

**IN THE MATTER OF INTEREST ARBITRATION BETWEEN**

Wabasha County

and

**BMS Case No. 14-PN-0916**

Minnesota Teamsters Public and Law  
Enforcement Employees' Union, Local 320

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**NAME OF ARBITRATOR:** George Latimer  
Assistant James St. Peter

**DATE AND PLACE OF HEARING:** February 17, 2015  
Wabasha, MN

**BRIEFS RECEIVED;** March 13, 2015

**DATE OF AWARD:** April 13, 2015

**APPEARANCES**

**FOR THE COUNTY:** Karrie Kelly, County Attorney  
Debbie Koenig, Financial Director  
Krissa Bedsted, Human Resources Generalist  
Brian Goihl, County Commissioner  
Michael Plante, Country Administrator

**FOR THE UNION:** Kari Seime, Attorney/Business Agent Teamsters Local 320  
Vance Rolfzen, Business Agent Teamsters Local 320  
John Coons, Wabasha County Deputy, Union Steward

## **INTRODUCTION**

This is an interest arbitration arising under Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. § 179A.01-30. Teamsters Local 320 (Union or Local 320) is the exclusive representative for the Deputy Sheriffs employed by the Wabasha County (Employer or County).

Members of this bargaining unit are essential employees under PELRA and as such do not have the right to strike, but do have the right to submit unresolved bargaining issues to binding arbitration before a neutral arbitrator selected by the parties. (Minn. Stat. § 179A.16).

The parties are signators to a collective bargaining agreement, signed on May 16<sup>th</sup>, 2011. This collective bargaining agreement between the parties expired on December 31, 2013. The parties negotiated for a successor agreement and agreed to some, but not all provisions. Pursuant to Minn. Stat. § 179A.16, subd. 2, and Minn. R. 5510.2930, on September 4, 2014, the Bureau of Mediation Services certified the following issues for interest arbitration:

- 1. Duration: What is the term of the contract? – Article 26**
- 2. Wages 2014 – Amount of general increase? – Appendix A**
- 3. Market Adjustment 2014 – Amount of market adjustment? – Appendix A**
- 4. Wages 2015 – Amount of general increase, if 2015 is awarded? – Appendix B**
- 5. Wages 2016 – Amount of general increase, if 2016 is awarded? – Appendix C**
- 6. Shift Differential – Shift differential amount effective January 1, 2014? – Article 21.4**
- 7. Compensatory Time Bank – Number of hours allowed in compensatory time bank? – Article 4.4**
- 8. Call Back Pay – Amount of compensation if a court appearance is cancelled? – Article 4.6**
- 9. Injury on Duty – Duration of coverage when injured on duty? – Article 22**

**10. Training – Meal reimbursement amount when attending required training? – Article 23.1**

**11. Insurance – Amount of Employer’s contribution each year of the contract? – Article 9**

**12. Uniforms – Should receipts be required to receive the uniform allowance? – Article 13**

A hearing was held on February 17, 2015, at the County Attorney’s Office in Wabasha, Minnesota. Prior to the hearing, the parties recognized that their final positions on Duration (Issue 1) and Insurance (Issue 11) were the same, and therefore resolved. The Employer has revised its final position on Compensatory Time Banking (Issue 7) to allow for time banking, but keep the 120 hours allowed. Both parties had full opportunity to submit documents and arguments into the record. Written closing briefs were received by the Arbitrator on March 13, 2015 and the record was closed.

**UNION FINAL POSITION**

1. DURATION: Article XXVI – Length of Contract: The Union proposes the following language, in bold and underlined:

Except as herein provided this Agreement shall be effective January 1, ~~2011~~, **2014**, and shall continue in full force and effect until December 31, ~~2013~~ **2016**, and thereafter until modified or amended by mutual agreement of the parties. Either party desiring to amend or modify this Agreement shall notify the other in writing by August 1st of the year in which modifications are desired, so as to comply with the provisions of the Public Employment Labor Relations Act.

2. WAGES: Article XXI – Amount of General Increase: The salary schedule shall be increased by 3% effective on January 1, 2014. See Appendix A.

