

IN THE MATTER OF THE ARBITRATION BETWEEN

LAW ENFORCEMENT LABOR
SERVICES, INC.,

Union,

and

THE COUNTY OF SIBLEY,

Employer.

MINNESOTA BUREAU OF
MEDIATION SERVICES
CASE NO. 07-PN-0808

DECISION AND AWARD
OF
ARBITRATOR

APPEARANCES

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On July 26, 2007, in Gaylord, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, who was selected by the parties under the provisions of the Minnesota Public Employment Labor Relations Act ("PELRA") to resolve collective bargaining issues about which the parties are at impasse. Post-hearing briefs were received by the arbitrator on August 9, 2007.

BACKGROUND

The County of Sibley (sometimes, the "Employer" or the "County") is situated southwest of the Minneapolis-St. Paul Metropolitan area. Its county seat, Gaylord, Minnesota, is about seventy miles from Minneapolis. The population of the County is about 14,800.

The Union is the collective bargaining representative of ~~fifteen employees who work in the Employer's Sheriff's Department~~ (the "Department") -- five Deputies, six Dispatcher-Jailers (hereafter, "Dispatcher"), two Investigators and two Sergeants. By agreement of the parties, the Sergeant's classification was added to the bargaining unit, effective January 1, 2007.

The Union and the Employer are parties to a labor agreement that has a stated duration from January 1, 2004, through December 31, 2006. Because they have not yet agreed to all of the terms of a new labor agreement, they continue to operate under the terms of the 2004-06 labor agreement, which I may sometimes refer to as the "current labor agreement." They have successfully negotiated some of the terms of their new labor agreement, but have reached impasse about several bargaining issues, described hereafter. In this proceeding, they seek to resolve those issues in arbitration, using the arbitration procedures established by PELRA.

On April 12, 2007, the Minnesota Bureau of Mediation Services certified that the parties were at impasse with respect to twelve collective bargaining issues that are to be resolved in this arbitration proceeding. I refer to these issues by the following titles:

- Issue 1. Duration of, the Agreement.
- Issue 2. Wages - General Increase for 2007.
- Issue 3. Wages - General Increase for 2008.
- Issue 4. Wages - Base Adjustment for 2007.
- Issue 5. Wages - Base Adjustment for 2008.
- Issue 6. Employer's Health Insurance Contribution for 2007.
- Issue 7. Employer's Health Insurance Contribution for 2008.
- Issue 8. Shift Differential.
- Issue 9. On-call Pay.
- Issue 10. Accrual of Compensatory Time.
- Issue 11. Holiday Premium If Called Back.
- Issue 12. Christmas Eve Premium.

At the hearing, the parties informed me that they have settled Issue 1, agreeing that Article 27 of the new labor agreement will provide for a two-year duration, calendar years 2007 and 2008, thus:

This Agreement shall be in full force and effect from January 1, 2007 through December 31, 2008, and shall be automatically renewed from year to year thereafter unless either party shall notify the other, in writing, by August 15, 2008 or by four (4) months prior to any subsequent anniversary date, that it desires to modify or terminate this Agreement.

In addition, the parties informed me that they have settled Issues 6 and 7, agreeing that the amounts of the Employer's contribution to health insurance premiums for 2007 and 2008 will be the same as the amounts the Employer will contribute in those years in behalf of its non-union employees.

ISSUE 2: WAGES - GENERAL INCREASE FOR 2007
ISSUE 3: WAGES - GENERAL INCREASE FOR 2008
ISSUE 4: WAGES - BASE ADJUSTMENT FOR 2007
ISSUE 5: WAGES - BASE ADJUSTMENT FOR 2008

An understanding of the parties' impasse over these four issues relating to wages requires a description of the agreement the parties reached about wages when they bargained for the 2004-06 labor agreement. For the first year of that agreement's

duration, 2004, they agreed in Schedule A to use the same wage schedules, with the same hourly wage rates, that were in effect during 2003 for the three classifications that were then in the bargaining unit. The schedule for each classification had the same structure. It established a starting hourly wage rate, referred to as "Step 3," and ten annual increments -- Steps 4 through 13, as follows:

