

**STATE OF MINNESOTA**  
**BUREAU OF MEDIATION SERVICES**  
**IN THE MATTER OF GREIVANCE ARBITRATION BETWEEN**

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COUNTY OF STEARNS,

EMPLOYER

-and-

ARBITRATION AWARD

BMS CASE NO. 11-PA-0434

LAW ENFORCEMENT LABOR SERVICES, INC.,

MEDICAL EXAMINER DUTIES

UNION.

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ARBITRATOR:

Rolland C. Toenges

GRIEVANTS:

Tim DesMarais, Detective  
Victor Weiss, Sergeant  
Danial Winkels, Detective

DATE AND PLACE OF HEARING:

July 25, 2011, Stearns County Law  
Enforcement Center, St. Cloud, MN

DATE POST HEARING BRIEFS RECEIVED:

August 16, 2011

DATE HEARING CLOSED:

August 23, 2011

DATE OF AWARD:

September 22, 2011

**ADVOCATES**

**FOR THE EMPLOYER:**

Scott Lepak, Attorney  
Barna, Guzy & Steffen, Ltd.  
400 Northtown Financial Plaza  
200 Coon Rapids Boulevard  
Minneapolis, MN 55433-5894

**FOR THE UNION:**

Isaac Kaufman, General Counsel  
Law Enforcement Labor Services  
327 York Avenue  
St. Paul, MN 55130-4039

**AT ISSUE****UNION:**

1. Did the County of Stearns fail to negotiate in good faith over changes to its death investigation system and the effect of those changes on the Grievants' terms and conditions of employment? If so, what is the appropriate remedy?
- 2a. Did the County of Stearns violate the Collective Bargaining Agreement by demoting the Grievants from Detective/Deputy Medical Examiner to Detective without just cause? If so, what is the appropriate remedy?
- 2b. Alternatively, did the County of Stearns violate the Collective Bargaining Agreement by laying off the Grievants from the position of Detective/Deputy Medical Examiner without following the required layoff procedure? If so, what is the appropriate remedy?

**EMPLOYER:**

1. Did the County of Stearns violate the Collective Bargaining Agreement when it reclassified the Detective/Deputy Medical Examiners to Detective?

**WITNESSES****FOR THE EMPLOYER:**

Pam Jensen, Sheriff's Captain  
 John L. Sanner, Stearns County Sheriff  
 Jennifer Thorsten, Dir. of Human Resources

**FOR THE UNION:**

Victor Weiss, Sergeant  
 Tim DesMarais, Detective  
 Danial Winkels, Detective

**ALSO PRESENT**

Martha Cole, Asst. Human Resources Director

## JURISDICTION

The matters at issue, regarding interpretation of the terms and conditions of the Collective Bargaining Agreement (CBA) between the Parties, came on for hearing pursuant to the Grievance Procedure contained in said Agreement. The Grievance Procedure (Article VII) provides, in relevant part, as follows:

*“7.1 Definition of a Grievance:* A grievance is defined as a dispute or disagreement as to the interpretation or application of the specific terms and conditions of this agreement.

*7.4 Procedure:* Grievances as defined by Section 7.1, shall be resolved in conformance with the following procedure:

Step 5: A grievance unresolved in Step 4 and appealed to Step 5 by the Union shall be submitted to arbitration subject to the provisions of the Public employment Labor Relations Act of 1971, as amended.

*7.5. Arbitrator’s Authority:*

- A). The arbitrator shall have no right to amend, modify, nullify, ignore, add to or subtract from the terms and conditions of this Agreement. The arbitrator shall consider and decide only the specific issue(s) submitted in writing by the Employer and the Union, and shall have no authority to make a decision on any other issue not so submitted.
  
- B). The arbitrator shall be without power to make decisions contrary to, or inconsistent with or modifying or varying in any way the application of laws, rules or regulations having the force and effect of law. The arbitrator’s decision shall be submitted in writing within thirty (30) days following the close of the hearing or the submission of briefs by the parties, whichever be later, unless the parties agree to an extension. The decision shall be binding on both the Employer and the Union and shall be based solely on the arbitrator’s interpretation or application of the express terms of this Agreement and to the facts of the grievance presented.
  
- C). The fees and expenses for the arbitrator’s services and proceedings shall be borne equally by the employer and the Union, provided that each party shall be responsible for compensating its own representatives and witnesses. If either party desires a verbatim record of the proceedings, it may cause such a record to be made,

providing it pays for the record. If both parties desire a verbatim record of the proceedings, the cost shall be shared equally.

The Parties selected Rolland C. Toenges as the Arbitrator to hear and render a decision in the interest of resolving the grievance matter.

The Arbitration proceeding was conducted as provided by the terms and conditions of the CBA and the Public Employment Labor Relations Act (MS 179A01 - 30). The Parties were afforded full opportunity to present evidence, testimony and argument bearing on the matter in dispute. Witnesses were sworn under oath and were subject to direct and cross-examination. There was no request for a verbatim record of the hearing.

The Parties submitted Post Hearing Briefs that were received by the Arbitrator on August 16, 2011. Thereafter, the Arbitrator held the hearing open for seven days pending any further submission by the Parties. Being none, the hearing was closed on August 23, 2011.

The Parties stipulated that the disputed matter was properly before the Arbitrator and there were no procedural issues to be resolved.

### **BACKGROUND**

The Employer is a governmental agency providing services typically provided by County Government in the State of Minnesota, which includes a Sheriff Department. It is in the Sheriff's Department where the instant grievance matter arose, more specifically in the Detective Division where investigative work has included assisting the Medical Examiner in death investigations.

