

IN THE MATTER OF ARBITRATION) INTEREST ARBITRATION
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 between)
)
 County of Crow Wing,) Non-Licensed Corrections
 Brainerd, Minnesota) Unit
)
 -and-) BMS Case No. 14-PN-1018
)
 Law Enforcement Labor)
 Services, Inc., Local)
 No. 16) February 5, 2015
))

APPEARANCES

For County of Crow Wing, Brainerd, Minnesota

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JURISDICTION OF ARBITRATOR

Law Enforcement Labor Services, Inc., Local No. 16

(hereinafter "LELS" or "Union") is the exclusive representative
for Non-Licensed Corrections employees in the Crow Wing County
Sheriff's Department ("Sheriff's Department") employed by the
County of Crow Wing, Brainerd, Minnesota (hereinafter "Employer"
or "County"). There are approximately 43 Corrections employees
in the Bargaining Unit, comprising of 42 Corrections Officers

and one Jail Programmer. This is an Essential Bargaining Unit under state law, which culminates in interest arbitration to resolve all outstanding impasse issues between the Parties.

The County and LELS (hereinafter referred to as the "Parties") are signatories to an expired collective bargaining agreement that was effective January 1, 2012 through December 31, 2013, and continues in effect by operation of law. Minn. Stat. § 179A.16, subd. 4.

The Parties entered into negotiations for a successor collective bargaining agreement. The Parties were unable to during bargaining and mediation to resolve all of their outstanding issues. As a result, on August 1, 2014, the Minnesota Bureau of Mediation Services ("BMS") received a written request from the Union to submit the unresolved issues to conventional interest arbitration. On August 1, 2014, the BMS determined that the following items were certified for conventional interest arbitration pursuant to Minn. Stat.

§ 179A.16, subd. 2 and Minn. Rule 5510.2930:

1. Duration - Effective Dates of Contract - Article 21.1
2. Wages 2014 - Wage increase if any for 2014 - Article 18.1
3. Wages 2015 - Wage increase if any for 2015 - Article 18.1
4. Wages 2016 - Wage increase if any for 2016 - Article 18.1
5. Insurance - Plan Availability and Employer Contribution if any - Article 13
6. Longevity - longevity Program if any - New

The County revised its final position regarding Issue 5, Insurance, and the Union agreed to the County's revised final position. Therefore, Issue 5 is not before the Arbitrator. The remaining five issues are properly before the Arbitrator for decision.

The Arbitrator, Richard John Miller, was selected by the Parties from a panel submitted by the BMS. A hearing in the matter convened on December 11, 2014, at 10:00 a.m. in the County Historic Courthouse, 325 Laurel Street, Brainerd, Minnesota. The Parties were afforded full and ample opportunity to present evidence and arguments in support of their respective positions.

The Parties agreed to hold open the record for the County to submit additional evidence and to update external data from one county. As a result, the Parties' legal counsel elected to file electronically post hearing briefs, with receipt by the Arbitrator no later than January 9, 2015. The post hearing briefs were submitted in accordance with that deadline date. The Arbitrator then exchanged the post hearing briefs electronically to the Parties' legal counsel on January 10, 2015, after which the record was considered closed.

**ISSUE ONE: DURATION - EFFECTIVE DATES OF
CONTRACT - ARTICLE 21.1**

POSITION OF THE PARTIES

The County is seeking a two year (2014-2015) agreement from January 1, 2014 to December 31, 2015. In contrast, the Union is seeking a three year (2014-2016) agreement from January 1, 2014 to December 31, 2016.

AWARD

A two year (2014-2015) agreement from January 1, 2014 to December 31, 2015.

RATIONALE

In determining the duration of a collective bargaining agreement, arbitrators review the past bargaining history between the involved parties. Previously negotiated collective bargaining agreements between the Corrections Unit and the County have primarily been three year agreements, with 12 of the last 16 years being covered by three year agreements. There, however, has been two, two year contracts within the last sixteen years, with the last being the expired 2012-2013 contract. Thus, there is no clear pattern regarding the duration of collective bargaining agreements with the Corrections Unit and the County.

