

IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

COUNTY OF ANOKA)

BMS NO. 07-PN-0661

“EMPLOYER”)

DECISION AND AWARD

LAW ENFORCEMENT LABOR)
SERVICES, INC. LOCAL NO. 199)

RICHARD R. ANDERSON
ARBITRATOR

"UNION")

NOVEMBER 24, 2007

APPEARANCES

For the Union:

Dennis Kiesow, Business Agent
Nick Wetschka, Business Agent
Erin Burnette, Detention Officer
James Fahrni, Detention Officer
Daniel Kissiah, Correctional Officer
Kelly Larvick, Shift Supervisor

For the Employer:

Scott Lepak, Attorney
Joan Gramling, Human Resource Manager
Melanie Ault, Director of Human Resources
Dan Ceynows, Director of Institutions
Marcy Crain, Assistant Anoka County Attorney
Mike Roff, Manager of Adult Institutions

JURISDICTION

Pursuant to the provisions of the Minnesota Public Employment Relations Act (PELRA),¹ Commissioner of the Bureau of Mediation Services (BMS) James A. Cunningham, Jr. certified the following issues in dispute to interest arbitration in a letter dated May 15, 2007.

- 1. Duration - Length of Agreement - Art. 26**
- 2. Wages - Amount of General Increase 2007 - Art. 21, Sec. 1**
- 3. Wages - Amount of General Increase 2008 - Art. 21, Sec. 1**
- 4. Wages - Amount of General Increase 2009 - Art. 21, Sec. 1**
- 5. Wages - Amount of Merit Pool - Art. 21, Sec. 2**
- 6. Hours of Work - Shift Differential, Amount - Art. 8, Sec. 7**
- 7. Preferred Benefits - Language - Art. 10 & Art. 11**
- 8. Hours of Work - Method of OT Calculation - Art. 8, Sec. 2**
- 9. Wages - How Calculated - Art. 21, Sec. 6**

The undersigned, being duly appointed as an arbitrator under the auspices of the BMS, was notified of my selection as the neutral arbitrator in this matter in a letter from the Union dated July 17, 2007. A hearing was held on October 8, 2007 in Anoka, Minnesota. The parties were afforded a full and fair opportunity to present their case. Witness testimony was sworn and subject to cross-examination. Exhibits were introduced and received into the record. The hearing closed on October 8, 2007. Post-hearing Briefs were simultaneously mailed on October 26, 2007, and received on October 26, 2007 and October 27, 2007 by the Employer and Union, respectively.

During the course of the hearing an issue developed with respect to a comparison of the job duties of the Work Release Officers (WRO's)² and the Detention Deputies at the

¹ MINN. Statute §179A.16, subd. 2.

² This classification includes Work Release Officers, Corrections Officers, Juvenile Detention Officers and Shift Coordinators.

Employer's Brief at which time the undersigned directed the Employer to furnish additional information in its Post-hearing Brief on the comparability factors related to the job duties of the WROs versus Detention Deputies. The Union was then granted, upon request, the opportunity to furnish a Reply Brief to the additional information furnished in the Employer's Post-hearing Brief. On October 29, 2007, the Union made said request, and November 5, 2007 was established as the mailing date. The Union's Reply Brief was received thereafter on November 5, 2007, at which time the record was closed. The Employer also submitted a Reply Brief dated November 5, 2007, which was received on November 6, 2007, rebutting the Union's Post-hearing Brief arguments on all the litigated issues. By letter dated November 6, 2007, the Union objected to the Employer's Reply Brief arguing that there was never an understanding that the Employer would be allowed to submit a Reply Brief.

The Union is correct in its argument that the Employer was directed to furnish additional information that the this Arbitrator requested to resolve the internal comparability issue involving the WRO's and Detention Deputies that arose during the hearing.³ In view of the foregoing, the Employer's Reply Brief is hereby rejected.

BACKGROUND AND FACTS

Anoka County, hereinafter the Employer, is located in east central Minnesota. The County is the fourth most populous in Minnesota with in excess of 340,000 residents. The Employer has approximately 1,465 employees, of which approximately 1,121 are non-union

³ Rather than having to prolong the hearing and litigate this issue on a future date, the parties agreed that the Employer would be given additional time to gather the information and submit it in its Post-Hearing where upon the Union would be allowed to submit a Reply Brief on the additional evidence.

and approximately 343 are represented in nine bargaining units serviced by four different unions and various locals of Law Enforcement Labor Services, Inc. (LELS).⁴ LELS Local No. 199, hereinafter the Union, is the recognized collective bargaining representative for all WROs working at the Anoka County Workhouse (Huber Facility), the three Anoka County Juvenile Centers and the Anoka County Medium Security Facility. The Union also represents the Shift Coordinators in the same unit who work at the Lino Lakes East Central Regional Juvenile Center (RJC) Medium Security Facility. The current Agreement is effective January 1, 2005 through December 31, 2006. The parties are currently operating under the provisions said expired agreement. The current unit consists of 51 employees. The other represented groups and their representative, number of employees and the current contract periods are as follows:

Highway and Park Maintenance unit - Local No. 49, International Union of Operating Engineers—75 employees—Contract effective January 1, 2007 through December 31, 2009.

Pine School Teachers unit — Education Minnesota — 22 employees — Contract effective July 1, 2005 through June 30, 2009.

Sheriff's Department Detention Sergeants and Lieutenants — LELS—9 employees — Contract effective January 1, 2005 through December 31, 2006.

Sheriffs Department Licensed Officers — LELS, Inc. — 87 employees — Contract effective January 1, 2005 through December 31, 2006.

Sheriff's Department Detention Deputies — LELS, Inc. — 64 employees — Contract effective January 1, 2005 through December 31, 2006.

Sheriffs Department Supervisors - Anoka County Sheriffs Supervisors Association — 8 employees — Contract effective January 1, 2005 through December 31, 2006.

Essential Investigator Unit — LELS, Inc. — 15 employees — Contract effective January 1, 2005 through December 31, 2006.

⁴ Six units represented by LELS involve different locals.

Sheriffs Department Essential Licensed Sergeants — LELS, Inc. — 12 employees — Contract effective January 1, 2005 through December 31, 2006.

The parties have a history of collective bargaining in the unit dating back to 1994. Minnesota Teamsters and Public and Law Enforcement Employees' Union Local No. 320 formerly represented this unit from 1989 through 1994.

The Employer operates a maximum-security jail, a medium security facility, three juvenile facilities and participates with other jurisdictions in a regional security facility. The Sheriff's Department operates the Jail. The Jail, with a maximum capacity of 248 inmates, primarily houses male inmates who are jailed and waiting to see a judge, or are jailed and waiting for trial, or have been convicted and sentenced for up to one year, or who are federal prisoners. Through a contract with the U.S. Marshal's Service, these federal prisoners are temporarily housed in Anoka County while waiting for trial or assignment to a federal detention center. Female detainees are processed through the Jail and housed at another facility operated by the Corrections Department.. It is also the primary intake and booking facility for all Anoka County law enforcement agencies.

The Corrections Department operates both adult and juvenile corrections facilities. WROS work at the Workhouse (Huber Facility), Juvenile Centers and the Medium Security Facility. The Workhouse is located in the City of Anoka approximately two miles from the jail. The Workhouse has both workhouse and work release classifications for male and female sentenced offenders. All inmates are offered a variety of educational and therapeutic programs. Non-work release inmates are required to work on work crews supervised by WROs. It is a 240-bed minimum-security unlocked dorm like facility. Its primary function is to have the inmates work. The Workhouse also accepts offenders from

other Minnesota counties. Referrals are accepted from courts, county corrections and law enforcement agencies. Approximately 50% of the inmates serving their sentence at the Workhouse work in the community at jobs during the day and are housed at the facility when not working. The other 50% are assigned to work at the facility or at other County owned or operated facilities, both under the supervision of WROs.

