

**IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN**

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Law Enforcement Labor Services, Inc.  
(Local No. 381)  
Union

-and-

County of Anoka  
Employer

**BMS Case No. 14 PN 1233  
Dispatchers**

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ARBITRATOR:

James A. Laumeyer

DATE & PLACE OF HEARING:

January 28, 2015  
Anoka County Government Center  
2100 3<sup>rd</sup> Ave.  
Anoka, MN 55303

DATE OF RECEIPT OF POST-HEARING  
BRIEFS & REBUTTALS:

February 23, 2015

DATE OF AWARD:

March 21, 2015

ADVOCATES:

For the Union

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For the Employer

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## **STATEMENT OF JURISDICTION**

Pursuant to the provisions of the State of Minnesota Public Employment Labor Relations Act (PELRA) as amended, an Interest Arbitration Hearing was held on the matter in the Employer's offices in Anoka Minnesota.

At the Hearing the Parties were afforded full opportunity to present testimony under Oath, evidence, and arguments. Further, at the request of the Arbitrator and agreement of the Union, the Employer was permitted to submit additional data relative to the documented experience for turnover and frequency of assignment of shift leaders, this information was received and exchanged on February 11<sup>th</sup>, 2015. The Parties requested the opportunity to submit post-Hearing briefs & rebuttals, such were duly received in a timely fashion and the Hearing was declared closed.

## **BACKGROUND AND STATEMENT OF ISSUES**

The Employer is located in the northwestern portion of the traditional seven county Twin Cities metropolitan area. Anoka County (hereafter County) is the 4<sup>th</sup> most populated county in the state with a 2103 estimated population of 339,534.

The Exclusive Representative is the Law Enforcement Labor Services, Inc, Local No. 381 (hereafter the Union or LELS). While the Union has been recognized as the Exclusive Representative for this bargaining unit since November 2013, LELS has represented (6) six other units in the County Sheriff's office for a prolonged time.

This unit which has been part of the county since 1974, is comprised of approximately thirty-five (35) County dispatchers who are classified as Dispatcher 1 (initial hires are promoted to the next level after one (1) year of satisfactory performance), Dispatcher II & Lead Dispatcher. The Record is totally void of any insinuation that the County Dispatchers are perceived as anything but critical, valued and essential employees who save lives. Rather, the focus of this dispute is in consideration of the requests for compensation and benefits in the context of the total County workforce.

These employees voted to unionize in November 2013. Since certification as the Exclusive Representative, the Union and the County conducted contract negotiations in an attempt to finalize its first contract. Therefore, this is the Parties' first attempt to identify, address and resolve issues without the benefit of bargaining history or long-term understanding. The

Record indicates that the Parties were successful in negotiating all but (8) issues in the first collective bargaining agreement.

Members of this bargaining unit are “essential employees” who cannot strike, but who have the right to request Interest Arbitration upon reaching impasse. (Minnesota Public Employment Labor Relations Act, §179A.01 – 179A.25) Parties have acknowledged they have reached impasse and submitted eight (8) remaining issues to the Minnesota Bureau of Mediation Services (BMS) for certification to Interest Arbitration. Henceforth, the Commissioner of the Minnesota Bureau of Mediation Services (BMS) certified the following eight (8) issues to this Arbitrator on December 18, 2014 for Conventional Interest Arbitration pursuant to Minn. Stat. §179.16 subd 7:

### ISSUES

- |   |                              |
|---|------------------------------|
| 1) Pay Plan Structure – What should be the pay plan structure.                          | New-1 <sup>st</sup> Contract |
| 2) Compensation – Amount of general increase for 2014, if any.                          | New-1 <sup>st</sup> Contract |
| 3) Compensation – Amount of merit increase for 2014, if any.                            | New-1 <sup>st</sup> Contract |
| 4) Compensation – Amount of general increase for 2015, if any.                          | New-1 <sup>st</sup> Contract |
| 5) Compensation – Amount of merit increase for 2015, if any.                            | New-1 <sup>st</sup> Contract |
| 6) Shift Leader Compensation – What should be the amount for shift leader compensation. | New-1 <sup>st</sup> Contract |
| 7) Shift Bidding – Should there be language adding establishing shift bid by seniority. | New-1 <sup>st</sup> Contract |
| 8) Meal Breaks – Should meal breaks be paid in full?                                    | New-1 <sup>st</sup> Contract |

The Parties and this Arbitrator met for a hearing on these matters on January 28, 2015. The Parties then submitted post-hearing briefs on February 11, 2015 and rebuttals on February 23, 2015. At that time, the Record was closed.

The Arbitrator is compelled to assess the final positions of the Parties on the basis of their relative positions on each Issue and the total impact of the Award. Further, the Arbitrator is compelled to find such decision shall be predicated upon a question of whether a reasonable party would accept the explicit and/or implicit economic, social and political “costs” of a strike over the current differences in positions on the Issues. The compelling conclusion is the Arbitrator is completely convinced that such mutual acceptance is not apparent, and the resulting

criterion is for the Arbitrator to “fashion” an Award that would arguably reflect the “settlement” that would have resulted had the Parties continued to bargain to an agreement—or the settlement that would have ended or avoided a strike.

