

IN THE MATTER OF ARBITRATION BETWEEN

ANOKA COUNTY
(Employer/County)

and

LAW ENFORCEMENT LABOR
SERVICES, INC., LOCAL NO. 222
(Union)

DECISION AND AWARD
(Interest)
BMS Case No. 07-PN-0910

ARBITRATOR: Frank E. Kapsch, Jr.

DATE AND PLACE OF HEARING: November 29, 2007 at the Anoka County
Government Center, Anoka MN

RECEIPT OF POST-HEARING BRIEFS: Both Parties submitted timely briefs by
December 28, 2007.

APPEARANCES

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THE EMPLOYER

Anoka County, Minnesota is the fourth most populous county in the State of Minnesota with a population of over 320,000 people. The County is located in the northwest portion of the seven-county metropolitan area of the Twin Cities of Minneapolis and St. Paul MN. The County's principal offices and functions are located in the county seat, the City of Anoka. Among its functions, the County operates a Sheriff's Department and a County Jail, both of which are staffed 24/7.

THE UNION

Law Enforcement Labor Services, Inc. and its Local Union No. 222 is the recognized collective bargaining representative for a unit of approximately 87 full-

time, licensed Deputy Sheriffs employed by the County. The contractual bargaining unit consists of;

“...all essential licensed deputies of the Anoka County Sheriff’s Office, Anoka, Minnesota. whose service exceeds the lesser of 14 hours per week or thirty-five percent (35%) of the normal work week and more than sixty-seven (67) work days per year, excluding part-time employees who are not included in the definition of “public employee’, as defined in M.S.179A.03, Subd. 14, and further excluding investigators, supervisory (supervisory employees includes sergeants) and confidential employees.

COLLECTIVE BARGAINING HISTORY

The Union and the Employer have been parties to a series of labor contracts covering the unit employees since at least the 1980’s. The most recent contract was effective January 1, 2005 and expired December 31, 2006. In about January, 2007, the Parties attempted to negotiate a successor contract, but those negotiations failed to resolve a number of issues.

THE CURRENT ISSUES

On September 18, 2007 the Minnesota Bureau of Mediation Services (BMS) certified the following issues for arbitration pursuant to Minn. Stat. §179A.16, Subd. 2:

1. Wages – Amount of Adjustment 2007 – Article 23, Appendix A
2. Wages – Amount of Adjustment 2008 – Article 23, Appendix A
3. Insurance – Language, Retiree Health – Article 17
4. Stand-by/On-Call – Amount of Compensation – New
5. Health Care Savings Plan - New

As stipulated at the hearing, this Arbitrator was subsequently selected by the Parties, pursuant to Minn. Stat. §179A. Subd. 4., to hear and resolve these Issues.

Prior to the hearing, the Arbitrator was advised by the Parties that the Union had withdrawn Issue 4, Stand-by/Call-In Compensation, in about July, 2007. The Union confirmed that action at the hearing.

With the Union having withdrawn Issue 4, it leaves the following four (4) Issues to be resolved by this Arbitrator:

1. Wages – Amount of Adjustment 2007 - (Article 23, Appendix A)
2. Wages – Amount of Adjustment 2008 - (Article 23, Appendix A)
3. Insurance – Language, Retiree Health - (Article 17)
4. Health Care Savings Plan – (New)

The challenge to an arbitrator, in an Interest case such as this, is to try to formulate a suitable resolution based on what the Parties, as reasonable persons, would have eventually agreed upon had their negotiations proceeded to a successful conclusion. To achieve that goal and objective, like my arbitrator colleagues, I subscribe to a commonly accepted set of standards of analysis to be applied to an issue. These are the same standards that the Parties themselves applied in the context of their contract negotiations.¹

- Ability to Pay – Can the Employer reasonably afford to pay the requested wage or benefit amount without causing serious harm to the continued financial viability of the organization?
- Statutory Considerations – Does the contemplated resolution violate or conflict with any applicable statutes, rules or regulations?
- Internal Comparisons – How does the contemplated resolution fit within or affect the existing organizational pay system and structure? Does it maintain a reasonable and equitable relationship with other positions within the organization?

¹ In its Brief, the Union points out that although the right to strike in the U.S. is looked upon as an essential economic freedom in the private sector of the economy, in the public sector certain government employees regarded as “essential” or critical i.e. firefighters, law enforcement personnel, etc., are prohibited by law from engaging in strikes or related work stoppages. By the Union’s view, the elimination of the strike potential from the public sector negotiation system may be giving public sector Employers an incentive to bargain less seriously or in a less timely fashion; knowing that the worst that will happen is that eventually they will end up in arbitration. The Union contends that an arbitrator needs to consider what settlement the parties would have reached, had a strike or work stoppage been part of the negotiation scenario. However, as the Union also concedes, an arbitrator would have great difficulty in placing him or herself into the minds of the parties in such a negotiation scenario.

I note that the Union made this same or similar argument for a Post- or Pre-Strike decisional standard back in 1999 to my former grad school professor, Arbitrator Mike Bognanno. In Anoka County and LELS, BMS 99-PN-919 (1999) (Bognanno, Arb.), Arbitrator Bognanno stated, “...*For at least three (3) reasons, the undersigned is uncomfortable with the Union’s suggested standard. First, while interest arbitration is a substitute or a strike, the public policy assumption underlying MPELRA is that the strikes - and, by analogy interest arbitrations – would rarely occur. However, as discussed later, interest arbitration is anything but a rare occurrence when it comes to the instant parties. If the ‘cost of disagreeing’ was higher than it is now – high enough to approximate the true cost of a strike – then Anoka County and its deputies would try harder to reach negotiated settlements rather than to arbitration contract-after-contract. Only under this high-costs scenario can one confidently say that an impasse and interest arbitration under MPELRA is analogous to a strike situation. Second, this arbitrator is unaware of available data that could be used to guide a determination of what a post-strike settlement ought to be. Data are only available on pre-strike settlements (i.e., external comparisons). Third, it is axiomatic in public sector labor relations that negotiated pre-strike settlements are superior to both post-strike settlements and arbitral settlements, as measured in terms of the parties’ joint welfare. If this axiom is true, then ought not interest arbitrators strive to issue awards that, based on the record evidence, match the outcomes the parties would have reached if they had the will and skill to successfully negotiate to the point of agreement.*”

Thanks, Mike, I couldn’t have said it better myself.