The Employer also operates a Medium-security Facility located in Lino Lakes, Minnesota. Inmates are housed in a building designed with four separate pods of 30 beds per pod. There are currently 30 beds designated for sentenced male offenders, 30 beds for pre-trial or sentenced females, and 30 beds for offenders sentenced to Minnesota's two-day Driving While Intoxicated (DWI) program. Referrals are accepted from courts, county corrections, and various law enforcement agencies. The Employer also accepts federal prisoner referrals.

The Employer operates two secure facilities (Sanford and Walker Cottages) with a total of 50 beds that are located in Lino Lakes, Minnesota for juvenile males 13 to 18 years old. Referrals are accepted from courts, corrections and various law enforcement agencies. Juveniles are detained at the facilities pending court order or court disposition. The facilities offer a weekend program that provides youth with the correctional institution experience and an opportunity to reflect on the consequences of their criminal behavior. There are also short-term 5-day to 60-day and long-term behavioral modification programs (3 months to 12 months) and sex offender long-term treatment programs (9 months to 18 months).

The Employer also operates a Juvenile non-secure facility. It is an unlocked, 24-bed facility located in Lino Lakes, Minnesota that houses males and females, ages 12 to 17. Referrals are accepted from various law enforcement agencies, courts, social service agencies and corrections departments.

Finally, the Employer participates in a regional secure RJC facility in conjunction with other metro and immediate out-state area counties. It is a maximum-security regional juvenile center for males and females 10 to 18 years old who have committed delinquent acts and have been sentenced. The purpose of the RJC is to protect the community while providing youth with opportunities to change.

OPINION AND AWARD

On the basis of the evaluation of all of the testimony, documents and arguments presented by the parties, the decision by this Arbitrator is as follows

ISSUE 1. — Duration - Length of Agreement – Art. 26

Current Contract

The current Agreement is a two-year agreement effective from January 1, 2005 until December 31, 2006.

Union Proposal and Position

The Union is proposing a one-year contract effective January 1, 2007 through December 31, 2007.⁵

The Union argues that traditionally there have been one and two-year agreements. The evidence presented discloses that a one-year Agreement is appropriate since there is

⁵ Hereinafter, underlined language is new proposed language and strike through is language to be deleted.

a lack of internal and external data for the years 2008 and 2009. Although the Education Minnesota Teacher's unit has a three-year agreement, they have duration dates other than January 1 through December 31. The Highway and Park unit has a tentative three-year agreement; however, it has not been ratified as of the date of the hearing. Finally, the parties do not have an adversarial relationship negating a need for a three-year agreement. As a result the Union maintains that a one-year agreement be awarded to maintain the historic pattern since 1992 of having one and two-year agreements; and to provide time for data to become available to adequately negotiate agreements for 2008 and 2009.

Employer Proposal and Position

The Employer is proposing a three-year contract effective January 1, 2007 through December 31, 2009.

The Employer argues that the evidence shows that there has not been a one-year agreement since 1998. Since then the negotiated/arbitrated agreements have been two years in length, which does not support a one-year agreement. The Union also presented an argument that the alleged problems associated with the wage system support a one-year agreement. The Union failed to connect its concerns with the wage system to the need for a one-year agreement. Again, this factor does not support the Union's position.

The Union's argument that the parties do not have an adversarial relationship does not support a short duration award as any relationship that is required to undergo any negotiations will create stressors on that relationship. The Union also argues that there is not sufficient certainty in the cost of living indexes, particularly in the food and fuel sectors. Most arbitrators acknowledge that this factor is given relatively less weight than other factors. The fact that the consumer price index does not accurately reflect the true cost of

living for groups that have a separate contribution for health insurance (which in this contract the County changes in response to rate changes) also heavily dictates against any concern about fluctuations in this area. Absent this highly inflationary factor, the likely purchasing power element as measured over time will likely be subject to the downward pressures associated with the mortgage/housing market downturn and regional job loss. Accordingly, the security afforded by a three-year agreement will be beneficial to the bargaining unit employees. Finally, the Union's argument that there are few external county settlements for 2008 and 2009 is rendered moot by the fact that there are no comparable counties in the market place to compare with this group.

In contrast, the Employer's arguments for a three-year agreement are based on the real need for a break from the negotiation process for this group. There is an historical pattern of the same duration for collective bargaining agreements within the Employer. Internal equity strongly supports a three-year agreement similar to the agreements that the Employer has already reached with other groups. The Teacher's unit, which is within the Community Corrections Division, and the Highway and Engineer and Park unit have contract durations into 2009.

DISCUSSION AND AWARD

The Union's proposal has merit. Except for a relatively small ratio of organized employees, wage rates have not been established for 2008 and 2009. Assuming that the Highway and Park unit ratify its tentative contract, only two of the nine organized bargaining groups have settled for 2008 and 2009. This only affects approximately 30% of the organized work force.

It would be disingenuous to saddle the unit with arbitrated wage increases for 2008 and

2009 when the wage increases have not been established for the vast majority of the Employer's work force. Also, the parties have issues that need to be resolved through negotiations rather than arbitration as pointed out further herein. The parties also need to come to an agreement on a comparable external work force, if there is one. It would also be unfair to require the Union to wait until the 2010 negotiations to try to resolve these issues that I have remanded back to the parties for negotiations. Since the parties do not have an adversarial relationship, there is a high probability that they can resolve their differences through negotiations rather than through interest arbitration.

In view of the foregoing, the duration of the new Agreement will be January 1, 2007 through December 31, 2007

ISSUE 2 —WAGES 2007 Art. 21, Section. 1

Current Contract

Effective January 8, 2005, the salary range will increase by two percent (2%). Effective January 7, 2006, the salary range will increase by two percent (2%). The salary range is shown on Appendix A (attached). In the event that the general adjustment for the general unorganized group exceeds two percent (2%) for January 7, 2006, the 2006 general adjustment will be the same percentage as for the unorganized group

Union Proposal

A general 6% pay increase over 2006 rates in addition to a 5% range movement adjustment for employees upon completion of 2, 5, and 7 years of service for all classifications.

Employer Proposal

General Increase: Effective the beginning of the first pay period in January of each year of this Agreement, employees will receive a two percent (2%) general increase or be placed at the applicable range minimum, whichever is greater.

Range Movement: Effective the beginning of the first pay period in January of 2007, the range minimum will increase by seven percent (7%), the 1st quartile will increase by six percent (6%), the midpoint and third quartile will increase by five percent (5%) and the range maximum by four percent (4%). Effective the beginning of the first pay period in

January of 2008 and 2009, the range minimum and range maximum will increase by three percent (3%).

UNION POSITION

Internal Equity

It is the Union's position that internal equity considerations support an award of its proposal. The Union argues that in spite of the Employer's argument that Detention Deputies and WROs positions are not comparable, the fact remains that both groups are essential employees under the Statute certified by BMS.⁶ Both are "corrections officers" responsible for the security, custody and control of facilities and inmates. Since they are essential employees, the this Arbitrator need not go any further than an internal comparison between essential "correction officers" of the Employer. Further, WROs pay into the same PERA (Public Employees Retirement Act) Correctional Service Retirement Fund. This Fund was created in 1999 for "corrections officers" serving in county and regional adult and juvenile corrections facilities.

The WROs are definitely doing the same work, but are underpaid. Both the WROs and Detention Deputies are Pay Grade 8 while the Shift Coordinators are Pay Grade 10; however, both unit groups are being paid less than the Detention Deputies. The Employer is underpaying WROs 29.78% below Detention Deputies at five years. Detention Deputies earn 12.17% more after five years than WROs earn after 12 years. Shift Coordinators are being paid 23.24% less at five years.

