

IN THE MATTER OF ARBITRATION BETWEEN

AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, GREATER MINNESOTA COUNCIL 65, SHERIFF DEPT. BARGAINING UNIT AND LAC QUI PARLE COUNTY, MINNESOTA))))))	OPINION AND AWARD BMS CASE NO. 12-PN-0681 INTEREST ARBITRATION
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ARBITRATOR: Charlotte Neigh
HEARING: September 20, October 9 and 15, 2012
POSTHEARING BRIEFS RECEIVED: October 29, 2012
AWARD: November 16, 2012

REPRESENTATIVES

For the Union:

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JURISDICTION AND PROCEDURE

In accordance with the Minnesota Public Employment Labor Relations Act (PELRA), Charlotte Neigh was selected to arbitrate this matter and the Commissioner of the Minnesota Bureau of Mediation Services certified the issues to be arbitrated. Two hearings were held in Madison and another by telephone conference. Both parties had a full opportunity to offer evidence. By agreement of the parties, posthearing briefs were e-mailed on October 29th, and the record was closed upon their receipt.

ISSUES CERTIFIED AT IMPASSE

1. Duration - Term of the Contract - Art. 24
2. Wages - General Increase for 2012, if any - Appendix A
3. Wages - General Increase for 2013, if any - Appendix A
4. Wages - General Increase for 2014, if any - Appendix A
5. Wages - Market Adjustment, if any, for each classification - Appendix A
6. On Call - Amount for on call pay for full time deputies - Art. 9, Sec. D
7. On Call - Amount for on call pay for part time deputies - Art. 9, Sec. D
8. Health Insurance - Employer contribution for 2012 - Art. 20, Sec. A (resolved by parties)
9. Health Insurance - Employer contribution for 2013 - Art. 20, Sec. A (resolved by parties)
10. Health Insurance - Employer contribution for 2014 - Art. 20, Sec. A (resolved by parties)
11. Holiday Premium Pay - Should work on Easter Sunday be paid at premium - Art. 12, Sec. A
12. Life Insurance - Should the amount of coverage be increased - Art. 20, Sec. C

BACKGROUND

The County of Laq Qui Parle has a population of approximately 7,259, and 60 employees, 11 of whom are in the sheriff department. This bargaining unit (BU) of essential employees includes 6 deputy sheriffs and 5 jailer/dispatchers, including a chief jailer. There are 26 non-union employees and AFSCME also represents employees in three other BUs: courthouse (7); road and bridge highway (13); road and bridge technical (3). The three other BUs have settled on collective bargaining agreements (CBAs) for 2012, 2013, and 2014, with wage increases of 1% in each year. The parties reached impasse in their bargaining and they proceeded to binding interest arbitration.

The appropriate group for external comparisons was established in a 2006 interest arbitration award as Economic Region 6W counties, including Big Stone, Chippewa, Swift and Yellow Medicine.

ISSUE NO. 1 - DURATION OF THE CONTRACT

UNION POSITION

AFSCME seeks a two year contract covering the calendar years 2012 and 2013.

COUNTY POSITION

Three year agreement effective January 1, 2012 through December 31, 2014.

UNION ARGUMENTS

- Most of the counties in the comparison group (CG) have contracts only through 2013.
- After some time away from bargaining, the parties will be able to reconsider the county's finances in the fall of 2013.

COUNTY ARGUMENTS

- The County and AFSCME have settled the courthouse unit, the road and bridge unit, and the technical unit contracts for a three-year duration of 2012-2014.
- A three-year contract will keep this BU in sync with the other three AFSCME BUs, rather than creating a burdensome second cycle of bargaining at the County.
- This internal pattern supports a three-year duration, as it did when it was awarded by an interest arbitrator in 2006 despite the absence of any external comparison data for the third year.
- Labor relations stability will be fostered by a three-year contract.

DISCUSSION

There has been a pattern of internal consistency with three-year contract terms for all BUs in the County as far back as 2004. This issue was addressed by an interest arbitrator in 2006, who found a benefit to both parties in having only one cycle of negotiations in the County. The Union has not shown any change in circumstances that would support deviating from this pattern.

AWARD - ISSUE NO. 1 - DURATION

The collective bargaining agreement shall be effective from January 1, 2012 through December 31, 2014.