The Arbitrator recognizes that the first year of the successor contract (2014) has expired and there are only eleven months left in the 2015 contract before it expires on December 31, 2015. At first blush, one could rationally expect with this scenario that a three year contract would best serve the Parties

to avoid any "strained" relationship between them since they would in the near future be back in negotiations if the Arbitrator awarded a two year contract. However, there is one overriding consideration in this case that warrants a two year contract.

At the direction of the County Board, and consistent with the Managing for Results system, the County began transitioning to a performance based pay system for its employees in 2012. The change from a traditional step structure to a performance based pay system has been the subject of negotiations with each of the County's 11 bargaining units. Through the process of negotiations during the recent rounds of bargaining, all bargaining units with the sole exception of the LELS Correctional Officers unit and the LELS Deputies unit have reached voluntary negotiated agreements with the County for either complete performance based pay or partial performance based pay. The only contracts within the County that extends beyond 2015 have wage provisions that include either a complete performance based pay system or a partial performance based pay system. The Union has not agreed to any forms of a performance based pay system. Thus, there is no internal comparison for 2016 with respect to any other bargaining unit that maintains the traditional step structure wage system since the LELS Deputies are not yet settled for 2014-2016.

The Union has been resistant to a performance based pay system, and has proceeded to interest arbitration in this case seeking a general wage increase for the Correctional Officers unit in addition to automatic step increases, which demands seek greater wage increases than any other bargaining unit and the non-union employee group. Therefore, a two year contract will better serve the Parties to once again discuss in negotiations the pros and cons of a performance based pay system rather than wait an additional year for negotiations to transpire, which could result in developing an enhanced "strained" relationship that might now exist between the Parties.

Finally, a two year contract for 2014 and 2015 is preferred since only three of the 17 or 21 comparison counties have wage settlements for 2016. Thus, with only about one-seventh of the counties settled for 2016, this is a limited sampling of valid settlement data available for the third year of the contract.

**ISSUE TWO: WAGES 2014 - WAGE INCREASE IF ANY FOR 2014 -
ARTICLE 18.1**

**ISSUE THREE: WAGES 2015 - WAGE INCREASE IF ANY FOR 2015 -
ARTICLE 18.1**

**ISSUE FOUR: WAGES 2016 - WAGE INCREASE IF ANY FOR 2016 -
ARTICLE 18.1**

POSITION OF THE PARTIES

The County is proposing a 0.0% general wage increase each year, and continuation of the step increases. The Union is proposing a 3.5% general wage increase each year, plus step increases.

AWARD

A 0.0% general wage increase each year of the 2014 and 2015 contract, with continuation of the step increases for those employees advancing through the salary schedule.

Correctional Officers who were already on Step 7 in 2013 are entitled to receive a wage increase of 3.5% for 2014 and 3.5% for 2015. For example, a Correctional Officer on Step 7 (top step) for 2013 would be entitled to a salary of \$54,343 for 2014 and a salary of \$56,245 for 2015. The same calculation method also applies to the Jail Programmer. If the Jail Programmer was on Step 8 (top step) for 2013, that employee would be entitled to a salary of \$57,603 for 2014 and a salary of 59,619 for 2015.

RATIONALE

In light of the Arbitrator's decision to award a two year contract for 2014-2015, Issue Four (amount of general wage increase for 2016, if any) is no longer before him.

There are generally four factors considered in any interest arbitration case. Those factors include: 1) the employer's

ability or willingness to pay for union economic demands; 2) internal equity; 3) external market comparisons; and 4) cost-of-living and other considerations, such as attraction and retention of employees.

As to the first factor, it is quite apparent that our national, state and local economies are stabilizing or even improving for 2014 and 2015. This is true with most governmental agencies, including Crow Wing County. As a result, the inability to pay argument raised by employers during harsh economic times in recent years has advanced to an argument that an arbitrator should consider the employer's obligation to efficiently manage and conduct its operations within the legal limitations surrounding the financing of these operations. Minn. Stat. § 179A.16, subd. 7. In other words, employers are now relying upon the argument of "financial restraint" or "financial constraint" rather than an inability to pay argument as to paying for union economic demands. The County is taking this approach in this case.

