

2010 Arbitration Awards - Minnesota B.M.S.

January 3, 2016

Summary of Arbitration Awards listed on the Bureau of Mediation Services' web site (<http://www.mn.gov/admin/bms/arbitration/awards/>).

"Sustained" means the grievance prevails overturning the original action. "Denied" means the original action prevails.

December, 2010

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
FMCS	Radisson Hotel Board Workers United Local 99	McCoy, A. Ray	Seniority based shift bidding	Restaurant claimed business reason for ignoring seniority for dinner shift.	Sustained	Reasonable consideration language requires a performance deficiency to ignore seniority.
10-PN-0956	Blaine, City of (Interest Award) Law Enforcement Labor Services Inc.	Miller, Richard	Interest	1yr-u (c-2yr); Insur. eff. 12/21/10 \$940 (u-\$990, e-\$870); Wages 2010-1% (u-3%, e-1%); Comp time-no-e; Increase Call Back from 2 to 3 hours.-no-e;	2010 - 1%	Duration-lack of data. Insur.- \$70 avg. increase in past (eff. for 2011); Wages-fund balance 43% & avg. increase for Stanton V. Call Back-no, even though officers receive 3 years.
10-PA-1569	Duluth, City of 101	Kapsch, Frank	Retiree Health Insurance	Do retirees keep insurance coverage in place at time of retirement? Yes. New contract language distinguishes this from Savela v Duluth Dist. Crt. case.	Sustained	Arbitrator's ruling is prospective. No violation occurred - Union sought interpretation of language.
10-PN-1183	Edina, City of (Interest Award) Teamsters Local 320	Frankman, Janice	Interest	Wages: 3%, 3% -u (e-.5% 7/10, .5% 7/11); Insurance: 2010-\$775, 2011-same as other ees-e; Shift diff.-no-e.	2010 - 3% 2011 - 3%	Wages - based on city's financial shape. Insurance-internal pattern. Shift differential-denied as new benefit.
10-PA-1612	Forest Lake, City of Law Enforcement Labor Services, Inc.	Moeller, Lon	10 day susp.	Officer made humorous Star Wars video about labor negotiations while at work & put it on a Dept. computer	7 day susp.	Sergeant received 10 days & a senior officer received 5 days - this fell between those suspensions.
10-PA-0085	Hibbing, City of AFSCME Minnesota Council 65	Gallgher, Thomas	Bargaining Unit Work	AFSCME & MAPE titles combined into a Parks Maintenance Supervisor who continued to do AFSCME work.	Sustained	Award defines AFSCME work vs. management work appropriate to new title.
10-PN-1058	Inver Grove Heights, City of (Interest Award) Law Enforcement Labor Services, Inc.	Schiavoni, Mary Jo	Interest	Wages: 1.5%-u (e-0%). Insurance-City's position: high ded. single +\$57.32; freeze most expensive (ee cost \$25.06),	2010 - 1.5%	Maintains relationship to Stanton V average. Ignores Sergeants taking 0%. Insurance-equitable cost sharing.
???	ISD 625, St. Paul St. Paul Federation of Teachers	Miller, Richard	Termination	Ed Assistant (Korean Club advisor) took students on field trip to LA for Korean music festival w/o telling school.	Suspended without pay.	Failed to seek School permission & boundary issues with students. Suspended until there is an opening.
10-PA-1428	Metro Transit Amalgamated Transit Union Local 1005	Paull, David	Bus Accident	Seeking removal of record of warning for an accident.	Denied	Video showed bus did not signal when moving to left lane.
10-PA-1545	Metropolitan Council Assn	Bognanno, Mario	Ltr of Reprimand	Manager accused of threatening and yelling at a subordinate.	Sustained	Evidence was equivoiced. Investigator did not talk to all witnesses.

10-PA-1594	Minnesota, State of, Department of Corrections (See Amendment Below) AFSCME Minnesota Council 5	Beens, Richard	Termination	Corrections Sgt. Convicted of GM for threatening his girlfriend.	Sustained	Discharge unduly harsh. Returned to work without back pay. (8 months).
10-PA-1594	Minnesota State of Department of Corrections (Amended Award) AFSCME Minnesota Council 5	Beens, Richard	Termination	Right to bear arms not restored in criminal case - affect on award?	Sustained in part	Assigned to a position that does not require use of firearm.
10-PN-0141	Rice County (Interest Award) Teamsters Local 320	Fogelberg, J.C.	Interest	Deputies seeking step movement for 2010 - accepted 0% for wages.	2010 no steps	Internal pattern; have fewer steps than other counties.
FMCS	Rochester City Lines Company, Inc. Amalgamated Transit Union Local 1005	Daly, Joseph	Termination	Bus driver didn't let female off bus unless she gave him a hug? He claims she initiated hug.	9 month susp.	Video not working. He said, she said, situation. His asking who she lived with was inappropriate.
10-PA-0796	St. Paul, City of Firefighters Local 21	Bard, Stephen	Failure to Back Fill a Position	Firefighter assigned to rescue squad detailed to work as a paramedic for 1 shift-no one called to back fill rescue sqd.	Sustained	Contract guarantees 3 firefighters on each rescue squad.
10-PA-1634	Special School District No. 1 Minneapolis Federation of Teachers	Beftor, Stephen	Unpaid Leave	Teacher on unpaid leave after being charged criminally seeking paid status.	Denied	Neither Teacher Tenure Act nor Contract cover situation. Past practice governs.

