

IN RE ARBITRATION BETWEEN:

TEAMSTERS LOCAL 320

and

DAKOTA COUNTY

DECISION AND AWARD OF ARBITRATOR

BMS 11-PN-0466

JEFFREY W. JACOBS

ARBITRATOR

November 7, 2011

IN RE ARBITRATION BETWEEN:

Teamsters Local 320

and
Dakota County

DECISION AND AWARD OF ARBITRATOR
BMS Case # 11-PN-0466

APPEARANCES:

FOR THE UNION:

Paula Johnston, Attorney for the Union
Halla Elrashidi, Attorney for the Union

FOR THE COUNTY:

Frank Madden, Attorney for the County
Nancy Hohbach, Deputy Employee Relations Director
Matt Smith, Director of Financial Services

PRELIMINARY STATEMENT

The parties were unable to resolve certain issues concerning the terms of the collective bargaining agreement and requested mediation from the Bureau of Mediation Services. Negotiation sessions were held and the parties negotiated in good faith but were ultimately unable to resolve certain issues with respect to the labor agreement. This is the parties' first labor agreement. The Bureau of Mediation Services certified 3 issues to binding interest arbitration pursuant to Minn. Stat. 179A.16, subd. 7 by letter dated May 23, 2011. Immediately prior to the hearing, the parties were able to settle the health insurance issues and will be arbitrating only the general increase and merit pay issues.

The hearing in the above matter was held on October 11, 2011 at the Dakota County Administration Offices in Hastings, Minnesota. The parties submitted Briefs that were received by the arbitrator on October 27, 2011 at which point the record was closed.

ISSUES PRESENTED

The issues certified at impasse and in dispute at the time of the hearing are as follows:

1. Wages 2011 – General Increase, Appendix A
2. Wages 2011 Merit Salary – Article 29

WAGES – 2011 – GENERAL INCREASE

UNION'S POSITION

On the issue of a general increase in wages the Union's position was for a 3.00% increase effective January 1, 2011. The Union noted that its final position was somewhat confusing and agreed it would use the chart set forth below for illustrative purposes only. The Union asserted that a 3.00% general increase across the board applicable to the employees wherever they fall on the salary schedule was reasonable and supported by the evidence:

APPENDIX A

	Minimum	Control Point Q3	Maximum
Correctional Deputy Inmate Services	\$43,363	\$54,075	\$57,577
Outreach Coordinator	\$45,732	\$57,371	\$61,182
Inmate Counselor	\$48,204	\$60,873	\$65,199

In support of its position for a 3.00% wage increase the Union made the following contentions:

1. **EXTERNAL COMPARISONS:** The Union pointed to the external comparables and noted that recent arbitral decisions support the claim that Hennepin and Ramsey Counties should be used along with Anoka, Carver, Olmstead, Scott and Washington Counties. Since there are no comparable positions to Inmate Counselor or Inmate Services Coordinator in any of the external comparable counties, the Union focused on the Correctional Deputy position, for which there are comparable positions in those other jurisdictions.

2. The Union noted that the average starting rate for these counties is \$40,323.29, see amended Appendix A to the Union's Brief,¹ and that even if the Union's position were awarded Dakota County's pay scale would be only slightly above that rate. The average for the top wage rates for the Correctional Deputy with the Union's increase would still be slightly lower than the average and would be considerably lower than the average if the County's position were awarded.

¹ The Union noted that some of the information presented at the hearing was inaccurate and amended its figures in the Brief, with the agreement of the County, to present accurate information. The figures used in this matter were thus those in the relevant portions of the Union's Post Hearing Brief with respect to Issue #1, general increase in wages.

3. Based on this, the Union asserted that it is reasonable to award a 3% based on the external comparables so Dakota County maintains its position with respect to relative position. It is currently the 3rd lowest of the comparable counties and the Union argued that it should not fall even lower.

4. The Union further asserted that Ramsey County, with its top wage rate of \$68,369.60, should be used as an external comparison and cited a prior award from 2002 by Arbitrator Miller that supported the view that Ramsey is an appropriate comparison since Dakota is the 3rd largest County in Minnesota. The Union noted that the wages for the correctional deputies are not competitive when compared to the average of the external comparison group. The average top wage rate is \$57,551.96 whereas the top rate in Dakota is \$55,900.00. Even if Ramsey County was removed from the calculation Dakota would still rank only 4th out of the 7 comparison counties.