ISSUES NO. 2, 3, 4 & 5 - GENERAL INCREASE FOR 2012, 2013, 2014 & MARKET ADJUSTMENT

UNION POSITION

For 2012 and 2013 AFSCME requests a cost of living adjustment that brings the bargaining unit job classes to the average pay of comparable sheriff's departments. If the contract extends through 2014, the award should bring the bargaining unit up to or maintain average pay of comparable sheriff's departments for each of the job classes within the department. AFSCME requests a market adjustment for each job class in the sheriff's department that brings each job class/employee up to the average of the comparable sheriff's departments, effective January 1, 2012.

COUNTY POSITION

1.0% general wage increase for each of the three years of the CBA with no market adjustments.

UNION ARGUMENTS

- Wages of the BU employees are far below average, even for the smaller counties in southwest Minnesota. The "Jail Administrator" is underpaid \$18,000 compared to her counterparts in neighboring counties. The deputy sheriffs and jailer-dispatchers are \$7,000 below the average of the CG.
- Whether the title is Jail Administrator or Chief Jailer, the long-term incumbent is required to train and schedule all the jailer-dispatchers and to keep the jail in compliance with stringent state regulations. The sheriff characterized the position as Jail Administrator on the department's website, and testimony supports that she performs the same duties as her peers in the CG. Whether she is technically a supervisor exempt from overtime under FLSA is beside the point. As the person in charge of the jail and dispatch center she should be paid substantially more than she is. Because the county board will never increase her pay to the proper amount, it is up to the interest arbitrator to do it. The award should make a substantial increase in the incumbent's pay in the same manner the County increased the pay of the recorder and the sheriff, by \$5,000 effective January 1, 2012.
- The BU employees have not historically been the lowest paid among the CG. Although Big Stone County has fewer economic resources, it pays its deputies and dispatchers far better than this County.

Union Arguments (continued)

- The county's financial situation is affected by having no debt and an intentionally low property tax levy relative to the CG. Its per capita income is above average in the CG, it has the lowest unemployment rate and a below-average poverty rate. In 2010 the General Fund Unreserved Fund balance at year end was \$8,944,205 or 48% of annual expenditures. At 2011 year end it was \$8,851,263, 36.1% of annual expenditures. The Family Services Unreserved Fund balance at year end was 190% of 2011 expenditures, and at 175% in 2010. The County recently decided to loan \$2.4 million to a private company to install fiber optic cable in the County.
- The sheriff got a \$5,000 raise in January 2012. The recorder received three adjustments in three years: \$5,509 in 2010, \$1,000 in 2011, and \$1,000 in 2012, totaling "(with step increases?)" \$9059. The auditor/treasurer got similar large pay increases. The County gave all of its Human Services employees a 1.5% pay increase, even though by virtue of the Merit Pay system they are far and above better paid than any other county employees with the same pay equity points. Highway department wage adjustments were given to some job classes beyond the 1% cost of living so that motor grader operators will be paid the same as truck drivers.
- At the time of the 2006 interest award, the arbitrator calculated that a 3% wage increase would put the jailer-dispatchers at 93% of the CG average, and the deputies' starting pay above average and top pay at 97% of average. Arbitrator Miller observed that longevity pay and a \$200 above average contribution for health insurance made up for the below-average pay. Now there has been a substantial decrease in wage ranking in the CG for both deputies and jailer-dispatchers. The jailer-dispatcher maximum wage is 80.3% of the average and the deputy maximum is 85.2%.
- The longevity schedule provides only \$187.50 per month to the only deputy who has been with the department long enough to qualify for the full benefit. Added to the maximum pay his income is \$49,769, which is \$4654 (9.3%) below average. A couple of jailer-dispatchers qualify for 1% or 2% longevity pay, which doesn't make up for being more than 19% below average in pay.
- Although the most recent pay equity report shows the County in compliance, it is troubling that the jailer-dispatchers, females with 485 pay equity points, have fallen more than \$2500 annually behind males in the highway department with basically the same equity points since 2007/2008.
- Despite the County's claim of internal consistency for wage increases: the recorder, auditor/treasurer and sheriff, all males, received big pay increases in the last couple of years; the truck drivers in the highway department received a bump up to motor grader pay; and the Family Services employees received a 1.5% increase, even though they are \$700 to \$1300/month above their predicted pay based on pay equity points.
- Arbitrator Latimer has rejected an employer's claim that internal comparisons should dominate all other tests, reasoning that employees are in different BUs for legitimate reasons, and to limit an increase to an amount settled with a first BU would effectively strip a later BU of the right to bargain.
- The incumbent Chief Jailer should receive a market adjustment of \$5,000 effective January 1, 2012. The deputies and jailer-dispatchers should receive market adjustments of \$2500. In addition, a 1.5% cost of living adjustment should be awarded for 2012 and 2013. The parties should negotiate any adjustments for 2014.

