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In Re the Arbitration between:

Washington County, MN,

**BMS Case No.11 –PN --0209**

Employer,

and

**INTEREST ARBITRATION  
OPINION AND AWARD**

Law Enforcement Labor Services, Inc.,  
Local 214,

Union,

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Pursuant to **Minnesota Statutes Section 179A.16, and Minnesota Rules §5510.2930** the Bureau of Mediation Services of the State of Minnesota certified the following fourteen (14) issues between the above parties to arbitration on October 20, 2010:

**ISSUE ONE:**            **DURATION – Term of Agreement? – Article 23.1 (settled)**

**ISSUE TWO:**           **Wages 2010 – Amount of Increase, If Any 2010 – Article 12.1**

**ISSUE THREE:**        **Wages 2011 – Amount of Increase, If Any 2011 – Article 12. 1**

**ISSUE FOUR:**         **Pay Plan – Should Steps be Compressed? -- Appendix**

**ISSUE FIVE:**         **Pay Plan – Should Step Increases Be Granted 2010? –  
Appendix (Settled)**

**ISSUE SIX:**           **Pay Plan – Should Step Increases Be Granted 2011? –  
Appendix**

**ISSUE SEVEN:**      **Night Differential – Should Differential be increased in 2010 or  
2011?**

- ISSUE EIGHT:      Compensatory Time – Should Maximum Accrual Be Increased? – Article 12.32**
- ISSUE NINE:      Clothing Allowance – Should Allowance Be Increased In Either 2010 or 2011? Should the Purchasing Card be Eliminated? – Article 15.1**
- ISSUE TEN:        Clothing Allowance – What should Terms and Amount of Reimbursement Be for Cell Phones? NEW SECTION**
- ISSUE ELEVEN:    Holiday – what Should the Value of Holiday Hours Be? Article 19.2, 19.3, 19.4 (Withdrawn by Union)**
- ISSUE TWELVE:    Insurance – What Should the Employer Contribution Be For 2011? Article 13. 1 (Settled)**
- ISSUE THIRTEEN: Sick Leave – Should Preservation Program be Deleted? – Article 14.7**
- ISSUE FOURTEEN: Grievance Procedure – Should Either Party Be Able to Request Mediation? Article 7.4**

The parties selected James A. Lundberg as the neutral arbitrator from a list of arbitrators provided by the Minnesota Bureau of Mediation Services and a hearing over the above issues was conducted in Stillwater, MN on April 15, 2011.

Briefs were submitted and the record closed on April 29, 2011.

Prior to arbitration issues #1 Duration, #5 2010 Step increase, #11 Value of holiday hours and #12 Insurance were settled or withdrawn.

**APPEARANCES:**

**FOR THE EMPLOYER**

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**FOR THE UNION**

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**ISSUE TWO:**        **Wages 2010 – Amount of Increase, If Any 2010 – Article 12.1**

**ISSUE THREE:**    **Wages 2011 – Amount of Increase, If Any 2011 – Article 12. 1**

**UNION’S POSITION:**

The Union is proposing a wage increase of 3% effective on January 10, 2010 and a 1.5% wage increase on January 10, 2011.

**UNION’S ARGUMENT IN SUPPORT OF POSITION:**

There is no internal pattern of 0% wage increase in 2010. In 2010 all of the bargaining units, except Local 214 have settled. Four bargaining units settled for a 3% general wage increase and four received a 0% general wage increase. To the extent that any pattern of settlement exists, the Union argues that a 3% general wage increase is supported.

Six of the County’s nine bargaining units have settled contracts for 2011. All of the contracts that have settled received no general wage increase. Three bargaining units have not settled for 2011. If the outcome of other contracts was the only factor to review, there would be no point in negotiating over wages. The County’s argument that any award counter to its position would result in “whipsaw bargaining,” is really a contention that the arbitrator must adopt the Employer’s position without regard to other factors.