November, 2010

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
FMCS	Cargill Salt Division Internat Chemical Workers Local 188C	McCoy, Arthur	Termination	Accused of lying about whether a coding machine was working at start of his shift.	Sustained	Others also incorrectly thought codes were printed, but did not receive discipline.
FMCS	Electrolux Home Products IAMAW District Lodge 165	Reynolds, James	Attendance Policy	Deduction of attendance points for absence from work.	Denied	Grievance was untimely, but ER asked for ruling on merit.
10-PA-1611	Forest Lake, City of Law Enforcement Labor Services, Inc.	Beens, Richard	5 day susp.	Officer made humorous video about negotiations & put it on the dept computer.	Denied	Spent 5.7 hours on duty working on the video. Punishment is "lenient".
10-PN-0932	Hennepin County (Interest Award) Hennepin County Supervisors Assn	Fogelberg, J.C.	Interest	Correction supervisors accreted into Suprvsr. Assn. seeking to retain Holiday & Officer in Charge pay.	Denied	Existing benefits not in Master Agreement viewed as new benefits.
10-PA-1585	ISD 625, St. Paul AFSCME Minnesota 5	Kapsch, Jr., Francis	Termination	School clerk failed to deposit cash receipts - about \$2,100 missing.	Denied	Preponderance of evidence test. Good discussion of Just Cause.
10-PA-1536	Metro Transit 1005	Fields, Bernice	20 day susp.	Bus driver using a cell phone while driving.	Denied	Policy calls for 20 day suspension for first offense.

08-PA-0900	Metro Transit Amalgamated Transit Union, Local 1005	Jacobs, Jeffrey	20 day susp.	Bus driver failed to turn cell phone off & failed to stop after hitting a parked car's mirror.	Split	Reduced from 30 days to 20 days. Violation of cell phone policy was minor - stowed away, but left on.
10-PA-0810	Mille Lacs County AFSCME Minnesota Council 65	McCoy, Arthur	Funeral Leave	Does the word grandparents include coverage for great-grandparents.	Denied	By defining immediate family, those not listed are excluded.
10-PA-1297	Minnesota, Department of Corrections AFSCME Minnesota Council 5	Scoville, James	Termination	Corrections sergeant failed to follow Segregation Unit rules.	Denied.	4 security or safety breaches all on camera.
10-PA-0386	Prior Lake, City of Law Enforcement Labor Services, Inc.	Martin, William	Termination	Officer broke into bedroom of former girlfriend confronting her & boyfriend.	Denied	Actions occurred while on-duty & in uniform - serious policy & legal violations.
10-PA-0387	Ramsey County Law Enforcement Labor Services, Inc.	Kircher, Andrea	5 day susp.	ECC dispatcher claimed co-worker offered her a sport drink that contained alcohol.	Sustained	Numerous discrepancies: drink not tasted by complainant; happened in February, reported in June.
10-RA-0514	Supervalu, Inc. Teamsters Local 120	Gallagher, Thomas	Termination	Stole returned merchandise from dock area over a period of years.	Denied	2 other ees received suspensions 10-RA-512 & 513. They consumed stolen items at work - this involved taking non-food items home.
FMCS	Turso Companies, Inc. GCIU - Teamsters Local 1B	Gallagher, Thomas	Subcontracting	Subcontract work fixed in-house with 2 office staff doing bookbinders work.	Sustained	Union workers paid 12 hours OT for the time in question.
10-PA-0058	Wright County Wright County Deputys' Association	Befort, Stephen	Travel Time	Should travel time outside city for training & court be compensable.	Sustained	Ruling relies on F.L.S.A.

October, 2010

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
FMCS	Culligan Soft Water Company Machinists Lodge 77	Befort, Stephen	Termination	Failed to note vehicle damage on inspection report.	Denied	20 performance issues led to this last chance agreement violation..
09-PA-1127	Fridley, City of Law Enforcement Labor Services, Inc.	Bognanno, Mario	Termination	Officer convicted of DUI, LSA and 3 violations of probation for alcohol use.	Denied	Off-duty behavior not protected by drug testing statute.
FMCS	Good Samaritan Society Woodworkers Lodge W-33	Bognanno, Mario	Reduction of hrs.	Across the board reduction vs. Union preference to reduce based on seniority.	Denied	Contract provides that, "needs of residents" trumps seniority.
10-PN-0623	Hennepin County Teamsters Local 320	Neigh, Charlotte	Interest	Comp time: ee option to select pay or time off-no-e. Seniority bidding for days off-no-e. Penalty if less than 10 day notice of schedule change-n-e.	Co. Position	Union has burden to demonstrate need for change. Some of the issues rejected in prior arbitrations. Wage & step freezes negotiated for 2011.
FMCS	Honeywell International, Inc. Teamsters Local 1145	Toenges, Rolland	Job Selection	Denied photographer position due to lack of experience.	Denied	Management right to set education & experience requirements for jobs.
10-PA-0695	ISD 690, Warroad Education Minnesota - Warroad	Sherwood	Coaches Pay	Asst. coaches eliminated; hired back as lower paid middle school coaches.	Sustained	Duties were not limited to middle school - must be paid as asstnts.

???	Minnesota, Department of Health Middle Management Association	Jacobs, Jeffrey	Termination Due Process	Issuing birth certificates w/o payment or tangible interest. Failure to notify nature of allegations prior to investigation.	Sustained Sustained	Evidence did not support charges. Case rested in part on interview - subsequent grievance steps can't "unring the bell".
10-PN-1107	Plymouth, City of Law Enforcement Labor Services, Inc.	Latimer, George	Interest	Wages only issue. U seeking 3%, AFSCME received 2%. E offered 0%.	2010 - 0%	Economy; no internal pattern, Union vs AFSCME-raises of 37% to 30% in 8 yrs. & 5% v 2% in 2009. Market rank should include longevity.
10-PA-1250	Rice County Teamsters Local 320	Miller, Richard	Termination	Incompetence, 75 data entry errors since her 2008 work improvement plan.	7 month susp.	Returned to work w/o backpay. Long term ee, no discipline - errors serious but can be corrected.
10-PN-0959	Shakopee, City of (Interest Award) Law Enforcement Labor Services, Inc.	Lundberg, James	Interest	Duration: 1yr-u; Wages: 1% (u-3%, e-0%); Uniform-\$800 (u-\$815, e-\$775) Longevity: no change-u; Performance pay: no change-u.	2010 - 1%	Duration-only 1 internal & lack of data; Wages: 67% fund balance; Longevity & Performance Pay: city burden to prove need for change.
10-PA-0859	Special School District No. 1 Minneapolis Federation of Teachers	Imes, Sharon	Step movement	District failed to pay step increases to teachers when contract expired.	Sustained	CBA states steps & lanes earned are to be paid at start of new year. Leaves open question of what happens in 2nd year if not settled.
10-PA-1133	Special School District No. 1 Minneapolis Federation of Teachers	Jacobs, Jeffrey	Step movement	District failed to pay step increases to ESPs when contract expired.	Sustained	PELRA's continuing contract provision & practice of honoring steps.
10-PA-1133	Special School District No. 1 (Clarification of award above) Minneapolis Federation of Teachers - Educational support Professionals	Jacobs, Jeffrey	Step movement: 2nd year	Do steps vested in expired contract continue for the second year?.	Union's Position	Vested benefits continue until replaced by a new contract.
AAA	Xcel Energy IBEW Local 23	Daly, Joseph	Termination	While Investigating copper theft, ee lied about his past record.	Sustained	Failed to clearly and specifically articulate charges. Interview other terms of contract.