<u>Step</u>	<u>Dispatcher</u>	<u>Deputy</u>	<u>Investigator</u>
3	\$11.40	\$14.66	\$16.97
4	\$11.97	\$15.33	\$17.77
5	\$12.53	\$16.11	\$18.67
6	\$13.12	\$17.21	\$19.94
7	\$13.38	\$17.53	\$20.32
8	\$13.60	\$17.89	\$20.72
9	\$13.89	\$18.25	\$21.12
10	\$14.13	\$18.59	\$21.53
11	\$14.43	\$18.95	\$21.95
12	\$14.73	\$19.32	\$22.39
13	\$15.01	\$19.71	\$22.85

Thus, during the first year of the 2004-06 labor agreement's duration, the wage rates from 2003 were carried over with no increase. For 2005 and 2006, the parties agreed to use an entirely new structure and to place each of the three bargaining unit classifications in one of the "Pay Grades" that the Employer has established for determining the compensation of most of its other employees -- under the Sibley County Classification and Compensation Guidelines.

The parties agreed that Dispatchers would be placed in Pay Grade 9, Deputies in Pay Grade 12 and Investigators in Pay Grade 13. They also agreed that for 2005 and 2006, wage rates for each classification would no longer be expressed in an eleven-step schedule as in the 2004, but, instead, that the

schedule for each Pay Grade would establish a range, with a minimum hourly wage rate and a maximum hourly wage rate, thus:

<u>2005</u>			
<u>Grade</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Classification</u>
13	\$17.11	\$24.46	Investigator
12	16.08	22.51	Deputy
9	12.99	17.66	Dispatcher

<u>2006</u>			
<u>Grade</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Classification</u>
13	\$17.28	\$24.71	Investigator
12	16.24	22.73	Deputy
9	13.12	17.84	Dispatcher

Schedule A of the 2004-06 labor agreement also provides:

- 2004 - 0% increase (2004 pay schedule - [as above])
- 2005 - move to new pay schedule - 2% COLA and 3% step at 1-1-05
- 2006 - 1% COLA - 3% step at 1-1-06

At the hearing, the parties explained 1) that during 2004, each employee was paid the pay rate established by the eleven-step schedule according to his or her years of service, 2) that during 2005, each employee received 5% more than his or her 2004 pay rate, i.e., what Schedule A refers to as "2% COLA and 3% step at 1-1-05," and 3) that during 2006, each employee* received

* The evidence does not establish whether any Investigator was at the top step on the 2004 wage schedule. If so, the 2006 maximum set for the Pay Grade 13 range, \$24.71, would limit his or her 2006 wage rate to that amount, preventing the higher rate, \$24.95, that would be payable if the 2004 top step rate of \$22.85 were increased by 5% in 2005 and by an additional 4% in 2006. The maximums for Deputy and Dispatcher are high enough to prevent a similar effect for those two classifications.

4% more than his or her 2005 pay rate, i.e., what Schedule A refers to as "1% COLA - 3% step at 1-1-06."

The parties have agreed that the Sergeant's classification, new to the bargaining unit, will be placed in Pay Grade 13, the same pay grade as that of the Investigators.

The Union's Position.

~~The text of the Union's final position on each of the~~
four issues relating to wages is set out below, as presented to the Bureau of Mediation Services on April 25, 2007:

2. Wages: Amount of general increase in 2007? (Schedule A). Effective January 1, 2007, a general increase of 3.5% over the 2006 wage rates.
3. Wages: Amount of general increase in 2008? (Schedule A). Effective January 1, 2008, a general increase of 3.5% over the 2007 wage rates.
4. Wages: Amount of base/structural adjustment for 2007? (Schedule A). Effective January 1, 2007, a step increase of 3.0% over the 2006 rates.
5. Wages: Amount of base/structural adjustment for 2008? (Schedule A). Effective January 1, 2008, a step increase of 3.0% over the 2007 rates.

For each of the two new contract years, the Union has separated the total wage increase it seeks into two proposals -- one seeking a "general increase" and the other seeking a "base-structural adjustment." The Union explained that it has made this division to make more apparent that, with the elimination of the kind of stepped wage schedule that was used in 2004 and prior years, employees no longer receive an automatic step increase that occurs with a new year of experience. Thus, in Issue 4 (for 2007), it proposes that employees receive a 3% wage increase, which it argues would be the equivalent of a step increase for an added year of experience if a stepped wage

schedule were still being used, and similarly, in Issue 5 (for 2008), it proposes that employees receive a 3% wage increase, which it argues would be the equivalent of a further step increase for another new year of experience. In Issue 2 (for 2007), the Union proposes a general wage increase of 3.5%, and in Issue 3 (for 2008), it proposes an additional general wage increase of 3.5%.