3. WAGES – Article XXI – Market Adjustment for 2014: Employees shall receive a market adjustment of 3.34% effective on January 1, 2014. See Appendix A1.

4. WAGES – Article XXI – Amount of General Increase: The salary schedule shall be increased by 3% effective January 1, 2015. See Appendix B.

5. WAGES – Article XXI – Amount of General Increase: The salary schedule shall be increased by 3% effective on January 1, 2016. See Appendix C.

6. SHIFT DIFFERENTIAL – Article 21.4 – Amount of Shift Differential: The Union is proposing the following language, in bold and underlined:

21.4 Shift Differential: An employee working between the hours of 6:00 p.m. and 6:00 a.m. shall receive a ~~twenty-five cent (.25)~~ **fifty-five cent (.55)** per hour shift differential in addition to his/her regular wage.

7. COMPENSATORY TIME BANK – Article 4.4 – Amount of Compensatory Time Accrued: The Union is proposing the following language, in bold and underlined:

4.4 Overtime earned by Employees will be paid in the pay period following the period in which it is earned. Employees will have the option of overtime pay or compensatory time. Compensatory time may be accumulated up to ~~120~~ **150** hours. Management has the right to assign time off unrequested from the employee for the purpose of utilizing their compensatory bank.

8. CALL BACK PAY – Article 4.6 – Cancellation of Court Appearance: The Union is proposing the following language, in bold and underlined:

4.6 Call Back Pay. An employee called back to work, including being called to testify in a criminal prosecution, except those initiated by the prosecuting officials of a jurisdiction outside Wabash County, shall receive credit for a minimum of three (3) hours and one and one-half (1½) times his/her regular hourly rate of pay. The minimum call back time credit described in this subsection shall not apply to any time continuous with the beginning or ending of an employee's scheduled shift. **If less than 24 hour notice of cancellation of appearance Employee will receive three (3) hours of pay.**

9. INJURY ON DUTY – Article XXII – Length of Compensation Period: The Union is proposing the following language, in bold and underlined:

An employee acting in the ordinary course of employment while acting in a reasonable and prudent manner and in compliance with the rules and procedures of the Employer, who incurs disabling injury will be compensated in an amount equal to the difference between the employee's regular rate of pay and benefits paid under Worker's

Compensation, without deduction from the employee's accrued sick leave. Such compensation shall not exceed an amount equal to ~~three (3)~~ six (6) months of the Employees regular monthly rate of pay. After this has been exhausted, the employee shall continue to receive the difference between the employee's regular rate of pay and benefits paid under Worker's Compensation, with this difference deducted from the employee's accrued sick leave.

10. TRAINING – Article 23.1 – Amount of Compensation for Meals: The union is proposing the following language, in bold and underlined:

~~23.1 The Employee shall be reimbursed by the Employer for out of pocket expenses for mileage, meals, lodging and tuition for training required of employee to maintain his or her position with the Wabasha County Sheriff's Department. Breakfast will be reimbursed up to \$8, lunch up to \$10 and dinner up to \$15 daily.~~

**Reimbursement for meals shall be made as per diem at the IRS rate. This per diem shall be paid whenever the course of employment or training takes an employee outside of Wabasha County.**

11. INSURANCE – Article 9 – The Union is in agreement with the County's insurance plan for 2015. See appendix D.

12. UNIFORMS – Article 13.1 – Payment for Uniforms: No change to existing language.

13.1 County shall pay on the second pay period of January to each current member of said unit as follows:

\$750 per year to each licensed Deputy Sheriff classified as such, effective 1/1/2011.

Payment is for payment or replacement in the following calendar year.

#### **EMPLOYER FINAL POSITION**

1. DURATION: Article XXVI – Length of Contract: Three (3) year duration, effective January 1, 2014 through December 31, 2016.

APPENDIX A, B, C. Wages 2014, 2015, 2016:

1 January 2014: COLA Increase: 1.5%

1 January 2015: COLA Increase: 2%

1 January 2016: COLA Increase: 2.5%

2. WAGES: Article XXI – Amount of General Increase: COLA Increase of 1.5% effective on January 1, 2014.

3. WAGES – Article XXI – Market Adjustment for 2014: The County is not agreeable to making a market adjustment with this unit as it would be a new term to the contract. Therefore, no contract language is being provided to the Arbitrator on this issue.