Arbitrator Richard Miller explained this higher standard for Interest Arbitration:

“The role of an interest arbitrator in cases dealing with essential employees is to fashion awards as the parties themselves would have negotiated *to end a strike*.” Law Enforcement Labor Services v. Cottonwood County, BMS 01-PN-1423 (Miller, 2002)

The Arbitrator notes and appreciates the County’s contentions that strikes have become rare and “strikes do not result in changes to pay plans unless they are changes sought and imposed by management.” (Page 2 County’s Rebuttal)

Additionally, the Arbitrator is appreciative of the guidance of Arbitrator Christine D. Ver Ploeg regarding the bases of an award in Interest Arbitration:

“The two primary bases for decision in any interest arbitration are:

- (1) Determining what the parties would likely have negotiated had they been able to reach agreement at the bargaining table or, in the case of essential employees, to settle a strike. Although the determination is speculative, arbitrators understand that to award wages and benefits different than the parties would, or could, otherwise have negotiated risks undermining the collective bargaining process and provoking yet more interest arbitration.
- (2) Seeking to avoid awards that significantly alter a bargaining unit’s relative standing, whether internal or external, unless there are compelling reasons to do so.”

Minnesota Teamsters Public and Law Enforcement Employees Union, Local No. 320 v. Carver County, BMS 12-PN-0380 (Ver Ploeg, 2013)

The Arbitrator is committed to a clear and consistent strategy in fashioning of the awards below. In general, the strategy will favor the County as far as discretionary authority to direct the workforce and conduct business in efficient and effective manner. Staffing and scheduling determinations are examples of these Employer rights and obligations. At the same time, the Arbitrator will favor the Union in matters of “fair” benefits and compensation.

### **ABILITY TO PAY**

Interest arbitrators generally look at four factors in determining wage rates: the employer’s ability to pay, adjustments in the cost of living and other economic data, internal wage comparisons, and external wage comparisons. These considerations will be referenced in the context of the Issues in this Award.

One of the primary factors in determining the cost items in Interest Arbitration is to consider the Employer's ability to pay for the Award(s). Minn. Stat. Sec. 179A.16(7) provides, in part, as follows:

"In considering a dispute and issuing its decision, the arbitrator or panel shall consider the statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations."

Accordingly, this determination must not only examine the Employer's ability to pay, but also the effects of the Award upon the Employer's current and future abilities to manage their operations within the "revised" financial limitations subsequent to the award(s). The County's ability to manage and conduct their operations in an efficient and effective manner is beneficial to all Parties, especially to the residents of Anoka County. It would serve no purpose to render an Award that the County cannot afford or fund.

It is clear that Anoka County experienced severe financial crisis resulting from the national recession of 2008. The crisis continued for years later. Currently, the national, state and local economies have shown significant recoveries. The County has presented arguments and evidence that the economies at all levels are uneven and fragile. Further, the County continues to experience and anticipates unfunded mandates. These are factors considered in the context of the County's right and obligation to efficiently manage and conduct its operations within legal restrictions of financing these operations.

In the consideration of the ability to pay, the Arbitrator was significantly influenced by this snapshot of financial condition, illustrating the following:

- County Program Aid (CPA) continues to increase (but remaining lower than 2010)
- The 2015 levy was set to increase by nearly 1%
- The County general fund increased slightly for 2014-2015
- The County's bond rating is AA+, with anticipation of an AAA rating in several years
- The County Board approved a 2014 budget of over \$280,000,000 and projected a surplus
- The County has a general fund balance in excess of \$40,000,000 and is experiencing increasing state funding—\$3.6 million in 2014 and \$659,000 in 2015
- The County is experiencing reasonable earnings on investments

Such considerations compel the conclusion of financial stability. Given the Union's requests in total would cost approximately \$180,000 over the County's position, the Arbitrator is compelled to conclude that the County *does* have sufficient financial ability to fund the Union's economic demands for 2014-2015, without jeopardizing the efficiency & effectiveness of

operations and services. This finding is consistent to that of Arbitrator Richard Miller in Law Enforcement Labor Services v. Anoka County, BMS 14-PN-1156 (Miller, 2014). Similarly, Arbitrator Miller noted and rejected the Employer's contention that the Arbitrator should not award any costs on Union demands that were not budgeted by the County. Budgets are prepared unilaterally with no input or discussion with exclusive representatives. Were an Arbitrator to accept such contention, it could render the effort and impact of Collective Bargaining and Interest Arbitration moot. Therefore, this Arbitrator finds that the County's financial condition *does* support the Arbitrator's consideration and Award on all certified Issues and demands.

### **ISSUE 1- PAY PLAN STRUCTURE**

#### **UNION POSITION:**

Requested that the current merit/pay structure be replaced by a pay plan with longevity steps

#### **COUNTY POSITION:**

Requested that the existing pay structure with merit increases be retained.

#### **DISCUSSION**

While this is the first contract of the bargaining unit, there is a long history for Dispatchers in Anoka County of four (4) decades. At genesis in this matter, is the primary issue of the appropriate pay plan structure. Decades earlier, the County adapted a general increase/merit pay plan. This plan has open ranges with stated minimums and maximums. Progression is the result of general increases and merit increases. Atypically, 80% of the County's employees are non-union and all have been and continue to be compensated under this general increase/merit pay plan.

The County has the following nine (9) bargaining units:

1. Sheriff's Office Essential Investigator Unit (CID) – LELS – 15 employees
2. Sheriff's Office Licensed Officers – LELS – 90 employees
3. Sheriff's Office Essential Licensed Sergeants – LELS – 13 employees
4. Sheriff's Office Supervisors – LELS – 9 employees
5. Sheriff's Office Detention Deputies – LELS – 67 employees
6. Sheriff's Office Detention Sergeants and Lieutenants – LELS – 9 employees
7. Community Corrections Department Work Release/Juvenile Detention Officers – LELS – 41 employees

8. Highway and Park Maintenance – Local No. 49, International Union of Operating Engineers – 82 employees
9. Dispatchers – LELS – 35 employees

All bargaining units, including the Dispatchers, but with the exception of the Work Release/Juvenile Detention Officers group, are on the general increase/merit plan, consistent with the other 80% of county employees who are non-union. Arguably, the County contends that these small units with different plans are outliers that do not bear any internal relationship. The Work Release/Juvenile Detention Officers are a unit that will be discussed and compensated by a longevity/merit increase pay system, now requested by the Union.