The Employer's cost of the Parties' wage proposals for 2014 and 2015 is a difference of \$183,048 (includes all roll-up costs). The financial health of the County is best exemplified by the fact that 2015 will be the fifth consecutive year of levy reduction. In addition, the County received County Program Aid in 2014 (over two million dollars), which was in excess of three

times the amount it received in 2011. Further, the County will receive additional aid increases in 2015. The County continues to hold a "AA" bond rating from Standard and Poor's. The County has the second lowest county tax as compared to four nearby counties, and was ranked 9th lowest in the state in 2013. Finally, the County's General Fund was \$584,783, which is more than double the cost of the Union's wage proposal.

Clearly, the County has the financial ability to pay for the Union's wage proposal had they been awarded for two or three years without adversely affecting its right and obligation to efficiently manage and conduct their operation. The Union's wage proposal was not awarded because of the other factors usually considered by arbitrators.

A second factor to be considered by arbitrators in interest arbitrations is internal equity. Internal equity takes two main forms - consideration of pay equity and consideration of an internal pattern, if one exists.

The legislature has established standards that interest arbitrators may consider and use when resolving wage issues for a balanced class, which exists in the Correctional Officers unit.

An arbitrator may consider the standards established by this section and the results of, and any employee objections to, a job evaluation study, but shall also consider similar or like classifications in other political subdivisions.

Minn. Stat. § 471.991 (2014). The legislature has charged the Minnesota Department of Employee Relations ("DOER") with the responsibility of ensuring compliance with the Minnesota's Local Government Pay Equity Act ("LGPEA"). To ensure compliance with the LGPEA, DOER requires jurisdictions to file reports every three years. On January 23, 2014, the County submitted a Pay Equity Report as required by LGPEA. It was determined that the County was in compliance with Pay Equity, and would be in compliance under both Parties' wage proposals.

The Pay Equity Report also shows that the maximum reported salary for Correctional Officers for 2013 was \$4,375 per month (top salary at Step 7 of the salary schedule). The County's Predicted Pay report shows Correctional Officers as being below predicted pay by \$53.07 per month, the equivalent of 1.2% of their current salary. This is one reason why the Arbitrator awarded a wage increase of 3.5% for the five current employees frozen at the top of the salary schedule who are not eligible for step increases. This will increase their top salary above the predicted pay, and secondly, will give them a wage increase like all other Bargaining Unit members advancing through the steps of the salary schedule. The 3.5% wage increase for those frozen at the top step is the equivalent of those employees advancing from Step 6 to Step 7 (3.44%), without adding any more steps to the existing salary schedule.

At first blush, it would be reasonable to assume that the Employer's final position of 0.0% general wage increase each year, and continuation of the step increases is an attempt to persuade the Union to accept a performance pay system like all other bargaining units, except for LELS Correctional Officers and LELS Deputies, and would result in an inferior settlement. This assumption is not true because the Employer's position is quite competitive compared to those bargaining units that have accepted a performance based pay system.

The County has been fair and flexible in its consistent approach to transitioning to a performance based pay system, allowing exclusive representatives the full opportunity to either complete performance based pay or partial performance based pay.

The performance based pay system includes a new Pay Matrix with open ranges. The Pay Matrix has four quartiles, no steps, and the minimum is reduced by 15% from the minimum in the step structure. The number of pay grades was increased from 24 to 30. The performance based pay system provides a percentage increase based on the level of each employee's performance. Employees whose wage is in the lower quartiles receive a higher percentage increase, and thereby have accelerated movement to the Midpoint of the range. In 2012, the Maximum on the Pay Matrix was the same as the 2011 Maximum.

The Maximum rate in the 2013 Pay Matrix was increased by 2.5% over 2012. In addition, the percentage increases for performance based pay were significantly increased and provide greater recognition and reward for the levels of performance. In 2014, the Maximum rate was increased by an additional 2.44%. The 2014 Pay Matrix is also applicable in 2015.

Because the Maximum of the new Pay Matrix is higher than the maximum of the step structure, it allows employees who are at the maximum of the step structure to receive a base wage increase.