4. WAGES – Article XXI – Amount of General Increase: COLA Increase of 2% effective January 1, 2015.

5. WAGES – Article XXI – Amount of General Increase: COLA Increase of 2.5% effective January 1, 2016.

6. SHIFT DIFFERENTIAL – Article 21.4 – Amount of Shift Differential:

An employee working between the hours of 6:00 p.m. and 6:00 a.m. shall receive a twenty-five (.25) per hour shift differential in additional to his/her regular wage.

This is the current contract language and we are proposing to keep it the same.

7. COMPENSATORY TIME BANK – Article 4.4 – Amount of Compensatory Time Accrued:

Overtime earned by Employees will be paid in the pay period following the period in which it is earned. Employees will have the option of overtime pay or compensatory time. Compensatory time may not be banked. Management has the right to assign time off requested by employees for the purpose of utilizing compensatory time.

8. CALL BACK PAY – Article 4.6 – Cancellation of Court Appearance:

The County's position is that provision should not be added to the contract. Therefore, no contract language is being provided to the Arbitrator on this issue.

9. INJURY ON DUTY – Article XXII – Length of Compensation Period: Wabasha County proposes to leave the contract as written:

An employee acting in the ordinary course of employment while acting in a reasonable and prudent manner and in compliance with the rules and procedures of the Employer, who incurs disabling injury will be compensated in an amount equal to the difference between the employee's regular rate of pay and benefits paid under Worker's Compensation, without deduction from the employee's accrued sick leave. Such

compensation shall not exceed an amount equal to three (3) months of the Employees regular monthly rate of pay.

This is the current contract language and we are proposing to keep it the same.

10. TRAINING – Article 23.1 – Amount of Compensation for Meals: Wabasha County proposes to leave the contract as written:

The employee shall be reimbursed by the Employer for out of pocket expenses for mileage, meals, lodging and tuition for training required of employee to maintain his or her position with the Wabasha County Sheriff's Department. Breakfast will be reimbursed up to \$8, lunch up to \$10 and dinner up to \$15 daily.

11. INSURANCE – Article 9 – The Employer shall provide to each employee a policy of hospitalization and medical insurance with benefits which are equal to those benefits presently in effect.

A. The Employer shall pay 80% of the cost of coverage for all regular full-time employees for the base group hospital and medical insurance deductible plan (currently \$250 deductible, \$10 generic drug plan.) The County shall pay 80% of the family coverage premium cost for the base deductible plan (currently \$250 deductible, \$10 generic drug plan.) Any additional cost of the premium shall be paid by the Employee through payroll deduction. The County will offer an HSA/VEBA option in those years in which the County qualified to offer such an option.

12. UNIFORMS – Article 13.1 – Payment for Uniforms:

13.1 County shall pay on the second pay period of January to each current member of said unit as follows:

Up to \$750 per year to each licensed Deputy Sheriff classified as such, effective 1/1/2014. In order to receive the uniform allowance, itemized receipts must be provided to verify qualifying purchases.

Pay is for payment or replacement in the following calendar year.

## **ISSUES 2-5: WAGE INCREASE AND MARKET ADJUSTMENT**

### **UNION ARGUMENTS**

The Union argues the Wabasha County deputy sheriffs are underpaid for doing inherently dangerous law enforcement work. When considering whether to grant an award on economic items, the following are generally the relevant factors: (1) The employer's ability to pay, (2) internal market comparison, (3) external market comparison, and (4) other relevant factors.

#### **1. Employer's Ability to Pay**

The Union contends that Wabasha County can afford the requested increases. According to the State Auditors Report for the year ending December 31, 2013, Wabasha County has over \$9 million in unassigned funds. (Emp. Ex. 6). Debbie Koenig, Wabasha County Finance Director, testified that the increases would cost the County \$47,000 in 2014, and an additional \$58,000 in 2015. The Union argues that the increases would amount to only 0.5% of the unassigned funds in 2014 and 0.6% in 2015, a "pittance" to the Employer and a major increase for the employees of this unit. (Union Brief, page 3). Furthermore, at the hearing there was testimony from Michael Plante, County Administrator, that in recent years the Wabash County Board has been tumultuous politically, which resulted in some erosion of the County's financial reserves. The Union argues that such financial mismanagement and infighting of the County Board should not be an excuse to deny the Deputies a wage increase that they deserve. Therefore, the Union does not accept the Employer's claim that it is unable to pay the requested wage increases.