The Pay Equity Act provides that in addition to traditional standards used in arbitration, the results of a job evaluation study should be reviewed. In Washington County, Deputy Sheriffs and Sergeants are paid below predicted pay. If the Union's proposal is adopted, both Patrol Officers and Sergeants will remain below predicted pay. Under the Union proposal, the Sergeants in 2010 will be \$1,162.42 per month below predicted pay and in 2011 the Sergeants will be \$1,104.81 below predicted pay. The gap between actual wages and predicted pay will be greater for both Patrol Officers and Sergeants, if the County's 0% proposal is adopted.

External market comparisons support the Union's wage proposal. Wage comparisons were submitted from the following eight county comparison group: Anoka County, Carver County, Dakota County, Hennepin County, Olmstead County, Ramsey County, Scott County and Washington County. Within the comparison group four counties have settled for the years 2010 and 2011. Anoka County did not receive a general wage increase but the top performance pay range increased by 3% for 2010. Ramsey County received a 2% increase to Top Patrol and Top Patrol with longevity for both 2010 and 2011. Scott County received a 2% increase in 2011. Olmsted County settled for a 1% increase in 2011.

Wages for Local 214 were slightly above the average wage within the comparison group (1.7% over the average) in 2009. If longevity is considered in the wage review, bargaining unit wages were at the average within the comparison group in 2009.

In 2010 and 2011 the Union proposal would place top wage rates at 1% below the comparison group average. With longevity, the Employer proposed Washington County wage rates will be 3% below average in 2010 and 4.5% below average in 2011 for

counties that have settled. Despite poor economic circumstances wages have moved up within the comparison group and the wages for Washington County deputies should not be allowed to drop in relative position.

Over the past 14 years the average increase in wages for Local 214 has been 2.55%. Only in 2005 did the bargaining unit receive a 0% wage increase.

The cost of living has not increased dramatically over the past year but it has increased. Consumer Price Index issued by the Bureau of Labor Statistics of the United States Department of Labor shows a rise of 1.8% for the Minneapolis-St. Paul area from 2009 to 2010. There was a .4% to .5% rise in the CPI for the first two months of 2011. The pay increase sought by the Union is reasonable and consistent with cost of living increases.

**EMPLOYER'S POSITION:**

The Employer proposes a wage freeze, 0% increase for both 2010 and 2011.

**EMPLOYER'S ARGUMENT IN SUPPORT OF POSITION:**

Internal wage consistency has been the primary standard used by interest arbitrators in the State of Minnesota, since adoption of the Pay Equity Act. To a great extent external comparisons have been used to determine whether a specific bargaining unit is so significantly underpaid that a deviation from the internal wage settlement pattern was justified. Heavy reliance upon internal wage comparisons is needed to maintain labor relations stability, morale, avoids whipsaw bargaining and encourages good faith bargaining.

The internal wage settlement pattern in Washington County is for a 0% increase and no step increases for 2010 and 2011. Eighty five percent (85%) of the total workforce

in Washington County has settled for a 0% wage increase and no step increases for the years 2010 and 2011. While four bargaining units representing only 15% of the County workforce settled for 3% wage increases in 2010, the wage settlements were the product of 2008 bargaining that produced three year contracts. The bargaining units were asked but would not reopen their contracts and the Employer has notified them that the County will attempt to balance out the 3% increases in future negotiations. The Union has argued that there is no strong internal wage settlement pattern. It is the Employer's contention that a 0% wage increase with no step movement is an internal wage settlement pattern that should be followed.

The view that a wage award should reflect what the parties would have negotiated to end a strike supports a 0% wage increase. In January 2010 the County faced a strike by 453 employees from the AFSCME non-exempt group. The parties settled for 0% increases in 2010 and 2011 and no step increases in 2011.

The Union assertion that its position will not negatively impact the County's ability to comply with the Pay Equity Act is misplaced. The State determines whether a County is in compliance with the Pay Equity Act and compliance determinations are not made in this forum. Even if an award of the Union's position does not place the County out of compliance with the Pay Equity Act, it will change the pay relationships within the County including the pay relationships between the male-dominated classifications of the LELS unit with the female-dominated classes within the County.