The Employer's Position.

The text of the Employer's final position on each of the four issues relating to wages is set out below, as presented to the Bureau of Mediation Services on April 25, 2007:

2. Wages - Amount of General Increase in 2007? - Schedule A Effective January 1, 2007 1.0% general wage increase plus up to 3.0% merit increase not to exceed range maximum. (See attached salary ranges.)
3. Wages - Amount of General Increase in 2008? - Schedule A Effective January 1, 2008 1.0% general wage increase plus up to 3.0% merit increase not to exceed range maximum. (See attached salary ranges.)
4. Wages - Amount of Base/Structural Adjustment for 2007 - Schedule A Retain current pay structure subject to the increases noted above in Item 2.
5. Wages - Amount of Base/Structural Adjustment for 2008 - Schedule A Retain current pay structure subject to the increases noted above in Item 3.

The "attached salary ranges" referred to in the Employer's final position are set out below:

<u>Grade</u>	<u>2007</u>		<u>Classification</u>
	<u>Minimum</u>	<u>Maximum</u>	
13	\$17.45	\$24.95	Sergeant
13	17.45	24.95	Investigator
12	16.40	22.96	Deputy
9	13.25	18.01	Dispatcher

2008

<u>Grade</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Classification</u>
13	\$17.62	\$25.20	Sergeant
13	17.62	25.20	Investigator
12	16.56	23.19	Deputy
9	13.38	18.19	Dispatcher

At the hearing, the Employer amended its final position; as follows. Effective for 2007, it would increase the range minimum of each classification by 2% above the range minimum for 2006, and, also effective for 2007, it would increase the range maximum of each classification by 6% above the range maximum for 2006.

With respect to Issues 2 and 3, the Employer proposes for each year of the new labor agreement a "general wage increase" of 1.0% and a "merit increase" "up to 3.0%." The proposal for a merit increase up to 3.0% derives from Section 21.4 of the 2004-06 labor agreement, which makes eligibility for a "step" increase subject to a satisfactory performance review, as follows:

Employees will be eligible for [a] step increase on their annual eligibility date on the attached pay scale based upon satisfactory performance reviews. Any step increase that is denied is subject to the grievance process of this labor agreement.

The Employer presented schedules of salary ranges to depict its amended wage proposals, thus:

2007

<u>Grade</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Classification</u>
13	\$17.80	\$26.44	Sergeant
13	17.80	26.44	Investigator
12	16.72	24.32	Deputy
9	13.51	19.09	Dispatcher

<u>2008</u>			
<u>Grade</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Classification</u>
13	\$17.98	\$26.70	Sergeant
13	17.98	26.70	Investigator
12	16.89	24.56	Deputy
9	13.65	19.28	Dispatcher

Decision and Award.

The evidence does not show expressly whether the parties have agreed to retain the language of Section 21.4 in the new labor agreement or to amend it to accord with the elimination of a stepped wage schedule. At the hearing, however, the parties agreed that in the past, typically, employees have not been denied a full step increase because of lack of satisfactory performance, but they also agreed that satisfactory performance can still be a basis for denying or reducing the 3.0% increase referred to as a "merit increase" in the Employer's positions on Issues 2 and 3 and referred to as a "base/structural adjustment" in the Union's positions on Issues 4 and 5. Therefore, I assume that the parties have agreed to retain Section 21.4 in the new labor agreement. I note that in its arguments the Union referred to the "base/structural adjustment" as a "step increase."

As I interpret the parties' arguments, they disagree about the amount of what both refer to as a "general" wage increase, but they agree that, in addition to whatever general wage increase is awarded, wages should be increased in each year by 3.0% -- as a "base/structural adjustment," as a "merit increase" or as a "step increase," subject to the provisions of Section 21.4, which has been retained without amendment in the new labor agreement. Therefore, I award the 3.0% yearly increases they

have thus agreed to, which, the evidence shows, are to be the equivalent of step increases paid for added experience, and I consider below their arguments about the amount of "general" wage increases.