September, 2010

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
10-PA-1258	Aitkin County Teamsters Local 346	Gallagher, Thomas	Volunteers	"Posse" members called to assist in search for lost hunter before all available deputies recalled.	Denied	No contract distinction between external volunteers or internal who are under control of Sheriff.
FMCS	Associated Milk Producers, Inc. Teamsters Local 120	Befort, Stephen	Arbitrability	Termination grievance filed 9 vs 7 days as required.	Sustained	Union presented evidence that clock starts after informal steps.
10-PA-1089	Champlin, City of Law Enforcement Labor Services, Inc.	Miller, Richard	Demotion	Sgt. demoted for dating an officer in violation of fraternization policy.	Denied	Policy reasonable to protect city from favoritism or harassment claims.

10-PA-0976	Corcoran, City of Teamsters Local 320	Fields, Bernice	Termination	Officer submitted claim for sunglass reimbursement w/o deducting discount & accused of theft.	Sustained	Opportunity to be heard, required before discharge.
10-PN-0776	Hennepin County Hennepin County Deputy Sheriff's Assn	Jacobs, Jeffrey	Interest	Wages: 0%, 0%-e (u-3%,3%); Steps: 2010 - 0% 10 yes, 11 no-e; Shift incr-no-e; Uniform 2011 - 0% increase-no-e; FTO, Latent Print, Firearm increase-no-e; Seniority-no-e; Pay for 28 day schdl-no-e; Penalty for schdl chng & definition of emergency-no-e;Lght duty-no-e.		Internal pattern; or failure to provide compelling reason for change; or inherent management right (create light duty position).
FMCS	Horizon Milling LLC, A Cargill Foods Company Bakery, Confectionery, Tobacco Wkrs and Grain Millers International Union	McCoy, Arthur Ray	Seniority Selection.	Senior ee not selected because of lower evaluator ratings. Supervisor rated senior ee higher.	Sustained	Unreliability of raters who did not supervise the applicants.
10-PN-1306	Isanti, City of (Interest Award) Law Enforcement Labor Services Inc.	Miller, Richard	Interest	Duration: 1 year-u; Wages-0%-e (u-3%); Insurance: high deductible plan?-no-u; Sick cap increase?-no-e.	2010 - 0%	1 yr. - lack of 2011 data; Wages - economy; Insurance-can't change until 2011 - so negotiate.
10-PA-0794	ISD 482, Little Falls Association	Martin, William	Professional Development Training	Food service workers denied approval to attend a summer conference.	Sustained	Contract language & past practice. Approval ordered in future, no compensation for those not allowed to attend.
10-PA-1271	ISD 748, Sartell School Service Employees Local 284	Kircher, Andrea	Reinstatement from disability leave	Bus drive wanted route w more hours.	Denied	Not entitled to bid when off & not able to work.
10-VP-1553	ISD 855, St. Michael-Albertville Individual Grievant	Latimer, George	Termination V.P. Hearing	Custodian stole dominoes and failed to admit when questioned.	Denied	Breach of trust. No extenuating circumstances to reduce penalty.
10-PA-0012	Itasca County AFSCME Council 65	Fields, Bernice	Minimum Qualifications	Can items outside posted criteria count as equivalent to requirements.	Denied	Fairness requires eliminating subjectivity. Management right to set qualifications.
10-PA-0319	Lakeville, City of Teamsters Local 320	Befort, Stephen	Termination	Public works driver failed 2 drug tests.	Denied	Safety sensitive position. City policy and CDL allow termination.
10-PA-1284	Metro Council/Metro Transit Amalgamated Transit Union Local 1005	Toenges, Rolland	Termination	Violated a last chance agreement re unexcused absences.	Denied	Claim he was misled by supervisor does not absolve responsibility.
10-PN-0957	Mounds View, City of (Interest Award) Law Enforcement Labor Services Inc.	Miller, Richard	Interest	Duration: 1 yr.-u; Insurance: \$867.33-u (e-\$842.20); Wages: 0%-e (u-2%).	2010 - 0%	1 yr. due to lack of 2011 data; Wages - economy; Insurance - offset 0% wages.
10-PA-0322	Olmstead County Olmstead County Employees Assn	Kircher, Andrea	Termination	Female maintenance worker slapped supervisor's arm during argument.	6 mos susp.	Co. failure to address complaints vs supervisor may have led to incident EE had no prior discipline.
08-PA-1338	St. Joseph, City of Law Enforcement Labor Services, Inc.	Gallagher, Thomas	Holiday Pay	Officer on sick leave denied holiday pay based on policy barring pay if employee is on leave.	Sustained	Policy appears to be for unpaid leave situations. Contract does not limit pay.
09-RA-0714	Supervalu, Inc. Teamsters Local 120	Bognanno, Mario	Termination	Took a break 13 minutes to long. 6 prior warnings. Returned w/o backpay.	2 years	Infraction low level in nature. No backpay & a last chance agreement.

