

**In the Matter of Arbitration Between**

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Mille Lacs County,

Employer

and

BMS Case No. 11-PN-0781  
(Sheriff's Unit)

Law Enforcement Labor  
Services Inc.,

Union

A. Ray McCoy  
Arbitrator

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Appearances

For the Employer

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## Introduction

Law Enforcement Labor Services, Inc., Local 99 (“Union”), is the exclusive representative of the licensed peace officers/sheriffs employed by Mille Lacs County (Employer). The Parties’ collective bargaining agreement expired on December 31, 2010. The Parties were unable to reach a new agreement and the Bureau of Mediation Services certified 17 issues at impasse. The Parties notified the arbitrator of his selection by letter dated January 31, 2012 and agreed to hold the hearing on May 23, 2012. The arbitrator conducted the hearing pursuant to Minnesota’s Public Employees Labor Relations Act (PELRA), Minn. Stat. § 179A.01 - 179A.30. The hearing took place at the Mille Lacs County Community and Veterans Services Building Conference Room, 525 Second Street SE, Milaca, Minnesota. The Parties elected to submit post-hearing briefs. The exchange of briefs took place on June 6, 2012 and the arbitrator closed the record at that time.

## Issues at Impasse

1. Duration-Length of Contract: 1 or 2 years Article 21
2. Wages, General Increase, if any for 2011- Article 14.1, Schedule A
3. Wages/Steps-Should Steps be granted in 2011-Article 14.1
4. Wages, General Increase, if any for 2012-Article 14.1, Schedule A
5. Wages/Steps-Should Steps be Granted in 2012-Article 14.1
6. Steps – New Language Proposed By LELS-Article 14.1
7. Comp Time- Accrual-Article 8.1
8. Overtime –Revise Overtime Language-Article 8.1
9. Overtime – Definition of Hours Worked for Purposes of Calculating Overtime –Article 8.1
10. Uniform Allowance – Should allowance be paid in a separate check-Article 15.1
11. Uniform Allowance, Amount for (a) 2011; (b) 2012–Article 15.1

12. Uniform Allowance, Should it be paid after expiration of the Contract – Article 15.1
13. Insurance – What should the Employer contribution be for the single premium coverage –Article 12.2, Subd. 2
14. Insurance- Should Employer pay for the single coverage for the \$15 Co-Pay Plan-Article 12. 2, Subd. 2
15. Insurance – What should the level of Employer contribution for the family premium coverage be–article 12.2, Subd. 2
16. Definition - What should the definition of the Employer be–Article 3.2
17. Employer Authority–What shall be the language defining the Employer – Article 4.1 & 4.2

Prior to the hearing the Parties resolved their differences with regard to issues 1 (Duration of the Agreement, Article 21), 9 (Definition of Hours Worked for Purposes of Calculating Overtime, Article 8.1) and 15, (Level of Employer Contribution for family Coverage, Article12.2, Subd.2).

### Summary of Positions & Awards

#### **Issues 2-6 Wage/Step Increases for 2011 and 2012 & New Language Regarding Steps**

##### Union's Position

The Union proposed a general wage increase of 1% for 2011 and 1% for 2012. The Union argued that its proposed wage increase is grounded in the factors traditionally used by arbitrators to determine wage issues in interest arbitration proceedings: external market comparisons, internal equity, the County's ability to pay the requested increase, cost-of-living and other relevant economic forces. The Union prefaced its position saying that it understood no bargaining unit received a wage increase in 2011. The Union went on to say that, nevertheless some employees did receive increases to their wages. The Union pointed to the County's decision to move the Assistant County Attorney unit to a new wage scale in 2011. The Union said the move resulted in the County Attorneys

receiving higher pay in 2011. In addition, the Union said some of the employees in the Nurses unit were advanced to a grade 4 and seven courthouse employees who were at the top of their pay scale received a “specially tailored additional step.” The Union’s point, of course, is that the County did not adopt a zero wage increase for all employees in 2011 and therefore should not be credited with an assumption regarding internal consistency. The Union also said, quoting Arbitrator Richard Anderson, fashioning an award solely for the purpose of maintaining internal consistency in wage increases is not appropriate in all circumstances.

The Union’s position with regard to a general wage increase for 2012 is primarily based on internal consistency. The Union pointed out that the County provided a general wage increase of 1% to employees in all the other bargaining units. As additional support for its position that a 1% wage increase for 2012 is warranted, the Union pointed to the fact that the County gave non-union employees a general wage increase of 1% as well as the benefits of a recently completed classification study resulting in additional wage increases for some non-union employees. In short, the Union took the position with regard to 2011, that no clear internal pattern had been established and with respect to 2012 that the internal pattern is at a minimum 1%.

The Union went on to argue that the Union’s proposals would not threaten the County’s compliance with Minnesota’s Pay Equity Act. The Union said it ran its own test to determine if its position on wages and steps, if awarded, would render the County non-compliant with the Pay Equity Act. The Union argued that its test suggested there would not be a problem with the County’s compliance and added that the County provided no evidence to the contrary.