- External Comparisons – How does the contemplated resolution, if adopted in this organization, compare with like or similar positions in other comparative organizations?
- Other Economic and Market Forces – Do these forces, e.g. supply and demand, cost of living, etc., have any notable effect - positive or negative - on the contemplated resolution?

I am also cognizant of the fact that while private sector Interest arbitration is bilateral – involving the employer and the employee – in the public sector, it is trilateral, with at least three distinct and different interests to be accommodated; the employees, the particular governmental unit as employer and the citizens represented by that governmental unit as voters, taxpayers and consumers of services. Also, to make the mix more interesting, those various parties, groups and constituencies each have their own distinct political and economic philosophies, perspectives and goals.

ISSUES NOS. 1 AND 2 – WAGES FOR 2007 AND 2008 (Article 23, App. A):

Because of their relatedness, I shall review and discuss Issues 1 and 2, Wages for 2007 and 2008, together.

Union Proposal – For 2007, the Union proposes a General wage increase of 5% for Steps 1 through 5 of the Pay Schedule (Appendix A). For 2008, the Union proposes an additional 5% General wage increase for Steps 1 through 5 of the Pay Schedule. The Union also proposes that the current 2% Performance-based increases to Step 5 be retained and appropriately paid for 2007 and 2008. The Union proposals for General wage increases would be effective or retroactive to the first full pay period in January of the respective year. The Performance-based increases would be paid in the first full pay period in July of each year, per the existing contract language.

Employer/County Proposal – For 2007, the County proposes a General Wage increase of 3% for Step 1 and a 2% General Wage increase for Steps 2 through 5 of the Pay Schedule. For 2008, the County again proposes a 3% General Wage increase for Step 1 and a 2% General Wage increase for Steps 2 through 5. The County also proposes to retain the 2% Performance-based increase for Step 5 for both 2007 and 2008. The County and the Union are in agreement as to the pay period time frames for payment of both the General wage increases and the Performance-based increases.

Ability to Pay

The County acknowledged, in the hearing, that Ability to Pay is not at issue and that it is capable of paying either its proposed wage increases or the Union's proposed increases. The County does note, however, that if this Arbitrator awards the Union's proposed wage increase for both 2007 and 2008, those increases will exceed the County's wage proposals by an additional \$272,000.00.

Statutory Considerations

The County stipulated that paying either its or the Union's proposed wage increases for 2007 and 2008 would not take the County out of compliance with the Minnesota Local Government Pay Equity Act (MLGPEA). Accordingly, that is not a factor for consideration.

Neither Party contends that there are any other legal or statutory issues to be considered in this matter.

Internal Comparisons

Union Position – With internal equity, relative to MLGPEA, not an issue, it should be noted that in turning to Internal Comparisons, the County has shown some consistency in providing wage increases since 2001. However, there has not been a clear internal pattern to those increases. An examination of Market Rate Wage Adjustments for various County jobs in 2001 and 2007 indicates that such Adjustments have not been consistent across the board. This fact significantly undermines any argument of an internal pattern advanced by the Employer.

During the hearing, the Employer argued that a settlement with a union representing non-essential employees in the County's Highway & Parks Department, coupled with the wage increases provided to the County's non-union employees should be compelling evidence of an internal wage pattern because it represents what essential employees would accept if their option was to strike, rather than arbitrate after reaching impasse. However, during rebuttal in the hearing, the Employer conceded that the contract settlement with the Highway Department employees and their union did provide more of a wage increase than the increases given the County's non-union employees and that this "extra" was a *quid pro quo* for elimination of the retiree health insurance benefits for newly hired employees. This clearly underscores the lack of a clear-cut internal wage pattern among the County's employees.

It is important for the Arbitrator to note that no other bargaining units, containing essential employees have currently reached negotiated contract agreements with the County. The only essential unit with a settled agreement are the County's Work Release Officers (WROs), represented by LELS, Local 199. That contract settlement resulted from arbitration. In the arbitration award, the WROs received a 3% wage increase for 2007, rather than the 2% proposed by the County. The County contends that award was due solely to an internal disparity with the County's Corrections Officers. That is simply not true. In his award, Arbitrator Anderson clearly stated;

"In as much the WROs are underpaid internally and in fact the lowest paid 'correction guard' 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% 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...** Although this award may not remedy the current wage disparity, it is a start.” (Emphasis added) County of Anoka and LELS, BMS 07-PN-0661 (2007) (Anderson, Arb.), p.28.*

Based upon the evidence brought forth by the Union, internal equity is not impacted by its proposed wage increases and the Union's wage proposals for 2007 and 2008 should be awarded.

Employer Position – The County currently employs about 1465 individuals. Of that number, 1122 or 76% are unrepresented or “non-union”. The remaining 343 employees or 24% of the County's workforce are represented by five (5) labor organizations in eight (8) different bargaining units. LELS and its various Local Unions represent four (4) of those units. The size of the eight bargaining units range from about 8 employees to about 90 employees.

The County's major argument, with respect to the Internal Comparisons, is very straight forward. Internal equity should be the primary consideration in a general adjustment award based on the history of consistency within the County. As Arbitrator Anderson noted in his recent award covering the Work Release Officers (WROs);

“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 increase percentages since at least 2003.” (The footnote to this section notes except for the exceptions listed herein, it appears that all employees have received the same wage increase percentages) Id., County of Anoka and LELS, p.24.

Internal equity is established by the wage increases of 2% in 2007 and 2% for 2008, for the County's 1122 non-union employees, for the 75 employees in the Highway and Park Maintenance unit represented by International Union of Operating Engineers, Local No 49 and for the 22 employees in the Pine School Teachers unit represented by Education Minnesota.