5. The Union further noted that the many of the deputies are in fact just slightly lower in pay than the Control Point Q3 rate set forth in the wage scale. See Employer exhibit 37 and Appendix A. The Union asserted that a 3% increase would bring these employees into line with comparable rates of pay in the comparison counties and make Dakota's pay scale far more competitive than it is currently. The Union also noted that to perpetuate the Count's 0% increase would simply cause these employees to fall farther behind and create an even greater inequity in pay.

6. INTERNAL COMPARISONS. Internally, the Union noted that even though the AFSCME unit was settled for a wage freeze in 2011, there is no internal pattern yet established. The LELS units are not settled, as are many of the other units within the County. Thus the County cannot make the claim that there is some sort of pattern in wage settlements. Further, the MNA and Attorneys Association settled for some merit increases, See Union Tab 2, and that the fact that there is no pattern should actually militate in favor of increases rather than the other way around.

7. The Union noted that the standard arbitral measure in interest arbitration is what the parties would have negotiated for themselves absent interest arbitration. Here no clear answer appears since there is no “pattern” as set forth above and the fact that AFSCME settled for a 0% increase in apparent exchange for concessions on the health insurance issue does not create any sort of pattern. Further, while there has been a strong internally consistent pattern in Dakota County over time, even as noted by Arbitrator Bognanno in a prior award, the great weight of arbitral opinion holds that mere internal consistency is not the sole determining factor in rendering an appropriate award. It is but one such factor and is outweighed here by the lack of any pattern and the evidence of a disparity in the wage when compared to external jurisdictions.

8. ABILITY TO PAY: The Union further noted that the County has very large unreserved fund balances, See Tab 10. The Union pointed particularly to the reserve of more than 72% of total general Fund revenue and noted that this is far higher than the State Auditor’s recommendation of 35 to 50% of that Fund. Further, even though some economic indicators have fallen statewide, Dakota remains a very strong County financially and has a somewhat lower unemployment rate than the State or surrounding Counties. Their fund balance has actually increased over the past few years rendering any inability to pay argument unsupportable by the evidence. Finally, the Union noted that the proposed increases would be miniscule by percentage in comparison to the general fund balances, i.e. approximately 0.00039% in some cases.

Accordingly, the Union asserted that a 3% wage increase is justified and should be awarded.

MERIT PAY INCREASES

UNION’S POSITION

The Union combined the general wage increase and merit increase issues and made many of the same arguments in supports of its position with regard to merit pay as with the general increase issue. The Union’s position with respect to merit pay increases is a 3% increase for Role model performance, 2.5% increase for Achiever performance and 0% for learner/corrective Performance.

The Union noted that externally, there are no other Counties that offer merit pay increases but these employees are highly qualified and many of them exceed expectations and should be rewarded for this level of commitment, despite somewhat lower pay when compared to neighboring counties.

The Union thus asserted that these employees deserve merit pay increases as set forth above.

COUNTY'S POSITION

The County's position was for a 0% general increase and a 0% increase in merit pay. The County too combined its discussion of these issues for purposes of this arbitration. In support of this position the County made the following contentions:

1. The County began its discussion with a comprehensive analysis of the state of the economy both nationally, locally and statewide and asserted that since the fall of 2008 it is no secret that the economy has been struggling, even depressed by some measures. The County pointed to the shut down of State operations in the summer of 2011 as a mere example of just how tight budgets are in the public sector statewide and for the lack of appetite for taxpayers generally, many of whom are out of work themselves, to increase taxes to pay for government services.

2. The County then asserted that the widely accepted standard by which interest arbitrators determine cases is to decide what the parties would have negotiated for themselves in the absence of interest arbitration. The basis for collective bargaining is negotiations and not some more nebulous standard or what the Union could have achieved through a strike. The County cited multiple awards by several different Minnesota Arbitrators, including Arbitrator Bognanno who rendered an award in Dakota County in 2010, in support of this principle and asserted that one must resist the temptation to either split the difference or to lose sight of the underlying rationale for any such award – collective bargaining and not something else.