The Union also pointed to the Consumer Price Index as a reason to grant its position with regard to wages and steps saying that the CPI was 3.2 in 2011 and trending upwards going forward. The Union said that its proposals would keep its’ members wages in reasonable step with increases in the cost of living. The Union next turned to external comparators saying that its members would begin to slide out of their mid-range position if its positions were not awarded.

Regarding steps, the Union proposed steps be awarded in both 2011 and 2012. Here, the Union turned to the bargaining history regarding steps to bolster its position.

The Union noted that granting steps each year has been a part of the Agreement since 1981. The Union argued that the County should be made to honor its long-standing agreement with regard to steps. Here again, the Union argued that some bargaining unit members did receive steps in 2011. Regarding its proposal for steps in 2012, the Union pointed again to the internal pattern saying five of the six bargaining units received step progression for 2012. The Union, this time quoting Arbitrator Fogelberg, argued that a pattern of internal settlements alone should not dictate the outcome. Finally, the Union maintained that the County has the ability to pay. The Union calculated the cost of all of its proposals including non-wage proposals to total \$62,292. The Union went on to say that it believed the County had already budgeted the cost of a 1% general increase and steps for 2012 and therefore the real cost of its proposal is \$36,109.

The Union, while acknowledging the tumultuous and somewhat uncertain economic condition of the state and country, argued that the arbitrator should determine the County's ability to pay by examining its specific economic snapshot. In this case, the Union pointed to the County's Comprehensive Annual Financial Report ("CAFR") to show that it has a healthy fund balance. The Union said the CAFR indicated an increase in the fund balance of approximately 1.4 million from the previous year. The Union also pointed out that the County's net assets increased by 4.4 million since 2010.

Finally, the Union said the County took actions that indicated it was confident it was financially sound. Those actions included authorizing 3.5% salary increases for the County Auditor-Treasurer, County Sheriff and County Attorney. The Union also raised the County's decision to remodel the Courthouse Square Building as well as the Historic Courthouse since 2010 as evidence that it is confident its financial position is sound. The Union compared the cost of its proposals (\$62,292) to the County's unreserved, undesignated General Fund balance (\$2,298,676) as further proof that there should be no concern regarding ability to pay.

The Union proposed striking the references to 2009 and 2010 from Article 14.1 of the Contract. Current language reads:

“All employees covered by this Agreement shall be paid in accordance with the pay scales attached hereto and made a part of the Agreement. Effective January 1, 2009, employees will be placed on the applicable pay grade of the 2009 pay scale on the lowest step that will give at least a

twenty-five (\$.025) per hour increase over the employee's hourly wage as of December 31, 2008. Employees shall be eligible for step increases on their anniversary date in 2009 and 2010.” (Labor Agreement Between The County of Mille Lacs And Law Enforcement Labor Services, Inc. Deputies (Local Union 99) January 1, 2009 through December 31, 2010 at p. 10; hereinafter “Agreement”)

The Union's primary argument supporting its proposed deletion of the references to 2009 and 2010 in the last sentence of Article 14.1 is that the historical pattern the Parties have maintained is to grant steps each year on the member's anniversary date. The Union explained that when the County made changes to the pay scales, it was necessary to memorialize that change as was done in 2005 and again in 2009-2010. The Union said the County by refusing to agree to its proposal is attempting to redefine the Parties' bargaining history and to cap step increases rather than presumptively granting steps. The Union stressed that what the County wants by denying steps is to benefit from the increasing experience of unit members without having to pay for it.

#### County's Position

The County proposed a 0% increase for 2011 and 2012. With respect to 2011, the County argued that it has maintained an essentially consistent pattern of wage increases for all employees for many years and that the Union's reference to classification adjustments was a part of the County's efforts to make all pay scales uniform both union and non-union. The Employer emphasized that when the Union was moved to the non-union pay scale in 2009, it resulted in an at least a .25 per hour increase over their previous years hourly rate. In short, the County said that whatever adjustments were made in other units in 2011, they did not represent a general wage or step increase but rather a continuation of efforts to equalize pay scales.

The County acknowledged that it reached agreements for a 1% general wage increase and steps in 2012 for members of the other six bargaining units. The County stated that it believed the arbitrator should issue an award that is identical to the general wage increase and step increases provided to the other bargaining units. The County also pointed to its record on recruitment and retention in the bargaining unit. The County basically argued that the current wage rates for LELS bargaining unit members and its wage/step proposals for 2011 and 2012 are good enough to attract many applicants when

a position becomes available and good enough to retain unit members. The County maintains that its financial position has been weakened by global economic difficulties. The County also pointed to the “Great Recession” and its impact on its budget to emphasize its continuing economic challenges. Specifically, the County went back as far as 2008 and pointed to the loss of \$260,417 in County Program Aid. It also pointed to the repeal of the Market Value Homestead Credit in 2011 and the resulting shrinkage of the County’s property tax base. The County emphasized the burden on its citizens as a result of unemployment, reduced property values and rising taxes as reasons why it began a program of fiscal restraint, budget cuts including layoffs and in general giving increased scrutiny to expenditures.