The Employer notes that there are some cities within the State of Minnesota that have recently received arbitration awards that are consistent with the Union's position. However, the appropriate external comparison is between other counties. Counties in

Minnesota carry the responsibility for many safety net services, including public health and criminal justice. Cities are not responsible for the same safety net services. It is inappropriate to compare cities with a county.

The County has taken the position that a wage freeze is necessary because of dire economic conditions. This contract negotiation is taking place in the midst of a serious economic recession that has impacted the entire nation. The State of Minnesota is facing massive budget short falls. Washington County anticipates significant reductions or elimination of Local Government Aid. The loss of Local Government Aid will place increased pressure on the County's primary source of revenue, property taxes. Local property owners have seen the value of their property fall with no corresponding drop in taxation. Furthermore, unemployment and under employment is high. At the end of 2009 the County had a total unreserved, undesignated fund balance that was less than two (2) months of operating expenditures. The State Auditor recommends a five (5) month minimum. The County does not have the ability to pay for the wage increase proposed by the Union.

The County also argues that there is considerable political resistance to increased expenditures in the current recession. In public meetings constituents have complained that taxes are too high in the County and the County should be tightening its belt in the same manner that families and businesses have had to tighten their belts. The County must deal with political realities and the public is demanding that the County hold the line.

**OPINION:**

The general pattern of recent wage settlements in Washington County is a 0% wage increase for 2010 and 2011 and no step increases for 2011. The pattern of internal wage settlements must be considered in interest arbitration and must be given significant weight. The fact that some bargaining units settled for a 3% wage increase for 2010 as part of a three year contract in 2008 must also be taken into consideration. However, the general pattern of recent wage settlements and the current economic environment weigh more heavily in favor of the County's wage proposal.

The external wage comparisons between Washington County and eight other counties give little assistance, since half of the counties have not settled. However, it appears that wage increases have been received in some other counties. The Union's proposed wage increase for 2010 is greater than increases received in the comparison group but the 2011 proposed wage increase is more in line with increases obtained in the comparison group.

The argument that Washington County does not have the ability to pay a wage increase is based upon a general downturn in the economy. However, there is specific evidence of economic strength in Washington County. The County's "Report to Our Citizens" for fiscal year 2010 says "Washington County had the second highest median household income in the state during 2007...[and] "the third highest per capital income in the state." Ex. 37. While housing values have slipped, the average cost of housing in Washington County continues to be high. (Average home value nearly \$260,000.00)

The Comprehensive Annual Financial Report of Washington County, Minnesota for the year ending December 31, 2009 at page 4 says, "Washington County continues to

have second to the lowest tax rate of any of the 87 Minnesota Counties.” While Washington County has been negatively impacted by the recession, the impact on the County has been far less than in other areas and the burden on Washington County tax payers is the second lowest in Minnesota. The facts do not support the County’s claim that it does not have the ability to pay proposed wage increases.

The Union moved into evidence the compliance report from the 2009 Pay Equity analysis performed by the State of Minnesota to determine whether the County was in compliance with the Pay Equity Act. The report provides data regarding relative pay for all County job classifications and relative job values in the form of predicted pay for job classifications. When the Pay Equity Act was adopted, the purpose was to assure that employees were given equal pay for equal work. In response to the Pay Equity Act, internal wage comparisons became a predominate tool for comparison used in Minnesota public sector labor arbitrations and wages for large numbers of female dominated positions that were under paid according to a job study were upwardly adjusted to be at or near “predicted pay.” A job study’s predicted pay continues to be a relevant gauge of internal wage comparability. The wages for Sheriff Patrol Deputies in Washington County were \$100.14 or approximately 1.7% below predicted pay for 2009. The Sergeants wages in 2009 were \$1, 274.30 or nearly 17% below predicted pay.

There are other economic issues to be addressed in this arbitration and those issues can be used to counter balance the slight deviation between Sheriff Patrol Deputies wages and predicted pay without awarding a general wage increase but the deviation between Sergeants wages and predicted pay is so great that the Union’s wage proposal should be awarded.