In deviating from that internal equity in the WRO award, Arbitrator Anderson noted that the deviation was necessary in order to “catch up” to internal equity (based on the fact that the WRO group had fallen behind both the comparable non-union group and the detention deputy group in the Sheriff's Office). Accordingly, even the deviation noted in the WRO award was designed to achieve internal equity.

The Union's argument on internal equity at the hearing started with a recognition that there is a past practice of internal consistency within the County. But the Union also noted that the County has periodically done market adjustments for its non-union employees in prior years and argues that shows the County really isn't that consistent. The County acknowledges that it does do

periodic market surveys and makes appropriate adjustments in its non-union classifications to primarily accommodate external market comparisons.

Analysis, Discussion and Conclusions – The Union questions the County’s assertion that there is a firmly established General Wage increase pattern among the County’s employees for 2007 and 2008. However, the Union agrees that the County’s non-union employees have received 2% General Wage increases for both 2007 and 2008. Additionally, the contracts/agreements for the Highway and Parks Maintenance and Teacher units confirm that employees in each of those groups are receiving General Wage increases of 2% in 2007 and again in 2008. That data indicate that of the County’s 1465 employees, the 1122 employees in the non-union group and about 100 of the 343 represented employees are all receiving a General Wage increase of 2% in both 2007 and 2008. That means that over 83% of the County’s employees are receiving the same 2% General Wage increase for those two years. No “pattern” there???

As the Union noted previously, there has been one exception to the apparent 2% “pattern” within the County’s workforce. That is Arbitrator Anderson’s award of a 3% General Wage increase for 2007 to the WROs. In reviewing Anderson’s award, I note that he discerned a 2% General Wage increase pattern for 2007 within the County’s workforce, but, with respect to the WROs, found that their wages had fallen behind both internal and external comparison groups and that a deviation from the apparent 2% pattern was justified. In addition to his statement, as outlined in the Union’s Position above, Arbitrator Anderson also made these observations;

“...It is understandable for obvious reasons why the Employer or any employer would want uniform percentage wage increases for all 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 behind by other bargaining units that may be successful in negotiating higher wage increases.” To this I would add that employers are not necessarily the only party in collective bargaining who seek wage patterns. Historically, where they possess significant bargaining power, unions have also vigorously pursued wage patterns, i.e. the auto industry, construction, trucking, etc. Obviously, given the right circumstances, wage “patterns can suitably satisfy varied interests.

“...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 by other employees. This is especially true where

the group in question is being left behind both internally and in the external market place. (Emphasis added)

As the Employer notes, the Union is proposing General Wage increases of 5% in 2007 and 5% in 2008 for the 87 employees in this bargaining unit. That group comprises less than 6% of the County's total workforce and the Union's proposed General Wage increases for 2007 and 2008 are two and one-half times (2 1/2) greater than the those of the other 83% of its workforce.

Other than pointing out that the County can well afford to pay the Union's proposed 5% General Wage increases for 2007 and 2008; it fails to present any cogent rationale or reason to internally justify that 5% figure. Unlike the situation involving the WROs, the Union isn't arguing that the licensed deputy group is significantly underpaid relative to another internal comparable group.

Finally, I note that according to Resolution #2007 (Establishing Compensation and Expense Amounts for the County's Employees for 2008), the County Commissioners, while giving the "troops" a General Wage Adjustment increase of 2%, gave themselves a General Wage increase of 3% for 2008. Perhaps I'm old-fashioned, but it was axiom in the military that as a Leader, one's first priority was to take care your troops, then to your own needs. The extra ammo, rations, etc. went into your troops' rucks, not yours.

Based on Internal Equity and Internal Comparison, I find that the Union has failed to establish a clear-cut reason or rationale to justify its proposed General Wage increases of 5% in 2007 and, again, in 2008. The fact that the County may well afford the 5% figure does not mean that it must, therefore, pay it to the deputies. Instead, the Employer has outlined what, on its face, appears to be a suitable case for a General Wage increase of something in the 2-3% range for those two years that comports with the scheduled General Wage increases for the overwhelming majority of its employees.

External Comparisons

The Parties are in agreement that the appropriate External Comparison Group consists of the Counties of Ramsey, Washington, Dakota and Scott and they have been using this Group, pursuant to arbitral precedent, in their negotiations for a significant number of years.

Union Position – The Union's proposed General Wage increases of 5% for Steps 1 through 5 of the units Pay Schedule for 2007 and 2008 should be awarded because the proposal is overwhelmingly supported by market comparisons. The Union's requested wage increases should be awarded to move the Anoka County Deputies toward a more appropriate position within their market.

Arbitral precedent clearly supports external or market comparisons in considering wage rates and proposals for employees. In County of Sibley and LELS, BMS 03-PN-1075 (2004) (Kircher, Arb.), Arbitrator Kircher stated;

*“Sometimes arbitrators favor internal consistency at the expense of external comparables to determine wages and benefits, arguing that to do otherwise would undermine the collective bargaining process and provoke more interest arbitration. **Taken to its extreme, however, there would be no point in negotiating wages if it were a foregone conclusion that all employees must receive the same increase.** Comparisons to pay for licensed peace officer jobs in other counties may be a more accurate reflection of the market, and sometimes arbitrators favor external comparables.” (Emphasis added)*

Thus, based on recognition given by arbitrators of external comparisons, the external market should be of paramount importance in evaluating the Union’s request, particularly when there is no internal settlement pattern, when pay equity is not a concern and when there is a considerable disparity with the external market.

