.33% respectively. A footnote states that these estimates are based on Performance-Based Pay at

¹¹ Employer Exhibit #34

¹² Employer Exhibit #35

“Achieves” level. It is not indicated whether the cost estimate is adjusted for turnover gain.

As noted earlier the Patrol Deputy/ Investigator CBA pay range is lower than the Employer’s Pay Matrix for the Patrol Deputy/Investigator Grade.¹³ The Patrol Deputy/Investigator pay range has eight steps with a maximum rate 2.5% below the Employer’s Pay Matrix in 2013 and 5.0% below in 2014.

EXTERNAL COMPARISONS:

For purposes of external wage comparison, the Parties have a history of using a group of counties termed “Two Tier Counties Comparison Group.”¹⁴ This county group consists of some 17 counties that geographically surround Crow Wing County. In terms of such things as geographic area, population, tax levy, and personal income, Crow Wing County generally ranks above average within this group.

Based on a comparison of maximum wage rates, Crow Wing Patrol Deputies were about 2.0% above the average in 2013. The average maximum wage rate among these counties increased about 2.0% between 2013 and 2014. The Average wage rate among these counties increased about 2.6% between 2014 and 2015. With only three counties reporting settlements for 2016 there is insufficient data to make a meaningful comparison.

A comparison of Investigator, with this same group of counties, shows Crow Wing County about 0.1% below the average in 2013. The Average wage rate among these counties increased about 2.8% between 2013 and 2014. The Average wage rate among these counties increased about 3.3% between 2014 and 2015. With only

¹³ Employer Exhibit #1

¹⁴ Employer Exhibits #57 through #64.

three counties reporting settlements for 2016 there is insufficient data to make a meaningful comparison.

SUMMARY - WAGES

The Employer's position, to allow step increases but no increase in the pay range, is a major departure from the historical manner in which wages have been established in the Patrol Deputy/Investigator Unit. Absent a showing that long-standing conditions established through mutual agreement are no longer workable or practicable, arbitrators are reluctant to award a major change when sought by only one party. There is no evidence in the record showing that the existing system is inefficient or results in less than fully qualified and productive employees. Further, there is no conclusive evidence in the record showing that the existing pay range structure with step increases is more costly than the Performance-Base Pay model, particularly when turnover gain is taken into consideration. Step increases have already been granted employees at issue for 2014 and 2015. The Employer's Wage Matrix, based on its classification and wage study, shows the top wage for Patrol Deputy/Investigator 2.5% above the CBA rate in 2013 and 5.0% above for 2014. The maximum rate in the range is key, as it is considered the full performance level and the rate used in external comparisons. A wage award of approximately 3.0%, with flexibility in the manner in which the compensation system provides increases for each bargaining unit, would be consistent with Crow Wing County Board approval.¹⁵

External comparison data shows comparative rates among the 17 county "Two Tier Comparison Counties" have increased in the area of 2.0% to 3.0% in 2014 and 2015, which is similar to the 2013 - 2014 increases made by Crow Wing County in its Pay Matrix.

¹⁵ Employer's Post Hearing Brief, pg. 5. "The County Board has approved a recommended total base wage increase of approximately 3.0%, with flexibility in the manner in which the compensation system provides increases for each bargaining unit."

AWARD WAGES

The existing CBA salary range structure with step increases effective January 1, of each year shall be retained and continue in effect through 2016.

The salary range for Patrol Deputy/Investigator shall be increased 2.5% in 2014.

The salary range for Patrol Deputy/Investigator shall be increased 2.44% in 2015.

The salary range for Patrol Deputy/Investigator shall be increased 2.33% in 2016.

CONCLUSION

The Parties are commended on the professional and thorough manner with which they presented their respective cases. It has been a pleasure to be of assistance in resolving this disputed matter.

Issued this 28th day of February 2015 at Edina, Minnesota.

ROLLAND C. TOENGES, ARBITRATOR