The Union presented evidence about the cost of its proposal for a general wage increase. Its calculations show that a general wage increase of 3.5% in 2007 would cost \$14,713 more than the 1% increase proposed by the Employer and that an additional general wage increase of 3.5% in 2008 would cost \$30,897 more than the additional 1% increase proposed by the Employer for that year. The Union argues that the Employer should have no difficulty in paying these additional costs, that the Employer's net assets have increased by \$3,188,433 in 2004 and by \$3,136,710 in 2005, that its governmental fund balance has increased substantially in the same years and that its tax capacity increased by 9.3% in 2004, by 15.2% in 2005, by 14.3% in 2006 and by 12.7% in 2007.

The Employer argues that the Union's calculations of the cost of its general wage increase proposals fail to recognize other costs that accompany a wage increase -- notably the "roll-ups" for F.I.C.A. and pensions and the increased cost of overtime. The Employer argues that its financial condition has been deteriorating in recent years, in which income from fees for services and federal and state aids has declined. The Employer points out that in recent years it has been spending down its fund balances.

The Employer also argues that it is a county with a small rural population, largely dependent on agriculture, that its

budget is only about 63% of the average budget for a comparison group of counties, those in "Economic Region 9 and Contiguous Counties," described in more detail below. The Employer points out that it has the ninth highest tax levy per capita of the eighty-seven counties in the state. Further, the Employer argues that an award of the percentage increases sought by the Union would influence other employees to seek similar increases.

Nothing in the evidence indicates that the Employer's financial status should be a determining factor in my decision about a general wage increase, though I recognize that, in making that decision, a balance should be sought between the limited resources of a rural county and the needs of employees. The Employer does not lack the ability to pay the increases the Union seeks, but mere ability to pay should not determine the appropriate wage rates. Other criteria must be the primary considerations that influence my decision.

The parties make arguments about the effect of my award on the Employer's compliance with the Local Government Pay Equity Act, Minnesota Statutes, Sections 471.991 to 471.999. The evidence shows that, as the Union argues, an award of the Union's position could be made without causing the Employer to be out of compliance with the requirements of the Pay Equity Act, but I also note the Employer's argument that internal comparison of wage increases must be considered, lest other employees perceive inequity in the general wage increase awarded here.

The Employer presented evidence that I summarize as follows about the wage increases of its other employees for 2007

and 2008. The seventeen employees of the Highway Department, who are represented by the American Federation of State, County and Municipal Employees ("AFSCME"), received general wage increases of 1% for 2007 and 1% for 2008. In addition, they received a 3% "step" increase in each of those years, which the Employer refers to as "movement within the salary range." The rest of the Employer's employees are not represented by a union. For 2007, except for elected officials, they received a general wage increase of 1% and "movement within the salary range" of 3%, and the Employer anticipates that they will receive the same increase in 2008. The Employer presented evidence showing that patterned internal wage increases have prevailed for the past ten years, though, as the Union notes, with some variation.

The Union argues that changes made in the range minimums and maximums for 2007 and 2008 have varied for other County employees, notwithstanding that they have received a general wage increase of 1% and movement within the range of 3%.

The Union points out that the Employer increased the 2007 salaries of its five elected officials by substantial percentages, ranging from 6.7% to 17% -- with the Sheriff receiving an increase of 8.5%. The Employer argues that those increases were provided by the County Board in recognition that Minnesota statutes give the Sheriff and the other elected officials the right to challenge their salaries as set by the County Board by appeal to district court and that the statutes set a standard for determining salaries -- consideration of responsibilities, duties, experience, qualifications, and performance. To this

argument, the Union responds that PELRA and the Pay Equity Act establish similar criteria for use in interest arbitration proceedings such as the present one.

The parties suggest several groups of Minnesota counties as appropriate for external wage comparison. Sibley County is one of nine counties (with Blue Earth, Brown, Faribault, LeSueur, ~~Martin, Nicollet, Waseca and Watonwan~~) in Economic Development Region 9, as established by the Minnesota Department of Economic Development (hereafter, "Region 9"). The Union argues that the counties of Region 9 should be the primary group for external comparison, though it also suggests other comparisons, as I note below.

