

<p>IN THE MATTER OF ARBIRATION</p> <p style="text-align: center;">between</p> <p style="text-align: center;">Hennepin County</p> <p style="text-align: center;">-and-</p> <p style="text-align: center;">Hennepin County Sheriff's Supervisors Association</p>	<p>INTEREST ARBITRATION</p> <p>BMS Case No. 15-PN-0011</p> <p>Date Notified of selection as neutral Arbitrator 11/26/14</p> <p>Date Of Hearing: 1/29/15</p> <p>Place of Hearing Minneapolis, Minnesota</p> <p>Record Closed:2/26/15</p> <p>Date Decision Awarded: 4/11/15</p>
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Appearances

For Hennepin County

William P. Peters, labor Relations Director
 Todd Olness, Labor Relations Representative
 Rita Vorpahi, labor Relations Representative

For Hennepin County Sheriff's Supervisors Association

Gregg M. Corwin, Attorney, Gregg M. Corwin & Associate, St. Louis Park, Minnesota
 Grant Gibeau, Attorney, Gregg M. Corwin & Associate, St. Louis Park, Minnesota
 David Zimmer, President and Captain, Hennepin County Sheriff's Office
 Jennifer E. Johnson, Sergeant, Hennepin County Sheriff's Office
 Steve Tait, Lieutenant, Hennepin County Sheriff's Office
 Matthew Rucker, Crime Scene Investigator, Hennepin County Sheriff's Office, Crime Laboratory

JURISDICTION OF ARBITRATOR

The Hennepin County Sheriff's Supervisors Association (Supervisors or HCSSA) is the exclusive representative for all POST licensed supervisors in the job classes of Sergeant, Lieutenant, Captain. employed by Hennepin County (County or Employer) in the Hennepin County Sheriff's Office under the direction of Sheriff Richard Stanek, the Chief Law Enforcement Officer of Hennepin County. Currently, the Union members accounts for roughly 0.8% of the total County workforce. There are sixty-five (65) Supervisors employed by the County, Forty-seven (47) of which are currently at the highest pay step under the Bargaining Agreement. In its 2014 and 2015 Contract Negotiations, the Hennepin County Sheriff's Deputies Association, exclusive representative for Hennepin County's Sheriff's Deputies, successively bargained for an additional 1% salary increase for Deputies at max pay. Of the 210 total Sheriff's Deputies, 138 were at max pay and received the additional salary increase.

Beginning in the spring of 2014, the County and Union (parties) met to negotiate their 2014 and 2015 Collective-Bargaining-Agreement. The Bureau of Mediation Services (BMS) provided mediation assistance when negotiations stalled on unresolved issues. Ultimately, mediation proved unsuccessful.

On October 17, 2014, Pursuant to Minn. Stat. § 179A.16, subd. 2, and Minn. R. 5510.2930, the BMS certified the following issues for interest arbitration:

- ISSUE NO. 1: Wages 2014 – Amount and Date of increase – Article 16, Section 1**
- ISSUE NO. 2: Wages 2015 – Amount and Date of increase – Article 16, Section 1**
- ISSUE NO. 3: Holiday Pay – Amount of Premium – Article 10**

On October 24 of October 31, 2014, respectively, the County and Union submitted their final positions to the BMS for certification and decision by the Arbitrator. ER 3 and ER 4.

The parties selected Harry S Crump to be the Arbitrator from the arbitration panels submitted by the BMS. A hearing on this matter convened on January 29, 2015, at 9 am at the Hennepin County Government Center, conference room A-410, Minneapolis, Minnesota. The parties were afforded full opportunity to present evidence and arguments in support of their respective positions.

The parties elected to file post hearing briefs with an agreed-upon submission date of February 26, 2015. Post hearing briefs were submitted in accordance with those timeliness and receive by the Arbitrator by email. The Arbitrator then exchanged the briefs by email, after which the record was considered closed. The parties agreed to the Arbitrator's Decision being issued by April 13, 2015.

ISSUE ONE: Wages 2014 - Salary Rates 2014, Article 16, Section 1, and

ISSUE TWO: Wages 2015 - Salary Rates 2015, Article 16, Section 1

POSITION OF THE PARTIES

Consistent with the voluntary settlements reached with its other unions, Hennepin County proposes a flat 2.5 % increase to all steps in the range 2014 and 2015..

