

**IN THE MATTER OF THE ARBITRATION BETWEEN**

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<b>LAW ENFORCEMENT LABOR</b>	)	
<b>SERVICES,</b>	)	
	)	
<b>Union,</b>	)	<b>INTEREST ARBITRATION</b>
	)	<b>AWARD</b>
<b>and</b>	)	
	)	
	)	
<b>LYON COUNTY,</b>	)	
	)	
<b>Employer.</b>	)	<b>BMS Case No. 11-PN-0203</b>
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Arbitrator: Stephen F. Befort

Hearing Date: September 13, 2011

Post-hearing Briefs submitted: September 27, 2011

Date of Decision: October 7, 2011

Appearances:

For the Union: Adam Burnside

For the County: Susan K. Hansen

**INTRODUCTION**

This is an interest arbitration proceeding arising under Minnesota’s Public Employment Labor Relations Act (PELRA), Minn. Stat. §§ 179A.01 - 179A.30. Law Enforcement Labor Services (“Union”) is the exclusive representative of a unit of licensed deputy sheriffs and investigators employed in the Lyon County Sheriff’s Department (“County”). The unit currently consists of eleven employees.

The parties negotiated a collective bargaining agreement for 2009-10 that provided for a wage reopener for 2010. The Union and the County have engaged in negotiations with respect to the reopener, but they have been unable to reach an agreement. The Bureau of Mediation Services (“BMS”) certified the following issue for interest arbitration:

1. Wages for 2010.

The matter proceeded to an arbitration hearing at which each party was afforded the opportunity to present relevant evidence and data.

## **DISCUSSION AND AWARD**

### **INTEREST ARBITRATION PRINCIPLES**

1. **Replicate Voluntary Agreement.** The central goal of interest arbitration is to ascertain the agreement that the parties themselves would have reached if they had continued bargaining and concluded a voluntarily negotiated settlement. *See* AFSCME Council 65 and County of Carver, BMS Case No. 10-PN-423 (Fogelberg, 2011).

2. **Criteria for Determination.** In general, arbitrators consider the following factors in determining interest arbitration awards: the employer’s ability to pay and other economic considerations, relevant internal comparisons, and relevant external comparisons. Since the adoption of the Minnesota Pay Equity Act, Minn. Stat. Sec. 471.991 - 471.999, the principal, but not exclusive, factor relied upon by most Minnesota interest arbitrators in deciding issues of wages, benefits, and other terms and conditions of employment has been internal consistency with the settlements negotiated with respect to the other bargaining units in the same jurisdiction. *See* e.g., Law Enforcement Labor Services, Inc. and McLeod County, BMS Case No. 03-PN-613 (Kircher, 2003); Law Enforcement Labor Services, Inc. and Chisago County, BMS Case No. 95-PN-54 (Berquist, 1995).

3. **Burden on Proponent for Change.** As a general proposition, an interest arbitrator should not alter longstanding contractual arrangements in the absence of a compelling reason to do so. Accordingly, most interest arbitrators will place the burden on the party proposing a change in the parties' relationship to demonstrate the need for such change by clear and compelling evidence. See Human Services Supervisors Association and County of Dakota, BMS Case No. 97-PN-837 (Wallin, 1997).

## **WAGES**

### **A. Positions of the Parties**

#### **Union:**

Wages for 2010: An increase of 3% in the merit grid, plus merit increases as determined by annual performance evaluations.

#### **Employer:**

Wages for 2010: No increase in the merit grid, plus no individual merit increases.

### **B. Discussion**

#### **1. Background**

Lyon County uses a merit-based compensation system for making wage adjustments. Under this system, annual merit increases, if any, are based on an evaluation of an individual employee's job performance. Each year supervisors rank employees through a formal written evaluation system on a scale from five (highest level of performance) to one (lowest level of performance). Employees who receive a ranking of three or higher are eligible for merit adjustments in the range of 2% to 8% of current salary. More junior employees on the lower end of the salary schedule generally are eligible for higher percentage adjustments.

#### **2. Application of the Criteria**

##### **a. Ability to Pay and Other Economic Considerations**

The Union contends that the County, although admittedly experiencing fiscal difficulties, has adequate resources to fund the Union's wage proposal. According to the 2010 Comprehensive Annual Financial Report, the County's unreserved fund balance for the General Fund at the end of the calendar year was \$8,251,133 or 71% of the total General Fund expenditures for 2010. The Union maintains that this compares favorably with the state auditor's recommendation that local government units maintain a fund balance of between 35 and 50 percent of annual expenditures. Given the fact that the total cost of the Union's wage proposal is approximately \$10,500, the Union argues that there is little doubt that the County has the ability to fund the Union's position on wages. The Union also points out that the Consumer Price index for the Midwest Region rose by 2% in 2010.

The County, in contrast, stresses that local government units in Minnesota currently are experiencing an unprecedented budgetary crisis. The continuing recessionary climate has put significant strain on public sector financial resources. The County points out that state grants in the form of county program aid to the County have been reduced by over \$500,000 from 2009 to 2011. The County's anticipated interest income on investments has declined from \$500,000 in 2009 to \$150,000 in 2010. In addition, the prospect of an additional multi-billion dollar budget gap for the state in the next biennium undoubtedly will result in further cuts to state aids in the foreseeable future. The County also asserts that its 2010 unreserved fund balance was almost \$600,000 less than it was in 2009.

While the County has the basic ability to fund the Union's request, its difficult financial position makes that step problematic. Beset with reduced tax income, investment income, and state aid, the County's basic economic need is to reduce rather than to increase expenditures.