COUNTY ARGUMENTS

Internal Consistency

- Arbitrators primarily emphasize internal consistency, recognizing that maintaining a uniform compensation pattern maintains labor stability and encourages serious, good faith bargaining rather than resorting to arbitration.
- Since at least 2004 there have been uniform wage settlements among all BUs and non-union employees. The three other AFSCME BUs voluntarily settled for 1.0% general wage increases for all three years, which is what this BU would have agreed to if they had negotiated to a resolution. This BU should not be treated differently merely because they are essential employees with the right to arbitration.
- The other BUs would in the future be extremely reluctant to settle for fear that this BU would achieve more in interest arbitration. A departure from the County's pattern will create a major whipsaw problem and jeopardize labor relations stability.
- The reclassification of the positions in the highway department created one class, Heavy Equipment Operator, for efficiency and flexibility in job assignments. This was not a market adjustment.
- The increases given to the recorder and auditor/treasurer were based on individual circumstances of additional functions and duties, as well as proficiency, performance, and cost savings.

Pay Equity

- The Pay Equity Act is to benefit only female-dominated classifications. The jailer-dispatcher position is a balanced class, not protected by the Act. The deputy position is a male-dominated class.
- The Chief Jailer/Dispatcher is a female-dominated, single-incumbent position that is currently \$269.54 below predicted pay. Other female-dominated positions in the County are significantly more below predicted pay but the County is in compliance with the Act.

Market Adjustment

- The Union's argument for a market adjustment focused largely on the wages of the Chief Jailer, who is also the Union Steward. The Union seeks an adjustment to mirror the wages of non-union, exempt, supervisory Jail Administrators in the CG who supervise much larger jails. It is not appropriate to compare this lead worker position to an Administrator position any more than comparing a highway foreman to an engineer. The Union is attempting to reclassify the Chief Jailer-Dispatcher position without following the established process for this inherent managerial right to evaluate and reclassify a position. It is non-negotiable and non-arbitrable and beyond the authority of an arbitrator.
- The incumbent admittedly has not attempted to follow the policy and procedure for reviewing and reclassifying her position. Under these same circumstances in another county, Arbitrator Miller rejected the Union's attempt, noting a failure to exhaust an administrative remedy before placing the issue before an arbitrator.

County Arguments (continued)

External Comparisons

- Although a wage award should be based on internal patterns, external comparisons also support the reasonableness of the County's proposed wage increases. Within the CG the relevant factors are significantly lower for this County, considering: population, population growth, tax capacity, net tax levy, per capita revenues, number of households, median home value, and jail capacity. Therefore it is not appropriate to use the CG's average wages as a benchmark.
- An external comparison should consider not only the sheriff department but a cross-section of classifications. Given the relative relationship of other classifications within the CG, no change is warranted in the ranking of this BU. This BU has historically ranked low when compared to the CG and there has been no change in demographics or economic status to warrant a radical departure from this rank. There is no justification for wage adjustments greater than the internal pattern of 1.0% in each year.
- Although the wages have historically ranked low in the CG, other forms of compensation and benefits must be considered: the most generous longevity schedule in the CG; and an extremely generous employer contribution for both single and family health insurance coverage. Factoring these in together with a wage increase of 1% each year brings the deputies' compensation to 96.9% of the CG average, and the jailer-dispatchers to 95.7% of the CG average.
- The County has had no problem attracting and retaining employees in the sheriff department. In the last ten years only one full-time BU member left to work for another jurisdiction. This indicates that the wage and benefits package is competitive.

DISCUSSION

The Union's references to a "cost of living" adjustment are considered to mean a "general increase" as certified by the BMS. The Union has not effectively countered the County's explanation of the constraints on its budget that support its position regarding wage increases. It is not enough to criticize the County for its long-standing policy of avoiding debt and trying to minimize the burden of property taxes on its relatively few residents. Revenues from state aid and investments have decreased substantially, necessitating historic increases in property tax levies in 2011 and 2012. To avoid increasing property taxes even more, the County has chosen to spend down its reserves rather than reducing staff. The future of county finances is uncertain given the lack of a long-term budget deficit solution at the state level. The County has clearly established the need to prudently manage its resources.