The Issue of a change to a different pay plan has a long history of Arbitrator reviews in Anoka County. The Corrections Department group was organized in 1990. The Parties reached impasse for the first contract and requested Interest Arbitration. A primary issue was similar to the instant matter, was the request to change from the merit plan to a longevity/merit pay plan. In a series of Interest Arbitration awards of 1991, 1993 and 2002, Arbitrator Gallagher consistently refused to award this change to the longevity/merit pay plan. Arbitrator Gallagher's rationale was stated succinctly in his 2002 award as follows:

“In the present case, I follow the same principle that a radical change in the system of compensation should be made by bargaining and not by arbitration.” Law Enforcement Labor Services & Anoka County, BMS 01-PN-956 page 17 (Gallagher, 2002)

The Record clearly and consistently illustrates that the County is committed to a pay plan premised upon merit to performance, rather than longevity. The County has implemented or maintained a general increase/merit pay plan for the vast majority of the workforce for decades. The County had negotiated longevity/merit plans in the past but has since made efforts to revise those existing contractual provisions. For example, the pay plan for the largest bargaining unit, Highway and Parks, the County has recently negotiated the change for senior employees to be compensated on the basis of performance rather than longevity. There is no confusion or ambiguity concerning the County's commitment and resolve to a pay plan based upon merit or performance and not longevity. Such clear commitment by the County is in complete opposition to the Union's request to change the current plan based upon general increase/merit to a plan with longevity steps.

This Arbitrator strongly concurs with the strong and consistent actions of previous arbitrators who have refused to dislodge an existing pay plan based on merit to a longevity plan because that would be a radical action that should be negotiated instead of arbitrated. An Award accepting this request in arbitration rather than bargaining is characteristic contractual innovation or of an arbitrator overreaching his authority and disrupting the appropriate roles and relationships of the Parties. The County must retain the right and obligation to manage the organization within financial limitations and in the manner deemed necessary to direct and staff the workforce to include the creation and determination of pay plans, subject to challenge and modification in contract negotiations.

Further, the Arbitrator is cognizant of the burden and responsibility of a Neutral in Interest Arbitration to fashion an award that addresses the issues of the Parties and is supportive of the Parties' current and future negotiations and their working relationship. The current pay system has been in place for decades. The role of Interest Arbitration is to render an award that is consistent with the Parties demonstrated understandings and **not** one that is disruptive and damaging to collective bargaining and the relationship between the Parties unless there is a clear and prevailing need for radical changes. Interest Arbitration is **not** intended to serve as a substitute for bargaining between the Parties.

In full appreciation of the "proper" role and scope for Interest Arbitration, the Arbitrator finds the County's contention convincing that the Union's attempt to attain these changes to the current pay plan known and "accepted" for decades, at the start of the Parties' bargaining relationship, must be denied. The Union is attempting to gain through arbitration that which it was, at this point in time, unable to bargain. This Arbitrator perceives the request to change the pay plan that has been in place for decades similar to a change in significant contractual language, such as referenced by Arbitrator Mario Bognanno over 20 years hence as follows:

"First, since negotiated changes to the Labor Agreement are superior to arbitrated changes, arbitrators are reluctant to (1) strike down matters of tradition which have helped to frame the relationship between the parties, and (2) write innovative language designed to alter that relationship. Arbitrator-imposed inventions or innovations which alter the basis (sic) contractual relationships between the parties carry with them considerable uncertainties with respect to future questions involving the ways said changes will be interpreted and applied. In this Arbitrator's opinion his peers are acting responsibly when they refrain from introducing basic contractual changes which could place the quality of the parties' relationship at risk. This principle is qualified, of course, by a record which supports the conclusion that the sought-after change

would have resulted through negotiations were it not for the fact that the parties ended up in arbitration.”

Similarly, while not controlling, The Arbitrator found internal equity (which will be discussed in more detail later in this Award) in this matter strong and presumptive. The 80% of County employees who are non-union are in the current plan. In addition, other bargaining units, such as Highway and Parks, Corrections, Licensed Supervisors, Detention Supervisors and Licensed Sergeants are under the County plan. In total, 1,589 of the 1,761 County employees (over 90%) are in the County pay plan.

The Arbitrator also notes that the County has negotiated changes in the Sheriff’s Office bargaining unit to a modified step system, which provides for progression for senior employees from longevity to pay for performance. These changes buttress the conclusion of the County’s intentions to maintain progression pay systems based upon merit/performance rather than longevity, which is also in conflict with the Union’s request to change to a longevity/merit plan.

The Union has referenced the Anoka Detention Deputies group that has a longevity/merit pay plan. In the Arbitrator’s considerations of internal equity, it was noted that the Detention Deputies with 67 members represents less than 4% of the County workforce, while over 90% of the workforce are compensated under the merit increase plan. Given such graphic comparison, the Arbitrator finds that internal equity further buttresses the County’s position on this issue.

### **ISSUE #1 AWARD**

It is the decision of the Arbitrator to deny the request of the Union to change/revise the current merit increase pay plan to the merit/longevity pay plan.

### **ISSUES 2-5 GENERAL & MERIT INCREASES**

#### **UNION POSITION:**

*Issue #2*—General Increase: 4% in 2014

*Issue #3*—Merit Increase: 3% in 2014

*Issue #4*—General Increase: 4% in 2015

*Issue #5*—Merit Increase: 3% in 2015

#### **COUNTY POSITION:**

*Issue #2*—General Increase: 0% in 2014

*Issue #3*—Merit Increase: 0% in 2014

*Issue #4*—General Increase: 0% in 2015

*Issue #5*—Merit Increase: 2% in 2015

## DISCUSSION

The most significant conclusions that were influential or controlling in the Awards in these economic issues were the following: economic factors, internal equity and external equity. This discussion will also include the consideration of the Parties' arguments and contentions relative to the County's pay equity report, turnover rate, and the disparate positions relative to the progression, or lack thereof, within the ranges under the merit increase system.