The Pay Equity Report lists all unit classifications below predicted pay, while the Detention Deputies are above predicted pay. The report lists the maximum monthly salary

⁶ Minn. Stat. §179A.03, subd. 7

for Detention Deputies at \$3,809.00 and this group at \$3,663.00 or 4% less. The Detention Deputies' maximum pay does not include any of the longevity pay steps received after five years, while the maximum pay for unit classifications includes the additional \$300.00 per month stability range maximum available after 20 years. The top pay used for this group, however, is literally unattainable with the Employer's current wage increase proposal and merit system.

The Employer argues that there is an internal pattern established based upon the 2% imposed on non-union employees and the 2% negotiated with the Teacher's unit and the Highway and Park unit. All these employees are non-essential with the vast majority being non-union without the benefit of negotiations. An award based solely on settlements between the Employer and non-essential employees fails to recognize the unique duties and conditions worked by essential employees. These unique duties and conditions are most accurately reflected in the external market place.

Finally, the Union argues that the Employer does not have an internal pattern of settlements or a history of negotiating the same wage increases for all employees. This is evidenced by the Employer making market adjustments for many non-union classifications both in 2005 and 2007. In addition, the Employer gave the Detention Deputies an additional 2% market adjustment at the 5-year step with the addition of a merit increase in 2005. The Detention Deputies' 2005—2006 Labor Agreement states the performance based 2% increase is “[a] mechanism to increase the County’s position toward the external market average.”

External Market Considerations

The Union's position is that its wage proposal should be awarded because it is also supported by external market comparisons. The Employer is part of Minnesota Economic Development Region 11 consisting of the seven Metro Counties of Anoka, Hennepin, Ramsey, Carver, Scott, Dakota and Washington Counties. The Employer ranks fourth within Region 11 both in population and tax capacity. All Region 11 Counties provide adult detention, juvenile detention and work release services. The lone exception is the Employer's maximum-security facility for juveniles run by employees in this bargaining unit.

The difference between the WROs and "corrections officers" in other counties is the agency they work for. The Employer's WROs work under the Department of Human Services while "corrections officers" in other counties work under their respective sheriff's departments. The WROs in this unit have the same job duties and are in "similar or like job classifications" as employees in the other six metro counties. It is obvious Region 11 is the proper comparable group and must be used when considering "similar or like classifications" for market comparisons.

WROS are extremely under paid when compared with other Region 11 "corrections officers". Arbitrator Gallagher recognized this when he used the same comparable counties during the last interest arbitration in 2001 when he found:

Whether fair compensation is measured by the external market or by internal comparisons, the evidence indicates that this bargaining unit, as I concluded in 1992, continues to be underpaid. The Employer argues that differences exist between the job functions of bargaining unit employees and employees in similar classifications working in neighboring counties.

Those differences, however, are not sufficient to explain the disparity in the compensation of bargaining unit employees.⁷

WROs are the lowest paid "corrections officer" group in Region 11, receiving over \$800.00 per month or 25.3% below average using 2006 top wages. Washington County "corrections officers", which are the second lowest paid in Region 11, receive over \$520.00 a month or 15.5% more than WROs. The WROs will still be paid \$775.70 per month less than the average at starting pay and \$831.46 per month less at top pay than the marketplace even with a 6% general increase for 2007. With the Union's requested increases, these employees will still receive considerably less pay than "corrections officers" doing the same work within their market group. In addition, the proposed range movements at two, five, and seven years are needed to ensure the WROs will reach top pay within a reasonable time.

The Union also argues that turnover supports its argument that WROs are underpaid. The Employer apparently is unable to attract qualified employees and is experiencing considerable retention problems. Presently, the starting wage advertised in the job posting for WROs and the starting wage paid new employees is approximately 10% above the starting pay provided in the Agreement. In the last five years, 38 WROs have left their positions, of which 33 left to seek employment elsewhere. This retention problem supports the Union's requested increase in wages.

Other Economic Considerations

The Union argues that its wage proposal should also be granted in part based upon economic forces, namely the cost-of-living as measured by the Consumer Price Index

⁷ Law Enforcement Labor Services, Inc. v. County of Anoka, BMS 01-PN-956. p.17 (2001)(Gallagher).

(CPI) issued by the Department of Labor-Bureau of Labor Statistics. Data submitted by the Union discloses an inflation rate of 2.4 percent in 2006. The first half of 2007 shows an increase of 2.8 percent for consumers in the Minneapolis and St. Paul area. The Employer's proposed 2.0% increase will not allow these severely underpaid employees to keep pace with inflation.

EMPLOYER POSITION

Internal Equity

The Employer argues that a comparison shows that its proposals are internally consistent with other employees. The evidence discloses that in 2007 there is a well-established pattern of a 2% wage increase covering 83% of its employees. Although some minor deviations exist, the established wage increase pattern still provides a strong basis for awarding the same wage increase to the WROs; and there is no compelling reason for deviating from this pattern

The Employer further argues that WROs and Detention Deputy positions are not comparable. The Union's attempt to compare the Detention Deputies to the WROs, thus justifying higher wage increases, just does not hold up as the following factors are examined

- The application standards are higher for Detention Deputies. The Detention Deputies classification requires that individuals have a current advanced First Aid Certification with knowledge of CPR principles, procedures and techniques desired. The WRO classification does not have any similar requirement. Detention Deputy applicants must have excellent health with weight in proportion to height. The WROs classification does not have any similar requirement. Detention Deputy applicants are

required to have tolerance for the stress associated with working in a potentially dangerous environment.

The WROs classification does not have any similar posted requirement. Detention Deputy applicants are preferred to have “demonstrated experience or training working directly with people and with solving people related problems”. The WROs classification simply requires an ability to develop and maintain working relationships but does not require or prefer problem solving.

- The job postings for each group demonstrate that Detention Deputy candidates undergo a stricter selection process. These requirements are similar to that of licensed officers. They include an application review, a written examination, an oral interview, psychological evaluation, a background investigation and a medical examination.

In contrast, the WROs candidates do not receive a psychological, background investigation beyond a ministerial BCA computer check or medical examination. The screening process of the WRO candidate is more akin to general county employment.

- The initial employment period and the training are different for each group. The Detention Deputies are required to take a 40-hour correspondence course that substitutes for academy training. The probation period for Detention Deputies is specified as 2,080 hours. Probationary Detention Deputies are placed under the direction of a field-training officer and placed into a very structured and intensive formal program. This program includes a daily evaluation, as well as formal evaluations at six, nine and twelve month intervals with formal demonstrated proficiencies required in 300-400 tasks.

In contrast, the individuals initially employed as WROs are subject to the same probationary period requirements as applicable to non-union employees as stated in the Anoka County Personnel Rules & Regulations. This is a six-month period, which is 1/2 the required period for detention deputies. WROs in the workhouse undergo a total of 55.5 hours of specific training and 76 hours of observation shifts. They do not have to undergo any formal correspondence or related academy training.

- The Detention Deputies work in a maximum security facility where all arrested individuals are initially processed; whereas, except for the juvenile secure facility, all the WROs work in medium or non-secure facilities where the juveniles are sent following processing at the Jail or by court order or by other jurisdictions. The Detention Deputies have to deal with individuals arrested for homicides, those with mental health issues including psychotic episodes, those under the influence of drugs and alcohol, those with physical/medical problems and suicide risks. Juveniles, who are arrested, are brought to the Jail where Detention Deputies are required to take additional protections to assure that the juveniles are not placed in the sight line of adult inmates.
- The Detention Deputies work in a very fast paced environment in which regular assigned duties are numerous and varied. For example, the Jail receives approximately 300 calls from the public that the Detention Deputies are required to handle. They need to make sure that the visiting individuals such as police officers, lawyers, family, and doctors are handled appropriately; and that no-contact orders are noted and enforced. This initial intake process is one of the most physically threatening functions that the Detention Deputies are required to deal with on a regular

basis. The individuals brought into the jail are often combative, in a state of high agitation incident to the arrest, are verbally and physically threatening, assaultive, exhibiting signs of danger to themselves (suicidal) or others and may be out of control due to drug/alcohol/mental health issues. The individuals brought to the Jail may have contagious diseases (there were 3-4 exposures this year at the Jail) and/or are in such a disheveled state upon arrival that the jailers need to deal with bodily fluids such as blood, feces and urine. All of these bodily fluids also serve as potential (and sometimes real) projectiles directed at the Detention Deputies. Detention Deputies also have to deal with gang-based problems that create an even more complex set of duties and responsibilities for them.