The County has also explained the particular circumstances and reasons for the wage increases given to the auditor/treasurer, the recorder and the sheriff. All of these decisions were supported by ample justification that they were in the best interest of the County and within the bounds of sound financial management. The sheriff's salary, even after the recent increase to reflect increased duties, is 95.9% of the CG average. The evidence does not support a claim that a market adjustment was given to employees of the highway department. The wage adjustment reflected that two classifications were combined into one for greater efficiency and flexibility. It entailed a change in duties for the two former classifications and required developing new skills. This is not the situation in the sheriff department.

Discussion (continued)

The increase of 1.5% given to employees of the Human Services Department was required by the state's merit pay system and does not constitute a departure from internal consistency by the County, which gave a 1% increase to its other non-union employees.

The most recent data available (2010) for counties in the CG show that Lac Qui Parle has 76.5% of the average population, with a projected decline of 8.7% by 2030; only Big Stone has a smaller population. Its tax capacity ranks 4th in the 5-member CG, at 87.1% of the average. Its total revenues amount to 71.1% of the average, and its median home value is the lowest, at 83.1% of the average. Its jail capacity is 7, compared to 17, 12, and 40 in the three other counties that have jails.

These parties submitted new contract terms to arbitration in 2006, and Arbitrator Miller made several findings that remain applicable: for the same reasons offered then and now by the Employer, Arbitrator Miller concluded that it was not appropriate to average the wages paid in the larger and wealthier counties of the CG to determine a benchmark wage for this BU; the parties had historically relied exclusively upon an internal pattern to determine an appropriate wage increase; and the wages paid to this BU had ranked low in the CG from an historical perspective.

Arbitrator Miller calculated that the 3% increase for 2006 resulted in putting the jailer-dispatchers at 93% of the CG average at the maximum of the wage schedule, and the deputies above average at the minimum and at 97% of the average at the maximum. He calculated that, considering longevity and the County's contribution for health insurance coverage, the total compensation package placed the BU above the CG average, resulting in a competitive package and no basis for an award any greater than the internal pattern.

Compensation Package

Three of the counties in the CG do not pay for longevity; Swift County pays 1¢/hour for each year of service, amounting to \$43/month after 25 years which is not as generous as Lac Qui Parle's: 1.0% 5-10 years; 2.0% 10-15 years; 3.0% 15-20 years; 4.0% 20-25 years; and 5.0% after 25 years.

The financial data in evidence show that the deputy wages:

- In 2011 were at 99.3% of the average minimum in the CG, and 88% of the average maximum or 92.2% with longevity factored in.
- In 2012 the County's offer of a 1% increase would put them at 99.2% of the average minimum, and 87.9% of the average maximum or 92% with longevity factored in.
- In 2013 a 1% increase would put them at 99% of the minimum, and 87.9% of of the average maximum or 92% with longevity factored in.
- Comparisons can't be made for 2014 because only one other county has wages set.

The financial data in evidence show that the jailer-dispatcher wages:

- In 2011 were at 92.8% of the average minimum in the CG, and 85.1% of the average maximum, or 89.09% with longevity factored in.
- In 2012 the County's offer of a 1% increase would put them at 92.73% of the average minimum, and 85.05% of the average maximum or 89% with longevity factored in.
- In 2013 a 1% increase would put them at 92.6% of the minimum, and 84.96% of the maximum or 88.93% when longevity is factored in.
- Comparisons can't be made for 2014 because only one other county has wages set.

Discussion (continued)

In 2012 the County's monthly contribution toward employee health insurance coverage is \$715 single and \$1,316 family. Both of these sums exceed the CG average. When these contributions are factored into the County's wage offer along with longevity, total compensation for a deputy at the maximum with single coverage is 93.5% of the average, and with family coverage is 96.9% of the average. A jailer-dispatcher with single coverage would be at 91.3% of the average, and with family coverage at 95.7%. Considering only wages, both classifications lost ground in the CG from 2006 to 2011, and would continue to slightly lose ground in 2012 and 2013. This slippage is less when longevity and insurance contributions are factored in. Although this gradually increasing disparity in wages in the CG is of some concern, the question is whether it is significant enough to warrant deviating from the historical pattern of internal consistency in wage increases.