The following Table shows the position of the Anoka County Deputies for Top Pay Rate within the comparison group in 2006:

<u>County</u>	<u>2006 Top Wage</u>
Dakota	\$5816.87
Scott	\$5510.42
Ramsey	\$5059.28
Washington	\$4690.53
Anoka	\$4628.08

The average Top Rate was \$5135.08 and Anoka County was -9.87% below that average and obviously the lowest county in the group. The County offered no proof that their proposed 2% increases for 2007 and 2008 will have any impact on the Deputy’s standing in their comparison group. In fact, the County’s proposed 2% increase in Steps 2 through 5 for 2007 will further erode the Anoka County Deputies relationship with their comparison group. The following Table indicates the effect of the Employer’s wage proposal for 2007:

<u>County</u>	<u>2007 Begin Wage</u>	<u>Top Wage</u>
Dakota	\$4041.67	\$5875.00
Scott	\$3582.94	\$5675.73
Washington	\$3804.67	\$5378.53
Ramsey	\$3523.13	\$5160.47
Anoka	\$3223.14	\$4815.05
Average	\$3635.11	\$5380.96

Based on these figures, under the Employer’s proposal, the Top Wage for an Anoka County Deputy would be or 11.7% (\$565.99/month) below the Group Average.

Instead of offering a constructive proposal to correct the continuing external inequity, the Employer Representative offered an analogy to the tortoise and the hare. There are a number of problems with this analogy. First, it requires the other comparison counties begin to ignore the marketplace and other economic factors and slow down wage increases so that Anoka County

Deputies can catch up. This is not how the process works in a free market society. Secondly, the County's proposal does not move the whole "tortoise" at the same speed. The 2% performance-based pay increases only help the employees who are in Step 5 of the Pay Schedule. The other Steps of the Schedule are not allowed to enter the race, in spite of the County's recognition by its 3% offer, that starting pay is also inadequate. Adding more 2% performance-based steps simply creates a second pay schedule with the top pay being a continually moving target with no proof offered that it will ever catch up with the market. The Union's proposed 5% increases for 2007 and 2008 are needed to address these inequities.

Finally, MLGPEA provides that public employers in the State must insure their wages bear a reasonable relationship to like positions with other public employers. That statute defines a reasonable relationship as, "*the compensation for positions which require comparable skill, effort, responsibility, working conditions and other relevant work-related criteria is comparable.*" Clearly this Employer is not properly addressing their requirements pursuant to the statute.

The Union has shown by an overwhelming amount of evidence that its request for 5% increases to Steps 1 through 5 for 2007 and for 2008 is justified by the external comparisons and the need to address the increasing disparity between the Anoka County Deputies and other Deputies in the comparable counties. The Union's proposal is reasonable and should be awarded.

Employer Position – The Employer's argument with respect to the External Market situation is very straight forward:

1. Anoka County has historically been significantly below average in wages utilizing this comparison group.
2. Prior interest arbitration awards have not advanced the wages for this group relative to the external market. Most recently, Arbitrator Bognanno's award rejected the Union's efforts to improve its market position through arbitration and left the Parties to address the matter through negotiations.
3. The Parties did address the issue in the most recent negotiations through introduction of a performance-based range increase that provides additional adjustments to the "Top" salary.
4. This negotiated agreement was designed to provide for a gradual increase that allowed for internal equity in terms of general increase while expanding the "Top" salary by the same percent. This included recognition that this would not be an immediate fix, but rather a long term approach and solution.
5. The County's current wage proposal includes this previously negotiated approach to the market comparisons.
6. This prior agreement should be recognized and continued.
7. The County's proposed three percent (3%) adjustment/increase to the Beginning rate for the licensed Deputies for both 2007 and 2008 is consistent with the 3% increase to the pay range for the non-union group and reflects its efforts to maintain market position.

The Union presented an excerpt of the 1997 interest arbitration award that based its wage award, in part, on an increase that maintained the deputy group at 90.98% of the Beginning rate and 93.7% of the Top rate. That supports the County's premise that Anoka County has historically been significantly below average in wages utilizing the comparison group.

The balance of the Union's arguments focus on where the County ranks in terms of average wages. The Union's arguments and evidence do not allege that the existing program of gradually increasing the Top rate is no longer desirable. Accordingly, the union has not offered any evidence refuting the County's argument in this area.

Rather than recognize this previously agreed-to solution, the Union arguments represent a reversion to the "old" Union approach of simply providing significantly larger increases than the other counties in the comparison group. This approach should be rejected because:

1. It does not follow the previously agreed upon approach to address the historical market issues.
2. The Union's approach does not provide either a long term or a short term "fix" to the disparity that the Union complains about.
3. Most importantly, the Union argument exposes the flaw in simply comparing other jurisdictions and market average as a static historical marker. As noted in the comparison group data submitted by the Union, Scott County leapt from its historical ranking of 5th of the five comparison counties in 2005 into 2nd place among the five counties in 2006, via a 27.17% wage increase to its deputies in one year. As noted by the Union in its presentation, in doing so Scott County chose to move to a different pay system based on merit. Likewise, Washington County performed a similar leap in 2006 by providing a 15.4% general wage increase to its deputies. This caused Washington County to improve its position from 4th to 3rd among the five counties, surpassing Ramsey County. Simply utilizing historical market rankings to maintain position would "undo" the conscious decision of these two other counties to improve their relative rankings and market position by these significant amounts. Simply utilizing "average" general increases would include the "skewed" increases in Scott and Washington Counties. Given the recent vast wage jumps by these other counties, a short term view of wages and "average" general increases does not provide sound guidance for a long term wage system.

The Union also presented a number of arbitration excerpts that focused on the external market as a rationale for deviating from any internal pattern. It is significant to note that in the great number of awards that the Union submitted, **none** of the awards addressed the situation where the parties had adopted a long term plan in the prior collective bargaining agreement to address external market-related issues. The County respectfully submits that the present agreed-upon approach from the last contract negotiations differentiates this situation from any other external based award. One contract, particularly given the volatility in the traditional external market, is not enough time to abandon ship.

Continuation of this approach is particularly appropriate given its tie to the internal equity considerations noted above.