The Union is the exclusive representative of all essential employees of the Stearns County Sheriff's Department Patrol Unit, which includes grievants in the instant matter.

The Employer and Union are Parties to a CBA covering the period of January 1, 2008 through December 31, 2010. This CBA was in effect at the time the instant grievance matter arose and therefore contains the applicable terms and conditions.

In 1993, the "Medical Examiner System" replaced the County Coroner in Stearns County. Under this new system Sheriff Department employees, classified as Detective/Deputy Medical Examiner, assumed the responsibility for the investigation of all unattended deaths occurring in Stearns County. A determination is made as to the manner and cause of all reportable deaths. This determination is achieved through a variety of post-mortem examinations conducted by, or at the direction, of the Detective/Deputy Medical Examiner and through consultation with the County's designated Medical Examiner.

The "Medical Examiner System" was adopted by Stearns County under the provisions of MS 390.31, subd. 1, sections 390.31 to 390.35. This statute provides for a "simplified system" for the investigation of the death of any person under a Medical Examiner appointed by the Board of Commissioners.

Following adoption of the "Medical Examiner System," the Employer arranged to qualify Detectives to become Detective/Deputy Medical Examiners. A notice of opportunity for appointment to these positions was posted and several employees indicated interest. Some were presently in the Detective job class and some were in the Sergeant class. If in the Sergeant class a demotion to the Detective class was involved, as the Detective pay grade was 20 while the Sergeant pay grade was 21.

Those Detectives and Sergeants selected to become Detective/Deputy Medical Examiner were required to participate in a training program designed to prepare them for the Medical Examiner investigative duties and responsibilities. Upon satisfactory completion of the required training, they were promoted to Detective/Deputy Medical Examiner and were compensated in pay grade 22.

Due to budget considerations, the Employer sought operational changes that would reduce expenses. One of the functions evaluated for cost reduction was the Medical

Examiner System, which was of concern due to overtime costs. The Sheriff also wanted to increase criminal investigations and the Detective/Deputy Medical Examiner function was taking staff time away from that function.

The Detective/Deputy Medical Examiners regularly worked a Monday through Friday day shift. The Detective/Deputy Medical Examiner employees rotated through an on-call system, where one of the five would be in on-call status every five weeks. The purpose of the on-call arrangement was to cover the Detective/Deputy Medical Examiner's off duty time. Most of their Medical Examiner work occurred during off duty hours and days.

The CBA provides a compensation arrangement for the Detective/Deputy Medical Examiners when in on-call status:

“12.3. The employer will provide a minimum of 12 hours pay at straight time or comp at straight time for any bargaining unit employee who is assigned to on-call weekly coverage. The employer shall pay three (3) additional hours of straight time pay, for a total of 15 hours straight time pay, for any bargaining unit employee who is assigned to on-call weekly coverage, in recognition of time spent processing telephone calls while on-call.”

In addition to the above on-call compensation, an employee received overtime pay if leaving home to investigate a death situation. Over the past several years, overtime pay for the five Detective/Deputy Medical Examiners averaged about \$50,000 per year, with an average per employee of about twice the average of other Deputies.

Although the Employer made attempts to encourage employees to reduce overtime costs, these attempts were not successful as much of the overtime was self-directed. It was difficult to establish a fixed policy establishing when necessary to go to the death scene and when the matter could be handled via voice communication.

In early 2010, the Employer began to discuss contracting with the Ramsey County Medical examiner to handle the Stearns County Medical Examiner function. The Ramsey Medical Examiner assured Stearns County that its costs could be reduced by the following arrangement:

- All deaths in Stearns County would be reported directly to the Ramsey Medical Examiner's Office.
- Guidelines as to what constitutes a medical examiner case would be provided to all law enforcement personnel, medical facilities and nursing homes and training would be provided at no charge to help with the transition.
- Law enforcement personnel responding to a death scene would report the death directly to the Ramsey Medical Examiner's Office from the death scene.

It would not be necessary to have Sheriff's personnel serving as Deputy Medical Examiners responding to death scenes in the future.

- Determination of case acceptance and if an autopsy is required would be based on the same criteria currently used by the Ramsey Medical Examiner's Office for all other counties.
- All terminal registrations would be made directly to the Ramsey County Medical Examiner's Office.
- All Cremation approvals would be made directly to the Ramsey County Medical Examiner's Office.

The Ramsey County Medical Examiner projected the following cost reductions if the above arrangement was implemented:

- The Autopsy rate could be reduced by 10% based on 2009 data, resulting in an estimated cost reduction of approximately \$20,000 per year
- Funding for Detective/Deputy Medical Examiners could be removed from the Stearns County budget since they would not be required to respond to death scenes.
- Total estimated cost of the Ramsey Medical Examiner's services would be between \$192,000 and \$202,000, not including any testimony that may be requested or transportation of deceased to the Ramsey Medical Examiner's Office for examination.

The Sheriff notified the Detectives that he was exploring options related to having Ramsey County Medical Examiner perform Medical Examiner services for Stearns County. The Sheriff found that a similar arrangement was working well for another metro area County and that 85 of the 87 Minnesota Counties were using this system.

On June 18, 2010, the Union put the Employer on notice of its position that the Union views the Medical Examiner work by employees as bargaining unit work and that the Employer has an obligation to meet and negotiate over any potential change to the Detective/Medical Examiner position.