**AWARD:**

*Sheriff's Patrol Deputies in 2010 and 2011 shall receive a 0% wage increase.*

*Sergeants shall receive a 3% general wage increase in 2010 and a 1.5% general wage increase in 2011.*

**ISSUE FOUR: Pay Plan – Should Steps be Compressed? -- Appendix**

**UNION'S POSITION:**

The Union is proposing that two steps should be compressed as follows:

**C42 Patrol Officer**

Step A	Entry
Step B	1 yr.
Step C	2 yrs.
Step D	3 yrs.
Step E	4 yrs.
Step G	5 yrs.
Step H	<u>7 yrs.</u> <del>10 yrs.</del>
Step I	<u>11 yrs</u> <del>15 yrs.</del>

**~~C42 Patrol Officer~~—Investigation**

Step A	Entry
Step B	1 yr.
Step C	2 yrs.
Step D	3 yrs.
Step E	4 yrs.
Step G	5 yrs.
Step H	<u>7 yrs.</u> <del>10 yrs.</del>
Step I	<u>11 yrs</u> <del>15 yrs.</del>

**C52 Sergeant**

Step E	Entry
Step F	6 mos.
Step G	5 yrs.
Step H	<u>7 yrs.</u> <del>10 yrs.</del>
Step I	<u>11 yrs.</u> <del>15 yrs.</del>

**UNION'S ARGUMENT IN SUPPORT OF POSITION:**

The Union proposal is to move the wage step progressions for Sheriff's Deputies and Sergeants in line with other County employee wage progressions. All other bargaining units within the County reach the top pay step by no later than the employee's 8<sup>th</sup> year anniversary. Local 214 employees do not reach the top pay step until their 15<sup>th</sup> year.

The Union's proposal provides for movement to the sixth step after seven years rather than ten years and movement to the top step by the 11<sup>th</sup> year rather than the 15<sup>th</sup> year. Local 214 employees under the Union's proposal would still take three years longer than other bargaining units within the County to reach top pay but the change would move the wage progression for Deputies and Sergeants closer to the wage progression of other bargaining units within the County. Internal benefits should be consistent with settlements negotiated with other bargaining units within the same jurisdiction.

**EMPLOYER'S POSITION:**

The Employer proposes that the existing contract language should not be changed.

**EMPLOYER'S ARGUMENT IN SUPPORT OF POSITION:**

The Union can not meet its burden of proof of a compelling reason to change the existing contract language nor does it propose a quid pro quo for the change.

When the County changed to a range structure there was no initial placement cost. Employees did not move into the next range until the following year. The Union's proposal would result in employees with 11, 12, 13 and 14 years of service automatically moving into a new step. The change would be cost prohibitive and is a cost that would carry over from 2010 to 2011.

Any adjustment should be left to the parties to work out through negotiations. Arbitrators are generally reluctant to make changes in a wage schedule when parties have been unable to reach agreement at the negotiating table.

**OPINION:**

Arbitrators are generally reluctant to make changes in wage schedules that have previously been negotiated by the parties. There are instances where a *quid pro quo* is offered and there are times when the change is necessary. The modification proposed by the Union is not based upon necessity nor is there a *quid pro quo*. Also, the transition to a compressed wage schedule would result in a significant increased cost to the Employer. Hence, the existing schedule shall remain in the contract.

**AWARD:**

*There shall be no change to the existing step schedule.*

**ISSUE FIVE:**        **Pay Plan – Should Step Increases Be Granted 2010? –  
Appendix (Settled)**

**ISSUE SIX:**        **Pay Plan – Should Step Increases Be Granted 2011? –  
Appendix**

**EMPLOYER’S POSITION:**

The County proposes a wage freeze that includes no step movement for 2011.

**EMPLOYER’S ARGUMENT IN SUPPORT OF POSITION:**

The Employer relies on the argument that it presented in support of a general wage freeze. It contends that the internal pattern of no step movement has been established. Furthermore, it contends that a review of the County’s ability to pay, internal and external comparisons and overall economic factors support the position.

**UNION'S POSITION:**

The Union proposes that the existing wage step plan be followed.