Analysis, Discussion and Conclusions – At first blush, the Union’s data on External Market Comparisons certainly appears to paint a rather dismal picture of the current position of Anoka County’s Deputy wages, relative to their counterparts in the other four comparison counties. However, a closer examination of the data indicates that, apparently from a philosophical view, the County has never sought to be a high-pay ranking county among the five counties in its comparison group and has always been toward the bottom of that group. Additionally, I found the following Table, as submitted by the Union to be interesting:

COUNTY	Top2005	%Incr.	Top2006	%Incr.	Top2007	%Incr.	Top2008
Dakota	\$5750	1.16%	\$5817	1.00%	\$5875	3.00%	\$6051
Ramsey	\$4960	2.00%	\$5059	2.00%	\$5160	3.02%	\$5316
Scott	\$4333	27.17%	\$5510	3.00%	\$5676		
Washington	\$4571	1.97%	\$4661	15.40%	\$5379	3.00%	\$5540
AVERAGE	\$4904	8.07%	\$5262	5.35%	\$5522	3.01%	\$5636
Anoka	\$4448	4.04%	\$4628	4.04%			

What I find interesting about this Table is that when the “skewed” percentage increases for Scott County in 2006 and for Washington County in 2007 are removed from the populations and a revised average is calculated, we get new Averages of 2.29% for 2006 and 2.51% for 2007. As a result, without the momentary “aberrations” of Scott and Washington Counties included in the Averages for 2006 and 2007, the percentage Top rate wage increases for the Anoka County Deputies were the highest of the remaining four counties and well above the Averages for each of those two years. Although not shown in the Table as received, a quick calculation of the %Increase for the Top Wage figures as shown for 2008 comes out at 3% for Dakota, Ramsey and Washington Counties.

I am also led to understand that the large wage increases that occurred in Scott County in '06 and Washington County in '07 were not necessarily routine annual wage adjustments, but instead were part of major pay system changes that will not repeat again for a long time.

What those revised figures tell me is that, contrary to the Union’s assertions, the “system” that the Parties negotiated in their last contract to deal with the external market situation is working; albeit not as quickly as the Union would currently like. But for the anomalies in Scott and Washington Counties, the Anoka Deputies appear to have done better on relative wage improvements than the majority of their peers in 2005 and 2006.

Based on the totality of evidence presented and the foregoing data, I find that the External Comparison situation favors the Employer's position, rather than that of the Union.

Other Economic and Market Forces

Union Position – The Union notes that other Economic and Market Forces are also considered by arbitrators in Interest cases. The most frequently used such factor, both in negotiations and in Interest cases is the “cost-of-living”. Interest awards have granted wage increases to employees based, at least in part, on an arbitrator's consideration and application of the cost-of-living standard. In applying the cost-of-living standard arbitrators rely heavily upon the Consumer Price Index (CPI) data compiled and issued by the Bureau of Labor Statistics, U.S. Department of Labor (BLS).

According to BLS, the CPI for All Urban Consumers in the Midwest Region increased by 3.2% in 2005, by 2.4% in 2006 and 3.7% for the twelve months ending October, 2007. The County's wage proposal ignores the impact inflation will have on the Deputies. The Union's wage request should be awarded to insure that their wages keep pace with inflation and maintain their purchasing power.

Employer Position – There are a couple of economic and market forces that an arbitrator should consider in evaluating wage proposals. One is Supply and Demand. The best factor to use in considering whether the County's entire wage and benefit package is sufficient to retain and attract qualified applicants is turnover data. In addition to the statistical arguments over comparable markets, the best test of whether a wage system (total economic package) is comparable to others in the community is the wage-related turnover. According to the County's data, 14 unit Deputies have voluntarily resigned their employment with the Sheriff's Office during the period 2002 through September, 2007. Seven of those individuals resigned when they were informed that they would not pass the field training portion of their probationary period. Three employees left for higher paying jobs in law enforcement elsewhere; one in 2004, one in 2006 and one in September, 2007 (that individual decided to join the State Highway Patrol). This turnover amounts to six-tenths of one-percent (0.6%) annual turnover in the workforce for economic reasons, demonstrates a very stable bargaining unit.

Those statistics also demonstrate that individuals are actively seeking to accept these Deputy positions as they become open. The last vacancy resulted in 168 qualified applicants. In the event the wage and benefit package currently offered was regarded as significantly deficient, the current employees certainly would have “voted with their feet” and sought employment elsewhere. Instead, recent experience shows that there are at 168 individuals waiting to replace an individual who chooses to leave a County Deputy position. The stability of this workforce and the number of individuals clamoring to become a licensed Anoka County Deputy demonstrates equitable compensation more accurately than any statistical analysis of comparable jurisdictions.

Cost of Living. The recent volatility in the energy sector has created wide swings on cost of living estimates. For example, the October, 2007, not seasonally adjusted rate is 3.5% for the Consumer Price Index (CPI), U Midwest Urban Area. This one month jump, along with the 1.8% increase as recently as August, 2007 demonstrates that this factor may not be viewed as a short term measure. Rather, the CPI is better viewed as a long term “check” measure. Using the 2001 to Present data shows that the members of this bargaining unit have received General Wage increases/Adjustments consistent with the change in the CPI:

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
General Wage Increase	3%	3%	3%	2%/1%	2%	2%
CPI-U Midwest Urban	2.7%	1.2%	1.9%	2.4%	3.2%	2.4%

The totals (using the split in 2004 as 2.5%) show that the unit employees received General Wage increases of 15.5% during that period, while the CPI increased by 13.8%.

Moreover, this County 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 to the highly inflationary cost of health insurance. In addition, employees who are eligible for movement through the Step and Performance-based pay systems will stay well ahead of the cost of living because they will receive an additional amount established in this arbitration, assuming acceptable work performance. 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 CPI.

In contrast, the Union’s proposed 5% increases will place these employees well beyond any increase needed to maintain purchasing power. The County’s final wage proposals are most consistent with the CPI change for 2007.

Analysis, Discussion and Conclusions – In assessing the Union’s and Employer’s Positions with respect to Other Economic and Market Forces, it does not appear that either the existing wage system or the cost of living factors are having a notable or disparate effect on the bargaining unit. According to the turnover and recent applicant figures, there do not seem to be any problems with respect to retention or recruitment with respect to the group. Additionally, the comparison of historical wage increases to corresponding CPI figures clearly indicates that, over time, the employees are adequately coping with inflationary ups and downs.