On June 23, 2020, the Employer responded to the Union that the Employer was in the process of reviewing the possibility of discontinuing having the Stearns County Detective/Deputy Medical Examiner provide medical examiner functions/services. The Employer informed the Union that it was willing to meet with the Union to discuss the effects of this action, if it were to be taken.

On July 12, 2010, the Stearns County representatives met with Union representatives to discuss contracting with Ramsey County for the Medical Examiner work that was being performed by Detective/Deputy Medical Examiners. Union representatives expressed concern about taking away bargaining unit work and how it would affect pay.

On July 13, 2010, the Stearns County Board of Commissioners approved the Sheriff's proposal to contract with the Ramsey County Medical Examiner to provide Stearns County with a Medical Examiner System, including records keeping and investigations.

On July 20, 2020, Stearns County representatives met again with Union Representatives regarding the contract with Ramsey County for Medical Examiner Services. The Employers position was that the work of Detective/Deputy Medical Examiners would now be in Pay Grade 20, the same as other Detectives, but the change would not be considered a demotion or reclassification. It would be considered a restructuring of an existing classification. The Employer explained the change was estimated to reduce the County's cost by \$200,000 and allow the Detectives that had been doing the Medical Examiner function to focus more time on criminal cases and paper work. The Employer also explained that the arrangement with Ramsey County is similar to the practice of approximately 85 of 87 Minnesota counties and that local police will now deal directly with the Ramsey Medical Examiner's Office.

At the July 20, 2011 meeting, the Union raised concern about the loss of on-call pay and that the employees were paid as Detectives before they were qualified as Deputy Medical Examiners and moved to the higher pay grade. There was

considerable discussion on how the pay of the employees would be handled and how overtime would be handled. There was agreement to extend the timeline for filing a grievance to allow time for the Union to review options with the membership.

On August 16, 2010, the Parties met again. The Union's goal was to freeze wages and maintain the on-call and overtime arrangement. The Union's position was also reiterated about the work being bargaining unit work. The Employer's position was that the three-hour (3) pay was in recognition of handling phone calls and was specifically negotiated only for the Medical Examiner work.

On August 25 2010, the Union Business Agent sent a letter to the Employer's Human Resources Director setting forth the Union's formal response that the effect of contracting out the work of the Detective/Deputy Medical Examiners constitutes a "reclassification" of their positions, and as such, the Employer has not followed its own policies. Further, if the employees are downgraded to pay grade 20, the Union will view it as a layoff, providing for exercise of seniority rights. Lastly, the Union put the Employer on notice that it will seek enforcement of the CBA, making its members whole in all respects and continuing until the signing of an agreement resolving the matters in dispute.

On August 31, 2020, the Employer responded to the Union, expressing disagreement with the Union's assertions and restating the Employer's position on the issues in dispute. The Employer offered to make certain concessions provided the Union would be in agreement with the balance of the reclassification as was noted. The Employer went on to indicate its willingness to meet and confer with the Union over the effects of the current reclassification and confirmed the Employer's agreement to move the matter directly to mediation and to extend the timeline for filing a grievance.

A written contract was executed between Stearns County and the Ramsey County Medical Examiner, dated September 1, 2010, setting forth in detail the agreement for provision of Medical Examiner services.

On September 3, 2010, the Union filed a fourth (4<sup>th</sup>) step grievance with the Employer. The Union, among other things, alleged violation of the CBA, Articles II, VIII and IX.<sup>1</sup> The Union requested that the employees at issue be made whole in all respects including, but not limited to, return of their Medical Examiner duties to the bargaining unit, returning the employees to their Detective/Deputy Medical Examiner classification Grade 22, and back pay including step increases.

Thereafter the Parties attempted to resolve the matters in dispute through the CBA Grievance Procedure, but without success.

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<sup>1</sup> “Article II – Recognition:

2.1 The Employer recognizes the Union as the exclusive representative under the Public Employment Labor Relations Act of 1971 as amended, for all personnel in the following bargaining unit: All essential employees of the Stearns County Sheriff’s Department Patrol Unit who are employed more than one hundred (100) work days per year, excluding supervisory and confidential employees.”

“Article VII – Seniority:

8.3. Any employee who is covered by this Agreement and who is subsequently promoted or transferred to any position with the Sheriff’s Department shall retain seniority in his/her previous classification.

8.4. Except in those instances where senior employees are not qualified to perform remaining work duties, seniority shall determined the order of lay-off, and recall from lay-off. Lay-off shall be in inverse order of seniority within each classification, provided that an employee who is to be laid off and who has previously served in a lower or equal pay grade by this Agreement may request to exercise seniority rights in such classification.”

“Article IX – Discipline:

9.1. The Employer will discipline employees for just cause only. Discipline will be in the form of:

- Oral reprimand
- Written reprimand
- Suspension
- **Demotion**
- Discharge

[Emphasis Added]

On November 10, 2010, the Union filed notice with the Bureau of Mediation Services that it was taking the issues in dispute to the arbitration step of the CBA Grievance Procedure and requested a list of arbitrators.

The disputed matters are now before the instant arbitration proceeding for resolution.