The County argued that even given all its belt-tightening measures it still spends the greatest portion of its property tax revenue for public safety. The County rounded out its arguments with regard to ability to pay by stating that simply because the County is able to pay does not mean it should spend those resources to fund the Union’s salary proposals. The County bolstered this position by raising again its implementation of strategies designed to equalize pay scales of its differing groups of employees both union and non-union. The County emphasized that providing adjustments to particular employees in other bargaining units should not be equated to a general wage increase or step increases and it should not undermine its position with regard to the importance of internal consistency.

Regarding Pay Equity, the County pointed to the fact that it had not received the State’s determination with regard to its obligations under the Act at the time of the hearing and therefore, the Union has no basis for saying that the County will remain in compliance if its proposals are awarded. The County said the State provided its last report to the County in 2009. The County responded to the Union’s proffered Pay Equity calculations saying they indicated a weakening of the County’s compliance and would actually undermine efforts to comply with the Act. In short, the County pointed to its record of fiscal restraint, the pattern of internal wage settlements for both 2011 and 2012 and the general economy to argue that nothing greater than the pattern of voluntary negotiated settlements for the other bargaining units should be awarded.

Regarding the issue of proposed new language to Article 14.1, the County argued that the last sentence of the article should be updated to reflect the calendar year in which employees will receive step increases. In other words, the County proposed the following sentence be added to Article 14.1: “Employees shall be eligible for step increases on their anniversary date in ~~2009 and 2010~~ 2012.” The County argued that the Union is seeking automatic step increases without the benefit of bargaining over what is a mandatory topic.

### Analysis

The arbitrator finds the County’s position regarding the 2011 general wage increase to be most persuasive. The Union acknowledged that no other bargaining unit or employee group received a general wage increase in 2011 but focused instead on the County’s job reclassification process arguing that it undermined internal consistency. In 2010, the County hired Employers Association Inc. to conduct an employee classification study. The study required Employers Association Inc. to interview representatives from each job class in the County, draft position descriptions, respond to employee requested appeals of the classification recommendations, draft final position descriptions and develop a job evaluation system. The County accepted the recommendations of Employers Association Inc. in October of 2011 and resolved to implement the plan with regard to non-union employees in 2012 and to use negotiations to implement the plan for its bargaining units. The County resolved to complete the process no later than December 2013. (Union Ex. 6)

The Union’s reliance on the employee classification study appears to be premature. Implementation of the recommendations often leads to adjustments for some employees but the goal behind the process is designed to make compensation more equitable across classifications given the true nature of the responsibilities. The County is not using the process to disguise a general wage increase or to move away from the internally consistent approach to general wage increases. To conclude that the implementation of recommendations coming out of the job evaluation study were the equivalent of general wage increases could undermine the goals of the job evaluation process.

The Parties will have the opportunity to explore the job evaluation process further during future bargaining. As the Union acknowledged, “The Union and County entered into mediation seven months before (March 2011) the implementation plan was adopted, and so the issue could not and has not been negotiated.” (Union Post-Hearing Brief at p. 3) Consequently, the arbitrator believes it is premature to rely on the changes that have taken place under the plan to date. The impact of the plan for members of the LELS unit should be clarified as well as the issue of whether the plan destroys the County’s goal of maintaining an internally consistent approach to salary increases. The County’s position of a 0% general wage increase in 2011 is awarded.

None of the other factors traditionally considered in interest arbitrations support the Union’s position on this issue. The external comparators show that the LELS unit members will maintain their standing relative to the units in their comparison group. (Union Ex.12) Even considering all of the economic challenges emphasized by the County, it is clear that it has managed its affairs in a fiscally conservative manner, consistent with its plan and does indeed have the ability to pay. However, the fact that it has the ability to pay is not the end of the story. There is no compelling reason to deviate from the internal goals set by the County.

Regarding step increases for 2011, the arbitrator awards the Union’s position. In an effort to imagine what kind of compromises the Parties might have made in order to settle a contract or end a work stoppage, the arbitrator finds that the record reflects a history of granting step increases to the sheriff’s unit dating back to 1981. (Union Ex.14) As discussed below, the County has used the reclassification process to move employees to different pay grades or scales. That process did become entangled with the County’s historical commitment to step increases. In other words, the County acknowledged that LELS members were moved to a different pay grade in 2009 and described that process as simply a reclassification process going on across all of its employee groups just as the current job evaluation process will need to be implemented across employee groups. However, doing so does not change the fact that the County has for several decades committed itself to granting steps.