Therefore, I find that Other Economic and Market Forces do not appear to have any significant impact on the current Wage issue.

Award – Wages 2007 and 2008

According to my findings and conclusions, as above, with respect to the standards:

- There is no issue with respect to the County's ability to pay the Union's proposed wage increases for 2007 and 2008.
- There is no evidence to indicate that adoption of either of the proposed wage increases would violate or conflict with any statutes, rules or regulations and compliance with MLGPEA is not at issue.
- Internal equity comparisons do not justify or support the Union's proposed 5% wage increases either for 2007 or 2008.
- External comparisons also fail to justify or support the Union's proposed 5% wage increases for both 2007 and 2008.
- Consideration of Other Economic or Market Forces, e.g. CPI data, recruitment/retention rates, does not significantly reinforce the Union's wage increase proposals.

In evaluating the relative strength of the above standards with respect to the competing wage proposals, the strongest argument on the Union's side appears to be the External Comparison situation. The County's wage rates, both Beginning and Top for Deputies, currently ranks at the bottom among the five-county comparison group. However, the data also show that this situation is not new. The County has apparently consciously chosen, at least until the last contract negotiations, to be comfortable in that position. However, in those last negotiations, the Parties did address the situation and came up with a solution to start raising the County's ranking among its peers over time. Looking at the wage data and rankings for the last contract term, it is evident that the agreed-upon system is starting to work.

As I have indicated in previous Decisions, the position that a public employer takes with respect to its compensation position in comparison with other similar public employers is a complex situation involving a number of competing and conflicting interests and constituencies. Among them; basic fiscal philosophy within the community, i.e. conservative or liberal, the tolerance of the community's citizens to taxes, the community's economic status, the citizens' vision and perspective on their government, etc. As an "outsider", I, as an arbitrator, do not feel comfortable substituting my personal perspectives for those of the community's voters and taxpaying citizens as to what the relative ranking of their community should be to comparison communities. If comparative disparities become critical, market forces will ultimately confront the community and demand change within the community. With the agreement in the last contract, it appears that the County has acknowledged the need to address its ranking among its peer counties. Obviously, the County has been below the group average for years and the "fix" is going to take some patience and some time, in order to be palatable to the County's citizens, voters and taxpayers.

With respect to the Union's argument regarding the issue of internal wage pattern, I don't believe that there are any credible arbitrators who believe that internal patterns should be routinely or slavishly applied in all circumstances. That is precisely why we use the commonly accepted standards that research shows that the parties themselves apply in negotiations. The weight given to a particular factor within the set of standards will routinely differ, based on the testimony and evidence received in a particular situation. In the case of the WROs, Arbitrator Anderson felt that there was a significant wage disparity between the WROs and a comparative group within the County workforce and, additionally, concluded that there was a serious external disparity. Considering and weighing those two factors, he decided that the circumstances warranted a departure from what he had concluded was an established internal wage pattern. In this instance, the evidence and data do not indicate any similar disparities regarding the status of the licensed Deputies.

With respect to weighing Internal versus External Equity, I believe I and my arbitrator colleagues generally try to view that situation in the same manner as employees. To illustrate; you learn that one out of three homes in a nearby community have swimming pools. Does that news cause you to immediately feel deprived, because your home doesn't have one? Perhaps not. But, when your wife and children inform you that they just learned that both of your next door neighbors are installing Olympic-sized pools this spring, I can predict with a fair amount of certainty that you and your family will be discussing swimming pools quite frequently over the ensuing days and weeks (at least until you end up at the swimming pool contractor's office with your checkbook). The Lesson - employees will be more sensitive to a perceived inequity or disparity in their own "neighborhood" and will react to it much more quickly than one perceived in a distant location. Also, interestingly, research indicates that employees are generally more sensitive to perceived inequities and disparities involving the quality of management/supervision than they are to compensation issues.

AWARD – ISSUES NOS. 1 AND 2, WAGES FOR 2007 AND 2008 (Article 23, Appendix A)

The Employer's Wage Proposals for both 2007 and 2008 are Awarded. To the extent that the Union, like the Employer, proposes to retain the 2% Performance-based addition to Step 5 of the existing Pay Schedule that position is also Awarded for 2007 and 2008.

ISSUE NO. 3, INSURANCE – RETIREE HEALTH (Article 17) Employer

Employer Proposal: The County proposes the following language change or amendment to the existing language of Article 17, Insurance, Section 17.2:

"Employees with a date of employment on or prior to January 5, 2007 retiring from this bargaining unit will receive the same insurance benefit program as is available to other employees under the Anoka County

Personnel Rules and Regulations, except that the County shall agree to pay the following minimums:... (Underline indicates the proposed change)

The remaining current contract language in Article 17, Insurance, shall remain unchanged.

The language of Article 17 was awarded to the Union by Arbitrator Sharon Imes in 1997. Arbitrator Imes noted that the County was proposing a “me too” provision in which the language would have simply stated that employees retiring from this bargaining unit would “*receive the same insurance benefit program as is available to other employees retiring from Anoka County employment during the same year.*” The Union proposed the language that Arbitrator Imes ultimately awarded. Arbitrator Imes noted in her award that;

“A review of the previous contract and the existing addendum to that contract indicates it is the County which is seeking a change. Although both Parties agree the other is seeking the same insurance benefit and that essentially the provision is a “me too” provision, the addendum agreed upon in the past contract clearly states it ‘shall not establish to be used to establish any precedent by either party.’ This said and done, the provisions before the arbitrator is the provision which is contained within the collective bargaining agreement and that provision contains the ‘safeguards’ the Union states it seeks. Consequently, to eliminate the language which sets forth these safeguards, even if that is the current County practice, is tantamount to changing the conditions of the contract. The County’s argument that this change is needed now in order to provide flexibility when negotiating insurance provisions is not persuasive. If and when there is a need to amend the benefit provided, it should be the subject of bargaining and that right should not have been given away under the ‘guise’ of currently existing practice.”

The County subsequently attempted to remove the language in later arbitrations, but was not successful. Essentially, the language and provision has lain dormant until the most recent contract negotiations.