### EXHIBITS

#### JOINT EXHIBITS:

- J-1. Collective Bargaining Agreement, effective 1/1/2008 – 12/11/2010
- J-2. Grievance Documents, dated 9/2/2010 and 11/10/2010
- J-3. Excerpt from Policy Manual, “5.2, Reclassification.”
- J-4. Excerpt from Policy Manual, “Salary Reclassification to a Lower Range.”
- J-5. Letter, dated 6/18/2010, to J. Thorsten from N. Wetschka, RE: Detective/ME Work - Obligation to Meet & Confer
- J-6. Letter, dated 6/23/2010, to N. Wetschka from J. Thorsten, RE: Medical Examiner Operations - Willing to Meet & Confer on “effects.”
- J-7. Letter, dated 8/25/2010, to J. Thorsten from N. Wetschka, RE: Detective/Medical Examiner Issue - failure to follow policy.
- J-8. Letter, dated 8/31/2010, to N. Wetschka from J. Thorsten, RE: Stearns County Detective/Medical Examiner Issue – matter not a layoff.
- J-9. P.A. Contract Agreement – between County of Stearns and M.B. McGee, P.A., dated 7/17/2010.

#### UNION EXHIBITS:

- U-1. Stearns County Resolution, RE: Adoption of Medical Examiner System, dated 12/29/1992.
- U-2. Payroll Status Sheets, RE: T. DesMarais demotion effective 1/16/2001; V. Weiss demotion effective 1/3/2009; and D. Winkels demotion 2/26/2003.
- U-3. Payroll Status Sheets, RE: T. DesMarais out of class assignment effective 8/4/2003; T. DesMarais promotion effective 9/3/2003; T. Jansky out of class assignment 8/1/2004 through 8/1/2005; T. Jansky out of class extension 8/1/2005; T. Jansky promotion effective 1/9/2006; V. Weiss out of class assignment

6/12/2009 through 1/3/2010; V. Weiss out of class continuation 1/1/2010; T. Weiss promotion effective 1/3/2010; D. Winkels out of class assignment 8/4/03; T. Winkels promotion effective 4/26/2004.

U-4. Memo, dated, 6/15/2010, Lentz to Sheriff Patrol Sgts, RE: Potential change in response to deaths.

U-5. Record, Stearns County Board of Commissioner's Meeting, 7/13/2010, RE: Approval of contract modifications with Ramsey County Medical Examiner.

U-6. Seniority Hours, Stearns County Sheriff's Patrol Unit, RE: Date of promotion to Detective/Deputy Medical Examiner (D. Winkels, T. DesMarais, V. Weiss).

U-7. Payroll Status Sheet, RE: T. DesMarais reclassification effective 9/1/2010; T. Jansky reclassification effective 9/1/2010; V. Weiss reclassification effective 9/1/2010; D. Winkels reclassification effective 9/1/2010.

U-8. Letter, dated 1/21/2011, from Thorsten to T. DesMarais, RE: Duties of Deputy Medical Examiner, Grade 22, eliminated and all in class being moved to Detective classification, Grade 20.

U-9. Exhibit showing effect on rates for T. DesMarais, D. Winkels, T. Jansky and V. Weiss, 7/27/2010, 1/1/2011 and 1/1/2012.

U-10. Accounts Payable Invoice Report, 7/17/2010 to 4/19/2011, RE: Fees paid to Dr. Michael McGee, Medical Examiner.

U-11. Minnesota Statutes, Chapter 390, Coroner; Medical Examiner

U-12. Memo, dated 1/25/2010, from M. Lieser to Dr. Michael McGee, RE: Meeting with Dr. McGee about 2008 ME stats.

EMPLOYER EXHIBITS:

E-1. Position Vacancy Announcement, for Detective/Deputy Medical Examiner, closing date 12/1/2008, with duties, responsibilities, minimum qualifications and desirable knowledge, skills and abilities noted.

E-2. Schedule of position titles in the Sheriff's Department with pay grade noted for each.

E-3. Stearns County Medical Examiner Year-End Reports for 2005, 2006, 2007, 2008 and 2009.

E-4. E-mail messages between Mary Lieser and Dr. Michael McGee, dated 3/8/2010, with an attachment from Dr. McGee containing recommendations to decrease costs for operating the Stearns County Medical Examiner's Office.

- E-5. Record, County of Stearns Board of Commissioners Meeting, dated 7/13/2020, RE: Board approval of contract modifications with Ramsey County Medical Examiner's Office.
- E-6. Exhibit showing salary progression matrix for Stearns County pay grades.
- E-7. Exhibit comparing Detective/Medical Examiner overtime expense to non-Detective/Medical Examiner expense for years 2006 through 2010.
- E-8. Bar chart showing comparison of Patrol Unit overtime expense to Detective/Medical Examiner overtime expense for years 2006 through 2011.
- E-9. Personal notes of Thorsten, RE: Meeting with Union on 7/12/2010 about expanding Ramsey County Medical Examiner Contract and freezing wages of employees affected.
- E-10. Agenda for meeting between Employer and Union, regarding effect on Detective/Medical Examiner positions if Medical Examiner services outsourced to Ramsey County Medical Examiner.
- E-11. Personal notes of Dennis Jones and Jennifer Thorsten, RE: Meeting with Union on 7/20/2010 about effect on Detective/Medical Examiner positions due to expansion of contract with Ramsey County Medical Examiner.
- E-12. Memo, dated 8/5/2010, from N. Wetschka to J. Thorsten, RE: Request for clarification and additional information regarding effect of Stearns County's expanded contract with Ramsey Medical Examiner.
- E-13. Personal notes of Jennifer Thorsten from meeting with Union on 8/16/2010, RE: Effect of Stearns County's expanded contract with Ramsey Medical Examiner.
- E-14. Personal notes of Jennifer Thorsten from meeting with Union. RE: Effect of Stearns County's expanded contract with Ramsey County Medical Examiner.
- E-15. Exhibit showing effect on wage rates for T. DesMarais, D. Winkels, T. Jansky and V. Weiss on 7/28/2101, 1/1/2011 and 1/1/2012.
- E-16. Findings and decision, Stearns County Personnel Board of Appeals, RE: Veterans Preference appeal by Danial Winkels.
- E-17. Transcript from hearing conducted by Stearns County Personnel Board of appeals, RE: Appeal by Danial Winkels under Veterans Preference Act.
- E-18. Tentative Letter of Agreement between County of Stearns and LELS, Inc., Local #294, Patrol Unit, RE: Detective calls while providing weekly on-call coverage.
- E-19. Letters, dated 1/21/2011, J. Thorsten to T. DesMarais, V. Weiss, T. Jansky and D. Winkels, RE: Detective/Medical Examiner duties eliminated 9/1/2010 and all individuals in this classification at pay Grade 22 moved to the Detective classification at Grade 20. Letter, dated 12/2/2010, J. Thorsten to D. Winkels, RE:

Winkels moved from pay Grade 22 to Detective, Grade 20 and giving notice to Winkels of his Veterans Preference Rights.

### **POSTIONS OF THE PARTIES**

#### **THE UNION SUPPORTS ITS POSTION WITH THE FOLLOWING:**

- The Employer's actions violated the CBA in several ways:
  1. The Employer failed to engage in impact bargaining over the effects of the changes to the death investigation system on the Grievant's pay, benefits and other terms and conditions of employment.<sup>2</sup>
  2. The change in the Grievant's employment status is properly characterized as a demotion; it is disingenuous for the Employer to call these changes a reclassification, because it did not follow any steps of the mandatory procedure set forth in County policy for reclassification of positions. Because the CBA permits demotions only for just cause, which the Employer acknowledges it did not have, these demotions violated the CBA.
  3. The Employer violated the CBA by denying step increases to the Grievants without cause, which it did as part of the Grievants' reduction in pay following the demotion.<sup>3</sup>
  4. Insofar as the changes to the death investigation were made for budgetary reasons, as the Employer claims, the Grievants should have

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<sup>2</sup> In support of its argument, the Union cites *Independent Sch. Dist. No. 88, New Ulm v. School Service Employees Union Local 284*, 503 N.W.2d 104 (Minn.1993); also, *General Drivers Union Local 346 v. Indep. Sch. Dist. No. 704*, 283 N.W.2<sup>nd</sup> 524 (Minn. 1979)(same).

<sup>3</sup> Article XXI – Pay Plan:

21.2. An employee's anniversary date shall be the date used for step movement purposes. The anniversary date is the date of appointment to an employee's current position.

21.6. Step increases may be denied by the employer for cause . . ."

been laid off according to the procedure that the Union negotiated in the CBA. This would have allowed three of the Grievants to exercise their seniority rights to become Sergeants and to earn a higher hourly rate than they are currently earning as Detectives.

- While the Employer did meet with the Grievants several times prior to the effective date of the contract with Dr. McGee, these meetings were purely informational.
- By any standard definition, the Grievants were demoted as they were reduced in rank and pay grade to a position carrying lower compensation.<sup>4</sup>
- Characterizing it as a demotion is consistent with how the Employer had implemented previous changes in the Grievant's employment status. Three of the Grievants were moved from the rank of Sergeant to the rank of Detective, (pay grade 20), which was documented as a demotion. When the Grievants were moved to Detective/Deputy Medical Examiner (Grade 22) it was documented as promotion. In at least two cases, the Grievants obtained the promotions through a formal application and interview process.
- Although the Employer chooses to call the reduction a reclassification, there is no evidence that the procedure required to reclassify the Detective/Deputy Medical Examiner positions was followed. The County policy to reclassify positions requires a written request by the Department Head, a job analysis by the Human Resources Director, and a review by the County Board or a standing committee.
- The Employer's contention that, even if the changes in the Grievant's employment status were not a reclassification *per se*, it was a "best fit." This

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<sup>4</sup> In support of its argument, the Union cites *Robert's Dictionary of Industrial Relations*, 4<sup>th</sup> Ed. (1994); also, *amend v. County of Isanti*, 486 N.W.2<sup>nd</sup> 3, 6 (Minn. App. 1992); also, *Adkisson V. Indep. Sch. Dist. No. 13*, 1998 WI, 778321, \*2 (Minn. App. Nov. 10, 1998)

- is a self-serving exception unilaterally carved out from the Employer's own policy.
- The Employer compounded its lack of process by violating the statutes governing the selection of a death investigation system and appointment of a Medical Examiner. Although the Employer contends it has reverted from the simplified investigation system to a standard system, no resolution was adopted by the County Board to authorize this change, as is required under statute. The statute requires that the County Board must appoint a medical examiner. Yet, according to Board Minutes, the Board did not act to appoint Dr. McGee as the County Medical Examiner, but merely approved a modification to his existing contract with the County. This is in contrast to the procedure followed in 1992 when the County Board adopted a formal resolution authorizing the simplified death investigation system and appointed Dr. Fredrickson as Medical Examiner.
  - The Employer contends its decision to remove the Grievants from the Detective/Deputy Medical Examiner position was for budgetary reasons. Insofar as this is true, the Grievants should have been laid off following the procedure set forth in the CBA. This is an important seniority-base benefit included in the CBA.
  - The intent of the CBA lay-off provision is that when staffing changes are needed for budgetary reasons, the more senior employees should have priority from losing their job.
  - Had the proper lay-off procedure been followed, the Grievants who were previously Sergeants could have bumped back into the Sergeant rank.
  - Grievant Weiss has since been promoted to Sergeant, but could have become a Sergeant immediately after losing his Detective/Deputy Medical Examiner position, if the proper lay-off procedure had been followed.