**UNION'S ARGUMENT IN SUPPORT OF POSITION:**

The party proposing a change in existing contract language must establish that there is a definite problem with the current contract language and must prove that the proposed change will effectively resolve the problem and is both necessary and reasonable. The County has failed to meet its burden.

The proposed step freeze will have greater impact upon Local 214 than upon other employees. The wage increments for most County employees are set at 3% or 4%, while Local 214 employees have wage steps that range from 1.7% to 7.5%. Some Local 214 employees will suffer nearly twice the loss of other County employees and the impact will be greatest on employees who are early in their careers.

The pattern of wage settlements cited by the Employer is not, in fact, a settlement pattern. Three of the nine bargaining units have open contracts and have not agreed to a step freeze. The internal pattern is neither strong nor is it clear.

The Employer argues that no step increase is a necessary cost savings but did not calculate and submit into evidence the actual saving to the Employer that will result from freezing step increases.

The Step progression has been in the collective bargaining agreement at least since 1986. A well established contractual term should not be changed in arbitration without a demonstration by the Employer that the change is reasonable and necessary. The Employer failed to meet its burden on this issue.

**OPINION:**

The wage step progression has been a part of the collective bargaining agreement for at least twenty five (25) years. The same principle that was used to resolve whether the wage step schedule should be compressed must also be applied to the issue of whether step increases will be frozen. The Employer did not establish a sufficient basis for freezing step increases. Furthermore, both Sheriff's Deputies and Sergeants are paid at a rate that is lower than predicted pay. A freeze of step pay would tend to expand the difference between predicted pay and the wages of both Patrol Deputies and Sergeants. The County should continue to meet the obligation of previously negotiated wage step increases.

**AWARD:**

*The wage step increases previously negotiated between the parties shall be paid in the year 2011.*

**ISSUE SEVEN:      Night Differential – Should Differential be increased in 2010 or 2011?**

**UNION'S POSITION:**

The Union proposes a night differential as follows:

Employees shall be paid night differential for each hour worked in a full shift, when the majority of the hours fall between 6:00 P.M. and 6:00 A.M. with the amount beginning in the first full pay period of each years 2010 -- \$.85/hr and 2011 -- \$.85/hr ~~2007 \$.70/hr and 2008 \$.75/hr.~~

**UNION’S ARGUMENT IN SUPPORT OF POSITION:**

There is no internal pattern over the issue of night differential, since most County employees are not staffed on a twenty four (24) seven (7) schedule. However, external comparisons support the Union’s position. Carver County pays \$.85 per hour for night differential; Olmstead County pays a night differential of \$1.10 per hour; and Ramsey County pays 6.5% of the first step of the salary range, which is \$1.35 per hour. The Washington County night differential is significantly below the market and should be increased to the same level as paid in other jurisdictions.

Over the past 15 years the Union’s night differential has increased by only \$.15 per hour. An increase is long over due.

**COUNTY’S POSITION:**

The County proposes no increase in the night differential.

**COUNTY’S ARGUMENT IN SUPPORT OF POSITION:**

The increase from \$.75 per hour to \$.85 per hour for the night differential appears small but is, in fact a 13% increase in the amount of the differential. The percentage increase is substantial and should not be granted.

The external market does not support an increase in the night differential. Four of the seven counties with the comparison group (Anoka, Dakota, St. Louis and Scott) pay night differentials that are equal to or less than Washington County.

The historical data demonstrates that historically rates for the night differential have been changed after four or five years. The current rate for night differential has only been in effect since 2008.

Internally the Teamsters Local 320 Correctional Officers unit settled their contract for 2011 and will continue to receive a night differential of \$.75. The internal comparison supports the current contract language.

Finally, the night differential is part of the total economic package and must be considered an additional cost during difficult economic times. There is no justification for increasing the night differential at this time.

**OPINION:**

Internal and external comparisons and the bargaining history of the parties support the current night differential of \$.75 per hour. Teamsters 320 Correctional Officers agreed to continue the same wage differential. The internal comparison should receive considerable weight in this matter as well as the external comparisons. Within the group of comparable counties, the existing night differential paid in Washington County is competitive. There is insufficient evidence to support an increase in the night differential at this time.