#### **2. Internal Market Comparison**

The Union does not argue that the internal comparisons would support its claim for a higher percentage wage increase.

### 3. External Market Comparison

The Union argues that, when compared to the external market, Wabasha County Deputy Sheriffs are well below average. Below is a table showing pay comparables to Wabasha County Deputies and Minnesota Region 10:

Houston County (Represented by LELS)	07/01/2014	\$23.90	\$29.53
Mower County (Represented by LELS)	2014	\$23.23	\$31.59
Olmsted County (Own Association)	2014	\$23.27	\$34.21
Fillmore County (Represented by LELS)	2014	\$20.91	\$27.94
Winona County (Represented by LELS)	2015	\$21.27	\$29.41
Freeborn County (Represented by MNPEA)	2014	\$21.37	\$30.78
Goodhue County (Represented by LELS)	2013	\$19.96	\$28.52
Dodge County (Represented by LELS)	2015	\$20.42	\$28.56
Rice County (MNPEA)	2015	\$23.95	\$31.13
Steele County (Represented by LELS)	2014	\$19.49	\$27.88
<i>Average</i>		\$21.79	\$29.96
<b>Wabasha County (Teamsters)</b>		\$18.28	\$26.67
Amount Below Average		\$3.51	\$3.29

Union Brief Exhibit A

As noted in the table above, the average wages of Region 10 are \$21.79 per hour at the bottom of the pay scale and \$29.96 per hour at the top. If the Employer's position is awarded, and the Arbitrator does not award a market adjustment, by 2016 the Deputies will be paid \$19.39 per hour at the bottom of the pay scale and \$28.30 per hour at the top. These hourly rates would still be below the 2014/15 average of Region 10. Therefore, the Union argues that the pay disparity gap between Wabasha County Deputies and those in Region 10 and the Contiguous Counties will only widen once the other counties settle their deputies' 2015 and 2016 contracts. Thus, at a minimum, a market adjustment of 3.34% is needed for the Wabasha County Deputies.

If the internal pattern proposed by the County is awarded, but the Arbitrator does award a market adjustment, by 2016 the Deputies would be paid \$20.04 per hour at the bottom of the pay scale and \$29.24 per hour at the top. However, these hourly rates are still below the current regional market average. This still results in a deficit to Wabasha of \$1.75 per hour at the bottom

and \$0.72 per hour at the top. Therefore, not only is a market adjustment of 3.34% needed in 2014, but the Union's proposed wage increases should also be awarded to bring these deputies in line with their regional counterparts.

#### **4. Other Considerations**

The Union fully acknowledges that the Minnesota Local Government Pay Equity Act (the Act) requires political subdivisions to pay employees equitably based on their job value without regard to gender. The Act also states that in an interest arbitration involving a class dominated by one gender, an arbitrator must take Pay Equity considerations into account. (Minn. Stat. § 471.992, Subd. 2). Krissa Bedsted, Wabasha County HR Generalist, testified that if the Union's wage proposals are awarded the Employer would fall out of compliance with the Act. However, the Union contends that a red herring exists in this argument because by only presenting one possible scenario at the hearing, it did not rise to the level of clear proof that the Employer would be out of compliance if the Union's position was awarded. The Employer did not cover other scenarios (i.e. would the Employer fall out of compliance if a market adjustment were awarded or if the County's own general increases were awarded). Thus, because the Employer's argument is a red herring, it should not be used as the basis to deny this bargaining unit a market adjustment, which at best would still leave them below the 2014 average at the end of this contract on December 31, 2016.

#### **COUNTY ARGUMENTS**

The County uses the same four relevant factors in its argument as the Union, with slight variation: (1) The employer's ability or willingness to pay, (2) internal equity, (3) external market comparison, and (4) cost-of-living and other considerations, such as attraction and retention of employees.