Most recently, the County indicated that in the course of implementing job evaluation recommendations that it wanted to honor its commitment to long-term

members of the AFSCME bargaining unit, in this case unit members at the top of their pay grade. The County was willing to carve out an exception with regard to step increases with at least the AFSCME Courthouse unit (Union Ex. 16). While saying no step increases would be given in 2011, the County took the position that AFSCME unit members at the top of their pay scales should receive step increases for 2011, 2012 and 2013. The County signaled that it was willing to grant steps even though to a limited number of specifically named employees in the case of the AFSCME unit. However, more compelling to the arbitrator is the fact that the County's commitment has been so long-standing and it has offered nothing in exchange for abandoning the notion that it should compensate for the increasing experience of its employees. Therefore, the arbitrator awards the Union position for step increases for LELS bargaining unit members in 2011.

Turning to the issue of the general wage increase and steps for 2012, it is clear that the Union's position should be awarded. The County's final position on this issue must be viewed as an attempt to gain leverage at the bargaining table. Otherwise, the County's offer of a 0% increase but step increases to employees who are not yet at the maximum of the wage schedule contradicts its commitment to internal consistency. In its post-hearing brief, the County made this point clearly saying: "It is the County's position that the award on general adjustments and step increases for both 2011 and 2012 should be identical to the absolutely consistent internal wage pattern." (County Post-Hearing Brief at p. 20) In short, the County abandoned its final position and acknowledged a commitment to maintaining its focus on internal consistency. The Union's position of a 1% general wage increase and steps for 2012 is awarded.

Finally, Article 14.1 does require new language. Current language, as noted above, is outdated.

"All employees covered by this Agreement shall be paid in accordance with the pay scales attached hereto and made a part of the Agreement. Effective January 1, 2009, employees will be placed on the applicable pay grade of the 2009 pay scale on the lowest step that will give at least a twenty-five (\$.025) per hour increase over the employee's hourly wage as of December 31, 2008. Employees shall be eligible for step increases on their anniversary date in 2009 and 2010."

With the exception of the first sentence, the language provides no guidance to the Parties going forward and can only serve as a historical note. The arbitrator's focus is on resolving differences in the Parties' descriptions of their bargaining history on this point. First, the Union maintains that the reference to specific years in the Agreement resulted from special circumstances requiring the years to be added to article 14.1. The arbitrator referenced the entanglement of the pay grade reclassification process above. The current language reflects that entanglement as well.

The County maintains that the bargaining history does not indicate that step increases were a given in prior contracts. The record does support the notion that at least as early as 2003, the Parties agreed to the following language: "Effective January 1, 2003, Employees will be placed on Steps as shown below. Step increases thereafter will occur on Employee anniversary dates." (Union Ex.17) The Union's position is bolstered by the fact that on October 4, 2011 the County resolved to move away from its commitment with regard to annual step increases for its non-union employees. Prior to 2011, the County had also provided annual step increases to its non-union employees.

"On an employee's anniversary date for their current position, the employee shall receive a one step rate of pay increase, until reaching the top step of their current position's grade level, unless otherwise determined by the County Board." (Union Ex. 6)

The County decided to scrap that language and adopted the following:

"During any year when the County Board has approved payscale step movement, employees who have achieved permanent employee status in their existing position by January 31<sup>st</sup> of that year will receive a one-step rate of pay increase..." (Union Ex. 6)

In short, the County seeks to achieve in this process what it imposed on its non-union employees just last year. The arbitrator believes the County must honor its' commitment to annual step increases for this bargaining unit. The County can return to the bargaining table and offer the Union something in exchange for moving toward the language it has imposed on its non-union workforce. The arbitrator is unwilling to alter the County's long-standing commitment to steps without a compelling reason to do so. Moreover, it makes sense that the County should recognize the increasing experience and

therefore value of unit members retained over time. The Union's position is awarded and the references to specific years will be stricken from the final sentence of Article 14.1.

### **Issues 7 & 8/Comp Time- Accrual- Article 8.1 & Overtime –Revise Overtime Language - Article 8.1**

#### Union's Position

The Union proposed new language for Article 8.2 (Accrual). Currently only sergeants and investigators are eligible to accrue comp time at the rate of time and one-half (1½) the employee's regular rate of pay up to a maximum of forty (40) hours. All other unit members can accrue up to a maximum of twenty (20) hours. The Union's position is that since deputies regularly exceed the current maximum of 20 hours of compensatory time and have to "burn" compensatory time before accruing more a change is needed. The Union also argued that since other members of the bargaining unit can accrue 40 hours, internal consistency supports its proposal. In addition, the Union maintained that its external comparator group does not make the kind of distinction between sergeants and deputies that the County makes. With regard to the overtime language, the Union proposes changing current language so that unit members are paid for all hours that exceed their regular shift no matter whether they have worked 40 hours during the relevant pay period. More specifically, the Union proposes that unit members be paid overtime for hours worked in excess of the regular daily shift. So, an officer scheduled to work an 8 hour shift but ends up working 9 hours is entitled to one hour of pay at the overtime rate.