Given these circumstances, many Minnesota arbitrators recently have stressed the importance of economic factors in resolving interest disputes. Arbitrator Miller, for example, has stated:

. . . Minnesota's economic climate and the adverse effect that it is having on public employers in the state are real and not contrived. As a result, arbitrators can no longer simply give passive review to the employer's financial condition, but must now give it full and undivided attention.

City of West St. Paul and Law Enforcement Labor Services, Inc., BMS Case No. 09-PN-1062

(Miller, 2010). Arbitrator Fogelberg similarly has stated:

Suffice it to say that the existing recessionary climate in which public employers operate today, and the relative hardships that this has caused and continues to cause, heightens the arbitrator's consideration of the statutory mandate of public employers to "efficiently manage and conduct their operations within the legal limitations [that] surround the financing of [their] operations."

Metropolitan Council and Teamsters Local No. 320, BMS Case No. 09-PN-833 (Fogelberg, 2010).

On balance, these very difficult financial constraints favor the Employer's position in this dispute.

**b. Internal Comparisons**

As noted above, internal consistency in wage adjustments generally is recognized as the single most important factor guiding interest arbitration outcomes. In addition, the Union and the County have a pattern of setting unit wage adjustments in a manner consistent with that established for other County employees.

The record indicates that the County's non-union employees received a 0% increase to the merit ranges for both 2009 and 2010. These employees received no merit increases in 2009, but were eligible for such increases in 2010.

The County has only two other bargaining units with certified union representatives. The LELS Non-Licensed Sergeants unit is newly certified and has not completed negotiations for 2010. The LELS Jailer/Dispatcher unit contract for 2009 and 2010 was submitted to interest arbitration. Arbitrator Jacobs, in his award, provided for 0% increases to the merit ranges for both 2009 and 2010, but he further ruled that unit employees were eligible for merit increases based on performance for both of these years. Lyon County and Law Enforcement Labor Services, Inc., BMS Case No. 10-PN-0925 (Jacobs, 2011).

In terms of pay equity considerations, the Union maintains that the County's underpayment ratio is in compliance with state regulations and that awarding the Union's position would do no harm to the County's status under the Pay Equity Act. The County, on the other hand, argues that awarding a pay increase to this male-dominated unit that is receiving above predicted pay would have a negative ripple effect on pay relationships even if it would not put the County out of technical pay equity compliance.

Based on the above, the clear internal pattern for Lyon County employees in 2010 is a 0% adjustment to the merit grid coupled with employee eligibility for performance-based merit increases.

**c. External Comparisons**

Both parties agree that the appropriate external comparison group for Lyon County is Economic Region 8, which includes the counties of Cottonwood, Jackson, Lincoln, Murray, Pipestone, Redwood, and Rock counties, plus the contiguous county of Yellow Medicine. The County and LELS have utilized this comparison group in previous interest arbitration proceedings.

The Union asserts that a comparison with the Region 8 counties supports its position on wages. The Union submitted data showing that deputies in these counties experienced an average 2.13% increase for 2010 wages at the top of the scale. The Union contends that awarding the County's total wage freeze proposal would result in Lyon County deputies falling from their current position as fourth highest in pay among the comparison group counties to a lower fifth overall ranking. In contrast, the Union proposal would continue the unit deputies in their present number four position. The Union additionally disputes the County's contention that Lyon County deputies ascend to the top of their pay scale at a faster rate than the Region 8 average.

The County asserts that the unit deputies are well paid in comparison to the Region 8 group. In this regard, the County points out that even with a 2010 wage freeze, the Lyon County deputies would still be paid \$.50 per hour higher than the average maximum wage of deputies in the comparison group. Finally, the County maintains that Lyon County employees on average reach the maximum of their merit ranges within seven years, while deputies in the comparison group need an average of 9.5 years to reach the maximum point of their respective pay ranges.

In an external comparison of a different sort, the closing briefs of both parties cite to other Minnesota arbitration awards that have reached outcomes consistent with their positions. The Union brief, for example, cites five recent awards for other Minnesota jurisdictions in which arbitrators have awarded pay increases to law enforcement units in spite of the current economic climate. The County's brief, meanwhile, lists four 2011 awards which have resulted in 0.0% wage adjustments for the affected employee groups.

On balance, the relevant external comparisons tend to support some modest upward movement in compensation. An award of the Union's full position, consisting of a 3% rise in the

pay scale coupled with an average 5% merit bonus, however, would exceed the average compensation adjustments received by deputies in the other Region 8 counties.

**C. Conclusion**

As noted above, the pertinent decisional criteria point in somewhat different directions. Economic factors generally favor the County's total wage freeze proposal, while external comparisons favor a modest upward wage adjustment. Most significantly, the internal comparisons favor a 0% wage increase coupled with eligibility for performance-based merit increases. An award consistent with this internal pattern best balances the various considerations in this matter and most likely replicates the agreement that the parties would have struck on a voluntary basis.

The County argues, however, that merit increases should not be awarded for 2010 because the deputy unit employees received merit increases in 2009 while other County employees did not. The County essentially argues that the two years should be treated as a zero sum game in which benefits negotiated for 2009 should be subtracted from the 2010 internal pattern. It is important to recognize, however, that the 2009 increases were established by means of a voluntarily negotiated collective bargaining agreement. Treating unit employees less well than all other employees in 2010 effectively punishes those employees for their earlier bargain and is inconsistent with the statutory duty to bargain in good faith with respect to terms and conditions of employment.

**AWARD**

Wages for 2010: No increase in the merit grid, but unit employees are entitled to individual performance-based merit increases.

Dated: October 7, 2011

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Stephen F. Befort  
Arbitrator