In negotiating the transition from a step salary schedule structure to performance based pay, the County has developed four separate settlement models:

1. Bargaining units that have accepted the complete performance based pay system.
2. Bargaining units that have agreed to a partial performance based pay system. This includes the new Pay Matrix for employees at the maximum of the old system, performance based pay for newly hired or promoted employees, and 0.0% general increase with steps for employees whose wage is below the maximum.
3. Bargaining units that have agreed to the new Pay Matrix but not performance based pay. This includes open ranges and no steps, and provides a 2.5% increase for employees whose wage is within their appropriate salary range on the Pay Matrix.
4. Traditional step structure with 0.0% general increase and step movement for employees below the maximum. This settlement model does not include the new Pay Matrix. For the 2012-2013 contract, the LELS Correctional Officers unit chose to remain on their

traditional step structure. Employees received step increases on January 1 of each year, and 0.0% general wage increase as a result of Arbitrator John W. Johnson's decision. Crow Wing County and LELS, Local Local 16, BMS Case No. 13-PN-0553 (Johnson, 2013). This was consistent with two other bargaining units that negotiated to remain on the traditional step structure - the AFSCME General Unit and the LELS Deputies unit.

The County has historically maintained an internally consistent pattern of settlements. Thus, prior to the transition to a performance based pay system, the County negotiated the same general wage increase for each bargaining unit who utilized the traditional step system. This assured the cost of wage increases across all bargaining units and non-union employees would be as consistent as possible. This consistent settlement pattern no longer exists since bargaining units have accepted the performance based pay settlement models.

While there is no longer a consistent wage pattern (across-the-board wage increase) among County employees, the Employer has continued to negotiate settlements that result in costs that are as consistent as possible across all bargaining units. The average cost of settlements in 2014 was 2.93%, based on a range of 1.82% for the AFSCME General Unit to 3.89% for the LELS Dispatch Unit. The cost of the Union's proposal for 2014 of a 3.5% general increase plus step increases is 8.15%. The cost of the County's position of a 0.0% general wage increase plus step increases is 3.93%. Even with a 0.0% general increase, the cost

of the County's final position for 2014 is higher than the average cost of other settlements for 2014 within the County. For 2015, the average cost of the three settlements that had been reached as of the arbitration hearing was 2.54%. The cost of the Union's proposal for 2015 of a 3.5% general increase plus step increases is 7.63%. The cost of the County's position of a 0.0% general wage increase plus step increases is 3.42%. The cost of the County's position is again greater than the average cost of the settlements reached with other bargaining units.

Thus, not only is the Employer's position quite competitive compared to those bargaining units that have accepted a performance pay system, the cost of the County's position for both 2014 and 2015 is greater than the average cost of the settlements reached by other bargaining unit who adopted the performance based pay settlement models. The wage cost is even slightly greater when the salary increases are calculated for the five employees frozen at the top of the salary schedule. Therefore, the wage award is not harmful to this Bargaining Unit in comparison to other bargaining units that agreed to performance based pay settlement models.

Further, the step increases in the traditional step structure settlement model range from 7.8% at the beginning steps of the wage schedule to 3.5% at the last few steps. The Union's final position would result in enormous wage increases

for each employee ranging from 14.1% to 22.9% over the term of the contract. Wage increases this enormous have not been granted to public sector employees in the state unless there have been some market study adjustments negotiated by the parties, which is not the case here.

As to the factor of external comparisons, the Union proposes a "two-ring" comparability group consisting of the following 17 counties surrounding Crow Wing County: St. Louis, Stearns, Sherburne, Itasca, Beltrami, Benton, Isanti, Carlton, Morrison, Pine, Cass, Mille Lacs, Todd, Hubbard, Kanabec, Aitkin, and Wadena. The County, on the other hand, proposes the same seventeen counties as used by the Union, but added Blue Earth, Goodhue, Otter Tail, and Rice Counties.