The County persuasively argues that other classifications of employees should be compared to the CG to put the situation into perspective. The record shows that, relative to the CG average in 2012:

- Assistant engineer ranks 4th of 4, at 89.1%.
- Auditor/treasurer ranks 4th of 4, at 81.5%.
- Heavy equipment operators rank 5th of 5, at 87.8%.
- Chief deputy auditor ranks 5th of 5, at 85.2%.
- Highway accountant ranks 5th of 5, at 82.4%.
- Signman ranks 3rd of 3, at 91.4%.
- Deputy assessor ranks 5th of 5, at 63.2%.
- Deputy recorder ranks 4th of 4, at 79.7%.
- Administrative assistant ranks 5th of 5, at 71.9%.
- Environmental officer ranks 4th of 4, at 59.3%.
- Veterans service officer ranks 5th of 5, at 72.4%

CONCLUSION RE: GENERAL WAGE INCREASE - ISSUES NOS. 2, 3 AND 4

The sheriff department employees have historically been paid less than the CG average and the Union has not shown any change in circumstances that would justify deviating from that. The fact that various County employees are paid an even smaller percentage of the CG average: weighs against the Union's argument for a substantial increase for this BU; and supports the County's claim that this is a relatively small and poor County within the CG. The County's concerns about the effect of such an increase on the other employees' morale and future bargaining behavior are warranted. The County's position is awarded.

AWARD - GENERAL WAGE INCREASE - ISSUES NOS. 2, 3 AND 4

2012 - 1.0% general wage increase.

2013 - 1.0% general wage increase.

2014 - 1.0% general wage increase.

CONCLUSION RE: MARKET ADJUSTMENTS - ISSUE NO. 5

For reasons discussed in relation to the general wage increase, the Union's request for market adjustments for all of the classifications in this BU is not granted. Regarding the Chief Jailer position, the primary focus of the Union's arguments, the claims of a gross underpayment are based on comparing this BU position to Jail Administrators in other counties who are members of management with supervisory authority, and who are responsible for substantially larger jails. In Lac Qui Parle County the sheriff retains the supervisory authority and responsibility over the jail and dispatch activities. Although the incumbent Chief Jailer may be able to establish that some of her duties are not reflected in the position description, and that the position should be upgraded and reclassified, this is not the forum for that effort. The incumbent has the option of initiating an existing internal process for such a review of the position, which is the correct procedure.

Regarding pay equity, the County is in compliance with the Pay Equity Act, and there has been no showing that granting the County's proposed wage increase would cause it to be out of compliance. Therefore it is not a basis for increasing the wage award.

AWARD - MARKET ADJUSTMENTS - ISSUE NO. 5

The Union's request for market adjustments is denied.

ISSUE NO. 6 - AMOUNT FOR ON-CALL PAY FOR FULL-TIME DEPUTIES*UNION POSITION*

AFSCME requests that the full-time deputy sheriff's on-call pay be increased from \$300 per month to \$350 per month.

COUNTY POSITION

The County proposes to strike the first two sentences of Section D and replace them with the following underlined sentence:

~~“Each full time deputy shall receive \$300 (2009) per month on call pay. Employees other than full time deputies who are required to be on call shall receive \$1.00 per hour for each hour he/she is required to be on call with a limit of \$100.00 per month.”~~

“Each deputy who is required to be on-call shall receive \$2.50 per hour for each hour he/she is required to be on call”

EXISTING CONTRACT LANGUAGE - Article IX - Overtime and On-Call Pay - Section D.

“Each full-time deputy shall receive \$300 (2009) per month on-call pay. Employees other than full-time deputies who are required to be on-call shall receive \$1.00 per hour for each hour he/she is required to be on call with a limit of \$100.00 per month. An employee who is on call will remain available to work while off duty. An on-call employee is not required to remain in a fixed location, but must leave word where he/she can be reached by telephone or electronic signaling device. On-call time besides regularly scheduled on-call time shall be mutually agreed upon between the Sheriff and the employee.”

UNION ARGUMENTS

- The system of a flat monthly rate should remain in place. Any issues between the County and the Sheriff about a lack of information or understanding of on-call scheduling should be worked out between them and not negatively affect the deputies.
- On-call pay should be increased from \$300 to \$350 per month. The deputies look at it as part of their monthly salary and as a way to improve their income relative to the CG.
- Changing to an hourly rate would greatly increase bookkeeping and penalize deputies who take a vacation or use sick leave.