10-RA-0512	Supervalu, Inc. Teamsters Local 120	Lundberg, James	Termination	Theft - grazing, eating expired food returned to the warehouse.	30 day susp.	Grazing had been common, new policy not clearly communicated. Less egregious than 10-RA-0513.
10-RA-0104	Supervalu, Inc. Teamsters Local 120	Scoville, James	Termination	Dock worker accused of shoving supervisor	Sustained	Video evidence was neither clear nor convincing re what happened.

August, 2010

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
10-VP-1227	Brooklyn Park, City of Individual Grievant	Kircher, Andrea	Termination	2 use of force incidents & 3 for being discourteous to the public; given 3 day suspension, and a Fitness for Duty Exam - fired for failing exam.	Sustained	No progressive discipline. Fitness for Duty can't be used alone as just cause. 2 psychologists had different opinions of test results.
10-PN-0861	Coon Rapids, City of (Interest Award) Law Enforcement Labor Services, Inc.	Bard, Stephen	Interest	Insur: no change-e; Vac: add 1 day/year 21yr to 25yr -u; Incr. Prem Pay: no-e; Uniforms:+\$35-u; Wages:1% (u-3%,e-0%)	2010 - 1%	Benefits-internal (public works vacs.) Uniforms-incr'd cost of "Buy American" Wages-external (maintains rank).
10-PA-0913	Ely, City of Ely Supervisory Employees Association	Miller, Richard	Termination	Deputy Clerk stole city funds. Claimed due process deficiencies.	Denied.	Any procedural defect was "cured" by the arbitration.
10-PA-1081	ISD 51, Foley Individual Grievant	Gallagher, Thomas	Termination V.P. Hearing	Threatening to kill coworkers, sexual comments, rudeness.	Denied	Conduct so adverse to operations not requiring progressive discipline.
10-PA-0935	ISD 276, Minnetonka Education Minnesota	Jacobs, Jeffrey	Filling New Position	Union grieved probationary hire vs. sr. teacher based on arbitrary qualifications	Denied	Management right to establish qualifications & license requirements.
10-PA-1102	ISD 742, St. Cloud St. Cloud Education Association	Imes, Sharon	Time lines Overload Pay	District's step 3 response was late - grant grievance on that basis? OPay due if exceeding avg # of mods	Denied Sustained	Union also had a technical error & there was no harm. Is resource time teaching time to be used in computing average - no.
FMCS	Estates United Steelworkers Local 9230	Frankman, Janice	Bargaining Unit Work	LPN on night shift replaced by RN. Management rights vs. past practice?	Denied	No ambiguity or void in Contract which past practice clarifies/fills.
10-PA-1037	Metro Transit 1005	Imes, Sharon	Bus Accident	Driver charged with accident with parked van - he denied involvement.	Sustained	Witness did not leave name. Bus camera does not indicate accident.
10-PA-0692	MN, Department. of Human Services AFSCME Minnesota Council 5	Daly, Joseph	10 day susp.	Human service tech at Ham Lake made a racist comment.	5 day susp.	Admits making it to co-worker, no other staff or patients around.
10-VP-0948	MN, Department of Human Services Individual Grievant	Befort, Stephen	Termination	Administrator - sub par performance & had sexually explicit content on his computer.	30 day susp.	No progressive discipline to support termination.
10-PA-0159	MN, Department of Veterans Affairs AFSCME Minnesota Council 5	Fogelbert, J.C	Termination	Second instance of improper cleaning of dishwasher (1st cost \$18,000).	Denied	Poor work record. Warnings and training provided.

10-PA-0287	Mower County Law Enforcement Labor Services, Inc.	Ogata, Harley	1 day susp.	Dispatcher failed to forward info to deputy stopped vehicle was stolen	Denied	Failed to follow procedures. Officer safety jeopardized.
10-PA-0838	Ramsey County Law Enforcement Labor Services, Inc.	Powers, Nancy	3 day susp. for Insubordination	2 deputies working State Fair were asked to move a car and refused.	Denied	Deputies felt it was beneath them. Constituted insubordination.
09-PA-0952	Woodbury, City of Woodbury Police Officers Association	Bognanno, Mario	Timeliness	Union waited 18 mo. before arbitration. City argued doctrine of latches.	Denied	Union waited for criminal charges to be cleared. Latches untimely since not raised until hearing.
			15 day susp.	Officer accidentally fired weapon in a St. Cloud hotel room while practicing.	Denied	Failed to notify supervisor & did not check to see if anyone injured.
			Last Chance	Last chance notice part of discipline.	Sustained	Good record must be considered.

July, 2010

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
FMCS	Allina Health Systems/United Hospital SEIU Healthcare Minnesota	Jacobs, Jeffrey	Timeliness Termination	Union claimed did not receive email. Time theft - punched in before parking car.	Arbitrable 20 day susp.	Credible testimony. Same as Befort's June United Hospital award. Attendance vs. theft issue.
10-PA-0577	ISD 13, Columbia Heights Education Minnesota	Daly, Joe	Ltr. of Deficiency	4 week suspension w/o pay for verbal confrontations with students	Sustained	Did not meet just cause standard. Student had problems with others.
FMCS	Cytec Engineered Materials, Inc. Teamsters 160	Befort, Stephen	Health Benefits	Greater benefits listed in Blue Cross plan document than in contract.	Denied	Contract prevails. Also notes employer can correct mistakes.
09-PN-0833	Metropolitan Council (Interest Award) Teamsters Local 320	Fogelberg, J.C	Interest	2009 0%-e (u-3%); 2010-0% (u-2%); Steps-yes-u; Longevity-no change-u (e- freeze steps & long., sunset longevity).	2009 - 0% 2010 - 0%	Ability to pay more important than external market.
10-PA-1034	Metro Transit Amalgamated Transit Union 1005	Neigh, Charlotte	Termination	4 accidents in 36 month period and record of absenteeism and tardiness.	Denied	Discretion to fire after 4 at fault accidents plus 9 attendance warnings
???	MN, Department of Revenue Employees	Imes, Sharon	Termination	Tax department employee failed to file her taxes & lied about it.	Denied	Ample notice of policy and consequence of violation.
???	MN, Department of Revenue Employees	Befort, Stephen	Termination	Sent 25 anonymous letters critical of management. Deceptive during invest.	Denied	Letters considered threatening, so return to work would be disruptive.
10-PA-0870	Pope County Teamsters Local 320	Gallagher, Thomas	Furlough	Union challenged county wide 1 hour per week furlough.	Sustained	Contract lists normal work week + layoff language provides seniority based method for reduction of hours.
10-PA-0172	Richfield, City of Law Enforcement Labor Services, Inc.	Ogata, Harley	Failure to End Car Chase	Multi-jurisdiction car chase; failed to end when other Depts. called off.	Written Warning	Reduced from 1 day susp. Policy-judgment to pursue rests with officer. Discussion on Garrity warning.
FMCS	St. Paul Pioneer Press Minnesota Newspaper Guild/ Typographical Union Local 37001	Remington, John	Timeliness Outsourcing	Filed 180 days after violation. Temporary warehouse workers used in excess of contract limits.	Arbitrable Sustained	Ongoing and failure to challenge prior to arb. is considered a waiver Long term temps made union ees. Short term pay differential given to U.