#### County's Position

The County maintains that no problem exist with regard to the accrual of compensatory time. Furthermore, the County maintains that the difference has been present in the Parties' Agreement since 1990 and that no compelling reasons exist to disturb that record. (County Ex. 63) Also, the County emphasized that there are some differences across bargaining units and therefore, the distinction made within this bargaining unit is reasonable. The County pointed to the fact that the nurses have no language in their contract regarding comp time, the Highway workers may accrue up to 85 hours and non-exempt non-union employees may accrue only 20 hours of comp time.

(County Ex. 64) Finally, the County made the point that deputies may accrue 20 hours, burn 10 and accrue up to the maximum of 20 again and again throughout the year. Therefore, the County reasoned that the need to accrue 40 hours is unnecessary. (County Ex. 68) The County's position regarding overtime is to maintain current language. The County is concerned that permitting such a change would drastically increase overtime cost. The County pointed out that it paid close to 3000 hours of overtime for the LELS bargaining unit in 2011. Furthermore, the County stressed that the Agreement already includes several instances in which unit members are eligible for overtime pay in addition to the overtime article. For example, the Agreement shows that unit members receive overtime pay for any time spent in court outside the normal working hours as well as time worked on Sundays and holidays.

#### Analysis

The arbitrator concludes that no compelling reason exist to change current language with regard to comp time accrual. The County's proof regarding the number of years that this language has existed in the Agreement is most compelling. Furthermore, the Union's proof simply does not provide sufficient insight into the need for the proposed change. The arbitrator believes that the Parties will benefit from further clarification of the need. Does compensatory time tend to be more expensive to the County because additional personnel will be needed to replace officers using accrued time? Does policing suffer because officers are using so much accrued compensatory time? Will allowing officers to accrue up to 40 hours of compensatory time mean that officers will not burn as much accrued time? Will allowing officers to accrue 40 hours of compensatory time relieve or increase staffing burdens? Unfortunately, the answers to these questions were not provided or at least not in a form the arbitrator found compelling. It is hopeful that the Parties will provide this kind of clarity for one another during subsequent bargaining. The County's position to retain current language is awarded.

Regarding, the proposals on overtime, the arbitrator finds that the Union did not show a compelling reason to deviate from long-standing contract language. The Parties' Agreement requires officers to work overtime unless unusual circumstances prevent them from doing so. This along with other provisions in the Agreement, seem to trump the

need to secure overtime at the rate the Union proposes. Here again, the Union's offer in support of its proposal falls short of clarifying a particular problem or need. Are unit members who work hours in excess of their daily shift able to accrue those additional hours as compensatory time or are they simply giving time to the County if they work less than 40 hours during the relevant pay period? Given that overtime is mandatory, is the County manipulating the process to secure overtime but to keep it at less than 40 hours during the relevant period in order to avoid paying overtime? There may be other questions, the answers to which will bring the Parties some greater understanding of the need for change as proposed by the Union. Those questions and answers should be hashed out at the bargaining table. Of course, the key concern is the cost of such a change to the County. The record does not reflect any real analysis of the cost of this kind of proposal and only careful study of current overtime cost to the County and a careful estimation of the increasing cost under the Union's proposal would help put the cost of this proposal in perspective. It is sufficient to hold here that the record lacks a compelling reason to make the change proposed by the Union. The County's position to maintain current language is awarded.

**Issues 10, 11 & 12, Uniform Allowance, Article 15.1, Should the Uniform Allowance be Paid in a Separate Check? What should the Amount of the Uniform Allowance be for 2011 and 2012? Should the Uniform Allowance be Paid After the Expiration of the Contract?**

Union's Position

The Union believes that the uniform allowance should be paid in a separate check in order to minimize the tax consequences to unit members. Currently, the Agreement provides for the uniform allowance to be paid in two parts, one in June and the other in December of each year. The Union maintains that granting its proposal would not add any additional cost to the County. The focus of the Union's proposal is to secure additional funds for its members by decreasing the taxes paid on the uniform allowance when issued as part of the regular payroll process. With regard to the amount of the allowance, the Union is proposing a fifty dollar (\$50) increase in the amount of the allowance for 2011 and 2012. The Union stressed that the cost of the uniform and

equipment is more than the annual allowance and that its' proposed increase will only soften the blow but not change that reality. The Union compared its proposal on this point to the increase received by the County's jailers. The Union emphasized the fact that the jailers received a ninety dollar (\$90) increase in their uniform allowance that went into effect in 2011. The Union also pointed out that its members have significantly more uniform and equipment needs than Jailers, in part because they must have a firearm. Finally, the Union pointed to the need to look to external comparator groups with regard to this issue since there is usually no other internal group with which to compare sheriffs' uniform and equipment needs. The Union pointed to the average uniform and equipment allowance of the sheriffs in its comparator group to support its proposal. The average uniform allowance in that group is \$817.00. Regarding payment of the uniform allowance after the Agreement has expired, the Union argued that it was game playing on the County's part to hold up the payments until a successor agreement is reached. The Union believes that doing so runs counter to the "long-standing history of paying out the uniform allowance regardless of the existence of a successor contract." (Union's Post-Hearing Brief at p. 19) As a practical matter, the Union said the deputies need the uniform allowance regardless of the successor contract. Finally, the Union said the County paid the allowance in 2011 after the contract expired.