COUNTY ARGUMENTS

- In 2010 the on-call costs for the two full-time deputies and two part-time deputies were approximately \$8,800. In 2012 there are four full-time deputies and under the current language the costs increased to \$14,400 ($\$300 \times 12 \text{ months} = \$3,600 \times 4 = \$14,400$). It is not reasonable for on-call costs to increase when there is essentially the same number of on-call hours needing to be worked. This is an economic issue that must be considered as part of the total economic package cost.
- By mid-2012 the County added two more full-time deputies (totaling 6) to cover its law-enforcement contract with the City of Madison. This contract does not support an increase to \$350 per month. At the current contractual rate, the on-call costs for these six full-time deputies is \$21,600.
- The County's proposal of \$2.50/hour for on-call hours actually worked would also apply to part-time deputies and is fair and reasonable.
- The County's proposal is to pay only for on-call hours actually worked rather than the ones scheduled. This distinction is significant because the hours actually worked often differ from the schedule, as deputies are allowed to trade away their scheduled on-call.
- Currently a full-time deputy receives \$300/month regardless of whether on-call hours worked are 50 or 150. Such a payment is contrary to the public purpose doctrine and the standards of public accountability. Such a stipend without regard to the number of hours actually worked is akin to a bonus or a gift due to lack of consideration and therefore is not a proper use of public funds.
- One of the deputies testified that deputies are scheduled to work on call an average of 110 hours/month. At \$300/month, this equates to \$2.72/hour and so the County's position of \$2.50/hour is fair and reasonable.
- An increase to \$350 per month would be a 16.6% increase, and is not supported by comparison data, which shows the highest payment at \$225/month and an average payment of \$144/month

DISCUSSION

In 2010 there were two full-time deputies at \$300/month on-call pay and two part-time deputies at \$1/hour on-call pay, which cost \$8,700 for the year. During 2011 the two part-time deputies were changed to full time and started receiving \$300/month on-call pay, amounting to an annual cost of \$14,400 to the County. The County Auditor-Treasurer (A-T) explained that the 2012 budget for on-call costs was reduced to \$10,000 because he and the commissioners reasoned that the increase to four County deputies would result in fewer on-call hours for each deputy in 2012 and so it was illogical to assume that the County would have to pay a total greater on-call expense of \$14,400. The A-T testified that he expected negotiations to result in a change in the on-call pay rate and expected it to cost less than the budgeted \$10,000.

Effective January 2012 the County started providing law-enforcement services to the City of Madison pursuant to a two-year contract that pays the County for costs incurred, including on-call pay at \$300/month for the two new full-time deputies assigned to cover the City. Although the County argues that this contract does not support an increase to \$350/month, it is noted that the contract contains a provision for revisiting costs and expenses annually.

The A-T testified that he is concerned about the lack of accounting for actual on-call hours worked, and that he understands “per reports” that there can be a significant difference between the hours scheduled and the hours worked because the more senior deputies use paid time off to transfer the burden to other deputies. He is also concerned that the County is incurring increased costs without any indication that more on-call hours are being worked and so there is no benefit for these additional expenditures.

On cross-examination the A-T acknowledged that the deputies consider the on-call pay to be part of their salary and view it as regular compensation. In response to the Union’s suggestion that the County could require deputies to chart the actual on-call time worked to provide a record to justify the expenditures, the A-T responded that he wasn’t sure the commissioners had the authority to require that from the sheriff, who is an independently elected official.

The record does not include a copy of the schedule for deputies. Based on the testimony of two deputies, a regular 6-week schedule for three County (not Madison) deputies apparently requires:

- Rotating through weekday day and evening shifts (7 a.m. - 4 p.m. and 4 p.m. - 2 a.m.) and a Saturday evening shift (4 p.m. - 2 a.m.).
- Being on-call from 2 a.m. to 5 a.m. after working the evening shift; this is automatic and not stated on the schedule.
- Being on-call from 5 a.m. to 7 a.m. before starting the day shift; this is automatic and not stated on the schedule.
- On-call duty every third weekend from 2 a.m. Saturday to 4 p.m. Saturday; and from 2 a.m. Sunday to 7 a.m. Monday.

Although there is a separate on-call schedule for the two deputies who cover the City of Madison, they all trade back and forth. The dispatchers know the on-call schedule and any deviation from it must be done with notice to the dispatchers and the sheriff. If on-call time has to be covered for an absent deputy, it is either assigned by the sheriff or he covers it himself.