The individuals brought into the workhouse have already been subject to the court process and identified as eligible for the minimum-security workhouse. Medium security inmates have also been screened and deemed able to function in a less restrictive setting than the jail. As noted above, the juveniles first intake through the Jail where it provides the juvenile time to calm down, clean up and address any immediate medication issues that may be needed prior to being transported to the Juvenile Facility under the supervision of WROs.

In addition, WROs have more stable and regular workloads. The WROs on the day shift receive a briefing, make random telephone job checks, monitor breakfast, distribute medications and monitor lunch. The only scheduled duties for the evening shift are to receive a briefing, distribute medications and monitor dinner. The night shift receives a briefing, distributes medications, monitors breakfast and runs a copy of the day's logs for "operations". They also do random security checks, searches upon

returning inmates and room searches. WROS also conduct breathalyzers and urinalysis test on returning inmates.

- The Detention Deputies in the Jail perform a security and monitoring function in a very fast-paced, demanding and high-volume setting with unpleasant and uncooperative individuals. Because of the security and potential liability issues, activities at the Jail are digitally recorded. This creates greater work accountability for the Detention Deputies. Response to problems by an inmate is addressed through a use of "force continuum". This may include use of verbal skills, physical intervention, pepper spray, tasers, cell extractions, use of restraint chairs and, at the Detention Sergeant level, the use of pepper balls shot by a weapon. Detention Deputies are trained and expected to be proficient in the use of "force continuum" and personal protective skills although only limited Detention Sergeants are trained and permitted to use a pepper ball weapon.

This significantly differs from the rehabilitative/educational functions of the Juvenile Facility and the continuation of work in the community functions of the Workhouse. Non-unit Probation Officers in the juvenile area primarily address issues there through education and counseling programs that are designed to return the juvenile into the community or otherwise assist in the transition to adulthood. The WROs assist in this process. Security problems in the Workhouse are addressed by Anoka City Police Officers rather than by WROs.

- Finally, the Union's argument that individuals who are underpaid will "vote with their feet" and move to another job most clearly demonstrates the lack of similarity between the Detention Deputies and the WROs . The recollection of the County management

team was that there has only been one individual in recent memory that moved from a WROs position to the Detention Deputies position. This move occurred approximately in March of 2005. This individual did not pass probation as a Detention Deputy and was separated in approximately July of 2005. If the jobs were as similar and the pay disparity as great as the Union suggests, any opening in the Jail would receive a flood of applicants from the existing WROs. The fact that this has not occurred even in small numbers strongly dictates against any finding of similarity in the classifications.

As evidenced above, the Union's claimed comparable is inappropriate. Arbitrator Gallagher's 2001 award used and was based on the other 173 pay equity point classifications rather than the Detention Deputies' salary plan. This focus on the non-union 173-point classifications rather than the Detention Deputies strongly supports the Employer's position to adjust the ranges to equal the non-union Grade 8 group. The comparison to the other 173 pay equity point positions also strongly supports the arbitrator providing the same two percent (2%) general increase for 2007 provided to the nonunion group at 173 pay equity points.

After Gallagher's 2001 award, the parties' voluntarily negotiated wage increases for 2003, 2004, 2005 and 2006 that focused on actual pay rather than range movement. During this same period, The Employer was also awarding the same general increases to employee groups including non-union employees that it settled with for the WROs. In addition, the Employer was also periodically adjusting the range minimum and maximum amounts by three percent (3%) (without corresponding impact on those existing employees' wages unless they fell below the new range minimum). The result was that the WROs have pay ranges below the non-union scale

In order to address this discrepancy, the Employer is proposing to adjust the pay ranges in 2007. This greater range adjustment at the start rather than at the top has the practical effect of shortening the range movement needed to reach the maximum salary. More importantly, for internal equity purposes, it has the effect of matching the non-union pay ranges with the pay ranges applicable to WROs. This addresses the precise internal equity rationale that Arbitrator Gallagher based his 2001-2002 award. Internal equity overwhelmingly favors the Employer's final position.

The Union also alleged that the WROs were \$31.62/month below the predicted pay as noted in the pay equity report. Awarding the County's proposed adjustments to the range for the classifications in this group will fully address the Union's argument that this group is below predicted pay. The Employer's position on adjustment to the range will put it at the same position as the other 173-point classifications and \$2.38 above predicted pay. It is important to note that the non-union group range adjustments were done in the same manner as the Employer proposes for the WROs. The effect on incumbents is to make sure they do not fall below the newly adjusted range minimum and are not capped at the old range maximum. WROs start above the new minimum start rate and do not have sufficiently senior individuals at the range top; therefore, there is no practical downside to this range adjustment.

In contrast, because the Detention Deputies are already well above predicted pay using this pay equity report, any wage award providing movement toward the same pay would result in increased distance from the predicted pay amount. The arbitrator's consideration of pay equity principals does not include the authority to place one group racing away from predicted pay.

External Market Considerations

The Employer argues that the Union's attempt to create an external market should be rejected. The Union's purported comparables show that there is an approximately 25.3% pay disparity using Region 11 and 23% using a narrower metro market group provides strong evidence that these groups have not been and are not comparable. External comparables become difficult to determine because of the varying approaches that alleged comparable counties use for their programs. These approaches are reflective in the diversity of the types of staff operating within the programs. For example, two individuals now staff the juvenile center buildings during the day hours when residents are generally in school, three staff the buildings during the evening and two staff the buildings overnight when residents are generally sleeping. The facility also schedules the non-unit Treatment Coordinator five nights each week per building. Non-unit Probation Officers are an essential part of this staffing and available to provide direction on areas of discretion. Other juvenile centers in the State may not use this model or take the same education/counseling approach, rather they may remain more detention oriented. For example, Scott County's internet site on its jail states that it only houses its juveniles for a "very limited time".

It is also particularly difficult for the Union to establish an appropriate external comparable for the juvenile facility because the bargaining unit includes employees at the East Central Regional Juvenile Center (RJC) facility, an eleven county joint powers agreement entity that serves Anoka, Benton, Chisago, Isanti, Kanabec, Mille Lacs, Pine, Scott, Sherburne, Washington and Wright Counties. This entity includes a supervisor, treatment coordinator, 12 Probation Officers, nine bargaining unit members, three Educators, a Nurse and an Accounting Clerk.

The work release programs are not the same in other counties. To the contrary, the other jurisdictions appear to take a similar approach to work release that these counties apply to jails with more bars, concrete, steel doors and restrictive jail type settings. For example, the Washington County jail holds pre-trial, straight time (sentenced), work release and STS (sentenced to service) offenders. These individuals are not placed in a separate program like the Employer. Finally, there are no medium-security facilities in the claimed comparable group. The Employer is relatively unique in providing this separate function. Thus, there simply are not sufficient external comparables for this bargaining unit.

Other Economic Considerations

The Employer's position will place the members of this bargaining unit exactly at the most recent CP (All Urban Consumers) not seasonably adjusted index rate of 2%. The Employer's position is even more generous in light of the commonly accepted economic principle which assumes that eighty percent of the CPI index change is an approximation of the real change in purchasing power for a public employee particularly where there is a separate contribution toward the highly inflationary cost of health insurance. Further, employees who are eligible for movement through the merit system will stay well ahead of the cost of living because they will receive an additional amount established in this arbitration. This system whereby employees below the range top receive another annual increase along with the general increase does not have a common parallel in the private sector. The large amount of these increases should be noted in comparing any increase with the consumer price index. In contrast, the Union's proposed 6% increase will place WROs three times beyond any increase needed to maintain purchasing power.