3. The County cited Arbitrator Bognanno's opinion at some length and pointed out his statements regarding how this County has fared despite falling revenues in state aids, taxes and other sources of funds. He noted that the County has done "a commendable job" in streamlining operations and cutting costs where it could and yet continuing to deliver quality services to its residents and maintain a top credit rating

4. **ABILITY TO PAY:** The County acknowledged that the Union's demands constitute a small percentage of its overall budget but asserted that simply because an employer can pay a requested increase does not mean that it should. Here the County pointed to the general discussion above and the marked downturn in the economy, and the prospect that it will continue its downward spiral into the foreseeable future, and further asserted that other factors should be given far more weight than any ability to pay or pay equity considerations. They are, on this record, minor factors at best and should be given very little weight by the arbitrator in determining the appropriate award on these two economic issues.

5. The County introduced testimony from the County Finance Director regarding the extraordinary efforts made to deal with declining revenues and to refute the assertion by the Union that a "fund balance" does not mean that the County sits on piles of money. The County asserted that the funds are in fact in most instances designated and earmarked in some fashion for various County programs or capital projects. Further, the mere fact that the County has acted in a fiscally responsible manner should not result in any sort of "penalty" by having to pay employees more than internal considerations and other statutory factors dictate.

6. **INTERNAL CONSIDERATIONS:** The County asserted that internal consistency is paramount in any interest arbitration and that this is especially true in this matter since there has been such a long and strong history of internal consistency in all of Dakota County's bargaining units and its unrepresented staff. The County representative characterized this relationship and history as quite remarkable and virtually unprecedented in Minnesota public employers.

7. The County asserted that this unit is seeking to break a pattern of internal settlements going back literally decades and that granting its request would upset the longstanding bargaining relationship the County has with this unit as well as all other units, especially those who have settled voluntarily through bargaining with the County. The County asserted that the risk is that a unit will wait and try to “whipsaw” the County into a higher settlement than other units achieved through bargaining thus creating industrial unrest and considerable jealousy throughout the ranks.

8. Here literally no other unit received a general increase or an increase in merit pay through bargaining. Those units who received a 1% increase did so as part of a negotiated quid pro quo for a change in the insurance plan, known as the “Three For Free” plan. There has thus been a completely consistent internal pattern not only for this round of bargaining but going back many years for both the unionized employees as well as those who are not.

9. The County pointed to the recent settlement with the AFSCME unit, which is by far the County’s largest single unit, as indicative of the pattern of such settlements. See Union exhibit 1 showing that the Human Services unit employs 444 employees while the jail employs only 44. The Human Services Supervisors agreed to the insurance change and received the 1% increase along with an offered \$400.00 bonus for settling early. The Minnesota Nurses Association got the 1% after agreeing to the change in insurance but did not received the bonus because they did not settle until after that offer expired.

10. Thus the Union’s claim that there is no internal pattern is not accurate – there is. The County offered two choices: take the change in insurance and receive a 1% increase or not and receive a 0% increase. All of the other units who have settled have fallen into one of these categories while this unit seeks to change that clear pattern.

11. With regard to the merit system itself the County asserted that it was designed to advance high performing employees quickly through the salary steps so they would get a higher rate of pay sooner. Further, there is no comparable merit system to that which the Union is seeking here and to implement one would be a radical departure from any sort of settlement and would throw the bargaining pattern in Dakota County into chaos.

12. EXTERNAL COMPARISONS: The County asserted that the appropriate comparison group is Anoka, Carver, Olmstead, St. Louis, Scott and Washington Counties. The County asserted that Ramsey should not be included but did include some wage information from Hennepin County for illustrative purposes. The County asserted that these groups all settled for 0% increases in 2011 except for Olmstead. Olmstead deputies however received a 1% increase in exchange for 32 furloughed hours. Some of the counties settled for a hard freeze of wages with no merit increases or step increases. See data for Washington and Hennepin Counties. Thus the Union's external comparisons do not provide sufficient support for its requested increases.

13. The County also asserted that Ramsey is an inappropriate comparison since the wage increases for 2011 were agreed to prior to the huge economic downturn and was part of a 3-year contract reached in 2008. This was of course before the State's budget deficits and the devastating effect the recession would have on Minnesota's public employers was known. This should thus be disregarded.

14. The County also pointed to its generous health insurance package and noted that it is a much better program than the external market. The County asserted that if one is to compare an economic package it is best to look at the total package and not simply one part of it. Here the insurance package is quite good and must be considered in looking at external comparison counties.

15. The County further argued that its attraction and retention rates are again quite good and that it has little trouble attracting candidates for open positions. Neither does it have a problem retaining its employees once they are hired. This is of course due to the competitive compensation package offered to its employees overall and the “market” understands that. Indeed if it were not competitive one would expect to see people leaving or that the County would have difficulty finding employees. Neither is the case here.