10-RA-0513	SuperValu Teamsters Local 120	Anderson, Richard	Termination	Theft - grazing, eating expired food returned to the warehouse.	90 day susp.+ restitution.	Grazing had been common, new policy not clearly communicated.
10-PA-0126	University of Minnesota AFSCME Minnesota Council 5	Jacobs, Jeffrey	Timeliness Termination	Failure to file for Arb. within 90 days Abuse of sick leave & insubordinate, some mitigation (he was a steward).	Arbitrable Split	Parties lax timeliness in past. Reinstated without backpay, was off for 26 months since May 2008.
AAA Case	Xcel Energy Teamsters Local 160	Jacobs, Jeffrey	Termination	Brought a large hunting knife to work and was seen waving it around.	Denied	Violated workplace violence policy.

June, 2010

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
10-PA-0817	ISD 93, Carlton Education Minnesota - Carlton	Befort, Stephen	Steps & Lanes	Arbitration barred by: 2 year contract limit; filing after expiration; & right to strike maturing? Arbitrator separated arbitrability vs. merits of case.	Arbitrable	Continuing contract provision applies. Dispute "arises under the contract" since service & credits earned prior to expiration.
10-PA-0676	ISD 138, North Branch North Branch Education Association	Toenges, Rolland	Prep Time - Travel	Drive time between schools eats into prep time & should be compensated.	Denied	Difference in prep time vs. other teachers is de minimus.
10-PA-1174	Metro Transit Amalgamated Transit Union Local 1005	Beens, Richard	Logged Complaint	Handicapped passenger wanted off where there was no stop.	Sustained	Driver did not see who was asking question.
???	Metro Transit Individual Grievant	Frankman, Janice	Termination VP Hearing	Bus accident. Driver previously fired but allowed back under a LCA.	Denied	Last chance agreement.
10-PA-1030	Metro Transit Amalgamated Transit Union Local 1005	O'Toole, Carol	Cell Phone Policy	Is Policy arbitrable? Policy bars bus drivers having phones while driving.	Denied	Policy not arbitrable. Can't decide issue on what might happen.
09-PA-1132	Owatonna, City of Teamsters Local 320	Neigh, Charlotte	Election of Remedies Demotion	Does contract bar grievance if EEOC age discrimination suit is filed? Sgt. demoted due to performance.	Sustained Denied	"Board of Governors" case allows filing in both venues. Unnecessary to suspend first.
FMCS	Regions Hospital Service Employees International Union	Toenges, Rolland	Seniority Job Assignment	Pharmacist assignment posted & tested. Senior employee not chosen.	Denied	Senior qualified language does not limit candidates to union members.
10-PA-1021	St. Francis, City of	Wallin, Gerald	Holiday Pay	5 grievances re how paid if scheduled to work vs. pay for day off.	Denied	Schedule posted monthly.
10-PA-1024	Law Enforcement Labor Services, Inc.					
10-PA-0237	Special School District No. 1 Electrical Workers Local 292	Befort, Stephen	Layoff	2 Electronic technicians laid off yet ER continued using temp electricians.	Denied	"Class" refers to job not Civil Service status. ER can reassign duties.
10-PA-0783	Spring Lake Park, City of Teamsters Local 320	Fogelberg, J.C	Arbitrability, Seniority Layoff	Challenged due to filing at step 2. Full time liquor store position dropped ee not allowed to bump part-timer.	Sustained Sustained	Principle of efficiency-step 1 had no authority to resolve grievance. Department seniority vs. position.
FMCS	United Hospital SEIU Healthcare Minnesota	Befort, Stephen	Termination	Punched time clock, before parking car. Terminated for theft of time.	20 day susp.	Considered attendance vs. theft problem.
10-PA-1025	University of Minnesota AFSCME Minnesota Council 5	Gallagher, Thomas	Abuse of Sick Leave	Written reprimand re abuse of sick leave.	Split	Found there was sick leave abuse on 2 days, but pattern not proved.