- It is unfair and contrary to the intent of the seniority provisions in the CBA that the Grievants should be unilaterally reassigned to the rank of Detective and lose two pay grades as a result.
- The Grievants should be reinstated to the position of Detective/Deputy Medical Examiner and made whole. Alternatively, the Grievants should be permitted to exercise their seniority rights in classification(s) in which they served prior to their promotion to Detective/Deputy Medical Examiner.

THE EMPLOYER SUPPORTS ITS POSITION WITH THE FOLLOWING:

- The appropriate designation for the change in the Grievant's status was a reclassification rather than a demotion of lay-off.
- Although the Union wanted the change to be considered a layoff, the Employer considers it a restructuring of the existing Detective classification.
- The matter is not a lay-off, because the Detective classification was already in existence and there was no separation of employment for any of the Grievants, or reduction of the workforce.<sup>5</sup>
- Neither was the change a non-disciplinary demotion, nor was it a disciplinary action in any respect.<sup>6</sup> A demotion is a management right and may be exercised as long as there is some reasonable basis in making the decision.
- Treating the change as a demotion could impact the Grievants in a negative manner as Section 5.4 of the Personnel Policy provides that, "In no case shall the employee's salary exceed the maximum of the salary range for the position to which he/she has been demoted."

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<sup>5</sup> The Employer supports its argument by citing *Elkouri & Elkouri, How Arbitration Works*, Sixth Edition at pages 782-783.

<sup>6</sup> The Employer supports its argument by citing *Elkouri & Elkouri How Arbitration works*, Sixth Edition at pages 799 – 802.

- The Employer met with the Union in good faith over the impact of the County's decision to contract with Ramsey County for Medical Examiner services. The County's decision is a management right set forth in Minn. Stat. Sec. 179A.07, Subd. 1.<sup>7</sup>
- The decision to contract with the Ramsey Medical Examiner for Medical Examiner services is within the definition of "matters of inherent managerial policy," including, but not limited to such areas of discretion as "the functions and programs of the employer and the organizational structure." The County also has specific statutory authority to have Ramsey County perform these services.<sup>8</sup>
- There should be no dispute that the appointment of individuals to assist the medical examiner is a management function of the medical examiner as set forth in Minn.<sup>9</sup> Stat. Sec. 390.252.
- Both the County's decision to utilize the Ramsey County Medical Examiner and the decision not to utilize the County's Detective/Deputy Medical Examiners were statutory rights.
- The law does not support the Unions argument that the County needed to take this action by resolution. Minn. Stat. Sec. 390.252 allows the County Board to contract with the Ramsey County Medical Examiner with out specific reference to whether this must be by resolution.
- Even in the event that the County's action should have been taken by resolution, the County Board's action was valid.<sup>10</sup>

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<sup>7</sup> Minn. Stat. Sec. 179.07, Subd. 1. "a public employer is not required to meet and negotiate on matters of inherent managerial policy."

<sup>8</sup> "A county board may contract to perform coroner or medical examiner services with other units of government or their agencies under a schedule of fees approved by the board."

<sup>9</sup> Minn. Stat. Sec. 390.252. "A coroner or medical examiner may appoint one or more investigators, with such qualifications as the coroner or medical examiner deems appropriate ..."

- In fact, the existing medical examiner has been retained and the Ramsey County medical examiner has simply expanded their services.
- The County's decision was a permissible exercise of a management right even under a subcontracting standard. In the New Ulm School District case, the Court indicated that the decision to subcontract was an inherent managerial right.<sup>11</sup>
- The thinking of many arbitrators is that, in the absence of contractual language permitting or forbidding subcontracting, subcontracting will be generally permitted provided that:<sup>12</sup>
  1. The action is performed in good faith;
  2. It represents a reasonable business decision;
  3. It does not result in the subversion of the labor agreement; and
  4. It does not have the effect of seriously weakening the bargaining unit or important parts of it.
- On the first and second factors noted above, the Personnel Board of Appeals, acting as a Veterans Preference Panel, found that the County's action was performed in good faith and was a reasonable business decision.<sup>13</sup>
- On the third factor noted above, the County's action has not result in subversion of the CBA. The CBA continues in full force and effect and the Parties are currently in negotiations.

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<sup>10</sup> The Minnesota Supreme court has stated that: "Generally, where the statute requires a resolution, any official action, though not in the form of a resolution, may be one in legal effect. Thus, although the motion made by the board lacked the formal attributes of a resolution, the deficiency of form is not fatal." *Lindahl v. ISD No. 306*, 270 Minn. 164, 168-169, 133 N.W.2d 23,26 (1965).

<sup>11</sup> Cited was *ISD No. 88, New Ulm v. School Services Employees Union Local 284*, 503 N.W.2d 104 (Minn. 1993).

<sup>12</sup> Cited was *Elkouri & Elkouri, How Arbitration works*, 749 (5<sup>th</sup> ed. 1997) quoting *Shenango Valley Eater Co.*, 53 L.A. 741, 744-45 (McDermott, 1969).

<sup>13</sup> See Employer Exhibits #16 and #17.