The Employer suggests a group it refers to as "Region 9 and Contiguous Counties." This group adds two counties to the Region 9 group, Renville and Mcleod, both of which are contiguous to Sibley County. The Employer does not include in this group two other counties that are contiguous to Sibley County, Carver and Scott, because those counties are nearer to Minneapolis and are more urbanized.

The Union argues that 2006 top wages of Deputies in Sibley County are 2.81% below the average paid to Deputies by Region 9 counties and that 2006 top wages of Dispatchers in Sibley County are 5.01% below the average. The Union argues 1) that seven of the nine counties have settled for 2007, agreeing to raise wages of Deputies by an average of 2.75% and to raise wages of Dispatchers by an average of 2.76%, and 2) that four of the nine counties have settled for 2008, agreeing to raise wages

of Deputies by an average of 3.15%. Three of the nine counties have agreed to raise wages of Dispatchers by an average of 3.34%.

The Union also argues that when the County Board gave substantial percentage increases to its five elected officials, it used a group of eight counties -- Aitkin, Brown, LeSueur, McLeod, Meeker, Nicollet, Redwood and Renville -- for external comparison. The Union argues that 2006 top wages of Deputies in Sibley County are 6.66% below the average paid to Deputies by those counties and that 2006 top wages of Dispatchers in Sibley County are 8.06% below the average. The Union argues that seven of the nine counties in this group have settled for 2007, agreeing to raise wages of Deputies by an average of 2.78% and that six of the nine have agreed to raise 2007 wages of Dispatchers by an average of 2.62%. Two of the nine counties in that group have settled for 2008, agreeing to raise wages of Deputies and Dispatchers by 3.25%.

The Union also suggests the use of another comparison group -- a group that includes all of the counties in the Employer's group, Region 9 and Contiguous Counties, but adds Carver County to it. That group was used by the arbitrator in a 1998 interest arbitration between the parties. I do not consider this group because, as the Employer argues, Carver County has grown substantially since 1998, becoming much more urbanized.

The Employer argues that if its range maximums for bargaining unit classifications are used in the comparison of the top wages payable by the counties in the comparison groups,

the Employer's ranking is close to the average -- slightly above or slightly below, depending on the classification under comparison. The Employer also argues that, even if, under some measures used for comparison, the wages it pays to bargaining unit classifications may be slightly below the average paid by counties in the comparison groups, it is appropriate that they ~~be below the average -- because Sibley County has relatively low~~ population, relatively low revenues, relatively low tax capacity and relatively high use of that tax capacity. The Employer argues that, to the extent that external comparison is considered, it should be considered in a broad comparison that recognizes that the compensation it pays to most of its employees, including its elected officials is also below the average paid in the comparison counties -- thus reflecting the financial status of a small, rural county.

The Union argues that the cost of living, measured by the Midwest Region Consumer Price Index ("CPI"), increased by 2.4% during 2006, and increased by 2.7% over the year preceding June, 2007. The Employer argues that, with the 3.0% step increases that employees will receive, a "general" increase of 1% per year is sufficient to offset the increase in the cost of living.

For the following reasons, I award a 2.5% "general" wage increase for 2007 and an additional 2.5% general wage increase for 2008. In the past, the parties have referred to what they here call a "general" wage increase as a "COLA" (for "cost-of-living-adjustment"). The evidence shows that the current rate of inflation is about 2.5%. An award of only 1% per year as a

"general" or "COLA" increase (with COLA increases in the recent past, notably 2004, that have also trailed the rise in living costs) will cause further erosion of the purchasing power of employees relative to their peers in comparison counties. I consider the annual 3.0% step increase the parties have agreed to, not as an offset to the rise in living costs, but as a ~~payment for annual experience, presumably with equivalent value~~ received by the Employer for increased skills and increased efficiency.

Though annual 2.5% general wage increases are slightly more than what most employees will receive in 2007 and 2008, the evidence shows that employees in bargaining unit classifications in comparison group counties will have greater average percentage increases. The award will have no substantial effect on the Employer's financial condition or on its compliance with the requirements of the Pay Equity Act.

ISSUE 8: SHIFT DIFFERENTIAL

The current labor agreement does not provide employees with a shift differential -- an increased rate of pay for work performed during particular hours.

The Union's Position.

The Union proposes that the new labor agreement establish a shift differential, thus:

Employees will be compensated an additional one dollar (\$1.00) per hour for all hours on a shift worked during the period the Sibley County courthouse is not open to service the public.