May, 2010

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
09-PN-0550	Brainerd, City of Law Enforcement Labor Services, Inc.	Boldt, Charles	Interest	2 yrs-e; 2009 u-3%, e-0%. 2010 u-no position, e-reopener.	2009 - 3% 2010-reopen.	2009 based on market average. 2 years w 2010 reopener-city pattern;
10-PA-0650	ISD 11, Anoka-Hennepin Anoka-Hennepin Education Minnesota	Imes, Sharon	Coaches Pay Timeliness	Union sought credit for time as asst. ISD - grievance is stale by 3 years.	Denied Denied	30 years past practice. Ongoing grievance each pay period.
10-PA-0346	ISD 535, Rochester Education Minnesota	Jacobs, Jeffrey	Summer Position Seniority	ALC classes exempt from seniority. ISD claims all summer classes are ALC.	Sustained	Neither location nor funding source defined ALC classes.
10-PA-1057	Lexington, City of AFSCME Minnesota Council 5	Latimer, George	Retroactivity vs. Continuing contract	Did MOU of April 2009 re continuing contract, bar city from collecting amount overpaid on insurance obligation in new contract?	Denied	New contract supersedes MOU.
???	Metro Transit Amalgamated Transit Union Local 1005	Ogata, Harley	Transfer	Light rail operator returned to bus driver for 2 policy violations.	Sustained	Use of cell phone overturned - due to his admission & it was for business.
???	Minneapolis, City of Minneapolis	Gallagher, Thomas	Promotional Test	Posting restricted advancement to top 18, but then changed to top 23.	Denied	Contract language & management right.
???	Minneapolis, City of Minneapolis	Jacobs, Jeffrey	Termination	Pulled ex-girlfriend's hair and ripped out hoop earring.	Sustained	Victim was drunk, tried to jump out of car on hwy.-pulled back into car.
10-PA-0523	Minnesota, State of AFSCME Minnesota Council 5	Befort, Stephen	Termination	LPN at Carlton addiction rec. facility allowed patient to retain 3 mos. Of drugs when released from facility.	Denied	Violated specific instructions re 3 mos. supply; narcotics that could cause addiction or death.
???	MN, Department of Revenue Employees	Jacobs, Jeffrey	Timeliness 3 day susp. Termination	Was suspension & discharge bundled? Poor performance. Failure to call in sick or return.	Sustained Denied Sustained	Request for extension & answer were vague. 3 day supported by prior discipline. and attempt to train. Extenuating circumstance due to medical condition. No back pay.
10-PA-0522	MN, Department of Transportation AFSCME Minnesota Council 5	Bard, Stephen	Termination	Indirect threat to beat up a fellow employee.	Denied	Zero tolerance provision does not require progressive discipline.
09-PA-1140	Ramsey, County of Law Enforcement Labor Services, Inc.	Fogelberg, J.C	Termination	Police dispatcher performance issues. Union cited lack of progressive discipline.	Denied	Discipline vs. Performance. Not competent to do job.
10-PA-0859	Special School District 1, Minneapolis Minneapolis Federation of Teachers	Imes, Sharon	Arbitrability	Does continuing contract provision expire when ability to strike matures?	Arbitrable	Issue is about step pay. Steps earned during existing contract, so arbitrable under contract.
FMCS	SYSCO Minnesota, Inc. Teamsters Local 120	Bognanno, Mario	Ability to Change Work Rules	Work compliance rate changed from 95% to 100% to impose discipline.	Denied	Duty to bargain waived by contract. Also, at impasse ER can impose.

April, 2010

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
FMCS	Allina Hospital, Buffalo SEIU Healthcare Minnesota	Fogelberg, J.C	Termination	Hospital entry clerk accessed a patient's records in violation of policy.	Sustained	Failed to prove there was no business purpose and disparate treatment.
FMCS	Axis MN, Inc. SEIU Healthcare Minnesota	Daly, Joseph	Termination	Employee left 15 minutes early w/o punching out or notifying suprv.	1 day susp.	Mitigating circumstances. Worked 33 hours, was exhausted.
09-PN-0840	Centennial Lakes Police Department Law Enforcement Labor Services, Inc.	Daly, Joseph	Interest	Wages-e; Insur. 09-\$900-u, 10-\$900 (u-1,000, e-800); performance pay-u.	2009 - 3.5% 2010 - 0.0%	Hard economic times. Insurance & performance pay based on internals.
10-PA-0235	Coon Rapids, City of Teamsters Local 320	Gallagher, Thomas	Termination	Maintenance worker lost CDL due to DUI & could not reclaim it within 60 day grace period in contract.	Sustained	Termination after 60 day MOU in conflict with just cause standard. Suspended until he gets his CDL.
10-PA-0235	Coon Rapids, City of- Supplemental Award (See above for original) Teamsters Local 320	Gallagher, Thomas	Termination	Original award stated CDL must be obtained within 90 days of 5/18/10, but not eligible till 2/4/11.	Sustained	Deadline extended to 90 days from 2/4/11. Not eligible for pay or benefits until reinstatement.
FMCS	Honeywell International Teamsters Local 1145	Jacobs, Jeffrey	Subcontracting	Work to build a testing fixture. How to end a past practice discussed.	Denied	Practice properly ended.
10-PA-0286	ISD 197, West St. Paul West St. Paul Federation of Teachers	Fogelberg, J.C	Mandatory Report Times	Contract calls for 15 min. before & 30 minutes after class. Principal set mandatory start and end times.	Sustained	Language allowing district to schedule meeting suggested Union waived some rights.
09-PA-1139	ISD 279, Osseo Education Minnesota-Osseo Educational Support Paraprofessionals	Schiavoni, Mary Jo	Termination	School Para fired for incompetence. Challenged on lack of progressive discipline & lack of training.	Denied	Repeated letters of expectation constituted notice & working one on one is considered training
09-PA-0947	ISD 423, Hutchinson Hutchinson Education Association	Toenges, Rolland	Leave of absence	5 year leave-can you come back early?	Denied.	Contract language & districts right to plan for replacement.
09-PA-0653	ISD 547, Parkers Prairie Education Minnesota-Parkers Prairie	Jensen, Eugene	Overload Pay	Should newly negotiated pay apply going back to earlier schedule?	Sustained	Arbitration is best served when awards make sense & avoid punitive results for either party.
???	Minnesota, State of AFSCME Minnesota Council 5	Jacobs, Jeffrey	Phone use	1 day suspension for accepting call from son in jail billed at \$2.09.	Wrtn Reprmd	Failed to notify supervisor of call. Award is non precedential.
FMCS	St. Francis Regional Medical Center SEIU Healthcare Minnesota	Flagler, John	Termination	Falsifying initials on Medicare doc. that provided hospital release info.	Ref Employee Assistance.	Hosp. alleged forgery vs. violation of work rule. Arbitrator found lack of intent or gain to employee.
09-PA-0654	St. Louis County Law Enforcement Labor Services, Inc.	Latimer, George	28 day susp. 5 day suspension	Tagged man dating ex-girlfriend. Failed to renew POST license.	Denied Denied	Used power of office for gain. Equaled # days w/o license.
09-PA-0646	St. Paul, City of St. Paul Police Federation	Anderson, Richard	Merit Steps vs. Longevity Steps	7 yr. step denied due to performance. Does longevity trump performance?	Denied	Union's unsuccessful attempt to clarify in negotiation supports city's pos.
09-PA-0546	SuperValu Teamsters Local 120	Befort, Stephen	Last Chance Agreement	Termination. Swearing at supervisors.	Denied	Only "shop talk" defense doesn't work when directed at supervisors.