Most, if not all, of the proposed comparability groups were used or considered by four other interest arbitrators in cases dealing with law enforcement employees employed by the County, including Correctional Officers. There was no consensus among the arbitrators or the parties as to what was the one appropriate comparability group. Each of the arbitrators chose their own comparability groups. The last arbitrator, John W. Johnson, decided to give consideration to four separate comparison groups in deciding the appropriate wage increases for Correctional Officers for 2012 and 2013, and there was some overlap among the groups. In this case, the County adopted the

21 counties used by Arbitrator Johnson into a single group. The Arbitrator finds that both of the comparability groups proposed by the Parties are valid and were used in determining the appropriate salary awards in this case.

The County's wage position continues to provide highly competitive wages for Correctional Officers. The County's position results in wages that are 107% of the average in 2014. There are an insufficient number of settlements in 2015 to calculate a true average. However, based on the data available, the County's position results in wages that are 103% of the average.

Clearly, the wage award results in competitive wages for Bargaining Unit employees, and there is no justification for a market adjustment wage increase such as suggested by the Union.

Another consideration in interest arbitration is Consumer Price Index ("CPI"). The CPI-All Urban Consumers as of October 2014 (the latest available data) is 1.6%.

The wage increases Correctional Officers have received have far outpaced the CPI from 2009 through 2013. The CPI has increased by 8.0%, and wages have increased, including step increases, by 25.5%. Because the step increases are large, ranging from 7.8% at the start of the wage schedule to 3.5% at the top end of the wage schedule, and those frozen at the top of the salary schedule are entitled to receive a 3.5% wage

increase, there is no question employee wage increases will continue to outpace the CPI into the foreseeable future.

ISSUE SIX: LONGEVITY - LONGEVITY PROGRAM IF ANY - NEW

POSITION OF THE PARTIES

The Union proposes to include a new longevity pay provision based on years of service as follows:

- 1% of top rate of pay after 8 years of service
- 2% of top rate of pay after 10 years of service
- 3% of top rate of pay after 12 years of service
- 4% of top rate of pay after 15 years of service

The County is opposed to the inclusion of this new economic item in the collective bargaining agreement.

AWARD

No longevity payments.

RATIONALE

The County's bargaining history establishes that longevity was eliminated 25 years ago for all employees hired after January 1, 1989. To the extent there is a longevity pay provision in any collective bargaining agreement within the County, the contract language clearly states that no employee hired after January 1, 1989, is eligible for longevity pay. Employees in the Correctional Officers unit were all hired after January 1, 1989.

As the proponent of this new economic provision, the Union has the burden of establishing a compelling reason for including

this economic benefit in the collective bargaining agreement. The Union has failed in this case to meet this recognized burden of proof.

The fact that 10 of 18 counties proposed by the Union provide for longevity in their collective bargaining agreements is noteworthy but not persuasive. The wages provided to employees in this Bargaining Unit are competitive in the marketplace even without longevity. Accordingly, there is no basis to increase the wages further with the addition of longevity pay.

In addition, to provide compensation solely based on an employee's length of service is contrary to the direction the County and its other bargaining units have moved, namely, to provide compensation based on each employee's performance and not on automatic longevity payments based on years of experience working for the County.

The Union alleges that the most compelling argument for awarding longevity is that in the past five years, the Bargaining Unit has experienced an attrition rate of nearly 100%, with 41 of the 43 employees leaving the Unit. While some of the turnover was due to promotions and retirements, the largest segment, some 54%, left for other jobs, resigned and/or did not complete their probationary period. The Union claims that if longevity is paid to existing employees it may help slow

the exodus of experienced employees and help the Employer's overall retention rate.

The Union's argument is not persuasive because the County has had no difficulty attracting qualified applicants for Correctional Officer positions. The evidence does not establish that employees are leaving the Sheriff's Department because of the wages being paid to Correctional Officers. They left for reasons other than wages. Thus, the cost to the County of the Union's proposed longevity pay provision of approximately \$16,000 in 2014, \$19,000 in 2015 and \$22,500 in 2016 (which includes roll-up costs) is not necessary or required to attract or retain Correctional Officers, with the wages being presently paid to them.

The Parties are to be complemented on their professional conduct at the hearing and the comprehensiveness of their oral presentations and their written post hearing briefs.

Richard John Miller

Dated February 5, 2015, at Maple Grove, Minnesota.