**AWARD:**

*The night time pay differential shall continue to be \$.75 for 2010 and 2011.*

**ISSUE EIGHT:      **Compensatory Time – Should Maximum Accrual Be  
Increased? – Article 12.32****

**UNION'S POSITION:**

The Union proposes that the maximum accrual for compensatory time be increased as follows:

The maximum compensatory time accrued shall be forty-five (45) ~~forty (40)~~ hours. Hours earned in excess of forty-five (45) ~~forty~~ shall be paid. Up to forty-

five (45) ~~forty (40)~~ hours may be carried forward from one calendar year to the next.

**UNION'S ARGUMENT IN SUPPORT OF POSITION:**

An increase in the maximum accrued compensatory time from 40 to 45 hours would not increase costs for the County but would benefit Union members who accrue and use their maximum compensatory time several times during the year.

There was testimony that some Deputies bank their maximum compensatory time and then use the compensatory time in performing program duties, including Explorer duties. When they use compensatory time as described no overtime costs are created. Hence, the proposal will yield benefits at no additional cost. Since Patrol shifts are set using 45 hours rather than 40 hours, the change in maximum accrual is appropriate.

**EMPLOYER'S POSITION:**

The Employer seeks no change in the maximum accrued compensatory time.

**EMPLOYER'S ARGUMENT IN SUPPORT OF POSITION:**

No other bargaining unit in the County has a compensatory time accrual maximum that is tied to shift length. If the proposal is adopted, the County could incur increased overtime expenses when it must schedule another employee to fill a shift.

Bargaining unit employees tend to use compensatory in increments of two or three hours and the majority of LELS members have compensatory time accrual balance less than twenty (20) hours. The only non-exempt employee group that does not have a 40 hour maximum compensatory time accrual is snow plow drivers. Exempt employees have a 60 hour maximum accrual but their compensatory time accrues at straight time not

at time and one half. Non exempt employees do not receive their accruals at separation of employment and may not cash out their accruals at any time.

External comparables support the Counties position. Three of the comparison counties (Anoka, Carver and Scott) do not allow employees to accrue compensatory time at all and two counties have compensatory time accrual limits that are similar to or less than the current Washington County contract.

**OPINION:**

The current benefit is internally consistent and compares favorably with the benefit available in other counties. The Union has not demonstrated that a change in current language is necessary and reasonable nor is there any evidence of a *quid pro quo*.

**AWARD:**

*The current maximum accrual of forty (40) hours of compensatory time shall continue for the years 2010 and 2011.*

**ISSUE NINE:            Clothing Allowance – Should Allowance Be Increased In  
Either 2010 or 2011? Should the Purchasing Card be  
Eliminated? – Article 15.1**

**UNION POSITION:**

The Union proposes the clothing allowance be increased in 2010 and 2011 from Six hundred twenty five (\$625.00) to Seven hundred (\$700.00) and opposes any change to the purchasing card system found in the collective bargaining agreement.

## **UNION'S ARGUMENT IN SUPPORT OF POSITION:**

An increase in the uniform allowance is necessary and reasonable in light of increasing costs of uniforms due to a new Minnesota Law, the Sheriff's planned conversion to new uniforms and the external market.

The new Sheriff has planned to phase in a new uniform policy, which will require all employees to make purchases of new uniform components and will begin to phase out currently acceptable uniform components. For example, all employees will be required to wear the new uniform pants by January 2012. The currently acceptable uniform hat will be replaced, as well as, shirts and belts. In addition to being a transition that will, for example, require the purchase of pants by a time certain rather than a purchase of pants when a pair is worn out, new Minnesota Law requires that uniform items be made in America. The cost of uniform components could rise by 25% to 40%. The price of items made in America is expected to be higher than products currently being used.

Eight of the nine comparable counties provide a uniform allowance. Of the counties that provide a uniform allowance and have settled for 2011, the average settlement is \$740.00 per year. Ignoring whether settlement has been reached for 2011, the average uniform allowance is \$693.00 per month.