10-PA-0124	University of Minnesota AFSCME Minnesota Council 5	McCoy, Arthur Ray	Written Warning	Employee notified co-worker vs suprvsr. re sick leave contrary to work rule.	Denied	Union's past practice argument rejected.
09-PA-1012	Wright County Wright County Deputies Association	Wallin, Gerald	Last Chance Agreement	Termination. Based on LCA for DUI & conduct unbecoming.	Denied	LCA not restricted to alcohol nor does it automatically sunset.

March, 2010

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
09-PA-0912	Beltrami, County of Teamsters Local 320	Bognanno, Mario	FTO O.T. Pay	Officers claimed 1 hour of OT for work as an FTO. County stopped practice.	Denied	Where there is mutual willingness to vary from CBA, either party may withdraw from practice.
FMCS	Boise Cascade Corporation International Assn of Machinists and Aerospace Workers Local W-33	Beens, Richard	Termination	Last chance agreement re drug use. Employer violated contract re testing procedure.	Sustained.	Contract calls for 5 panel test. Nurse failed to mark form, & a 9 panel test was conducted.
09-PN-0806	Carver County (Deputies' Unit) Law Enforcement Labor Services, Inc.	Gallagher, Thomas	Interest	Wage reopener MOU to negotiate results of a job study. U-9.12%, e-0%	2009 - 0%	No market adjustment based on county's finances.
09-PN-0424	Carver County (Sergeants' Unit) Law Enforcement Labor Services, Inc.	Bognanno, Mario	Interest	Wage reopener MOU to negotiate results of a job study. U-10%, e-0%	2009 - 2%	Based on market & sergeants underpayment vs. pay equity.
09-PA-0907	Dayton, City of AFSCME Minnesota Council 5	Reynolds, James	Vacation Accrual	Calculating years of service for ees. who worked part time and full time.	Sustained.	Past practice crediting years vs. pro-rating based on hours.
10-PA-0170	Hennepin County (NPHWC) AFSCME Minnesota Council 5	Jacobs, Jeffrey	Lay Off	Junior dental hygienist retained over more senior employees.	Denied.	Junior employees had REM license.
10-PN-0265	ISD 77, Mankato Mankato Teachers Association	Bard, Stephen	Interest	Final offer total package.	District's position.	Ability to pay. 1st yr. - hard freeze; 2nd yr. - steps & lanes.
09-TD-6	ISD 625, St. Paul Individual Grievant	Toenges, Rolland	Termination	Teacher discharge-insubordination & inefficiency.	Denied	Rejected numerous attempts at coaching to improve performance.
09-PA-0608	Maple Grove, City of Law Enforcement Labor Services, Inc.	Reynolds, James	Comp Time	Are hours carried over from prior year considered in 50 hr/yr. accrual? - yes.	Denied.	50 hr. per year cap does not allow for replenishment.
10-RA-0056	Rainbow Foods UFCW Local 653	Gallagher, Thomas	Termination	Meat cutter ground beef after pork without cleaning grinder.	30 day susp.	Not deliberate. No prior discipline.
???	Company UFCW Local 789	Jacobs, Jeffrey	3 day suspension Termination	Failure to punch out for an appntmnt. Put hand in sanitizer against rules.	Sustained Sustained	Progressive discipline. Credible witness, 4th discipline.
FMCS	Sodexo, Inc. HERE Local 17	Flagler, John	Termination	7 grievants fired for failing to correct mismatched SSN information.	Sustained	Company not responsible for correcting SSN data, only trying.

February, 2010

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
10-PA-0516	Adams Health Care Center Teamsters Local 160	Jacobs, Jeffrey	Termination	Nursing home resident left unattended in a lift, while in the bathroom.	5 day susp.	Lack of clear policy, consistent enforcement or prior discipline.
NLRB	Axis Minnesota, Inc. Healthcare SEIU Minnesota	Flagler, John	Termination	Left work area to do union business while caring for vulnerable adults.	3 week susp.	Counseled previously but was not told consequence of repeat.
10-PA-0029	Champlin, City of Teamsters Local 320	Befort, Stephen	Termination	CDL suspended for 1 year due to DUI	Denied.	Both job description and contract say CDL is required.
FMCS	Elk River Machine Company United Steelworkers Local 2002-1	Kircher, Andrea	Recall, Seniority	A junior welder with specialty skills was recalled for a project.	Sustained.	Senior welders should have been trained first. 2 weeks pay to Sr. ee.
09-PA-0943	Hennepin County Medical Center Hennepin County Association of Paramedics and EMT's	Flagler, John	Overtime Pay	Do PTO hours count as time worked? No - it was a quid pro quo for the PTO.	Denied	Listing items in a contract means similar non listed items are excluded
09-PA-0941	ISD 255, Pine Island Pine Island Education Association	Martin, William	Coach Selection	Outside candidate selected.	Denied.	District operated in good faith, unbiased selection committee.
10-PA-0042	ISD 361, International Falls AFSCME Council 65	McCoy, Arthur	Job Posting	Does employee on sick leave create a vacancy requiring posting?	Sustained	Contract requires posting for temp jobs over 30 days.
10-PN-0659	ISD 2143, Waterville-Elysian-Morristown Education Minnesota - Waterville-Elysian-Morristown	Miller, Richard	Interest	Joint submission of issues. Accepted by arbitrator as the award.	1st y-delayed step 2y-steps	Step on 137th day; extra-curricular schedule increased 1% each year.
09-PN-0924	Lake County Lake Co. Superv. Empl. Association	Paull, David	Interest	County VEBA insurance awarded; plan takes effect in 2010-Union argued 2010 not in front of arbitrator. Pay comp time to exempt ee.?-no	2008 - 2% 2009 - 2%	County was willing to accept Union's wages if VEBA awarded. VEBA based on internal pattern & cost considerations.
10-PA-0108	Board AFSCME Minnesota Council 5	Torosian, Herman	Termination	Customer service clerk failed to make timely deposits & secure money.	Denied.	Ignored direct orders- seriousness trumps lack of progressive discipline.
10-PA-0071	Paynesville, City of AFSCME Council 65	Jensen, Eugene	8 hr. suspension	Liquor clerk disciplined for behavior seen in surveillance video	Written Rprmd	Can't use video w/o notice. Letter result of info developed from invest
FMCS	St. Catherine, College of Operating Engineers Local 70	Daly, Joseph	Layoff	Seniority issue: sufficient vs. relative ability to determine layoff order.	Sustained	Qualifications refers to eligibility not ability.
07-PA-1040	St. Cloud, City of Law Enforcement Labor Services, Inc.	Gallagher, Thomas	Working out of Class	PD reorganized eliminating Captains. Lts. want Capt's pay for new duties	Split	Out of class pay awarded during 3 year transition period.