DISCUSSION AND AWARD

In formulating this award, I intend to look at the traditional criteria that arbitrators use in determining wage rates in interest arbitration matters—ability to pay, pay equity, internal comparisons, external comparisons and other economic considerations.

Since equity pay and the ability to pay are not in issue, I intend to ensure that any award not compromise the internal relationship of employees, and at the same time ensure that the WROs are not left behind by the “marketplace”. I will also consider the other economic considerations raised by the parties, if such considerations are necessary in my award.

As stated earlier herein, the Employer has 1,465 employees, of which 343 are represented in nine bargaining units serviced by five different unions/locals. There are 51 WROs, which is roughly 15% of the unionized work force and approximately 3.5% of the Employer's total employee compliment. The evidence disclosed that there is a consistent internal pattern that has emerged in establishing wage increases wherein an overwhelming majority of employees have received the same general wage increase percentages since at least 2003.⁸ The Employer has currently negotiated a general 2% wage increase for 2007 with two of the nine bargaining units. The Employer also set a general 2% wage increase for all its unrepresented employees for 2007. Absent compelling reasons, it would be difficult to award greater wage increase percentages through interest arbitration than what has been established in negotiated settlements or given to unrepresented employees.

⁸ Except for the exceptions listed herein, it appears that all employees have received the same wage increase percentages.

Although the Employer has established a 2% wage increase pattern, there are some exceptions. In 2005, the Employer gave the Detention Deputies an additional 2% market adjustment at the 5-year step with the addition of a merit increase in 2005 in order to increase the Employer's position toward the external market average.

In its agreement with the Highway and Park unit a special range adjustment amount was negotiated that affects their total wage compensation package for the years 2007-2009. This special range adjustment for 2007 is as follows:

<u>Minimum and Minimum +3%</u>	8%
<u>1st Quartile</u>	7%
<u>Midpoint and 3rd Quartile</u>	6%
<u>Range Maximum</u>	5%

In addition, a change in the merit pay pool was also established in this tentative agreement. There is a two percent (2%) merit pool increase effective the beginning of the first full pay period in January of each year calculated using the range maximum (including the applicable stability range maximum in 2007 for those individuals eligible for stability movement and excluding stability for 2008 and 2009) noted in the 2007 increase of ranges.⁹ Finally, Snow and Ice Control employees received an additional increase from \$1.25 to \$1.50 per hour during the snow and ice control season effective upon the date of ratification of the agreement by both parties. What the actual effect the increase of the range adjustment and additional increase to Snow and Ice Control employees have to their negotiated total wage compensation package is not known; however, it most assuredly adds to the 2% wage increase given to this group.

⁹ It appears that former merit increases were previously based on an employee's actual wage.

Market adjustment rates were also made for certain non-union employee classifications in 2007 as they had for other non-union employee classifications in 2005. Again, what effect this has had on their total wage compensation package is not known; however, it was increased by this action.

The Employer is also offering the same 2% general wage increase to WROs. The Employer is also proposing a change in the range movement, which has an effect of increasing an employee's total compensation package; however, its offer is slightly less generous than that negotiated with the Highway and Park unit.

The Employer argues that there is no internal or external comparable group to compare the WROs with. There is no question that the duties and responsibilities of the WROs and its Detention Deputies, as the Employer points out, are different. Nevertheless, both groups are in Pay Grade 8 and both groups have been certified by the State as essential employees since they satisfy the statutory definition of "guards at correctional facilities".¹⁰ There is also no question that the Employer's corrections system differs from those facilities that the Union argues are comparable. However, once again employees in all jurisdictions are "correctional guards" and thus essential employees.

It is understandable for obvious reasons why the Employer or any employer would want uniform percentage wage increases for all of its employee groups. With different wage increases for different groups the collective bargaining process could be disruptive of employee morale and create dissension in the workplace or make bargaining more difficult since a particular bargaining unit would be reluctant to settle first for fear of being left

¹⁰ Minn. Stat. §179.03, subd. 7 (1998)

behind by other bargaining units that may be successful in negotiating higher wage increases.

As Arbitrator Bard profoundly points out when he addressed the same dilemma in City of Duluth v. Duluth Police Union, 07-PN-0383 (2007):

This argument, however, is a two edged sword and is not persuasive to this Arbitrator. Carried to its logical conclusion it effectively eliminates collective bargaining and locks every Union in a city to the pay raise negotiated by the first Union to settle. If followed rigidly, it would encourage public employers to always settle first with its smallest and weakest union and then claim a binding precedent had been set for wages for the remaining groups. It also has the effect of completely eliminating consideration of market factors and the differing demands of differing jobs.... The Arbitrator does not believe that this should automatically compel a similar award for the remaining employees simply to maintain a pattern of internal consistency in wage increases.

I am also not convinced that, as in the situation herein where the largest group by far is non-union, the same wage increase imposed on the non-union employees is carte blanche to impose on all represented groups. To do so would virtually eliminate any need to ever negotiate wages. Internal equity goes beyond giving the same wage increase to all employees if compelling reasons exist to deviate from general wage increases established for other employees. This is especially true where the group in question is being left behind both internally and in the external market place.

The WROs have been losing ground with both Pay Grade 8 non-union employees and Pay Grade 8 Detention Deputies, the only group it can be adequately compared to internally.¹¹ In addition, they are underpaid as compared to "correctional guards" in other jurisdictions in the metro area.

¹¹ Both are "correctional employees" within the meaning of Minnesota Statute..

In as much the WROS are underpaid internally and in fact the lowest paid "correction guards" in the metro and surrounding county area, there exists a compelling reason to award the WROs a general wage increase of more than 2% and also adjust their range movement as proposed by the Employer. In view of the foregoing, the WROs are granted a 3% general wage increase as well as the adjustment in the range movement proposed by the Employer for 2007. This will enable the WROs to begin to "catch up" internally and externally with other "corrections guards".¹² Although this award may not remedy the current wage disparity, it is a start. Further "catch up" is best left to future bargaining.

ISSUE 3 — WAGES 2008 - Art. 21, Sec. 1

In view of the award in Issue No. 1 (**CONTRACT DURATION**), this Issue is no longer relevant.

ISSUE 4 — WAGES 2009 - Art. 21, Sec. 1

In view of the award in Issue No. 1 (**CONTRACT DURATION**), this Issue is no longer relevant.

ISSUE 5 — Wages - Amount of Merit Pool - Art. 21, Section 4

Current Contract

Section 4. Merit Pools\Minimum Range Movement. The merit pool is computed using the standard county formula. For 2005, the merit pool is two percent (2%) of the annualized wages of the employees in the pool as of June 24, 2005 and will be distributed effective June 25, 2005. For 2006, the merit pool is two percent (2%) of the annualized wages of the employees in the pool as of December 31, 2005 and will be effective January 7, 2006.

¹² It will also allow them to keep pace with increased inflationary pressures as reflected in CPI data and higher fuel, transportation, heating and food costs associated with the recent record high price of oil.

Union Proposal

The Union proposes to increase the merit pool to 5% to become effective on the first payroll period of each year of the Agreement.

Section 4. Merit Pools/Minimum Range Movement. The merit pool is computed using the standard county formula. For 2007, the merit pool is ~~two~~ five percent (2%) (5%) of the annualized wages of the employees in the pool as of ~~June 24, 2005~~ December 31, 2006 and will be distributed effective ~~June 25, 2005~~ the first day of the first payroll period of 2007. For ~~2006~~ 2008 and 2009, the merit pool is ~~two~~ five percent (2%) (5%) of the annualized wages of the employees in the pool as of December 31, 2007 of each previous year and will be distributed effective ~~June 25, 2005~~ the first day of the first payroll period of each year.