As pointed out in the hearing, this situation came to the fore in 2006 when the Governmental Accounting Standards Board (GASB) issued or changed Rule 45 regarding how certain disclosures must be treated in financial statements.

The points pertinent to this situation are as follows:

1. Information about the other (than pension) post-employment benefits (OPEB); what are the benefits, who is eligible, how many employees and retirees are covered and other information.
2. The actuarially determined liability for the OPEB benefits and the assets (if any) that are available to offset the liability; also information about the actuarial methods and assumptions that were used to calculate the liability.
3. The portion of the liability that must be reported as an annual accounting expense on the employer’s financial statements, and a cumulative

For purposes of this interest arbitration, the most important element of Statement 45 is the requirement that the County identify the liability and make contributions to offset its annual expense. This requirement replaced the prior “pay as you go” basis that only required employers to report actual costs.

The most realistic calculation of the County’s liability for the current retiree health insurance program is \$136,000,000. Accordingly, the County was required to come up with a plan to address this obligation. Because of the vast dollar amounts involved, the County recognized that every additional dollar that came into the county through increased aid or new housing would not be enough to resolve this issue over a few years time. The additional amounts that would otherwise be utilized to pay for general increases, additional jobs, capital improvements or other necessary expenditures would need to go to meet this obligation for years.

Unlike other public jurisdictions that sought to simply eliminate the program, as no longer economically feasible, the County first sought to limit its application to existing employees (those hired prior to January 6, 2007). This did not solve the County’s issue with the existing liability but rather limited its application to a defined, rather than a growing, amount.

The partial solution of limiting eligibility to only employees hired prior to January 6, 2007 was immediately applied to all the County’s non-union employees. All of the existing union contracts, with the exception of the Highway and Park Maintenance unit and the licensed Deputy unit, had either “me too” provisions or no reference to retiree health insurance at all. For those units, the January, 2007 eligibility limit was immediately applied to newly hired employees. The County and Operating Engineers, Local No 49, representing the Highway and Parks Maintenance employees also addressed this issue. That group ultimately agreed to the January 6, 2007 limitation also.

The only remaining group without the limitation is this bargaining unit in this interest arbitration. As noted by Arbitrator Imes, in negotiating (or arbitrating) this benefit, the parties recognized that it would operate as driven by internal equity – a “me too” provision that had the added element of required negotiation should the benefit need to be changed. The Union argued in the arbitration before Arbitrator Imes that it simply wanted to preserve the ability to negotiate on this issue as a “safeguard against possible (County) abuses”. In the event that internal equity is the driving force, this arbitrator has universal application for other employee groups in the County to apply to members of this group. Failure to apply internal equity would provide this group with a benefit that no other County employee groups can get. This would place this group well above any other group at the County simply because this group has access to interest arbitration.

In the event that the standard is simply to determine whether the proposed change is a “possible (County) abuse,” the County’s limitation should also be awarded. The County’s proposal is not an effort to abuse the program – it is the first part of an effort to retain the key elements of the program for those

employees who operated under this provision when they began working for the County. The Union in negotiations recognized that this is not a matter that the County has approached on a whim or as an abuse. It is a huge problem.

Local government, including Anoka County, exists to serve its citizens. Additional citizens, aging demographics, emergencies (the Anoka Tornados High School nickname is apt), decreasing funds available for human services and roads and the needs of the County's citizens all require that the County be able to utilize new money to address these needs rather than simply place this money into an account.

More importantly to the County's employees, failure to provide a limitation on this benefit may endanger the entire retiree health insurance program. Absent a defined obligation that is not growing, the County will be forced to create a more aggressive plan to address this obligation. Ability to pay, while not an issue in this present arbitration, will become the primary element in all future negotiations. The County may be forced to take more draconian measures such as elimination of the retiree health insurance benefit for some or all of the currently eligible employees. The employee groups, including this group, must be part of this solution rather than a continuation of the problem. The County's Proposed language change to Article 17 should be awarded.

Union Position: The Union position on the County's proposed language change to Article 17, insurance, Section 17.2 is that the change should not be awarded.

The language in Article 17 was awarded to the Union by Arbitrator Sharon Imes in 1997 to insure that any changes in the Retiree Health insurance Program would be negotiable. Prior to her award, the benefit language had been in an addendum to the contract. Since 1997, the County has made several attempts to convince arbitrators to remove the language in Article 17, but without success.

In the current circumstance, the County acknowledges that the primary reason it wishes to eliminate this provision is the requirement to recognize the future cost of the program, due to a recent change in accounting standards. The County did not argue it could not afford the future cost, only that it was a concern and would not look good on future balance sheets. The County said that the estimated total future cost of the unfunded retiree health insurance benefit is at most slightly more than \$136 million dollars. That may sound like a large amount of money, but it is important to recognize that Anoka County at the end of 2006 already had deposits and investments in excess of \$132 million dollars. Additionally, the County's certified tax levy of \$304/person is the 5th lowest rate of all 87 counties in the State.

The Union does not disagree that retiree health insurance benefits are a significant cost for the County now and in the future and efforts must be made to minimize the financial impact on both employees and the County. However, any efforts must involve both parties and be the result of collective bargaining. The efforts to limit the impact of retiree health insurance costs should not be the result of unilateral changes by the County trying to take advantage of the arbitration process. The County should not be allowed to obtain through arbitration what they were unable to obtain at the bargaining table, primarily because they were

unwilling to engage in meaningful negotiations and refused to offer any quid pro quo for the elimination of the retiree health insurance benefit for new employees.

The Union has shown the Employer failed to meet their burden of providing both sound rationale and compelling reasons for the significant change they are demanding. The County also failed to provide a quid pro quo for the proposed elimination of the retiree health insurance benefit for new employees. For these reasons, the Union's position of no change to the existing language should be awarded.

Analysis, Discussion and Conclusions – This Issue brings to the fore the arbitral Interest principle and standard that says that a party proposing a change in existing language shall bear the burden of proof in demonstrating that there is a definite problem with the existing language and that its proposed change will effectively and efficiently resolve the problem, e.g. the proposal is necessary and reasonable.