The Employer's Position.

The Employer opposes the addition of a shift differential to the labor agreement.

Decision and Award.

The Sibley County Courthouse is open from 8:30 a.m. till 4:30 p.m., Monday through Friday, and it is closed during the rest of the week.

The Union argues that shift work causes a physical strain to those performing it and difficulties for members of their families. It argues that fifty-nine of Minnesota's eighty-seven counties pay a shift differential, including Carver and Scott counties and three of counties in Region 9.

The Employer argues that only three of the ten counties in the Region 9 and Contiguous Counties group pay a shift differential, and the Employer repeats its argument that Carver and Scott Counties should not be used for comparison because of their substantial urbanization. The Employer notes that none of its other employees receive a shift differential. It argues that the Union's proposal would be expensive -- costing more than \$63,000 over the two-year term of the new labor agreement. The Employer urges that this new and expensive benefit should not be added to the labor agreement in arbitration, but should be adopted only in the give and take of bargaining.

In addition, the Employer argues that the Union has previously proposed the addition of a shift differential in a 1989 interest arbitration, Law Enforcement Labor Services, Inc., and Sibley County, BMS Case Nos. 87-PN-364 and 89-PN-164

(Rutzick, 1989), in which the arbitrator rejected the proposal, indicating that the matter was more appropriate for the parties' bargaining.

I do not award the Union's proposal to add a shift differential to the new labor agreement. I agree with the Employer that such an expensive new benefit should come into the agreement through bargaining and not through arbitration.

ISSUE 9: ON-CALL PAY

Section 8.6 of the current labor agreement provides:

Deputy Sheriffs, Investigators and Dispatchers-Jailers shall be compensated for on-call time. Compensation shall be paid at the rate of \$1.50 per hour. Minimum call-out time shall be three (3) hours, as he/she is restricted from certain activities or pursuits while being on-call.

During five hours of the week -- from 7:00 a.m. till noon on Sunday mornings -- the Employer does not schedule any employee to work, but, instead, provides law enforcement coverage by placing an employee on call. That employee receives compensation while on call as established by Section 8.6 of the labor agreement -- \$1.50 per hour, or a total of \$7.50 for the Sunday morning he or she is on call.

The Union's Position.

The Union proposes that the hourly rate an employee receives for being on call be increased from \$1.50 to \$5.00.

The Employer's Position.

The Employer opposes the increase in on-call pay sought by the Union.

Decision and Award.

The Union argues that there has been no increase in on-call pay since 1984 and the cost of raising on-call pay from \$1.50 per hour to \$5.00 per hour would not be significant -- only \$910 per year. The Union argues that the four counties in Region 9 that provide on-call pay do so at a higher rate -- ~~one-half the regular hourly rate in Blue Earth County, \$4.00 per~~ hour to Dispatchers and \$5.00 per hour to Deputies in Brown County, \$3,200 per year in Nicollet County and \$4.00 per hour in Watonwan County. The Union also argues that the cost of on-call pay is a cost that the Employer can fully control because it determines how many hours employees will be on call.

The Employer argues that the percentage increase in on-call pay sought by the Union -- from \$1.50 per hour to \$5.00 per hour, or 233% is excessive, even if the gross dollars are not substantial under the current practice of using on-call coverage for five hours on Sundays. The Employer argues that only the four counties the Union cites in its argument, above, pay any on-call pay and that the other six counties in the Employer's Region 9 and Contiguous Counties group provide no on-call pay. None of the Employer's other employees receive on-call pay, though the evidence does not show the extent to which they are required to be on call.

I award an increase in on-call pay from the current \$1.50 per hour, which has been the rate since 1984, to \$3.00 per hour, thus raising the compensation for being on call on Sunday morning from a total of \$7.50 to a total of \$15.00. The cost of such an

increase will not be significant. Though I recognize that the parties have not presented evidence showing the total increase in the CPI since 1984, I take notice that the added \$1.50 per hour will roughly correspond to total inflation since then.