The County has proposed discontinuing the purchasing card system but has not proposed a new system for administering the clothing allowance. The Union contends that the issue is not ripe for arbitration. However, the Employer did not establish a need for the change nor has it demonstrated that eliminating the previously negotiated provision is reasonable or necessary. The County has not met its burden on this issue.

**COUNTY POSITION:**

The County proposes to retain the current \$625.00 maximum annual Employer contribution toward clothing allowance and eliminate the purchasing card effective December 31, 2010.

**COUNTY'S ARGUMENT IN SUPPORT OF POSITION:**

The Employer will be making the uniform "more uniform" but the change will be phased in over a two year period. The phased transition should answer the Union's concerns over affordability.

The current purchasing system is a resource drain and involves multiple checks and balances. If an error is made or problem detected far into the chain of review, the packet is referred back to the employee who originated the purchase. The process requires substantial amount of time and creates a significant administrative burden. Using the purchasing card, the system can not be streamlined. Hence, the Sheriff would like to eliminate the use of the purchasing card.

**OPINION:**

The cost of uniforms for bargaining unit members is going to increase and will likely increase dramatically due to Minnesota Law and due to the new uniform policy. Phasing in the uniform changes over a period of two years will do nothing to reduce the increased cost. The Union has established that there is need to increase the uniform allowance and the proposed uniform allowance increase is comparable to the uniform allowance received in other counties within the comparison group. An increase in the uniform allowance for 2011 to \$700.00 per year is reasonable and necessary.

While the Sheriff's office is unhappy with the cumbersome nature of administrative checks placed upon the purchasing card system, the process described at hearing is very reasonable. Public funds are being used to pay for uniforms and the purchasing card system is clearly designed to prevent misuse of funds dedicated to a specific purpose. Inconvenience is not a reason for eliminating reasonable accounting practices.

**AWARD:**

*The uniform allowance for 2011 shall be increased to seven hundred dollars (\$700.00) per year.*

*The purchasing card system shall continue to be followed as directed by the current language in the collective bargaining agreement.*

**ISSUE TEN:            Clothing Allowance – What should Terms and Amount of Reimbursement Be for Cell Phones? NEW SECTION**

**UNION POSITION:**

The Union is proposing a new article as follows:

Article 15.5 Employer will reimburse employees in the amount of \$45/month for cellular phone fees and charges associated with the employees' Department-required cellular phones.

**UNION'S ARGUMENT IN SUPPORT OF POSITION:**

The County provides Union employees with \$30/month to be used for the employee's cellular telephone plan. The current allowance is too small to cover the cost of a basic "talk only" cell phone plan. Before factoring taxes and surcharges the least expensive cell phone plan available from local providers is \$39.99 per month. Union

employees are required to carry a cell phone to supplement other communication systems. The requirement that cell phones be carried by bargaining unit members should be accompanied by the means to pay for the required equipment.

**COUNTY'S POSITION:**

The County proposes no change in the current policy which is to provide \$30.00/month for cell phone reimbursement.

**COUNTY'S ARGUMENT IN SUPPORT OF POSITION:**

The current policy does not extend to bailiffs and part-time employees.

The cell phone reimbursement is done pursuant to a County-wide policy. There is no contract provision regarding cell phone reimbursement. There is no Sheriff's Department policy requiring bargaining unit members to carry cell phones. Many bargaining unit members carry cell phones and County policy allows reimbursement up to \$45.00. The reimbursement level of \$30.00 has not created problems for bargaining unit members. In the one instance where limits have been exceeded for work related communications, the matter was brought to the Sheriff and the problem was addressed.

Other counties do not have contract provisions providing for cell phone reimbursement. Most other counties provide for reimbursement for cell phone use or by providing cell phones within their administrative policies not in collective bargaining agreements. Bargaining unit members are not purchasing cell phones exclusively for their work. Those who have cell phones are allowed to use them and the time used is reimbursed. There is no need to change the policy nor is their need to create a new provision in the collective bargaining agreement.