Note: the date of increase is not in dispute; the County and Union agree on retroactivity to December 29, 2013 and December 28, 2014.

Consistent with the settlement reached between Hennepin County and the Hennepin County Sheriff's Supervisors Association, Hennepin County Sheriff's Supervisors Association proposes a 2.5% increase to all steps in the range and an additional 1 % increase for employees at the top of the pay range for 2014 and 2015.

Note: the date of the increase is not in dispute; County and Union agree on retroactivity to December 29, 2013 and December 28, 2014.

AWARD

The Employer's position is sustained. The Employer proposed flat 2.5% increase to all steps in the range is hereby awarded in its entirety.

RATIONALE

In the bargaining for new 2014 and 2015 contracts, The Employer achieved voluntary agreements with 16 of its 17 unions that includes wage increases of 2.5% in each year. Only in those limited cases where attraction and retention problems warrant greater pay did Employer adjust wages by more than 2.5%. The Employer's philosophy on collective bargaining is to offer uniform pay adjustments and benefits improvements across all bargaining units unless compelled by good evidence to do otherwise. Currently, the Employer's final wage offer for 2014 and 2015 are consistent with a voluntary settlement reached with its other unions, except for 11 of the 417 job classes at Hennepin County that demonstrated a compelling need based on attraction or retention data to deviate from the strong internal pattern. Not a single Supervisor, Manager, or Director in Hennepin County received an increase more than 2.5%.

The Union notes that the Employer did deviate from their pattern when licensed Deputies received an additional 1% to the top rate in each year. The Employer agreed to the additional 1% for licensed Deputies based on demonstrated attraction problems heightened by (1) new changes to the PERA's early retirement calculations for Police and Fire participants and (2) knowledge that the Minneapolis Police Department would hire significant new cadets classes in 2014 and 2015. This, also, served the Employer's purpose to ensure the Employer's ability to attract and retain qualified employees and produced a strong internal settlement pattern.

The County's history of pay increase over the last 15 years confirms that licensed job classes pay adjustment have not always moved in lockstep with each other; licensed deputies pay adjustment have not always moved in tandem with the Sheriff Supervisors. There is precedent for licensed Deputies receiving an above-pattern adjustment when their Supervisors did not. There is no consistent history pattern to justify applying the Deputies above-pattern adjustment to any of the three Sheriff Supervisors job classes. These Supervisors and their subordinates have not always been treated identically.

In terms of retaining quality Supervisors, the County notes that it has not lost a licensed Supervisor for any reason other than retirement in the last five years. No other significant group in the Sheriff's Office shares this distinction. Whether these Supervisors stay in their job due to good pay,

goal-plated benefits, or just old-fashioned seniority, there is no reason to compel the Employer to act outside its well-established pattern. If the counties wages lag in the labor market, County would logically expect to experience difficulty when recruiting new supervisors. Yet no difficulty exists. When job vacancies occurred, the Sheriff's Office can successfully recruit incumbents into positions in the three Supervisor classes. With few exceptions the employees that serve as recruiting source for new Sheriff's Supervisors are already employed by the County-new Hennepin County Captains come from the ranks of Hennepin County lieutenants; new Hennepin County lieutenants come from the ranks of Hennepin County Sergeants, and new Hennepin County Sergeants come from the existing Hennepin County Sheriff's Deputies. If there is no problem in replacing Supervisor staff, and no foreseeable trouble in doing so, a fiscally responsible public employer does not make extraordinary changes to its pay or benefit packages.

The Union claims that the testimony given at the January 29, 2015, hearing shows that the Supervisor Retention rate is not a result of the Counties Compensation Structure, but rather from a lack of opportunity for lateral transfer. In Hennepin County, the vast majority of new supervisor hires come entirely from the deputy ranks. This is a consistent practice throughout other Metro area law enforcement departments. A Sergeant from Hennepin County cannot simply apply for an equivalent Supervisor position in Ramsey County or Anoka County. If they want to transfer to a different County they would likely have to enter the new unit as a Deputy and work their way up the chain of command. As the testimony of the hearing showed, Supervisors stay in that position not because they are satisfied with the payee, but because they have no realistic opportunity to transfer.