Employer Proposal

The Employer proposes no change in the merit pool amount, but would adjust the eligibility and distribution dates proposed by the Union.

Section 4. Merit Pools/Minimum Range Movement. The merit pool is computed using the standard county formula. ~~For 2005,~~ The merit pool for each year of the Agreement is two percent (2%) of the annualized wages of the employees in the pool as of June 24, 2005 and will be distributed effective June 25, 2005. ~~For 2006, the merit pool is two percent (2%) of the annualized wages of the employees in the pool as of December 31, 2005 of the prior year~~ and will be effective ~~January 7, 2006~~ the beginning of the first full pay period in January of the applicable year.

UNION POSITION

The Union argues that the current pay plan is unworkable with the percentage of the merit pool currently offered by the Employer. As a result employees cannot reach top pay without a sufficient merit pool for range movement. In 1990, the pay plan provided a 3% annual merit pool with another 3% merit adjustment for employees below the midrange. The original merit pool allowed employees to earn from 0% to 10% based on individual merit. In spite of this there was a slow movement within the wage range, which Arbitrator Gallagher recognized when he awarded a minimum of a 4% merit in addition to the midyear merit range movement of 3% for employees under midrange for 1992 and 1993. After the 1992 award, the Employer apparently discontinued the midyear 3% merit range

movement awards.

In 2001, the Employer changed how merit pay is distributed. Employees no longer could receive a 0% to 10% award; rather, only a 3% award was available. In 2003, the Employer asked employees to help out during the State's financial problem, which resulted in lower merit amounts. The range movement again slowed significantly; and as a result, employees hired after the 1992 arbitration adjustments were unable to reach top pay prior to the eight-year period when Stability Pay begins.

The Employer's pay plan has been unworkable from its inception and completely destroyed by the reduction and changes in the distribution formula for the merit pool used for range movements between the minimum and maximum pay rates. The plan has suppressed wages below the market and kept WROs more than 12.7% below the Detention Deputies, who are in the same pay grade and do the same work. It now takes in excess of 12 years to reach top pay that should be reached in eight years.

Two counties in Region 11 have a merit based pay system that uses merit for pay range movement. Scott County awards up to 5% for 2007 and 6% for 2008. Dakota County reduced merit awards to 2% for 2006, but it was increased to 2.5% for 2007 and 3% for 2008. Dakota County merit pay is calculated on the 3rd quartile of the range so employees below that point actually receive more than 3% of their individual wage.

EMPLOYER POSITION

The merit compensation pool occurs within the Employer's general pay plan. It applies to non-union employees as well as all other groups with the exception of the Teachers, Sheriff's Department Licensed Deputies and the Essential Investigator unit employees. The Employer argues that its proposal is internally consistent with all other employees who

receive merit pay. Since at least 2003, all of the merit pool employees with the exception of the Highway and Park unit employees, who received 1½% in 2005, have received the same merit pool increases of 2%. The Highway and Park unit received a 3% general wage increase in 2004, was an effort to provide equity adjustment in favor of non-union employees relative to the Highway and Park unit. Thus, the merit pool amount was reduced in 2005.

The non-union employees received a two percent (2%) merit increase for 2007. As non-union employees, they have not had merit pools established for 2008 or 2009; but it is a certainty that such pools will not be 4%. The Highway and Park unit settled for two percent (2%) in 2007, 2008 and 2009, however, the merit pool amounts were calculated using the range maximum rather than the employees' actual pay. Merit pool amounts for other represented employees have not been established for 2007 or subsequent years.

The Union is concerned about range movement. As stated in the Employer's position on Issue No. 2 (Wages for 2007), the Employer is proposing to adjust the pay ranges for 2007, which has the effect of shorting the range movement needed to reach maximum salary.

Finally, the Union by its position is in essence requesting a change in the Employer's compensation plan. This is best left to negotiations, rather than interest arbitration.

DISCUSSION AND AWARD

Contrary to the Employer's assertions that the Union is attempting to change the Employer's compensation system, the evidence shows that it is merely seeking to accelerate the range movement toward maximum pay for the WROs. The evidence clearly shows, based upon the Union Exhibit Book, page 204, that an adjustment in range

movement is warranted. While the Employer's proposal may have an accelerating effect, more needs to be done. The short-term history in granting merit pool amounts since 2003 has generally been consistent. However, there is evidence that the Employer has deviated at least once in establishing merit pool increases and has also changed the calculation method at least once. In addition in the one organized unit where the merit pool amount has been established, the calculation method has changed. This in effect increases the merit pool amount that employees below the maximum range receive. Finally, merit pool increases for all of the essential bargaining unit employees for 2007 has not been established.

In view of this, the amount of the merit pool for 2007 will be 3%. In addition, the calculation rate will be the same as the rate that the Employer has negotiated with the Highway and Park unit. It is also consistent with amounts given to other essential employees in Dakota and Scott counties.¹³ Although this award will not alleviate the problems associated with WROs moving through the range movements of the pay plan, it along with the range movement award in Issue 2 (Wages 2007) is a start. Any further adjustment if needed should be resolved in future negotiations.¹⁴

ISSUE 6. — Hours of Work — Shift Differential, Amount — Art. 8, Section 7.

Current Contract

Section 7. Employees that are regularly scheduled, by their department head, to work a shift during evening hours shall be paid a three dollars and seventy-five cents (\$3.75) per shift night differential provided that:

- A. At least four (4) hours of the night shift are worked after 6:00 p.m. and before 6:00

¹³ By this statement, I am not adopting the Union's comparable group: rather I am pointing out similarities in the metro-county area.

¹⁴ The Employer's range movement offer, which I adopted, also helps alleviate the range movement concerns of the Union.

a.m. of the following day.

B. Employees working overtime shall not be considered eligible to receive shift differential in addition to overtime pay.

C. Weekends which are normally scheduled as part of the workweek for an employee will not entitle the employee to a shift differential.

This night shift differential will increase. to (\$4.00) per shift on January 7,2006.

Union Proposal

The Union is proposing to increase shift differential to \$5.00/shift worked effective 2007.

Section 7. Employees that are regularly scheduled, by their department head to work a shift during evening hours shall be paid a ~~three five dollars and seventy five cents (\$3.75)~~ (\$5.00) per shift night differential provided that:

A. At least four (4) hours of the night shift are worked after 6:00 p.m. and before 6:00 a.m. of the following day.

B. Employees working overtime shall not be considered eligible to receive shift differential in addition to overtime pay.

C. Weekends which are normally scheduled as part of the workweek for an employee will not entitle the employee to a shift differential.

~~This night shift differential will increase. to (\$4.00) per shift on January 7,2006.~~

Employer Proposal

The Employer is not proposing to amend the existing language of the Agreement.

UNION POSITION

The Union argues that this request amounts to an increase in the hourly shift differential rate of \$.48 to \$.60. The only organized group that has settled for 2007 is the Highway and Park unit where a shift differential rate of \$1.00 per hour has been negotiated.

External market place also supports the Union's proposal. The rate for WROs is the lowest in the metro area. The average shift differential rate in the metro and contiguous counties for most "correction guards" is \$.75 per hour.

EMPLOYER POSITION

The Employer argues that the Union has the burden to show the need for the shift differential rate change and has failed to do so. All other Employer essential employees receive \$4.00 per shift differential. The \$1.00 per hour rate for Highway And Park employees is seasonal based. Whereas the Work Release unit employees work regularly on night shifts, the Highway and Parks unit employees night work is seasonal and primarily during snow storms.

The Union's comparable external argument is flawed since, as the Employer points out in Issue No. 2, there is no comparable external group.