- On the fourth factor noted above, the County's action did not have the effect of weakening the bargaining unit or important parts of it. The number of employees was not reduced as was the case in *New Ulm*, where all of the work in the bargaining unit was to be eliminated, or *General Drivers*<sup>14</sup> where all of the drivers were to be eliminated.
- The County did not violate the CBA. Contrary to the Union's assertion that the County acted unilaterally, the County communicated and met with the Union where the Parties exchanged information and positions on the matters at issue. A number of scenarios were discussed and the evidence (County Exhibit #18) shows that the County did engage in impact bargaining with the Union.<sup>15</sup>
- The County did not violate Articles II, VIII or IX the CBA. The employees remain in the bargaining unit, have retained their seniority, no one was reduced to part-time status or suffered a loss of benefits.
- The only contractual reference by the Union at the hearing was that the Grievants were demoted and that a demotion can only occur for just cause, pursuant to Article IX - Discipline. The Sheriff testified that the County's action was not based on discipline in any respect. A demotion is not limited to a disciplinary action as noted in *Elkouri & Elkouri*, as long as there is a reasonable basis for making the demotion.<sup>16</sup>
- The County appropriately reclassified and placed the Detectives. In placing the Detectives in pay grade 20, the County followed the provisions of the

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<sup>14</sup> Cited was *General Drivers Union Local 346 v ISD 704, Proctor School Board*, 283 N.W.2d 524, 527-28 (Minn. 1979).

<sup>15</sup> Country Exhibit #18, is a tentative Letter of Agreement between the County and Union setting forth certain on-call compensation provisions for Detectives

<sup>16</sup> Cited was *Elkouri & Elkouri, How Arbitration Works*, pages 799-802.

Personnel Policy. The CBA does not identify how a reclassified individual is placed in the new pay grade.

- Personnel Policy, Sections 9.42, details the procedure applicable to a Salary Reclassification to a lower pay range (Joint Exhibit #4). The Policy provides that any resulting salary reduction may not exceed 5% at any time and reductions would continue so that over a period of no more than three (3) years the salary would no longer exceed the range of the new classification. This is what the County did to the incumbents who remained Detectives.<sup>17</sup>
- There was no violation of the County's own policy, as the Union alleged, because the County did not need to perform a classification study. The Union's argument may be quickly dismissed by reference to the work "may" in the Policy. ("A reclassification . . . *may* be recommended by the respective Department Director . . .")
- Given that the reclassification was to a position that already existed and already had a salary Grade assigned to it, there was no need to perform a separate job analysis. A classification and compensation study had been done in 2007, which included Detective.
- The County followed any necessary procedure in reclassifying Detectives. The Human Resources Director reviewed the reclassification issue with the County Board's Classification Advisory Team, which is a subcommittee of the County Board. Any deviation from the Policy did not result in any harm to the Detectives.
- The first paragraph of the State's public sector labor law notes that any policies in this statute are "subject to the paramount right of the citizens of this state to keep inviolate the guarantees for their health, education, safety

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<sup>17</sup> One individual was promoted and is no longer a Detective. No dispute or evidence was presented on the placement of this individual in his new position.

and welfare.”<sup>18</sup> The Sheriff’s decision was consistent with these goals, by enabling Detectives to focus needed attention to the investigation of crimes.

### **DISCUSSION**

Of key importance in reaching a finding in arbitration proceedings is attention to the issues in dispute. In the instant case, the Parties are not in agreement on how the issue(s) in dispute are to be stated. Therefore, it is incumbent on the Arbitrator to address the issue(s) in a manner that best identifies the dispute.

In the instant case, the Employer has simply stated the issue as whether there is a violation of the terms and conditions set forth in the CBA. The Union’s statement of issues goes somewhat beyond the CBA provisions, *per se*, and includes the question of whether action of the Employer was in accordance with applicable laws and regulations and was conducted in good faith.

The record shows that the Employers motivation for making the change in its Medical Examiner System was to reduce costs and increase efficiency, via expanding its contract with the Ramsey County Medical Examiners Office. The record indicates this is being accomplished by essentially relieving the Sheriff’s Department of non-criminal death investigation activity, here-to-for performed by Detective/Deputy Medical Examiner staff, and reducing the number of autopsies performed. The record shows that these changes are authorized under state statute and now make Stearns County’s Medical Examiner System consistent with nearly all other Counties in Minnesota.

In today’s economy, the need to cut costs where practicable and increase efficiency is axiomatic, often a necessity rather than an option. In the instant case, there is expectation of a significant cost saving and improvement in the quality of service. It allows the staff formerly classified as Detective/Deputy Medical Examiner to focus their full attention on needed criminal investigations. It also potentially increases

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<sup>18</sup> Cited was Minn. Stat. 179A.01(a).

efficiency in the handling of Stearns County Medical Examiner services by centralizing them in the Office of the Ramsey County Medical Examiner, who also provides this specialized service to other agencies.

The effect of the expanded contract with Ramsey County Medical Examiner's Office is that the duties previously performed by Detective/Medical Examiner employees are no longer required, as most of these duties are now being performed by the Ramsey County Medical Examiner's Office and local police agencies. Certain death situations, such as those where there is evidence of criminal activity will continue to be investigated by the Stearns County Sheriff's Department, but will be handled by patrol officers and supervisors, as are other criminal situations.