#### County's Position

The County proposed no increase in the uniform allowance for 2011 and 2012. It does want to change current language regarding when the allowance should be paid out. Rather than paying in June and December, the County wants the language to be changed to read the 13<sup>th</sup> and 26<sup>th</sup> payroll of each year. The County also believes that there is no merit to the Union's argument that paying the allowance in a separate check will reduce the amount of taxes paid on the uniform allowance. Finally, the County believes that paying the uniform allowance after the expiration of the Agreement does not represent an increase to unit members or an increased cost to the County. The County acknowledged paying the uniform allowance in 2011 after expiration of the Agreement.

### Analysis

The arbitrator agrees that resolution of the increase in the uniform allowance should be based in significant part on both available internal comparators and the external comparators mutually identified by the Parties. Here the jailers do appear to be a reasonable comparator group, although as pointed out by the Union they are not required to purchase a firearm and generally do not have the exact same uniform or equipment needs given the difference in working environment. Nevertheless, it is undisputed that the County provided the jailers a \$90 increase in their uniform allowance for 2011 but provided no increase in the allowance for jailers in 2012. The average uniform allowance in the comparator group is \$817.00 per year. (Union Ex. 23) The counties in the comparator group did not increase the uniform allowance in 2011 or 2012. However, one county supplies its sheriffs with uniforms and therefore does not pay a uniform allowance. Another county provides an allowance of \$1185.94 and only one provides an allowance less than the LELS unit here but that county permits the allowance to carry over from year to year. Only one county in the comparator group is yet to settle and this analysis assumes that county will also hold the amount of the allowance at current levels for 2012. Consideration of both internal and external comparators leads the arbitrator to conclude that the Union's proposal should be adopted. First, the County provided jailers a \$90 increase in its uniform allowance for 2011 but provided no specific reason as to why it could not provide an increase to the LELS unit. The County simply said:

“The amount of the uniform allowance is an economic item that must be considered in light of the total package. The current amount of the allowance is competitive in the external comparison group.” (County's Post-Hearing Brief at p. 32)

The variation of amount of the uniform allowance in the comparator group is not informative except to note that each County appears to have a unique approach to this issue. The LELS unit is close to the bottom of the group with regard to uniform allowance even though it is about in the middle of the group when it comes to salary. When you consider that the only county below it, allows sheriffs to carry over the uniform allowance from year to year and select the best time to draw down the allowance, it is unclear whether the LELS unit is actually at the bottom. It makes sense that with respect to this measure, the LELS unit should be provided an increase in order

to move it closer to the mid-range of the comparator group, consistent with its ranking in the group with respect to salary. An increase in the uniform allowance is warranted and reasonable. Moreover, the County willingness to provide a uniform allowance for the jailers makes clear that doing so is internally consistent. The Union put forth convincing evidence by way of testimony at the hearing that demonstrated the actual uniform and equipment cost to be closer to \$942 per year. (Union Ex. 13) Even taking into account the County's response that some of the items could be considered personal and not eligible for reimbursement, the testimony was convincing. The arbitrator believes that the Union's proposal provides a reasonably necessary increase and one that more closely reflects the reality of the burden on unit members. The Union position regarding the uniform allowance for both 2011 and 2012 is granted.

With regard to the issue of whether the allowance should be paid in a separate check, the arbitrator awards the County's position. How the County processes payroll obligations is best left to the County. The tax consequences for unit members should be worked out as they process their annual tax returns. Helping unit members reduce the tax consequences of the salary and benefits paid to them should not be the County's burden unless is voluntary chooses to adopt that task. It is customary that workers secure proper tax advice with regard to their total compensation in order to limit their tax burden. The arbitrator awards the County's position.

In addition, the arbitrator awards the County's proposed change with respect to paying the uniform allowance on the 13<sup>th</sup> and 26<sup>th</sup> payroll of each year. That language change essentially conforms to a biweekly payroll process as opposed to fundamentally changing the times when the allowance will be paid out. The payments should still fall roughly mid-year and at the end of the year consistent with current language. The Union did not argue against this change. Finally, the arbitrator awards the County's position with regard to the issue of whether uniform allowances should be paid after the expiration of the Agreement. Here the County acknowledged its intent and obligation to pay the uniform allowance out as it did in 2011 after the Agreement had expired. The County said doing so did not add to its cost and it was simply delayed in getting the payment out in 2011. The arbitrator believes that the record reflects that the Parties are in agreement on this point even though current language does not provide the specificity sought by the

Union. Relying on the County's admission in its post-hearing brief that it was delayed in making the payment in 2011 or in other words, it fully intended to pay the allowance even though the Agreement was expired, the arbitrator refrains from adding the new language proposed by the Union.