Initially, the County's economic factors were stable and strong. But, it was of no surprise to anyone that the recession of 2008 and its long shadow had resulted in a tight money restrictive strategy for the County and most other organizations—public as well as private. Private industry was first to experience recovery, while the public sector lagged behind in its recovery. However, current financial indicators report that the economy has climbed out of the shadow of the recession and the economy is once again stable and strong. Similarly, the Standard and Poor's Rating Services (03/04/2014) reported that Anoka County's "budgetary flexibility remains very strong, as demonstrated by the maintenance of strong fund balances, reflecting strong management practices." (S&P Page 2) Further, the same report provided the following outlook for Anoka County for the next two years: (emphasis added)

"The stable outlook reflects our view of Anoka County's very strong flexibility and liquidity profile, which is supported by a broad and diverse economy and very strong management. We anticipate that the county will continue to hold at least a strong fund balance position. We do not expect to change the ratings within the two-year outlook horizon, but could consider an upgrade if the county's projected per capita EBI improves to more than 100% to boost the economic profile and if market value improves significantly. Given the county's stable economic base and very strong management practices, we do not anticipate lowering the rating in the next two years." (S&P Page 3)

Similarly, the Consumer Price Index (CPI) has experienced an annual increase of approximately 1.6% in 2014, and is projected to experience a similar annual increase in 2015 (U.S. Department of Labor Bureau of Labor Statistic). This Arbitrator is **not** considering the CPI as a totally accurate representation of actual growth in the economy or inflation. However, the CPI is referenced as an indicator that the economy has recovered and has found stability at the current time. The data and indicators provide evidence that the state and local economies are on the cusp of total recovery. Accordingly, the Arbitrator is compelled to conclude that the two-year

periods—2014 and 2015—the County can be expected to return to the practices of providing “pre-recession” wage increases to the workforce. A review of a sample of the wage increases of twenty-two counties and cities from the BMS website, data indicates that the average increase for 2014 is approximately 2% and 2.25% for 2015. In the private sector, the ADP Workforce Vitality Index reports wage increases of 4.5% to 4.8% in 2014. (SHRM – HR Magazine December 2014 p13)

A significant and presumptive consideration in the determination of the general and merit increases for 2014 and 2015 is that of internal equity. These figures are striking and staggering. The Record indicates that 97.5% of the County employees (approximately 80% are non-union) have “settled” (accepted for by the non-union employees who do not bargain) for 2014 and 96.8% for 2015. These “settlements” for the union and non-union employees are as follows:

	General Adjustment		Merit/Performance	
	2014	2015	2014	2015
1. Nonunion	0%	0%	2%	2%
2. Highway/Parks*	0%	0%	2%	2%
3. Sheriff Det. Sup.	0%	0%	2%	2%
4. Sheriff’s Lic. Sup.	0%	Open	2%	Open
5. Sheriff Deputies**	0%	0%	2%	2%
6. Sheriff Det. Dept. **	0%	0%	2%	2%
7. Sheriff Invest.**	0%	0%	2%	2%
8. Work Release/Juv.	1.5%	1.5%	2%	2%
9. Sheriff’s Lic. Sgts	Open		Open	

\*Highway and Parks elected to take their 2% each year and divide it equally among bargaining unit members as a flat cents per hour increase.

\*\*The merit listed represents the performance (merit) portion of a step/performance system.

This pervasive evidence indicates that 97.5% of County employees have “settled” for 0% as a general increase for 2014 and 2015, and 96.8% of employees have settled for 2% merit increase in 2014 and 2015. Given these overpowering numbers, any settlement/award that would be inconsistent must be premised upon most extraordinary and dire rationale.

An example of such extraordinary and dire rationale was perceived by Arbitrator James A. Lundberg as the basis for the award of 1.5% for 2014 and 2015 in general increases for the Work Release/Juvenile Unit. Arbitrator Lundberg provided the following rationale:

“Top wages for Anoka County Work Release Officers were only \$3.00 per month (nearly equal) lower than top wages Hennepin County Work Release Officers in 2012. In 2013 the Anoka County Work Release top wages were 1.5% less than the Hennepin County Work Release top wages. The County’s proposal will result in Anoka County Work Release top wages being 3% less than the top wage for Hennepin County Work Release top wages in 2014 and 4.65 less than Hennepin County Work Release top wages in 2015. The Union’s proposal will result in Anoka County Work Release top wages being 2.2% lower than Hennepin County Work Release wages in 2014 and 2.9% less than Hennepin County Work Release wages in 2015.” LELS vs. Anoka County, BMS 13-PN-0286 (Lundberg, Nov. 9, 2014)

The compelling basis for this award by Arbitrator Lundberg was the unacceptable inequity of employees in lower positions (in terms of grades and job evaluation) being compensated at higher wages than employees in the higher positions.

### ***External Comparisons***

The Record indicates that the Parties are in agreement regarding the appropriate counties to be used as comparisons or benchmarks for purposes of assessing external equity. The counties established by a long history of interest Collective bargaining at Anoka County are Dakota, Ramsey, Scott and Washington County.