FMCS	United States Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Waseca, Minnesota Counsel of Prisons Locals (AFL-CIO) American Federation of Government Employees Local 801, Waseca, MN\	Daly, Joseph	FLSA work w/o compensation.	Pre & post shift responsibilities.	Sustained	Employer to pay 15 minutes for pre work, for 3 years prior to grievance filing.
				Employer challenged timeliness and specificity of grievance.	Arbitrable	Ongoing grievance. Union can file class action grievance.
FMCS	University of St. Thomas Teamsters Local 120	Beens, Richard	Disability Leave	Removed from seniority list and replaced-unable to do work after 6mo.	Denied.	Disability insurance plans referenced in contract allows action.

January, 2010

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
10-PA-0145	Duluth Housing & Redevelopment Authority Teamsters Local 346	Lundberg, James	Class of Pay	Property Manager position created due to reorganization.	Sustained	Moved from class 11 to class 12 due to greater responsibility.
09-PA-0942	ISD 745, Albany Albany Federation of Teachers	Imes, Sharon	Extra-curricular if on sick leave	Prorated pay, hired replacement.	Denied	Was not arbitrary, capricious nor covered by contract language.
09-PN-0221	ISD 2149, Minnewaska Teamsters Local 320	Jacobs, Jeffrey	Interest-Total Package	New contract - 10 issues certified.	Employer's position	Union's wage proposal would put district in S.O.D.
	Ruling on Request for Modification of Award Teamsters Local 320	Jacobs, Jeffrey	Continuing Contract	Can't change or reduce obligations-not required to increase during pendency of pendency of negotiations.	Employer's position	Benefits could be the subject of new negotiations.
FMCS	Knife River, Inc. Teamsters Local 120	Jacobs, Jeffrey	3 day suspension	Truck drivers failed to wear seat belts as required in yard.	Denied.	Adequate notice. Policy listed 3 day suspension for violation.
09-PA-0820	Princeton, City of Individual Grievant	Anderson, Richard	Termination Vets 60 day pay	Veteran failed random drug test. Pay reduced during appeal because he couldn't drive.	Denied Sustained	Progressive - 3rd failure. Contrary to statute. Paid at higher rate with 6% interest.
09-PA-0847	Plymouth, City of Law Enforcement Labor Services, Inc.	Daly, Joseph	20 day susp.	Police officer 8 minutes tardy for roll call.	Denied	Progressive discipline including a prior 15 day suspension.
???	Minnesota, State of Middle Management Association	Jacobs, Jeffrey	Early Retirement Incentive	Early retrmnt benefit to be declared at age 55. Ee over 55 when assigned.	Denied	Contract did not anticipate one over 55 being assigned to unit.
10-PA-0025	Ramsey County AFSCME Minnesota Council 5	Miller, Richard	Termination	Program manager responsible for paying fostercare providers authorized double payment of \$952 to herself as "respite" pay for watching children.	17 mo. susp.	She received ok for double payments so county shares blame. Reinstated without backpay due to prior discipline.
09-PA-0628	Minnesota, State of, Department of Corrections AFSCME Minnesota Council 5	Daly, Joseph	3 day suspension	Called co-worker to talk about her tan bikini and unseen tattoos.	Denied	Violated sexual harassment policy, woman felt uncomfortable.
FMCS	St. Francis Regional Medical Center SEIU Local 113	Gallagher, Thomas	Termination	Pharmacy employee took 4 pills after receiving permission from supervisor.	Sustained	Supervisor did not have authority, but grievant assumed she did.

09-TD-16	Special School District 1, Minneapolis Minneapolis Federation of Teachers	Toenges, Rolland	Termination	Teacher threatened to tape student to his chair. Conduct unbecoming.	Denied	Disciplined 4 times previously.
08-PA-0019	University of Minnesota AFSCME Minnesota Council 5	Jacobs, Jeffrey	Termination	Threatened to have boyfriend take care of co-worker.	10 day susp.	Threat made to supervisor not coworker Continued working another week.
09-PN-1062	West St. Paul, City of Law Enforcement Labor Services, Inc.	Miller, Richard	Interest	2009-3%+steps-u(u-4%+steps; e-0%+steps); 2010-0%+steps-e(u-4%+stp; e-0% no steps); Xmas eve premium-u.	2009 - 3% 2010 - 0%	Steps both years - city has 54% fund balance. Xmas eve premium=pattern.