16. The County argued that there is no support internally, externally or based on a review of the economic situation in the County or the State in general for any increase in pay.

The County urges an award of 0% increase in general wages and in merit pay.

DISCUSSION

PRELIMINARY DISCUSSION:

The discussion of these two issues will also be combined here as well as the arguments made by the parties were quite similar with regard to both issues. A few preliminary matters need to be discussed. The standard in determining an appropriate interest award is indeed to try to determine, based on the best evidence available, what the parties would have negotiated for themselves in the absence of interest arbitration. This is, of course, an inexact science at best but is the widely held and best view among interest arbitrators. This can sometimes be measured fairly accurately by a review of what other similarly situated units have negotiated with their employer, either internally or sometimes externally, through the collective bargaining process.

Certainly there is some difference between an essential unit, which does have access to interest arbitration, versus a non-essential unit, that does not, under Minnesota Law. Certainly the decision to go to interest arbitration does not carry with it the same sort of risk and potential economic upheaval as a strike does and therefore the considerations are different in terms of what the parties might have negotiated when faced with these two very different prospects for not settling.

The best method for reaching agreement is through collective bargaining, i.e. negotiation between parties trying in good faith to reach agreement on wages, hours and terms and conditions of employment. How they might have achieved that in the absence of interest arbitration requires a review of what other units have settled for, other internal considerations, external comparisons and a review of how economic factors come into play in arriving at the appropriate award. As discussed below, on this record, the various factors used by interest arbitrators weighed in the County's favor.

ABILITY TO PAY:

Initially, it should be noted that there was little question that the County has the money necessary to pay for the Union's requested increases. As noted above, even with the Union's requested 3% increases, the total cost for the 44 employees in this unit would constitute a minor percentage of the County's overall budget. As Arbitrator Bognanno noted, it would hardly make a dent in the County's budget nor would it result in any significant difficulty financially were it to be awarded.

Having said that though, it was clear on this record that two factors militate against the Union's claims. First there was and remains the very real dire economic situation around the State. There is little question that the "crash" of 2008 has neither abated significantly nor does it show any signs of suddenly ending. Virtually all predictions for economic activity around the County and the State of Minnesota are conservative at best and the best economic signs, to the extent one can or should rely on any of them any longer, show a flat economy. Some are even worse depending on how cynical one wants to be. Certainly though, there is little appetite in these times for tax increases and public employers, even those with the tax capacity to do so, are reluctant to increase taxes on a public already strained by unemployment or underemployment with little relief in sight

This is not to say that the outlook is in all ways disastrous. There are some encouraging signs but this matter is not a treatise on macroeconomics but rather a discussion of the appropriateness of the Union's request verses the County's requested award.

This calls into question the second issue in an ability to pay argument. There is some merit to the County's assertion that simply because a public employer can pay a requested increase does not mean it should. Further, the mere fact that the County has acted responsibly in its financial affairs does not result in license to spend it without justification on other bases. There must therefore be some reason based on internal and/or external considerations for granting a requested award. Here those factors were in the County's favor.

EXTERNAL CONSIDERATIONS:

The parties differed on the appropriate external comparables. The Union asserted that Ramsey County should be considered as part of the comparison group. The County argued that it should not but provided rebuttal evidence that even if it is considered there was an explanation for why Ramsey County granted an increase to its deputies in 2011.

Several prior awards have used Ramsey County as an appropriate comparable and there was no compelling evidence provided as to why Ramsey County should not be used here. See *Dakota County and IBT #320*, BMS #01-PN-879 (Miller 2002) and *Dakota County and LELS*, BMS # 05-PN-0065 (Ver Ploeg 2005). See also *Dakota County and LELS*, BMS # 10-PN-1346, slip op at p. 20, fn 5, (Bognanno 2011).

All of these prior arbitrators recognized that Ramsey County is in the same market area and that the employees apply for jobs in all these counties and that the employers compete for employees within the same general geographic area as well. Ramsey and Dakota County border each other and while once there was considerable separation between communities located in the two, with urban sprawl those distinctions have largely disappeared. Accordingly, Ramsey County should be included in the comparison group.