**Issues 13 & 14, Insurance, Article 12.2, Sub.2 What Should the Employer Contribution be for the Single Premium? Should the Employer Pay the Single Coverage for the \$15 Co-Pay Plan.**

The Union's Position

The Union argued that its proposal was reasonably necessary and consistent with a long-standing history of employer-provided health insurance for employees selecting single as opposed to family insurance coverage. The Union pointed out that such language has been in the Parties Agreement since 1988. The Union argued against the notion that internal consistency should be the determining factor in deciding this issue. Instead, the Union argued that since 1988 every single contract the bargaining unit entered into with the County indicates the County will pay for single employee coverage. The Union stressed that for twenty-two years the language has been negotiated into the contract and the County has covered 100% single employee coverage. The Union expressed concern that the County wants to describe the dollar amount as a cap. Therefore, it is important to preserve the underlying commitment that the County will pay 100% of the amount of single employee coverage. The Union did say that while its proposal is designed to maintain the County's commitment to pay 100% of the \$15 co-pay plan for single employee coverage, it is willing to accept a \$592 (2011) and \$609.50 (2012) contribution to any other single health insurance plan. The Union clarified that unless the employee was choosing the lowest cost single employee coverage then it agreed that the County should properly impose a dollar limit on the other choices. The Union also said that there is no consistent internal pattern with regard to the employer's insurance contribution. The Union pointed to the fact that the County agreed to cover 100% of the \$30 co-pay plan and 98% of the cost of the \$15 co-pay plan for three other bargaining units in 2012 and up to \$609.50 for members of two other bargaining units.

### County's Position

As far as the County is concerned, there is only one issue before the arbitrator and that is the amount of its contribution to the single coverage insurance. The County urged the arbitrator to focus on internal consistency arguing that for more than ten years, the County has maintained a consistent contribution toward both single and family health insurance. In 2011, the County set its contribution pattern at \$592 for single employee coverage and \$609.50 for its single employee insurance coverage during 2012. The County said as early as 2005, it began a push to have employees contribute to single coverage and move away from paying the entire amount of that coverage. The County said that its work with insurance consultants revealed that such a push to have employees contribute to their insurance was indicative of the changing nature of the health care marketplace. The County pointed out that three of its bargaining units agreed to language that 98% of single coverage would be paid by the employer and 2% by the employee. Employees in those three bargaining units selecting single employee insurance coverage are required to pay \$12.50 toward that coverage in 2012. The County also demonstrated that the remaining bargaining units as well as the non-union employees are required to pay \$17.50 per month toward single insurance coverage. The County argued that internal consistency is what arbitrators adhered closely to in interest arbitration proceedings. The County further argued that the Union's proposal would require it to pay \$627.00 per month for the \$15 co-pay plan and no other employee of the County receives that large of a contribution.

### Analysis

The Parties have consistently agreed to language requiring the County to pay 100% of the cost of single employee coverage. Relevant language in the 2009/2010 Agreement reads:

“Effective January 1, 2009 through December 31, 2010, the Employer will contribute the full cost of single coverage for eligible employees. Effective January 1, 2009, for eligible employees, the Employer will contribute 100% of the premium for the lowest cost plan for single coverage. For purposes of this calculation, the lowest cost plan for the term of this agreement shall be deemed to be the (\$15 co-pay) optional plan.” (Agreement at p. 12)

The County indicated that starting in 2005 it began the process of changing directions on this commitment and moving toward having employees contribute or pay a portion of the cost of single coverage based on the advice of insurance consultants. (County Hearing Book at p. IX-3) Based on this admission, County arguments regarding internal consistency carry little weight. Rather than seeking internal consistency, the County is interested in reducing its long-standing obligation to pay 100% of the cost of single employee coverage for the lowest cost single coverage plan. It is precisely that kind of change in direction that lends itself to the give and take of bargaining. What is the County prepared to trade in order to change such a long-standing commitment? To adopt the County's proposal would essentially cut the wages of bargaining unit members selecting single coverage without any consideration or reference to the impact on the overall financial picture of its positions in this process. The arbitrator finds that the County has not set forth a compelling reason to change its long-standing commitment.