A primary consideration that must be factored when assessing internal and external equity is the cogent argument of the Union that the rate or lack of expected progression within the pay range distorts the reality of the “real pay story” of the compensation of the Dispatchers. The Union has characterized the maximum of the pay grade/range stability 4 as “illusionary and unattainable.” The evidence submitted addressing these contentions will be addressed below.. Accordingly, the Union contends that any comparison internal or external, which is based in part on the maximum, is inaccurate invalid and misleading. In response to the contention that the stability step should not have been used as the maximum, the County has revised the external market analysis without considering the stability steps.

The comparative data, without consideration of the stability steps, is as follows (County post-hearing brief, pages 13 and 14):

	2014		2015	
	Start	Top	Start	Top
Dakota	\$19.45	\$29.35	\$19.84	\$29.94
Ramsey*	\$19.67	\$28.45	Not settled	
Scott	\$20.35	\$30.56	\$20.96	\$31.48
Washington**	\$20.51	\$25.98	\$21.12	\$26.63
Average:	\$20.00	\$28.73	\$20.64	\$29.35
Anoka***	\$20.58	\$29.90		

\*See below. Ramsey County uses several classifications in Dispatch.

\*\*Washington County amended its start in 2015 by way of a proposed trial range. The prior start rate of \$21.02 was replaced with a trial start of \$21.12. There was also a trial range max that has not been implemented

\*\*\*Comparable data uses the Anoka County range maximum excluding stability. Including stability results in a top rate of \$31.63/hour.

Subsequent to review of the revised data, the Arbitrator is compelled to conclude that the external market analysis, which does not speak to progression, as totally supportive of the County position that the wage range/grade for Dispatchers is competitive in the external market. While one county, Scott, has a higher maximum, Anoka County's wages are the highest for starting wages and second highest out of the four counties for top wages.

The Arbitrator did review the pay equity report and arguments (Exhibit 5) by the County contending evidence that the Dispatcher IIs are compensated equitably internally. The Arbitrator appreciates that pay equity assessment was designed and intended to discern differences in the pay of male and female dominated positions within the organization. The report, which also utilizes the stated maximum (Step 4) for the position, indicates that the Dispatcher II position is paid \$82.40 over the predicted pay. While the Pay Equity Report was not influential, the report did provide support for the County's contention of internal equity for the Dispatcher number classification.

The close examination of the data initially utilized in the external market analysis does support the Union's argument that there is more to the story than to accept that the external market study, based upon grade reported maximums. For example, currently in Stability step 4 - 20 years of service ( the range maximum used in the external analysis), there are no Dispatcher

II being paid at that level (20 years) even though Dispatchers have up to thirty-seven (37) years of service.

The Record indicates strong contention by the Union that the County's experience with turnover is evidence of external inequity, rather than external equity. In support of this contention, the Union has submitted these striking statistics:

1. Thirty-one (31) dispatchers left the County since 2010. This number is nearly equivalent to 100% of the total staff of dispatchers.
2. A recent I-team reported that 20% of the dispatchers left in a .6 week period
3. Four (4) witnesses at the hearing were former Anoka County dispatchers who each testified that their pay was the primary reason they left and that they each received higher pay from another county.

At face value, these statistics are unsettling. However, the County has provided the following information to explain the turnover it has experienced:

1. Of the thirty-one (31) dispatchers who left since 2010, fifteen (15, approximately 50%) of these individuals left while in initial employment phase, which is the phase of "wash out" or employee resignation.
2. Eleven (11, or 30%) of the individuals who left, left as a result of employer instigation—early retirement or performance issues.
3. None of the employees who gained employment in another county were hired by another county in the external comparison group.
4. The four (4) union witnesses who left to another county did also admit that other factors, such as location were considerations in the decision to leave Anoka County.

The Arbitrator's conclusions subsequent to the review of the data and arguments relative to the implications and influence of turnover are as follows:

- There is no disagreement that significant turnover is costly and disruptive to operations.
- The primary reasons for the majority of the turnover were the result of County initiative or the "wash out" period.
- There is no compelling evidence that the County's turnover experience resulted largely from pay inequity or lack of competitiveness.
- Finally, the Record indicates that the County is experiencing no difficulty in "attracting or recruiting dispatchers at current compensation rates/practices.

Therefore, the Arbitrator was compelled to accept the County's position and rationale that the turnover, though significant was **not** evidence that the compensation of the dispatchers was less than competitive. There was testimony and evidence that compensation was not necessarily the primary cause of the significant turnover of the thirty-one (31) dispatchers since 2010.

Given the conclusions cited, above the Arbitrator has found that the significant factors of economic conditions, internal equity and external equity strongly support the County's proposed general and merit increases for both 2014 & 2015.

### ***Pay Progression***

The Record is replete with evidence and the disparate positions of the Parties regarding the merit system and the "effects" of progression. A primary basis for the Award was the finding that the County's merit/general increase pay system has resulted in restrained progression for the dispatchers, causing internal and external pay inequities. The conclusions previously noted above, relative to findings of internal & external equities were premised upon the traditional and accepted analysis, which utilized minimums, midpoints and maximums of salary/wage grades/ranges to assess internal equity, external equity and pay equity. Accordingly, the analysis does not assess "real wages" and assumes that systematic progression is the reality for the positions that are being analyzed.

Subsequent to the review of the evidence/argument of need, the Arbitrator is compelled to find that the County's merit pay system has been "broken" relative to both stated and expected projection for this bargaining unit. More specifically, employees in the bargaining unit have not progressed to reflect tenure or merit and the maximum of the grades/ranges are arguably or presumably unattainable. This systematic subpar performance of progression under the merit system has resulted in inequities internally and externally.

The County has argued with the some credibility that the progression of this unit, as well as most of the workforce, has been severely restrained to a great extent due to the recession of 2008 and a period of slow recovery. However, the Record documents decades of slow or retrained progression resulting from the limitations upon funding. Conceptually, merit and/or pay for performance systems are perceived as progressive pay plans that reward the employees who

are contributing to the success of the organization and give less, or no reward, to the employees who are providing “marginal” contributions or who are not performing satisfactorily.