Having said that however when compared to the wages here there was insufficient evidence to warrant granting the Union's requested increase. The evidence showed that the vast majority of the comparison counties settled for a 0% increase in 2011. While the Union showed that some of the counties pay more, and some do, the relative position with respect to these comparison jurisdictions would not be greatly impacted by the County's award. Further, while Ramsey County's wage schedule appears to be far higher it is apparent that it generally has been over time and that there was no compelling reason presented to change that relative position with respect to Ramsey County.

The evidence showed as noted above that Anoka, Hennepin, St. Louis, Scott and Washington Counties settled with their deputies for a 0% increase for 2011. Olmstead settled for a 1% increase but in apparent exchange for a 32 hour unpaid furlough. Hennepin and Washington imposed hard wage freezes and Scott actually reduced its merit pay matrix for 2011.

Ramsey County did grant an increase for 2011 but the evidence showed that this was done as part of a 3-year wage settlement done in 2008. There was some evidence to suggest that the contract may have been signed after the great crash, as it has become known, in the fall of 2008 but there was some merit to the County's assertion that the full impact of just how that might impact public employer's budgets was not known until well after the Ramsey County contract was signed. More importantly, it is clear that the full impact of the economic conditions is known now and clearly supports the County's position in this matter.

Finally there was some merit to the County's assertion that the total wage package when health insurance is figured into the mix is quite competitive indeed, even after the change in health plan discussed herein. Certainly even though the issue here is general increase in wages, this issue cannot be viewed in a vacuum when discussing total compensation. This is especially true when discussing retention and attraction rates. Employees certainly do look at more than just the hourly wage or salary. They look at other benefits and working conditions when comparing compensation packages. Here those factors mitigated in favor of the County's position.

INTERNAL CONSIDERATIONS:

Perhaps the most compelling evidence on this record was the extraordinary pattern of internal consistence between Dakota County units, both unionized and non-union over time. The evidence showed a very clear pattern of internal consistency over time that provided very strong support for the County's position. As some arbitrators have noted, while internal consistency is not the sole factor in determining appropriate wage awards on this record, the internal pattern of settlement, as a measure of what the parties would have settled for in the absence of interest arbitration, was a most valuable measure.

Further, despite the claim that there is no internal pattern; the evidence showed that indeed there is on this record. Several units, including the County's largest unit, have settled for the internal pattern. The AFSCME unit settled its contract for a 0% increase. Others settled for a 1% increase but with a quid pro quo for the changed, Three for Free health plan. That health plan reduced costs to the County and in exchange for that, a 1% general increase was provided to those units that took it. As noted there was even a bonus of \$400.00 to the affected employees if they accepted the plan within a certain time frame. While some of the units have not settled it is significant that many already have and that the larger units have settled. Certainly the mere fact that one large unit may have settled does not always mean that such a settlement establishes a pattern for all other units. Here though the fact that several of the larger units have settled for a 0% or a 1% with the change in health plan was quite compelling and showed a clear pattern of settlements that again compelled the result here.²

² As noted above, the parties settled the health insurance issue that had been certified at impasse by BMS. There was no evidence however as to what the Union settled for and without that no assumptions can be made that this unit settled for the Three for Free plan and thus qualified for the 1% increase. The sole evidence presented was a simple statement that the parties "had settled" that issue and that no further evidence or argument would be presented.

Finally, there was considerable merit to the County's assertion that deviating from the clear internal pattern on these facts would create the potential for considerable ill-will among employees, and whipsawing by other unions. This might well have the impact of costing far more than the relatively small amount of money, in comparison to Dakota County's overall budget, by providing an impetus for other units to increase their demands above and beyond the internal pattern. While this alone is not a determining factor it is a consideration, especially in light of such strong evidence of a longstanding and consistent internal pattern of wage settlements and awards.

PAY EQUITY

This was not a major issue on this record but the County showed that it is in compliance with Pay Equity and that it would be whether the Union's position or its position is awarded.

MERIT INCREASE

The parties raised virtually the same arguments with respect to ability to pay, external and internal comparisons with this issue as well. The evidence showed that no other group received a merit increase within the County. There was evidence to support the claim that high achieving employees are moved through the salary steps quicker to gain greater pay due to their higher performance. All other units settled for a 0% increase in the merit matrix and the Union provided little if any evidence why there should be a deviation from this.

Accordingly, the evidence as a whole supports the County's position on both the general wage increase as well as the merit pay increase

AWARD

The County's position is awarded on both the general wage increase and on merit pay.

Dated: November 7, 2011

Jeffrey W. Jacobs, arbitrator