Moreover, the internal picture indicates that the County agreed to continue to pay 100% of single employee coverage for members of three bargaining units and simply changed the plan relevant to the 100% commitment. Here, the Union seeks to maintain current language which requires the County to cover 100% of the cost for single coverage under the \$15 co-pay plan. Even assuming internal consistency, it would not be unreasonable to acknowledge the pattern established here by the County namely that of continuing to pay 100% of single employee coverage for some units and not others. The fact that the County secured concessions from other bargaining units indicates that it is possible to trade away its long-standing commitment. However, that does not mean the LELS unit must fall in line simply because the County has adopted a new goal with regard to its health insurance contribution for single coverage.

The County has the ability to pay and doing so will not significantly alter the Union's position with regard to its external comparators. The Union's position is awarded. The County will continue to pay 100% of the contribution and that 100% will apply to the \$15 co-pay plan.

**Issues 16 & 17: Definition of Employer, Article 3.2. Should Current Language be Changed to Define Mille Lacs County Board of Commissioners as the Employer? Should Article 4.1 & 4.2 be Change by Deleting References to the Sheriff?**

County's Position

The County proposed new language with the goal of making clear that the County Board is the employer and retains inherent managerial rights consistent with the Public Employment Labor Relations Act (PELRA). The County argued that current language in the Agreement predates the Minnesota Supreme Court's decision in General Drivers Local No. 6 v. Atkins County Board, 320 N.W. 2d 695 (Minn. 1982) wherein the Court said:

“Here we hold that Minn. Stat. § 179.63, subd. 4 (1980) operates to make the county board the sole employer for purposes of negotiating CBA's under PELRA and that PELRA prevails over Minn. Stat. § 387.14 (1980) to the extent of any conflict.” Id at 700.

The County argued that its proposal must be adopted so that the contractual language on this point will be consistent with the law. The County went on to say that the arbitrator is compelled to adopt its position because to do otherwise would be tantamount to adopting a position in conflict with the law. The County reasoned that if its position was not adopted the arbitration award could be overturned. The County argued that its proposal is consistent with that found in its agreements with its other bargaining units and that no problems have arisen as a result of having adopted that language. Finally, the County stressed its preference that the arbitrator give little weight to the fact that current language on this point has been in the Parties' Agreements for several decades.

Union's Position

The Union maintains that a party proposing a change in existing language bears the burden of proof to demonstrate a definite problem with existing language and that its proposed change will resolve the problem. The Union said the County's argument regarding consistency is not a compelling reason to adopt new language. The Union also pointed to the fact that in 1980 the Parties' Agreement contained the very language sought after by the County here. The Union also showed that the Parties' negotiated and agreed to change that definition in 1982. In short, the 1980 Agreement defined the employer as the Mille Lacs County Board and its representatives and the 1982

negotiations resulted in the Parties changing the definition back so that the County was the Employer for purposes of budgetary decisions and the Sheriff was responsible for managing the day-to-day operations of the Sheriff's department.

#### Award

The arbitrator awards the Union's position. First, the County did not identify any problem that has plagued it as a result of current language. Absent a compelling reason to change existing contract language, the arbitrator declines to do so. The restriction on arbitrator authority advanced by the County is not relevant here. In this instance, the arbitrator is acting consistently with traditional interest arbitration standards by refusing to change existing contract language absent compelling reasons. Moreover, the arbitrator by making this award is not awarding illegal contractual language but simply requiring the Parties to live with language negotiated and agreed upon decades ago. The bargaining history on this point is compelling because it demonstrates that it took 30 years for the County to decide that it needed to comply with a decision handed down in 1982, the very year it agreed to language that continues in the Agreement to this day. Furthermore, it makes practical sense that for a legal interpretation of a decision of the Minnesota Supreme Court that the Parties appeal directly to that Court for a determination as to whether their negotiated language on this point is in fact illegal.

#### Summary of Awards

1. **(Settled by the Parties prior to hearing)**
2. **The General Wage Increase for 2011 shall be 0%.**
3. **The County will provide Step Increases in 2011.**
4. **The General Wage Increase for 2012 shall be 1%.**
5. **The County will provide Step Increases in 2012.**
6. **The language referencing specific years shall be removed from current language. New language shall read as follows: "All employees covered by this Agreement shall be paid in accordance with the pay scales attached hereto and made a part of the Agreement. Employees shall be eligible for step increases on their anniversary date."**
7. **Retain Current Language**

- 8. Retain Current Language**
- 9. (Settled by the Parties prior to hearing)**
- 10. The County does not have to pay the uniform allowance in a separate check.**
- 11. The Uniform Allowance will be increased by \$50 in 2011 and \$50 in 2012.**
- 12. No language change regarding payment of uniform allowance after contract expiration.**
- 13. The County will pay 100% of single coverage.**
- 14. The County will pay 100% of single coverage for the \$15 co-pay plan.**
- 15. (Settled by Parties prior to hearing)**
- 16. Retain Current Language re: Definition of Employer**
- 17. Retain Current Language re: Definition of Employer**

Respectfully Submitted

July 6, 2012

/s/

A Ray McCoy  
Arbitrator