The record shows that, prompted by budget considerations, the Employer began to explore contracting with the Ramsey County Medical Examiner's Office around the beginning of 2010. The Union became aware of this several months later. A number of meetings and communications took place between the Employer and Union in the months before the contract with Ramsey County Medical Examiner's Office was executed in the fall of 2010. The record shows that these communications and meetings included discussions about the effect this would have on the Detective/Deputy Medical Examiner staff, including positions of the Parties on such matters as salary rates, overtime and classification. The record shows that, at the time of the hearing, the Parties were involved in negotiations for a new CBA to be effective in 2011. These negotiations have included compensation issues affecting employees that were classified as Detective/Deputy Medical Examiner and are now classified as Detective.

The employees that were titled Detective/Deputy Medical Examiner are now titled Detective, save one that has been promoted to Sergeant. The record shows considerable disagreement between the Parties concerning the proper definition of the movement of the employees titled Detective/Deputy Medical Examiner into the title of Detective. The Employer defines this as a "reclassification" or "restructuring" of the duties of the Detective classification, arguing that, as such, it does not involve

demotion or lay-off. The Employer argues that this is appropriate, because the Detective/Deputy Medical Examiner employees were previously in the Detective classification and performed Detective duties along with their Medical Examiner duties.

The Union's position is that the movement of the Detective/Deputy Medical Examiner employees into the Detective classification is a lay-off. The Union contends that it doesn't meet the definition of a demotion because there is no showing of cause as is required by the CBA. The Union supports its position with reference to the fact that when the Detective/Deputy Medical Examiner employees were advanced to that title from Detective the Employer's Personnel Records show it as a promotion.

The Union also points out that several of the employees who ultimately were titled Detective/Medical Examiner were previously Sergeants and, according to Personnel Records, were demoted into the Detective classification while they were acquiring training to qualify for Detective/Medical Examiner. Upon becoming qualified they were, according to Personnel Records, promoted into the Detective/Deputy Medical Examiner title and were advanced in salary grade from 20 to 22. Another indication that the Employer did not consider the employees to be in the Detective classification is that while in training for Detective/Deputy Medical Examiner, records show them as working "out of class."

### **FINDINGS**

- I. The Arbitrator finds that an expansion of the contract with Ramsey County Medical Examiner's Office does not constitute a violation of the CBA, except as referenced in Finding #III.
  - The action by Stearns County was in accordance with its statutory authority.

- The action by Stearns County was performed in good faith for a reasonable business purpose.
  - The expansion of the contract with Ramsey County Medical Examiner's Office by Stearns County is not limited by any term and condition set forth in the CBA. The rights reserved by Stearns County in the CBA authorizing this action are explicitly set forth in Article V – Employer Authority and Article XXIV – Complete Agreement And Waiver Of Bargaining. The Employers reserved managerial rights under the CBA are also consistent with the provisions of Minn. Stat. Section 179A.07, Subd. 1.
  - The expansion of the contract with Ramsey County Medical Examiner's Office does not have the effect of subverting the CBA or weakening the bargaining unit. The record shows no reduction of employees in the bargaining unit or barrier to collective bargaining with the Union.
- II. The Arbitrator finds that although the Employer has explicitly reserved the right to expand its contract with the Ramsey County Medical Examiner's Office, the Employer is obligated to engage in impact bargaining with the Union, to the extent that such bargaining is not so inextricably intertwined with exercise of its managerial rights so as to render them moot.
- The record shows that the communications, meetings and mediation between the Employer and Union, during the period preceding the change of Detective/Deputy Medical Examiners to Detective, included exchange of information, discussion, positions and counter positions, which can reasonably be interpreted as having constituted impact bargaining. Further, the record shows that impact bargaining continued as of the date of the instant hearing.
- III. The Arbitrator finds that the movement of the Detective/Deputy Medical Examiner employees into the Detective classification title constitutes a layoff

and is subject to the provisions of the CBA, Article VIII – Seniority, particularly Sections 8.3 and 8.4.

- Although demotion was raised in the hearing, the common usage of the term demotion usually is in reference to movement out of a position where work does exist. The term layoff more commonly refers to separation from a job where there is a lack of work, which is most applicable to the instant case where the work no longer is being performed.
- Employees appointed Detective/Deputy Medical Examiner were required to acquire qualifications not required of other employees in the Detective classification. Employees from the Sergeant classification voluntarily demoted to Detective and were identified as working out of class while acquiring the necessary qualifications. When the necessary qualifications were achieved, advancement into the Detective/Deputy Medical Examiner title was processed and recorded as a promotion.
- Although the Employer argues that the Detective/Deputy Medical Examiner work was merely an extension of Detective work, the Employers personnel records and processes do not support this argument. It is clear from the record that different qualifications were required, a different classification title was used and the work was different and valued at salary grade 22, versus grade 20 for Detective. Employer Exhibit #2 lists Detective/Deputy Medical Examiner as a separate classification title with a different salary grade than any other job classification in the Sheriff's Department.
- The employees appointed to the Detective/Deputy Medical Examiner title, followed the Employer's requirement of demotion, working out of class while acquiring the required qualifications and advancing through promotion, It is therefore axiomatic that they be afforded the

layoff seniority rights provided under the CBA, when the work that formed the basis for their classification title no longer exists.

**AWARD**

**Employees removed from the Classification title of Detective/Deputy Medical Examiner, due to the elimination of work that distinguishes their title from the work of Detective, are subject to the provisions of Article VIII – Seniority and are entitled to the lay-off seniority rights provided therein.**

**CONCLUSION**

The Parties are commended on the professional and thorough manner with which they presented their respective cases. It has been a pleasure to be of assistance in resolving this grievance matter.

Issued this 22 day of September 2011 at Edina, Minnesota

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ROLLAND C. TOENGES, ARBITRATOR