The HCSSA's argues that an additional 1% pay increase to Supervisors at the top of the pay range is necessary to ensure that the Hennepin County Sheriff's Department attracts qualified candidates for its Supervisor ranks and to combat escalating salary compression between Deputies and Supervisors. The Union's witnesses presented arguments suggesting that reducing the Supervisory wage difference between Sheriff's Sergeant and Sheriff's Deputy by two percentage points from 28% to 28% would result in front-line staff expressing little interest and promotional opportunities.

In support of the Union's claims, Deputy Brett Bukkila testified that he had not applied for a recent promotion vacancy to Sergeant because he can work overtime as a Sheriff's Deputy and earn as much as a Sergeant, that he would lose his seniority, and with it likely the assignments and shift he enjoys. Sgt. Jennifer Johnson testified that she believes the decreasing pay differential between Deputies and Supervisors is in part to blame for the decline of highly qualified candidates. A similar

sentiment was echoed in the testimony of Lieutenant Steve Tait , who warned of the impending crisis when the current class of Supervisors retire leaving the less qualified Supervisors to remain. Finally the testimony of Captain Dave Zimmer, is of the opinion that in recent years the quality of new Supervisor applicants as been decreasing.

The County offers three points to rebut the Union's line of argument: (First), while working premium OT earns Deputies significant compensation, they need to work the hours! Using ER 20, a Sheriff's Deputy paid at top pay of \$63,920 needs to work 388 hours of premium OT in a year just to earn a top-pay Sergeants base pay. For as much as the Union's witnesses spoke about flexibility and spending time with family working 388 hours seem a considerable time commitment.

The County further points out that in order to earn the \$108,529 that Crime Lab Technician Matthew Rucker earns in 2013, Deputy Bukkila would have needed to work nearly \$40,000 worth of OT. (Second), the Counties data clearly demonstrates that Sheriff's Supervisors compensation isn't limited to base pay. Supervisors have ample opportunity to earn other pay elements (e.g., OT, night differential, on-call pay, stability pay) that amounts to many thousands of dollars annually. In 2014, a total of 22 Sergeants earned more than \$90,000; 13 Lieutenants earned more than \$95,000; in all five Captains earn more than \$100,000. It seems disingenuous to claim that adding a mere 1% of the top step would motivate a licensed Deputy to apply for promotion. (Third), on cross, the Union's witnesses acknowledged that in the last 15 years only two Sergeants have voluntarily demoted down to the rank of Sheriffs Deputy. Whatever the reason for these actions County believes that two voluntary demotions in 15 years do not create a problem. Given its historical success in filling promotions vacancies, the Sheriff's Office was able to find qualified candidates to replace them. Finally, The County notes that the Unions has made no proposal to modify the seniority provisions of the contract that could alleviate some of the deputies concerns.

The Union took issue with the lifetime earnings analysis that compared Hennepin County and Ramsey County Sheriff's supervisors pay over a 25-year career. To clarify, the 25-year earning analysis is a model that compares Hennepin County's pay structure against Ramsey County's pay structure for the equivalent job.

At top rate, Ramsey County's Commander earns \$91,627 in annual base pay, \$88 more than Hennepin County's Lieutenant at top pay. The purpose of the lifetime earnings analysis is to compare pay over an entire career-not simply a single point in time. As the County suggested during testimony, the model demonstrates earnings comparisons over a 10-or 15 year career. As ER 22 affirms in both 10-

and 15 year lifetime analysis, a Hennepin County Lieutenant earns more than his Ramsey County Commander counterpart. In both 10-and 15-year lifetime analysis, a Hennepin County Sergeant earns more than his Ramsey County Sergeant counterpart. The County notes that the Union's exhibit on external pay entirely omits the relevant comparison of each county's Sergeant Job class.

The Arbitrator is fully cognizant of the fact that significant departures from the settlement pattern, without compelling evidence, would be detrimental to the County in current or future negotiations and an irreparably harmed their ability to bring collective marketing to finality within a reasonable period of time. More importantly, Counties relationship with their unions that were among the first to settle would be strained as they would never again trusted Employer if they deviated substantially from the settlement without compelling reasons to do so.