ISSUE 10: ACCRUAL OF COMPENSATORY TIME

Section 8.3 of the current labor agreement provides:

Except as otherwise provided by this Agreement employees on a three day twelve hour shift shall be compensated at the rate of one and one-half (1 1/2) their base salary for all hours worked in excess of the employee's regularly scheduled shift. Employees on a five day eight hour shift schedule shall be compensated at the rate of time and one-half (1 1/2) for all hours worked in excess of forty (40) in a work week; no premium compensation shall be available for excess hours worked because of shift changes or other particularities in the regular schedule.

8.3.1 In lieu of salary, employees may accrue compensatory time at the rate of one and one-half (1 1/2) times the employee's regularly scheduled shift. This option must be mutually agreed to by the parties. Compensatory time can only accrue to a maximum of sixty (60) hours.

The Union's Position.

The Union proposes that the last sentence of Subsection 8.3.1 of the labor agreement be amended to raise the maximum permitted accrual of compensatory time from sixty hours to eighty-four hours.

The Employer's Position.

The Employer opposes the change sought by the Union.

Decision and Award.

The Union makes the following arguments. Compensatory time is valuable to public safety employees and especially so to

those who, as here, regularly work a twelve-hour shift. The Fair Labor Standards Act sets the maximum of accrual of compensatory time for public safety employees at twice the maximum set for other employees. The Employer's personnel policies permit a maximum accrual of 120 hours, well above the eighty-four hour maximum proposed here. Having more compensatory time off will allow bargaining unit employees to have more flexibility in meeting family-needs.-----

The Employer makes the following arguments. The Employer must have its public safety employees work twenty-four hours per day -- except for the five hours on Sunday morning when an employee is on call. The use of compensatory time by a public safety employee for a shift usually requires that the Employer have another employee take that shift, working at overtime rates. Thus, the use of compensatory time is expensive. Because twenty-four hour coverage is not necessary for its other employees, the Employer usually do not fill a shift vacated by an employee not in public safety, and, for that reason, the 120 hour maximum in the personnel policies is acceptable for those employees. External comparison does not support the Union's proposal. Three of the ten counties in the Region 9 and Contiguous Counties group do not permit compensatory time, and the average maximum accrual permitted by the other seven counties is 62.5 hours -- about the same as the maximum set in the current labor agreement. Thus, the average permitted accrual for all ten counties is 43.75 hours.

I do not award the increase in the maximum accrual of compensatory time sought by the Union. The evidence shows

that bargaining unit employees currently have a greater maximum accrual than the average for similar employees in ten comparison counties.

ISSUE 11: HOLIDAY PREMIUM IF CALLED BACK
ISSUE 12: CHRISTMAS EVE PREMIUM

For 2005 and 2006, Section 9.2 of the current labor agreement establishes the following holidays:

New Year's Day - January 1
Dr. Martin Luther King Day - Third Monday in January
President's Day - Third Monday in February
Memorial Day - Last Monday in May
Independence Day - July 4
Labor Day - First Monday in September
Veteran's Day - November 11
Thanksgiving - Fourth Thursday in November
Friday after Thanksgiving
Christmas Day - December 25
Christmas Eve (four (4) Hours)

The following additional provisions of the current labor agreement are relevant to these two issues:

Section 9.3. When a holiday as designated in this Article falls on a Sunday, the following day (Monday) shall be considered the official holiday for employees, or when such holiday falls on a Saturday, the preceding day (Friday) shall be considered the official holiday for employees. For the employees on another scheduling system, the holiday shall be deemed to fall on the applicable actual calendar day without reference to Saturday or Sunday.

Section 9.4. All hours worked on holidays shall be compensated at time and one-half (1 1/2) plus holiday pay, except for Christmas Eve.

Section 9.6. Holiday Premium (Effective 1/1/98)

A. All holidays except Christmas Eve

1. Employees who do not work on a designated holiday shall receive eight (8) hours of holiday pay at his/her normal rate of pay.

2.a. Employees scheduled to work on a holiday shall be paid at the rate of one and one-half times his/her normal rate of pay for each hour actually worked on the holiday. (See 9.4 above.)

2.b. Each employee scheduled to work on a designated holiday shall be paid eight (8) hours of pay at his/her normal rate of pay for each holiday worked.

2.c. In addition each employee shall receive "extra" holiday pay for each hour worked on holiday over eight (8) hours as set out in Attachments B & C. (Total payment of holiday plus "extra" holiday not to exceed twelve (12) hours.)