DISCUSSION AND AWARD

The Union is seeking a modest increase in the night shift differential. Except for the Highway and Parks unit, which has a night differential of \$1.00 per hour, none of the other groups have established a night shift differential for 2007. Although comparable counties have not been defined with certainty, the evidence furnished by the Union discloses the current night shift differential for WROs is substantially less than established in surrounding jurisdictions. I, therefore award the Union's proposal and the night shift differential for unit employees in the 2007 Agreement will be \$5.00 per shift.

ISSUE 7 — Preferred Benefits — Language — Art. 10 & Art. 11

Current Contract

Article 10 Section 1. ¹⁵

Article 10 Section 2. Effective March 8, 2003, the prior vacations provisions noted in Section 1 will be discontinued and the Employees in this bargaining unit will be covered by the County's Preferred Benefit Program as outlined in the Anoka County Rules and Regulations.

Article 11 Section 1. ¹⁶

Article 11 Section 2. Effective March 8, 2003, the prior sick leave provisions noted in Section 1 will be discontinued and the Employees in this bargaining unit will be covered by the County's Preferred Benefit Program as outlined in the Anoka County Rules and Regulations.

Union Proposal

The Union proposes to eliminate the current language in Article 10 and Article 11 and add the following language to Section 2 of both Articles:

No benefits provided by Preferred Benefit Program as outlined in the Anoka County Rules and Regulations may be reduced, except through negotiations.

Employer Proposal

The Employer proposes to eliminate Section 1 in both Article 10 and Article 11 and make no changes to Section 2 of both Articles.

UNION POSITION

The Union argues that its proposal should be awarded. During past negotiations, the unit agreed to give up the vacation and sick leave plan for the Employer's Preferred Benefit Plan based on the Employer's Personnel Policy in effect in 2003. Since then, the

¹⁵ Section 1 language is not being spelled out since both parties agree to remove it.

¹⁶ Id..

Employer has revised the Plan without notification to the Union. In 2007, the Employer is unilaterally eliminating retiree health benefits for new employees. The Union needs the language to protect the current benefits. Adding the Union's proposed language will provide security to the current benefits and prevent any further erosion.

EMPLOYER POSITION

The Union is attempting to have an arbitrator assist it in going back on its part of the original negotiated benefit of the Employer granting an improved benefit subject only to the contingency that it be the same benefit as provided to the non-union employees now and in the future.

The Employer has “me too” language for health insurance in its collective bargaining agreements for good reason. It has always taken a pro-employee approach to insurance premiums. This has been accomplished by tough negotiations with health insurance plans to provide affordable rates while providing sound coverage and in the amount that the Employer contributes toward these plans. There has been no effort to move away from this approach by any of the bargaining units.

The same holds true for the retiree health insurance issue. The Employer is one of the rare entities in the public or private sector that provides a retiree health insurance program. With the recent GASB accounting reporting changes, the Employer has had to recognize and account for an over \$80 million program. Rather than abolish the this program as many other employers have done, the Employer simply limited the program to existing employees. The motivation was an effort to save the program for existing employees. The Union’s characterization of this as a negative grossly misstates the Employer's action in this area. Rather than receive credit for its efforts to maintain this unusual and

expensive benefit for existing employees, the Union has unfairly characterized it as action by the Employer intended to be contrary to the interests of its employees.

DISCUSSION AND AWARD

The party requesting to change or add new language to a collective bargaining agreement bears the burden of proof by clear and convincing evidence that the new or changed language is justified. In this case, the Union has not submitted compelling evidence or reason to justify the need for its proposal.

In 2003, the Union agreed to be covered by the non-union Plan. At the time it was negotiated, there was a possibility that the terms of the Plan could be changed. It could be enhanced or conversely reduced. It is now attempting to change the "playing field" through interest arbitration, something that is best left to bargaining.

Accordingly, the Employer's proposal is awarded. The language in Section 1 of Article 10 and Article 11 is removed and the language in Section 2 of Article 10 and Article 11 remains unchanged in the 2007 Agreement.

ISSUE 8. Hours of Work — Method of Overtime Calculation — Article 8, Section 2.

Current Contract

Section 2. Overtime shall be at the rate of time and one half (1½) the employee's regular hourly rate of pay and shall be paid for all hours in excess of forty (40) hours per week. In computing overtime, all hours worked and all compensated leave time shall be counted towards the 10 hours per week.

Union Proposal

The Union proposes no change to the current language.

Employer Proposal

The Employer is proposing to eliminate the existing language and add the following language to this Section.

The Employer shall establish schedules that recycle in not more than 28 days and 171 working hours. Work hours will consist of hours actually worked, flexible time off, holiday hours and employer required unit meetings.

Except as otherwise provided in this Agreement, any employee required to work in excess of 171 hours in the 28 day normal working schedule cycle shall be compensated for such excess compensable hours at the rate one and one half (1½) times the normal rate with payment thereof to be made at least once monthly in cash.

UNION POSITION

The current language was negotiated into the contract many years ago and has not changed. The Employer is now requesting a major procedural change from the current basis of calculating overtime on a 40-hour workweek to 171 hours in a 28-day period. The burden of proving a need for such a change is on the party requesting the change.

This major change subjects WROs to being required to work 2,223 hours a year without earning overtime, which amounts to an additional 143 hours more than the current language based on a 40-hour week and 2,080 hours a year. The Employer is once again attempting to obtain a benefit it was unsuccessful in obtaining in the 1996 arbitration or through subsequent negotiations. Further, the Employer has not offered an acceptable quid pro quo.

EMPLOYER POSITION

The Employer is proposing a conditional change to the collective bargaining agreement in the event that the Employer's proposed general and merit increases are not awarded. If the Employer's wage proposals are not awarded, the Employer takes the position that the arbitrator must recognize a quid pro quo should occur similar to that afforded in negotiations.

The unit members work six (6) days followed by three (3) days off recurring throughout the year (commonly called a 6-3 schedule). While this is a “law enforcement” schedule that fits the needs of continual coverage, the schedule results in uneven hours of work in any given week. There are “long” weeks of 49.5 hours and 41.25 hours and “short” weeks of 33 hours.

The 40-hour limitation was put into place in the original 1990-1991 collective bargaining agreement. The rationale at the time was that the bargaining unit consisted of three different work groups—the juvenile detention, the medium security and the work release (workhouse) groups. The first two groups, the juvenile detention and medium security groups, worked in areas that fell within the fair labor standards act definition of “security personnel in correctional institutions.” This definition is important because individuals in this capacity are not legally required to be paid overtime until they actually work 171 hours in a 28-day period. In contrast, the non-secure work release group did not meet this definition as it did not perform work in a facility that would be considered a “correctional institution.” The result was that a uniform 40-hour overtime for WROs was established.

The matter remained unchanged since the original Agreement. The Employer has now licensed the Workhouse as a secure facility. This means that the Fair Labor Standards Act now would permit the 28 day and 171 hour overtime calculation. Because this broader standard more easily “fits” the 6-3 schedule, it has become a potentially applicable provision for the members of this group

DISCUSSION AND AWARD

As stated herein, the party requesting to change or add new language to a collective bargaining agreement bears the burden of proof by clear and convincing evidence that the new or changed language is justified. In this case, the Employer has not submitted compelling evidence or reason to justify the need for its proposal. Further, any change in the overtime compensation rate under the circumstances herein, is best left to future bargaining.

In view of the foregoing, the Union's proposal is awarded and there will be no change to the language in Article 8, Section 2 in the 2007 Agreement.

ISSUE 9. Wages — How Calculated — Art. 21, Section 6.