Initially, the County’s merit increase did compensate individual employees for demonstrated superior performance (up to 10%). Currently, the plan provides across the board increases for satisfactory service. To understand when and how the County’s merit system became “problematic,” a historical perspective is critical.

Initially, the merit plan was created and funded with a 3% pool of total wages. The compensation for individuals would be from 0% to 10%. In addition, employees below the midpoint of the range would receive an additional 3% discretionary increase. Employees would progress quickly in their ranges with increases with a maximum of 13% per year. Later, criticism of progression on the merit plan was an issue. In 1992, Arbitrator Gallagher critiqued the slow movement within the pay range as follows: (emphasis added)

“I note that one of the causes of slow progress through the permitted range of wage progression is its relatively wide range and the relatively small average progressions that have been made possible by annual 3% merit pools. As the range is now constructed, the maximum rate is 150% of the minimum rate, and midrange is 125% of the minimum rate.” Minnesota Teamsters Public and Law Enforcement Employees Union, Local 320 v. County of Anoka, BMS Case No. 92-PN-1231 (Gallagher, 1992).

The Record indicates that in 2001, the County changed its funding approach and eligibility for merit increases. The range of increases of 0-10% was changed to a 3% increase for satisfactory service. The discretionary increases of 3% were discontinued. In 2003, the County “asked” the employees to “help out” by “accepting” reduced merit pay when the State of Minnesota was experiencing financial shortfalls. In addition to the documented reductions in merit increases, the County also reduced or withheld general increases. In 2007, Arbitrator Richard A. Anderson recognized large disparities in internal equity between units, which were compensated solely on the basis of merit and those receiving longevity increases. Consequently, Arbitrator Anderson awarded a bargaining unit “catch up” increases based upon the following rationale:

“The evidence clearly shows...that an adjustment in range movement is warranted. While the Employer’s proposal may have an accelerating effect, more needs to be done.” Law Enforcement Labor Services, Inc. vs. County of Anoka, BMS 07-PN-0661 (Anderson, 2007).

Shortly after Arbitrator Anderson's award, the recession hit the county, state and country. While merit pay increases had been "chilled" previously, economies of the 2008 recession shadow the ability of funds for merit increases to "freezing."

In 2011, Arbitrator Richard Miller also found internal equities between bargaining units and stated:

"One unique aspect is that the pay plans with the merit pool as it currently exists creates a top pay for Bargaining Unit employees that cannot be reached. In addition, the plan has suppressed wages for this Bargaining Unit that has kept these employees more than 13% below the County's Detention Deputies, who are in the same pay grade and do the same or very similar work and deal with the same prisoners." Law Enforcement Labor Services, Inc. vs. Anoka County, BMS 10-PN-1311 (Miller, 2011)

Finally, in 2012, Arbitrator Richard Miller found compelling internal equities resultant from comparisons of internal positions and the "effects" of the County's merit pay plan.

Arbitrator Miller was strongly influenced by the higher wages period to lesser jobs/grades and commented:

"It is more alarming that detention deputies (Grade 8) earn more than \$2.50 per hour or 12% more than a shift coordinator (Grade 10) at 5 years and approximately \$1.70 per hour or 7.4% at 10 year. Given that work release employees cannot reach the range maximum, a comparison of top pay in external comparables results in a very deceptive picture of what employees actually receive." Law Enforcement Labor Services, Inc. vs. Anoka County, BMS 12-PN-1217 (Miller, 2012)

This award has considerable impact to the instant matter, especially since the Dispatcher IIs are also Grade 10 and have similar contentions of inequity with the same Detention Deputies unit, who are Grade 8.

The Arbitrator scrutinized the Record in the consideration of the alleged internal and external equities of the dispatcher unit in terms of "real wages" resultant from the restrictive progression under the step merit pay plan. Several documents of evidence were compelling and presumptive.

First, the document "Internal Anoka County Pay Comparison" (Union Exhibit 5-2), is a graphic representation of the pay and years of service pay regression for Dispatcher IIs (Grade 10) and Detention Deputies (Grade 8). The regression lines dramatically indicate that the Dispatchers are paid approximately -4.6% to -14% less in wages for the same years of service than the Detention Deputies who hold lower grade positions.

The Detention Deputies are the same comparison group that was used by Arbitrator Miller in his determination of internal equity and presumption that a significant negative difference in pay with a position of lower grade was compelling.

This Arbitrator also noted that the job evaluation/points for the Detention Deputies under pay equity was 178, while the job evaluation points for the female dominated dispatcher jobs were 206 (Dispatcher I) and 259 (Dispatcher II). The data from the job evaluation comparison does not document the precise inequity for this Dispatcher Unit. However, the comparison of such significant pay differential with a lower grade position is characteristic of a dire internal inequity and is compelling and influential in this award. The Arbitrator did note the County's contention that the Detention Deputies were not an appropriate group for comparison. However, the Arbitrator cannot ignore this glaring inequity with a lower grade position.

Similarly, the Arbitrator was impressed with the Union's contention of alleged inequity externally. Although the generally accepted analysis of external equity supports the County's contention of competitiveness, the Arbitrator did consider the argument that such does not represent the "real wages" of the members of the bargaining unit with comparable positions with similar tenure in the external market sample (external competitors). The "real wages," which have been adversely restrained by the slow progression under the merit plan, are significantly lower than individual employees with the same years of service in the other counties in the comparison sample.