3. Overtime hours worked on a holiday shall not be counted towards the calculation of holiday pay.

B. Christmas Eve Only

1. Employees who do not work on a Christmas Eve shall receive four (4) hours of holiday pay at his/her normal rate of pay.

2.a. Each employee scheduled to work on Christmas Eve shall be paid four (4) hours of pay at his/her normal rate of pay for each holiday worked.

2.b. In addition each employee shall receive "extra" holiday pay for each hour worked on holiday over four (4) hours as set out in Attachments B & C. (Total payment of holiday plus "extra" holiday not to exceed six (6) hours.)

3. Overtime hours worked on Christmas Eve shall not be counted towards the calculation of holiday pay.

The Union's Position -- Issue 11.

The Union proposes that Subsection 9.6.A.2.a of the current labor agreement be amended by adding the underlined sentence below:

2.a. Employees scheduled to work on a holiday shall be paid at the rate of one and one-half times his/her normal rate of pay for each hour actually worked on the holiday. (See 9.4 above.) Employees called in to work a holiday on their scheduled day off will receive double time for all hours actually worked on the holiday.

The Employer's Position -- Issue 11.

The Employer opposes the amendment sought by the Union.

Decision and Award.

The Union argues that employees who are called in to work on a holiday should be paid an additional premium for having been called in and that, without the amendment it seeks, those employees would receive only the premium that is specified for employees who are regularly scheduled to work on a holiday. The Union also argues that the labor agreement between the Employer and AFSCME, which represents seventeen employees of the Highway Department, has a provision that requires payment of double time to employees assigned to work on certain holidays -- Thanksgiving Day, the four hours recognized as holiday hours on Christmas Eve, Christmas Day and Easter Sunday -- plus (except for Easter Sunday) "holiday compensation at their base pay rate."

The Employer argues that the total premiums provided for holiday work are already substantial and that the addition of the language the Union seeks would increase the premium to triple pay -- so that a Deputy whose regular rate of pay is \$22.73 per hour would receive \$68.19 per hour for working on a holiday. The Employer also argues that none of the ten counties in the Regions 9 and Contiguous Counties group provides an additional premium for being called in to work on a holiday and that most of those counties provide time and one-half plus holiday pay for those regularly scheduled to work on a holiday.

I do not award the amendment sought by the Union. The evidence from comparison counties is insufficient to show that the increased premium proposed by the Union should be added to the agreement by arbitration. The Union should negotiate for the change in the give and take of bargaining.

The Employer's Position -- Issue 12.

~~The Employer proposes that Subsection 9.6.B of the~~
current labor agreement be amended by adding the the following provision as Subsection 9.6.B.4:

If Christmas Day falls on a Saturday, employees, whose schedule provides that the preceding day (Friday) is considered an official holiday, will not be eligible for Christmas Eve holiday pay.

The Union's Position -- Issue 12.

The Union opposes the amendment sought by the Employer.

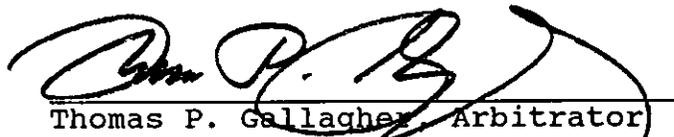
Decision and Award.

In 2004, Christmas Day fell on a Saturday, and it will again in 2010 and in 2021. In 2005, a dispute arose between the parties whether Section 9.6 required payment of four hours of holiday pay for Christmas Eve, 2004, to one of two employees in the bargaining unit who are on a regular Monday-through-Friday work schedule. The Union opposes amendment of the current relevant contract language, which came into the agreement in 1998, arguing that its plain meaning requires payment to "employees who do not work on Christmas Eve." The Employer argues that, so interpreted, the provision allows Monday-through-Friday employees to "double dip" by providing them both

Christmas Day holiday pay for the years when Christmas Day falls on a Saturday and four additional hours for Christmas Eve in those years.

I do not award the amendment sought by the Employer. The language of Section 9.6 appears to require payment of the Christmas Eve holiday pay, notwithstanding that an employee is on a Monday-through-Friday schedule. The parties bargained for that language in 1998, and, in the absence of an obvious and substantial unfairness in the current requirement of the section, it should be changed, not in arbitration, but by the parties in the give and take of bargaining.

September 4, 2007



Thomas P. Gallagher, Arbitrator