First, I credit the Union's perspective on the situation; that the major impetus behind the County's proposed language change is not financial. I note that there is nothing in the language of Rule 45 that requires that the County make any payments against the calculated liability – merely that it report the calculated liability and also report any contributions made in the current year toward the calculated liability. Obviously, to make the balance sheet look better, some contributions are desirable. Rule 45 didn't change the liability level; it just required that henceforth it now be disclosed on the balance sheet.

The County has historically known or reasonably should have known about its potential liability for the retiree health program. To argue otherwise would indicate a total lack of fiscal or financial responsibility by the County. I also note that Rule 45 does not require that contributions be made, only that, if made, they must be shown on the financial statement. Therefore, I have to believe that the incentive behind the County's efforts to cut off newly hired employees from the retiree health insurance program, as of 1/6/07, is to soften the impact of now having to show the cold, hard financial figures for that insurance program to the citizens and voters. I see nothing here that portends an imminent financial crisis for the County, only a public relations crisis.

Contrary to the County's argument, I find that the County's proposed language change is a material change in the insurance program. It is the type of change that Arbitrator Imes appears to have contemplated when she placed the retiree health insurance language into the contract, rather than leaving it as a "me too" addendum. Her action made changes a negotiable item. Arbitrator Bognanno subsequently affirmed Imes in 1999. I also note that the County did successfully negotiate this issue with Operating Engineers, Local No 49.

I find that the County has not met its burden of proof to show that this language change is immediately necessary or that the County would suffer any immediate or short-term significant financial damage if its Proposal were not awarded. The list of perspective and potential adverse future financial "problems" postulated by the County are unsupported by any detailed facts or data and can only be categorized as speculation.

In view of my findings above, the County's argument with respect to internal equity becomes moot.

To award the County's proposal would also require that I overturn or modify the previous decisions of Arbitrators Imes and Bognanno. The County has failed to provide any cogent evidence to warrant that kind of action on my part.

AWARD – ISSUE NO. 3 – RETIREE HEALTH INSURANCE (Article 17)

The Union's Position is Awarded and the Employer's Proposal is denied. The current language of Article 17 shall remain in full force and effect during the term of the 2007-2008 contract, unless and until such time as the Parties negotiate and reach agreement on any appropriate changes.

ISSUE NO. 4 – HEALTH CARE SAVINGS PLAN (New):

Union Position – The Union is proposing a Health Care Savings Plan (HCSP) for unit employees hired after January 5, 2007, as an appropriate quid pro quo for the Employer's proposed elimination of the retiree health insurance benefit for those employees. The Employer opposes the HCSP.

The Union proposes that the Employer pay an additional \$.80/hr. to employees after one year of service. This amount would increase every two years based on one-half of the average percentage wage increase for the previous two years. Employees receiving the extra hourly amount would contribute this amount to a HCSP established for the employee. The HCSP would also be available to employees who choose to "opt out" of the County's retiree health insurance benefit program currently provided in the collective bargaining agreement. The Union believes this proposal provides an appropriate quid pro quo for the County's proposed language change to eliminate the retiree health insurance benefit program for employees hired on or after January 6, 2007.

The HCSP proposed by the Union is patterned after a negotiated contractual agreement between the City of Eagan and LELS, as the representative of the Eagan Police Officers. The Eagan HCSP was negotiated to replace the retiree health insurance benefit already in place in the Police Officer's collective bargaining agreement. It is based on an actuarial study to determine the dollars needed to fund an employee's single health insurance benefit from age 55 to 65. The cost of the single health insurance premium in Eagan at the time of the study was \$573.70/month. The current cost of the most expensive single health insurance premium for Anoka County employees is \$569.76/month, only a few dollars a month less than the Eagan premium at the time of the study. The study found the present value of \$1664.00/year or approximately \$.80/hr. invested over a 30 year career would provide the necessary money to fund an employee's health insurance costs for 10 years. This is the amount proposed by the Union based on actuarial assumptions and is reasonable.

The Union's proposed HCSP is notably more reasonable when compared to a plan awarded by Arbitrator Bard in City of Duluth and Duluth Police Union, BMS 07-PN-0383, (2007) (Bard, Arb.), pp.17-28. In that arbitration, both parties agreed that the existing retiree health insurance plan needed to be replaced due to dire financial problems faced by the City. The dispute/Issue focused on the best way to fund an alternative plan. The City's plan was awarded and provided the City would contribute 1% of an Officer's salary to a HCSP in addition to making a lump sum payment of \$12,000.00 to an Officer's HCSP after three years of service. The Union's proposed HCSP is reasonable when compared to the plan awarded in Duluth and is offered to a financially solvent Employer, who is clearly not suffering the financial crisis facing Duluth.

The Union's proposed HCSP is reasonable, fiscally responsible and is an appropriate quid pro quo for the elimination of retiree health benefits for new employees and should be awarded.

Employer Position – The Employer, as noted above, rejects this Union Proposal. For the reasons set forth below, I find it unnecessary to outline the Employer's detailed arguments in support of its position.

Analysis, Discussion and Conclusions - The Union's Proposed New language concerning the creation or adoption of a Health Care Savings Plan (HCSP) is being offered as a quid pro quo, for the possible award of the Employer's Proposed language change in Issue No 3, above.

As indicated in Issue No. 3, I have not awarded the Employer's proposed language change to Article 17, Retiree Health Insurance. Therefore, the Union's Proposal in Issue No. 4 becomes moot and no longer necessary or relevant.

AWARD – ISSUE NO. 4, HEALTH CARE SAVINGS PLAN (New)

In view of my Award in Issue No. 3, above, the Union's Proposal is moot, unnecessary and is denied.

Dated at Minneapolis, Minnesota this 27th day of January, 2008.

Frank E. Kapsch, Jr., Arbitrator

Note: I shall retain jurisdiction in this matter for a period of 30 calendar days from the date of this Decision and Award to deal with any related questions or problems.