The Union Exhibit 5-37 documents the comparison of an Anoka Dispatcher with 128 months of service compared to Dispatchers (with less service) at other counties chosen by the Parties to represent the external market for survey and benchmarks. The Arbitrator did not recognize 128 months as the magic number, but rather as a valid indicator of an inequity. This exhibit illustrates striking differences and apparent inequities with the external market in "real wages" in lower wages ranging from **-\$7.5%** to **-21%**. While this data does not determine the precise external inequity, the data does indicate that the "real wages" for Anoka Dispatchers are "behind" in wages compared to dispatcher positions of similar tenure in the external market analysis. The findings that the Dispatchers are experiencing internal and external inequities should not be surprising, given the documented wage restrictions for the County's merit plan since 2001 and arguably beyond.

Consequently, the Arbitrator is compelled to find that merit increases beyond those offered by the County are appropriate to help the Dispatchers “catch up.” The following considerations were influential in the fashioning of the Award:

- The Arbitrator did not perceive a compelling need to award general increases at this time, since the County’s grades and ranges are shown to be competitive. Unlike merit increases, which cause progression in the range, general increases are not perceived as direct mitigation of the issue identified.
- The internal and external equities are moving targets,
- This Record does *not* provide a precise and undisputable determination of what percent of pay or “settlement” that would “make the Dispatchers whole.” Rather, the data is symptomatic of a systematic malfunction of the merit pay system, which resulted in subpar progression for this unit.
- The perceived inequities have been the product of circumstances over a prolonged period. Consequently, the Arbitrator will address the inequity issues in the myopic terms of the current biennial period of 2014 and 2015 and defer to future reviews to fully address these issues, if necessary.
- Finally, the Arbitrator recognizes the County’s current positions for increases as characteristic of the return to increased funding for merit increases and managed progression after years of restrictive policies precipitated by the shadow of the 2008 recession.

The Arbitrator’s Award of merit increases will be premised upon these existing practices and philosophies of across-the-board increases for current employees with satisfactory service in the years 2014 and 2015.

The Record indicates disparate positions relative to the current design of the merit plan with references to years of service for the stability steps. The Union contends that the references to years of service provide a reasonable expectation that employees will be in the appropriate step when they have the stated years of service. For example, some employees should be in stability step 4 when they have 20 years of service, which is currently far from the current reality. Conversely, the County argues that the pay plans are not designed to move everyone to maximums. Rather, the stability steps are steps added to the established range to provide a tool for retention of long-term employees, rather than increases for levels of longevity. Whether the

deletion of references to specific years of service would eliminate any unrealistic or false expectations, the Arbitrator will leave for conjecture.

### **ISSUES #2, 3, 4, 5 AWARD**

Given the analysis and conclusions discussed above, the decisions of the Arbitrator on Issues #2, #3, #4, and #5 are as follows:

- The decision of the Arbitrator for **Issues #2** and **#4** (*General Increases*) is to award the position of the County of 0% for both 2014 and 2015.
- The decision of the Arbitrator for **Issues #3** and **#5** (*Merit Increases*) is to award the Union's position of 3% for each year of 2014 and 2015.

*The Arbitrator provides the following direction to the Parties regarding the back pay (of the 3% merit increase) for the calendar year 2014:*

All current members of the bargaining unit who were employed in 2014 and who were deemed to have performed satisfactorily shall receive the 3% increase for all work performed in 2014. Current bargaining unit members who worked in 2014, but were not employed on 01-01-2014, shall have their increases commencing on the date of hire. Further, the Arbitrator directs that the County issue a separate check or electronic transfer for 2014 back pay to the Dispatchers within 30 days of the receipt of this Award.

The pay adjustments for all employees who have/are working in 2015 and performing satisfactorily should be made by regular payroll adjustments. Dispatchers employed after January 1, 2015 and perform satisfactorily should have the increase prorated from the date of hire.

### **ISSUE 6- SHIFT LEADER COMPENSATION**

#### **UNION POSITION:**

Dispatcher IIs performing designated shift leader work receive premium pay "hour for hour" and at a rate of 5%.

#### **COUNTY POSITION:**

Individuals assigned and performing the duties of shift leader for at least 3.5 hours when there is not a shift leader will receive shift leader pay in the amount of a 3% increase for all hours so worked.

## DISCUSSION

Initially, the Arbitrator noted the Parties stated mutual agreement and understanding that the Dispatcher IIs must be assigned or designated as the shift leader in order to “qualify” for shift leader pay. This is a critical understanding/agreement without such the Parties could face the unmanageable scenarios of self-appointment by employees claiming to be eligible or deserving of shift leader pay. The most significant conclusions compelling the Award(s) are as follows:

- There is no dispute that a long-standing practice (work rule) for shift leader eligibility and pay has been in place, which has governed the issues of eligibility and extra compensation for shift leader assignment. The practice and work rule provided employees who were assigned shift leader for more than four (4) hours would receive an increase of 5% for all hours of the assignment. While the dispatchers were not organized until recently, the Arbitrator does find the practice/work rule as based upon long standing mutual agreement and understanding which compels influence in this Award.
- The County argues that internal equity should be influential in the determination of the “working amount out of class” pay. The Record indicates that the rate of increase is 3% for nearly all other County employees. However, the Arbitrator notes the long-standing practice (work rule), but also acknowledges that the pay differential between Dispatcher IIs and Lead Dispatchers far exceeds the 5% in the practice (work rule). Although dispatchers working out of class as a lead dispatcher do not perform all of the duties of the lead dispatcher, the significant differential (10% at grade minimums) justifies that the increase remain at 5%.
- The Record indicates that the long-standing work rule required a minimum of four (4) hours for eligibility for shift leader pay. While the County’s proposal of 3.5 hours is very close to the practice, the Union’s position of “hour for hour” and “immediate” eligibility is a significant departure. The Union has proposed language similar to that existing in another bargaining unit within the County for this “immediate” eligibility. However, this Arbitrator will **not** award this significant departure, which could result in administrative and, potentially, operational issues, but will defer further discussion of such to the bargaining table.