The Union failed to present compelling and convincing evidence to support its proposed 1% market adjustment for Supervisors at the top of the pay range. The Union has presented no evidence to compel the Employer to act outside its well-established pattern. The Union presented no facts that question the employer's recent history regarding attraction and retention. The Union failed to present compelling evidence that the Employer could not fill promotional vacancies into positions in the three Supervisor classes with qualified licensed employees. The voluntarily turnover in this group of licensed Supervisors is nonexistence. There were no new rationale to conclude that the Employer's philosophy on collective bargaining and the deference traditionally given to internal comparisons in interest arbitration are somehow unsound. Based on the above the rationale, Union's requests for an above-pattern wage adjustment is rejected in their entirety, and award this Supervisors job class the same internal pattern wages increase shared by the rest of the County.

ISSUE THREE: Holiday Pay - Amount of Premium. Article 10, Section 1(B)

POSITION OF THE PARTIES

Hennepin County proposes no change to the language contained in Article 10, Section 1(B) which is shown below:

Employees for whom a legal holiday is a scheduled day of work shall be paid at their base pay rate for work performed on the legal holiday.

The Union proposes to change the current contract language in Article 10, Section 1(B) as follows:

The Employees who work a designated holiday with the exception of Christmas Eve day shall receive overtime compensation (one and one-half (1-1/2) times base pay rate) for hours worked on the legal holiday. Employees who work the Christmas Eve holiday shall receive straight time

compensation (one times base pay rate) for hours worked on the non-legal holiday. Compensation for holiday hours worked shall be provided either in compensated time off or cash payments as approved by the EMPLOYER.

AWARD

The Employer's position is sustained. Maintain the current contract language contained in Article 10, Section 1(B) which is shown below:

Employees for whom a legal holiday is a scheduled day of work shall be paid at their base pay rate for work performed on the legal holiday.

RATIONALE

The Employer's position is sustained based on convincing and compelling reasons. First, the County has established a clear internal pattern among all County employees. no supervisory or managerial job class, because of union status, receives holiday premium pay. In the Sheriff's Office, no organized supervisory or managerial job class enjoys holiday premium pay; and no non-organized supervisory or managerial class receives it. In their 36 plus years as a Bargaining Unit at Hennepin County, this Union has never received holiday premium pay. The Union is failed to present compelling evidence to require the union to change its internal pattern among all County employees and supervisory/managerial job class.

Second, The Hennepin County Supervisors Association has been unsuccessful in providing this holiday premium paid benefit to any of the five newer job class accreted to the Association. Four years ago, the Sheriff's Supervisors submitted this very same request to arbitration. In his January 2011 decision dealing on this topic, Arbitrator Miller awarded the County's position and maintain the internal pattern. Arbitrator Miller spoke specifically to one of the Union's current arguments that supervisors should not be "underpaid compared to (their) employees" on a holiday:

" Finally, the Union noted that when deputies are required to work on holiday they receive extra day-and-a-half of compensation, as proposed by the Union in this case.

While it is true under that current contract language Deputies make more money than the Supervisors in this Bargaining Unit on holidays worked, it must be remembered that the annual wage rate paid to Sergeants, Lieutenants, and Captains in the Bargaining Unit is clearly sufficient to make up for this insignificant difference on a holiday..." Id. In the current arbitration, the Union failed to show that the annual wage rate pay for supervisors would not be sufficient to make up for this insignificant difference on a holiday.

Third, every non-organized licensed supervisor or manager in the Sheriff's Office can be called

to work or to a crime scene at anytime of the day, seven days a week. Also, the other organized supervisors in the Sheriff's office, Detention Sergeants and Telecommunicator Sergeants, regularly works holidays and can be on call in 24/7. Neither the Detention Sergeants nor the telecommunicator Sergeants have successfully bargained for holiday premium pay, as Lieutenant Steve Tait accurately stated on cross.

Finally, the Union did not offer a new fact, comparison, internal comparison, or view on the County's external market during bargaining nor in the arbitration hearing that persuaded the Employer to move off the status quo regarding Holiday Premium pay. As with the interests case four years ago, the Union should not be rewarded in an arbitration hearing what it could not successfully negotiate at the bargaining table. Therefore, the Unions request for changing Holiday Premium pay is rejected. The current contract language contained in article 10, section 1(B) shall be maintained.

Issued And Ordered on April 11, 2015, from Savage, Minnesota.

Harry S. Crump

Harry S. Crump, Labor Arbitrator

Dated April 11, 2015, at Savage, Minnesota.