**OPINION:**

The Union has not demonstrated a substantial need to incorporate a new cell phone reimbursement policy into the collective bargaining agreement. There are no internal or external groups that currently have provisions incorporated into their collective bargaining agreements. At this point the question is one of County policy and the arbitrator does not have authority to modify policy.

**AWARD:**

*No language regarding cell phone reimbursement shall be added to the collective bargaining agreement.*

**ISSUE THIRTEEN: Sick Leave – Should Preservation Program be Deleted? –**

**Article 14.7**

**COUNTY POSITION:**

The County proposes eliminating the sick leave preservation provision from the collective bargaining agreement.

**COUNTY’S ARGUMENT IN SUPPORT OF POSITION:**

The sick leave preservation program was incorporated into the collective bargaining agreement in 1988. The program created incentive for not using sick leave, which made it possible to manage excessive sick leave use. When an employee maintains a balance of 160 hours of sick time through the first two years of employment, he or she qualifies for an exemption from having to use vacation or compensatory time on the first day of a sick leave. The program was established before the Family and Medical Leave Act of 1993 and may present disadvantages for staff with persistent FMLA conditions who are unable to grow sick leave balances above 160 hours. Consequently, the program

may have a disparate impact on individuals with persistent FMLA conditions. The program is antiquated and should be eliminated.

Neither internal nor external comparison data supports continuation of the sick leave preservation program. Externally, six of the seven comparison counties do not have a sick leave preservation program. Internally, the only other unit within the County with sick leave preservation is the Teamsters 320 Correctional Officer Unit.

**UNION'S POSITION:**

The Union proposes no change to the sick leave preservation program.

**UNION'S ARGUMENT IN SUPPORT OF POSITION:**

The sick leave preservation program has been part of the collective bargaining agreement for twenty five (25) years. It was negotiated by the parties and should not be eliminated in arbitration in the absence of a demonstration that the change is reasonable and necessary. Arbitrators are generally reluctant to change negotiated contract terms and the Union asks that the arbitrator not change what has been a part of the relationship between the parties for a period of twenty five (25) years.

No specific evidence was submitted demonstrating that the sick leave preservation program has created a problem for any employee. Furthermore, the program is utilized by employees and there is no evidence that the cost of the program is excessive.

**OPINION:**

The sick leave preservation program has been a part of the collective bargaining agreement for a very long period of time. The arbitrator is reluctant to change an existing contract provision without substantial demonstration that a change needs to be made and that the proposed change will resolve existing problems. Without a demonstration that the

provision needs to be changed and the proposed change will resolve existing problems, change in the program should be accomplished through negotiation.

**AWARD:**

*The sick leave preservation program shall remain a part of the collective bargaining agreement.*

**ISSUE FOURTEEN: Grievance Procedure – Should Either Party Be Able to Request Mediation? Article 7.4**

**UNION POSITION:**

The Union proposes that either party be able to request grievance mediation:

“~~The parties~~ Either party ~~by mutual agreement~~ may agree to petition the Bureau of Mediation Services for the utilization of mediation prior to Step 4.

**UNION’S ARGUMENT IN SUPPORT OF POSITION:**

The modification is necessary so that the mediation process is accessible to either party. Creating the new provision will give either party access to a third party service at no cost and prevent either party from holding a grievance hostage with the threat of costly arbitration.

**COUNTY’S POSITION:** County proposes no change to the current contract provision regarding grievance mediation.

**COUNTY’S ARGUMENT IN SUPPORT OF POSITION:**

Mediation is by definition a voluntary process. Nothing positive can be gained from compelling a party that does not wish to go to mediation to engage in the process. If

a party is forced to participate in mediation, it is likely that the process will not be effective. The proposal is likely to increase costs to all parties without improving the effectiveness of the process.

**OPINION:**

Mediation is a voluntary process and the proposal is counter-intuitive.

There is no showing that there is a need to change the existing contract language nor did the Union demonstrate that the provision would resolve any existing problems.

**AWARD:**

*The existing contract language regarding grievance mediation shall continue to be part of the collective bargaining agreement.*

Dated May 15, 2011



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James A. Lundberg, Arbitrator