Discussion (continued)

No official records are kept regarding the number of on-call hours actually worked by individual deputies. A deputy testified that the schedule has been the same since 2010 and the number of on-call hours actually worked has been the same since 2010. He calculated that he is on call for approximately 110 hours/month, sometimes a little more and sometimes a little less. He stated that all three of them work “pretty close to the same” number of on-call hours, plus or minus 5 or 10.

The most senior deputy testified that historically this BU has been the last to settle with the County and the commissioners would increase the amount of their on-call pay to avoid giving a larger general increase than the other employees got. He also testified that the on-call hours worked are “pretty equal” among three of the County deputies but different for the one who works half time as the Emergency Coordinator. Even though this one deputy works less on-call time, he gets the same \$300/month on-call pay. There was some suggestion that this treatment of the Emergency Coordinator is problematic but neither party attempted to address it.

It is not surprising that the deputies consider the \$300/month on-call pay as part of their regular compensation. For every scheduled weekday shift, the deputy is “regularly scheduled” to be on call for either two hours before or three hours after, as well as extensive on-call hours every third weekend. There is no evidence that this burden has lessened since there have been four full-time County deputies. The only evidence in the record, the testimony of one of the deputies, is that the number of on-call hours actually worked has been the same since 2010. The County’s assumption that the number of on-call hours actually worked by each deputy would diminish is refuted by this evidence.

Likewise, the A-T’s understanding that there is a significant difference between the hours scheduled and actually worked, and that the burden is shifted to less senior deputies is refuted by the testimony of the deputies. An unknown factor is the extent of the on-call hours that the County deputies work to cover the City of Madison. Under the known circumstances, the costs for on-call pay increased just as the costs of wages increased with the addition of two full-time County deputies. The deputies should not suffer an adverse effect because of the County’s failure to budget for this cost, which was known to be required by the existing CBA.

The fact that the deputy’s job includes a requirement for substantial on-call time as part of the regular schedule demonstrates adequate consideration for the flat monthly payment. If the County desires a report of the number of on-call hours actually worked, some method could be devised to achieve that.

On the other hand, the Union has not demonstrated an adequate basis for increasing the monthly payment. The County correctly points out that the increase proposed by the Union would greatly exceed both the average and the maximum in the CG. It is concluded that neither party has shown convincing reasons to change the provision regarding on-call pay for full-time deputies.

AWARD - ISSUE NO. 6 - AMOUNT FOR ON-CALL PAY FOR FULL-TIME DEPUTIES

There shall be no change in existing contract terms.

ISSUE NO. 7 - AMOUNT FOR ON-CALL PAY FOR PART-TIME DEPUTIES*UNION POSITION*

Provide for a part-time deputy on-call pay rate of 1/2 of the part-time officer's regular hourly rate of pay, paid for each and every hour the part-time deputy is scheduled to be on call.

COUNTY POSITION

(In conjunction with revising the on-call rate for full-time deputies) Each deputy who is required to be on call shall receive \$2.50 per hour for each hour he/she is required to be on call.

UNION ARGUMENTS

- The current rate of \$1.00/hour is a joke.
- The Union's proposal is more than fair.
- Officers on call forgo a lot of other personal activities.
- In two of the CG counties, deputies on call are paid \$3.00 per hour.

COUNTY ARGUMENTS

- Based on the current monthly stipend of \$300, working on call 110 hours per month (as testified by a deputy) would equate to \$2.72 per hour on-call payment. The County's position of \$2.50/hour for full-time and part-time deputies is fair and reasonable.
- The Union's position would increase the hourly rate for a part-time deputy from \$1.00 to \$9.20 per hour, an exorbitant and cost-prohibitive increase.

DISCUSSION

The County's offer of \$2.50 per hour was contingent on that rate being applied to full-time deputies as well, which has been denied. There is no indication that the County is willing to pay this rate to part-time deputies without the benefit of having it apply also to full-time deputies. Currently there are no part-time deputies and the record does not indicate an intent to add any. Given the absence of any part-time deputy there is no evidence regarding the extent and effect of being on call or any other basis for evaluating how much should be paid for it. The Union's proposal is a huge increase from the historical rate and far exceeds any county in the CG. There is no basis for awarding a change in the on-call pay rate for part-time deputies

AWARD - ON-CALL RATE FOR PART-TIME DEPUTIES - ISSUE NO. 7

The rate shall remain at \$1.00 per hour.

ISSUES NO. 8, 9 AND 10 - HEALTH INSURANCE CONTRIBUTION - have been resolved by the parties.