## **ISSUE 6- AWARD**

The decision of the Arbitrator is that dispatchers, when assigned as the shift leader for 3.5 hours or more, will receive a pay increase of 5% for all hours worked as a shift leader.

## **ISSUE 7- SHIFT BIDDING**

### **UNION POSITION:**

Bidding for shifts on the basis of seniority.

### **COUNTY POSITION:**

Continue the current practice of assignment of shifts *not* on the basis of seniority.

### **DISCUSSION**

The Union cites the former practice of assigning shifts on the basis of seniority and contends that senior dispatchers have been rewarded by the allowance of utilizing their seniority in the staffing of shifts. Conversely, the County has changed this practice to shift assignment without consideration of seniority for business reasons.

The following significant conclusions were of influence and control in the award:

- The Arbitrator notes that prior to organizing, the bidding of shifts were made on the basis of seniority. The Union has contended “FOUL” primarily due to the timing of the discontinuation of the practice that was a significant benefit for senior dispatchers. The Record is inclusive of the personal stories of senior dispatchers who had been able to have secondary employment by utilizing their seniority to secure shifts that were conducive to both work schedules.
- However, the Arbitrator did find the County’s rationale and business reasons as presumptive that the basis and impetus for the change in practice was premised upon sound business reasons, rather than malicious intent.
- More specifically, the Arbitrator was influenced by the County’s contention that shift bidding by seniority, rather than assignment could create overtime issues under the FLSA. With respect to the FLSA, 24-7 operations present challenges in staffing to be in accordance with the FLSA Act. More controlling is the County’s contention that shifts be “balanced” with experienced or senior employees to avoid providing “diminished”

services to the public. The County submits the probable scenario, that under strict seniority assignment approach, the night shift (arguably most difficult) would be staffed predominately by the newer and less experienced dispatchers. Such could also reduce the training opportunities and knowledge transfer between peers in such imbalanced staffing.

- The County's position was further fortified by the Arbitrator's consideration of the employment rosters submitted by the Parties –County #4 and Union #5-41. The roster documents that of the twenty eight (28) Dispatchers (I & II), ten (10) are Dispatcher Is and in their first year of employment—five (5) of which, started employment in January 2015. Of the eighteen (18) Dispatcher IIs, nine (9) have service of over five (5) years.
- Further, as declared by the Arbitrator, the consistent strategy in Interest Arbitration is to favor the Employer in matters, such as staffing that are necessary for the efficient and effective operations. This is especially important in such critical operation/services as the county communications center /dispatch.
- Finally, the Arbitrator notes that shift staffing has no support from internal and little externally.

Given these striking staffing considerations, the Arbitrator is compelled to award the County's position that shifts continue to be staffed by assignment rather than seniority. This Award is consistent with the stated strategy of the Arbitrator to support Employer's discretion to direct the workforce above, but also with the generally accepted statutory (PELRA) provisos that the Employer retains the right to establish work shifts and staffing schedules and assign employees thereto as required for efficiency of the operation of this organization.

#### **ISSUE 7- AWARD**

The decision of the Arbitrator is to award the County's position and current practice of shift staffing by assignment rather than by seniority.

#### **ISSUE 8- PAID MEAL BREAKS**

##### **UNION POSITION:**

Dispatchers receive a 30-minute paid lunch break.

##### **COUNTY POSITION:**

No change

## DISCUSSION

The Union has requested that dispatches receive a paid lunch and contends that such would avoid “dangerous staffing levels” during lunch breaks. The Union referenced one other bargaining unit who have paid lunches. The County argues that there is no operation need for paid lunches and that paid lunches are contrary to the intent of breaks “to get the dispatchers away from their desks” for a period of time. The Arbitrator was compelled by the following in this award:

- The Arbitrator did not find the Union’s contention convincing that paid lunches would avoid “dangerous” staffing below minimum standards. The Arbitrator did not find **any** evidence of such instance and would not believe that the County would staff for dangerously below standards.
- There is little internal or external support for the Union’s demand.
- While not influential, the Arbitrator was impressed with the County’s contention that lunch breaks can/should be an opportunity to take a break from the stress work and to return “refreshed and deescalated”.

## ISSUE #8 AWARD

The Arbitrator awards no changes in the current unpaid lunch practice.

**SUMMARY OF AWARD(S)**

**ISSUE #1 AWARD:**

- It is the decision of the Arbitrator to deny the request of the Union to change the current pay plan.

**ISSUES #2, 3, 4, 5 AWARDS:**

- The decision of the Arbitrator for **Issues #2 and #4** (*General Increases*) is to award the position of the County of 0% for both 2014 and 2015.
- The decision of the Arbitrator for **Issues #3 and #5** (*Merit Increases*) is to award the Union's position of 3% for each year of 2014 and 2015.

**ISSUE #6 AWARD:**

- The decision of the Arbitrator is that dispatchers, when assigned as the shift leader for 3.5 hours or more, will receive a pay increase of 5% for all hours worked as a shift leader.

**ISSUE #7 AWARD:**

- The decision of the Arbitrator is to award the County's position and current practice of shift staffing by assignment rather than seniority.

**ISSUES #8 AWARD:**

- The Arbitrator awards no changes in the current unpaid lunch practice.

The Arbitrator assumes and appreciates the Parties' intent to cooperate in the implementation of the Award, to draft appropriate contractual provisions for their Agreement, and to administer any retroactive amounts due employees. However, the Arbitrator shall retain jurisdiction to resolve any matter(s) associated with administration and/or implementation of the Award.

James A. Laumeier, Arbitrator \_\_\_\_\_

Dated \_\_\_\_\_