Current Contract

Section 6. Stability ranges. An additional range area shall be available for movement through the normal general increases and/or merit increases for any employee who is in at least his/her 8th, 12th or 15th year on the applicable January 1. This new range area shall be available in accordance with the following schedule:

1. Stability range S1 consists of eighty dollars (\$80.00) above the normal range top. This range area will be available to anyone who, as of January 1 of the applicable year, is in or after the start of his/her eighth year of service as an employee of Anoka County and shall be available each year thereafter for any employee that meets the years of service requirement.
2. Stability range S2 consists of one hundred thirty-five dollars (\$135.00) above the normal range top. This range area will be available to anyone who, as of January 1 of the applicable year, is in or after the start of his/her twelfth year of service as an employee of Anoka County and shall be available each year thereafter for any employee that meets the years of service requirement.
3. Stability range S3 consists of two hundred dollars (\$200) above the normal range top. This range area will be available to anyone who, as of January 1 of the applicable year, is in or after the start of his/her fifteenth year of service as an employee of Anoka County and shall be available each year thereafter for any employee that meets the years of service requirement.

4. Stability range S4, consists of three hundred dollars (\$300) above the normal range top. This range area will be available to anyone who, as of January 1 of the applicable year is in or after the start of his/her twentieth year of service as an employee of Anoka County and shall be available each year thereafter that meets the years of service requirement.

5. The stability range system replaces the former program of allowing additions to base equivalent to one-half of the annual COLA increase or lump sum payments in lieu of general increases. However, the cash merit system over range top will continue without change. Any awards based on performance into the stability area must meet all of the requirements relating to improved performance and qualify of performance relative to salary costs that would be applicable to any employee within the normal range area.

6. "A Year of Service" as used in this section shall mean completion of 2,080 hours of non-overtime compensated employment

Union Proposal

The Union proposes to modify the aforementioned language to provide the additional compensation in addition to an employee's regular rate of pay upon completion of the specified number of years in paragraphs 1 through 4.

~~Section 6. Stability ranges. An additional range area shall be available for movement through the normal general increase and/or merit increase for any~~ An employee who is in at least his/her 8th, 12th, or 15th or 20th year on the applicable January 1 ~~This new shall receive an increased wage rate and pay range area shall be available in accordance with the following schedule:~~

1. ~~Stability range pay S1 consists of an additional eighty dollars (\$80.00) per month above the employee's current rate of pay and increases the normal range top. This range will be~~ Stability pay S1 is available to anyone who, as of January 1 of the applicable year, is in or after the start of his/her eighth year of service as employee of Anoka County and shall be available each year thereafter for any employee that meets the years of service requirement.

2. ~~Stability range pay S2 consists of an additional one hundred thirty-five dollars (\$135.00) per month above the employee's current rate of pay and increases the normal range top. This range area will be~~ Stability pay S2 is available to anyone who, as of January 1 of the applicable year, is in or after the start of his/her twelfth year of service as employee of Anoka County and shall be available each year thereafter for any employee that meets the years of service requirement

3. ~~Stability range pay S3 consists of an additional two hundred dollars (\$200.00) per month above the employee's current rate of pay and increases the normal range top. This range area will be~~ Stability pay S3 is available to anyone who, as of January 1 of the applicable year, is in or after the start of his/her fifteenth year of service as employee of Anoka County and shall be available each year thereafter for any employee that meets the

years of service requirement.

4. Stability range pay S4 consists of an additional three hundred dollars (\$300.00) per month above the employee's current rate of pay and increases the normal range top. ~~This range area will be~~ Stability pay S4 is available to anyone who, as of January 1 of the applicable year, is in or after the start of his/her twentieth year of service as employee of Anoka County and shall be available each year thereafter for any employee that meets the years of service requirement.

5. ~~The stability range system replaces the former program of allowing addition to base equivalent to one half of the annual COLA increase of lump sum payments in lieu of general increases. However,~~ The cash merit system over range top will continue without change. Any lump sum awards based on performance ~~into the stability area~~ must meet all of the requirements relating to improved performance and quality of performance relative to salary costs that would be applicable to any employee within the normal range area.

6. "A Year of Service" as used in this section shall mean completion of 2,080 hours of non-overtime compensated employment

Employer Proposal

The Employer proposes no change to the existing language.

UNION POSITION

The Stability Range Article as written has no value for unit employees. Stability range increases do not provide additional wages unless an employee is at the range maximum and has been employed over eight years. The current employees cannot reach the range maximum in the number of years specified. Charts submitted by both parties clearly show an employee must work over 12 years to reach the range maximum and not eight years when the stability range is increased.

In 1992, Arbitrator Gallagher recognized the benefit had no value when he found: "just as the Employer's proposal to add a new stability range means little to them because none of them has wages near even the maximum rate, much less any of the stability ranges." Arbitrator Gallagher's findings were reinforced by the inability of any WRO, hired after his award, to reach the range maximum, much less the stability ranges.

This issue is one of fundamental fairness. In addition to much higher wages, the Detention Deputies receive longevity pay of \$80.00 after five years, \$135.00 after 10 years, \$200.00 after 15 years and \$300.00 a month after 20 years. The same longevity pay benefit should be provided for this group. The proposed conversion of the stability pay range increases to additional compensation based on years of service will start providing equity for WROs.

EMPLOYER POSITION

The Employer argues that any change in the parties' compensation system should not be made unless compelling evidence justifies such a sweeping change. To the contrary, internal equity dictates that the stability ranges not be twisted into something different. All the merit-based pay systems of the Employer utilize the stability range system as a complementary mechanism to the existing range tops. It is best left to bargaining and not interest arbitration.

DISCUSSION AND AWARD

The Union may have valid concerns that the current stability range system in its present form is not working and needs to be fixed along with the Employer's entire compensation plan. This may be true, however, the "fix" should take place in the arena of give and take collective bargaining rather than in an interest arbitration forum. Based upon my Decision herein, collective bargaining for a successor agreement should commence shortly at which time this issue can be revisited by the parties in a forum appropriate for compensation plan changes.

In view of the foregoing, the Employer's proposal is awarded. There will no change to the language in Article 21, Section 8 in the 2007 Agreement.

AWARDS

ISSUE 1— Duration Length of Agreement — Art. 26

The Union's proposal is awarded. The new Agreement will be effective from January 1, 2007 through December 31, 2007

ISSUE 2 — WAGES 2007 — Art. 21, Section. 1

In the 2007 Agreement, there will be a general increase of 3% over the 2006 wage rates effective the first payroll period beginning in January 2007; and a change in the range movement where the range minimum will increase by seven percent (7%), the 1st quartile will increase by six percent (6%), the midpoint and third quartile will increase by five percent (5%) and the range maximum by four percent (4%).

ISSUE 3 — WAGES 2008 Art. 21 — Section. 1

This Issue is moot in view of the Award in Issue No. 1.

ISSUE 4 — WAGES 2009 — Art. 21, Section. 1

This Issue is moot in view of the Award in Issue No. 1.

ISSUE 5 — Wages — Amount of Merit Pool — Art. 21, Section 4

The Union's proposal is partially awarded. The merit pool increase in the 2007 Agreement will be 3%. In addition, the calculation rate will be the same as the rate that the Employer has negotiated with the Highway and Park unit.

ISSUE 6. — Hours of Work — Shift Differential, Amount — Art. 8, Section 7.

The Union's proposal is awarded. The night shift differential for WROs in the 2007 Agreement will be \$5.00 per shift in the 2007 Agreement.

ISSUE 7 — Preferred Benefits — Language — Art. 10 & Art. 11

The Employer's proposal is awarded. The language in Section 1 of Article 10 and Article 11 are removed and the language in Section 2 of Article 10 and Article 11 remains unchanged in the 2007 Agreement.

ISSUE 8. Hours of Work — Method of Overtime Calculation — Art. 8, Section 2.

The Union's proposal is awarded and there will be no change to the existing language in Article 8, Section 2 in the 2007 Agreement.

ISSUE 9. Wages — How Calculated — Art. 21, Section 6.

The Employer's proposal is awarded and there will no change to the existing language in Article 21, Section 8 in the 2007 Agreement.

Dated; November 24, 2007

Richard R. Anderson, Arbitrator