ISSUE NO. 11 - HOLIDAY PREMIUM PAY FOR EASTER SUNDAY*UNION POSITION*

Amend the Holiday Pay section to provide that any employee who works on Easter Sunday is paid double time their regular hourly rate of pay for all work on that Sunday (midnight 12:00 a.m. through 11:59 p.m.).

COUNTY POSITION

Retain current contract language.

CURRENT LANGUAGE - ARTICLE XII - HOLIDAYS

Section A. (Amended 2009)

All work performed by an employee on a holiday shall be considered as overtime and shall be compensated for at time and one-half (1 1/2) the employee's regular rate of pay. Designated holidays are as follows:

. . . (listing 11/1/2 days)

Section B. (Amended 1986, 2009)

Regular employees will be allowed to take eleven (11) days off each year with pay for holidays as arranged with the Sheriff. These days may not be carried over into the next year. The employee may choose to take an alternative day off for holidays, in lieu of the designated holidays set forth in Section A, or the employee may choose to receive holiday pay. If the employee chooses to receive holiday pay, it shall be paid out in the pay period following the holiday or at a time mutually agreed to by the employee and Sheriff but in no event shall it be paid later than December 1 of that year.

. . .

UNION ARGUMENTS

- This is not a request for another paid holiday off work for all department employees. Only two or three employees actually work on Easter Sunday.
- Those who work on a family holiday like Easter should be paid extra for working that day.
- Sheriff department employees in 2 of the counties in the CG receive extra pay for working on Easter Sunday.

COUNTY ARGUMENTS

- For at least twenty years the parties have voluntarily negotiated agreements without paying a premium for Easter or paying double time for any holiday.
- In 2006 the arbitrator rejected the Union's efforts to enhance the holiday provision, based on the negotiation history.
- None of the counties in the CG pay double time for work on Easter Sunday: two of the counties do not recognize Easter Sunday as a holiday at all; two of them pay time and one-half.

DISCUSSION

Currently these employees are allowed to take off 11 1/2 days with pay each year as holidays. Additionally, an employee working on a designated holiday receives 1 1/2 times the regular rate of pay. According to County exhibit 84A, payment in lieu of taking a day off is unique to this BU and was allowed for the first time in the 2009-2011 CBA. According to the T-A, this practice was expected to save or maintain overtime costs but they have continued to increase, and adding Easter as a holiday would be an additional cost.

However, paying a premium to employees who work on Easter Sunday would not add it as a day for which employees could claim either an additional day off or a day's pay. It would cost the County only for the hours actually worked on Easter Sunday, which, according to the Union, is only two or three employees. Nor would it affect other County departments, which are not regularly required to operate on Easter Sunday.

It is noted that Good Friday is a holiday for all the BUs, presumably because of its connection to the same event that is commemorated by Easter. It is fair and reasonable to recognize that employees who actually work on the Sunday of this widely celebrated holiday weekend deserve premium pay. The County correctly points out that double time is unprecedented in this County and in the CG. The appropriate rate of pay would be one and one-half times, as paid in two of the other CG counties.

AWARD - PREMIUM PAY FOR EASTER SUNDAY - ISSUE NO. 11

The holiday pay section shall be amended to provide that any employee who works on Easter Sunday (midnight to 11:59 p.m.) shall be paid one and one-half times the regular rate of pay.

ISSUE NO. 12 - LIFE INSURANCE - AMOUNT OF COVERAGE

UNION POSITION

Increase the amount of life insurance coverage provided by the Employer from \$10,000 to \$20,000 for each employee effective the month following the arbitration award.

COUNTY POSITION

Retain current contract language.

UNION ARGUMENTS

- In 2012 the County increased the amount of life insurance coverage for all employees except this BU.
- The internal consistency urged by the County should be followed for this item.

COUNTY ARGUMENTS

- If the Union wants internal consistency to apply to this issue, it should also apply to the wage issue. Given the Union's rejection of the uniform total package settlement agreed to by the other three BUs, increasing the value of the life insurance policy is not warranted.

DISCUSSION

In 2012 the County increased the term life coverage for all of its other employees from \$10,000 to \$20,000. There is no basis for treating these employees differently.

AWARD - LIFE INSURANCE - AMOUNT OF COVERAGE

The amount of life insurance coverage provided by the County shall be increased from \$10,000 to \$20,000 for each employee effective the month following this arbitration award.

This award is in full settlement of all issues submitted to this arbitration.

November 16, 2012

Charlotte Neigh, Arbitrator