

<b>IN THE MATTER OF ARBITRATION</b>	)	
	)	<b>OPINION AND AWARD</b>
<b>Between</b>	)	
	)	
<b>LAW ENFORCEMENT LABOR</b>	)	
<b>SERVICES, union</b>	)	
	)	<b>BMS Case 07-PA-0903</b>
<b>And</b>	)	
	)	
<b>REDWOOD COUNTY, MINNESOTA,</b>	)	
<b>Employer</b>	)	

**Appearances:** for the Union---Tiffany L. Schmidt, staff attorney

For the Employer---Cyrus F. Smythe, Labor Relations Associates

**Procedures:** The undersigned was selected as Arbitrator in this Matter through the Procedures of the Minnesota Bureau of Mediation Services. A hearing was held in the Redwood County Board Room at the County Building in Redwood Falls, Minnesota on October 24, 2007, commencing at 9 a.m. With the submission of Post-Hearing Briefs on November 26, 2007, the Record in this Matter was closed.

**Parties:** The Employer is a modest sized Minnesota county; the Union represents Deputy Sheriffs, jailer/dispatchers and possibly other classifications in the county's Sheriff's department. The Employer and Union are parties to a labor Agreement in force from January 1, 2005 through December 31, 2007. Key elements of this Labor Agreement are derived from an interest arbitration award handed down by Arbitrator John Remington on August 3, 2006.

**Issue:** The issue is framed differently by the Parties, so the Arbitrator will frame it in terms of the central facts of the case. The labor agreement includes “payscale” for 2005, 2006 and 2007, reflecting Arbitrator Remington’s Award. Three new employees were hired during 2006, placed in step 1 of the 2006 payscale and began serving the probationary periods provided for in the labor Agreement. When January 1, 2007 rolled around, their wages were not increased to the new 2007 step 1 level. The issue is: did this violate the labor Agreement or, as the Employer would have it, was this actually required by the Agreement?

### **Employer’s Contractual Arguments**

The Employer contends that Article 25 of the Agreement covers this situation clearly and without room for misinterpretation. It reads as follows:

#### Article 25      Salaries

- 25.1 Salaries shall be as set forth in the Compensation Schedule (Exhibits A-C attached hereto).
  - 25.1.2 Placement of any subsequent or additional Civil Process Deputies on the pay plan shall be made on the closest but next highest step for Deputy Sheriff II relative to the Employee’s prior placement on the pay plan.
- 25.2 Salary increases, in accordance with the schedule, shall become effective for the payroll period nearest the employee’s anniversary date of employment.
- 25.3 Salary increases pursuant to the attached Compensation Schedule is [sic] expressly dependent on satisfactory performance by the employee. Employee’s performance shall be evaluated by the Sheriff on a yearly basis. Employees whose performance is unsatisfactory shall not receive a step

increase for that year. Performance evaluations shall be grievable but not arbitrable.

### **Analysis**

The County contends that, since employees Hubin, Schoepfer and LaBat were still in their probationary periods and hence had not received a satisfactory performance appraisal, section 25.3 bars them from the increased pay of the 2007 Payscale. Further, the Employer maintains in its Brief that “the County has the sole right to move employees through the salary schedule contingent on “satisfactory performance...” But this is clearly the wrong conclusion for several reasons.

1. Section 25.3 clearly says that “employees whose performance is unsatisfactory shall not receive a *step* increase for that year.” It does not say “employees whose performance has yet to be evaluated shall not receive a *scale* increase for that year.”

2. The reference in the singular in Section 25.3 to “Compensation Schedule” reinforces the previous point---it supports the idea that movement from step to step within a given year’s compensation schedule is contingent on satisfactory performance, not movement from one yearly scale to the next.

3. In its Brief, the Employer contends that the interpretation of article 25 applied to the Grievants is consistent with the Parties’ past practice. The vagaries

of past practice embedded in the large number of payroll adjustment documents (Jt. Ex. 4 – 11) suggest that many inconsistent elements have cropped up over the years.

4. It is to be presumed logically that the concept of a payscale for a particular year would embrace all positions (e.g., deputy sheriff and jailer/dispatcher) and all steps (e.g., in the present case, 1 through 18). The Employer's interpretation of Article 25 creates a nineteenth step for 2007.

5. Finally, it is difficult to reconcile the fact that the Deputy Sheriff Grievants will make less during much of 2007 than those hired in 2007 with any common sense propositions about human resource management..

#### **AWARD**

The Grievance is sustained. The Grievants are to be moved to the 2007 payscale effective January 1, 2007 and made whole for any losses incurred.

**Given at Minneapolis, Minnesota this twenty-seventh day of December, 2007.**

**James G. Scoville  
Arbitrator.**