## **1. Employer's Ability to Pay**

The County argues it does not have the ability to meet the economic demands of the Union. The cost of implementing the Union's wage requests would result in an increase of approximately \$47,000 in 2014 and \$58,000 in 2015. (Emp. Ex. 3). The County's unrestricted reserves have steadily decreased since 2009, with the sharpest drop in 2013 (Emp. Ex. 7, graph 6).

## **2. Internal Market Comparison**

The Employer argues that there are three major issues with the Union's request when examining the internal equity.

First, the County argues that none of the other unions in Wabasha County have received the increase requested by Local 320. The other unions in the County have agreed to a 1.5% cost-of-living adjustment in 2014, 2.0% in 2015, and 2.5% in 2016. To allow this Union to receive such a great increase would cause adverse morale issues with the other bargaining units and with non-union employees.

Second, the County highlights that the Deputy Sheriff's Union is comprised entirely of men. The best internal comparison group is the Dispatcher/Jailer union, which has a balanced male and female union. The difference between these two unions impacts the County's pay equity report. If this Union was to be awarded a higher wage with a market adjustment that was not given to the other bargaining units, the higher wage to the male-dominated group will likely cause a gender pay equity disparity.

Thirdly, the Employer argues that Minnesota's pay equity statutes require an arbitrator to consider the equitable compensation relationship standards. If the Union's position for pay schedule increases and market adjustment are awarded, the Employer will fall out of compliance

with the pay equity statute. (Emp. Ex. 1 & 2). This means the Employer could suffer a 5% reduction in state aid, county aid, or a fine of \$100 per day, whichever is greatest. (Minn. Stat. § 471.9981, Subd. 6(c)). In addition, the County argues that it is not unreasonable to assume that the Department of Management and Budget could require it to raise other salaries in the County in order to come into compliance. This would substantially cost the Employer.

### 3. External Market Comparison

In order to compare the external markets, the Employer compiled data from various census reports and geographical profiles of the comparison counties. (Emp. Ex. 8-21). The following table is a comprehensive overview of that data:

COUNTY	POPULATION	TAX BASE	NET TAX CAPACITY	MEDIAN INCOME	MEDIAN HOME VALUE
Dodge	17,731	\$22,043,796	\$25,658,341	<b><u>\$65,548</u></b>	<b><u>\$161,100</u></b>
Fillmore	21,122	\$25,799,593	\$28,893,224	\$49,370	\$135,200
Freeborn	32,584	\$32,103,885	\$39,242,410	\$44,988	\$104,000
Goodhue	<b><u>44,127</u></b>	<b><u>\$58,688,698</u></b>	<b><u>\$62,628,287</u></b>	<b><u>\$56,875</u></b>	<b><u>\$181,800</u></b>
Houston	19,718	\$15,832,970	\$16,889,134	\$50,523	\$156,500
Mower	<b><u>38,603</u></b>	<b><u>\$35,132,010</u></b>	<b><u>\$43,207,525</u></b>	\$46,315	\$106,000
Olmsted	<b><u>124,277</u></b>	<b><u>\$139,757,623</u></b>	<b><u>\$146,309,802</u></b>	<b><u>\$64,385</u></b>	<b><u>\$171,100</u></b>
Rice	<b><u>56,665</u></b>	<b><u>\$50,220,669</u></b>	<b><u>\$50,790,228</u></b>	<b><u>\$59,332</u></b>	<b><u>\$187,500</u></b>
Steele	33,680	\$31,534,672	\$34,109,672	<b><u>\$56,940</u></b>	\$155,400
Wabasha	21,610	\$22,695,922	\$24,048,452	\$55,686	\$154,000
Winona	<b><u>49,985</u></b>	<b><u>\$38,294,619</u></b>	<b><u>\$40,846,855</u></b>	\$49,753	<b><u>\$158,000</u></b>

\*The top five counties in each category are bold and underlined for reference\* (Emp. Brief, p. 3).

Based on the table above, the County argues that Goodhue, Olmsted, Mower, Rice, and Winona are outliers across several categories. There are only three counties (Fillmore, Freeborn, and Wabasha) that fall in the lower half across all categories. However, even among these three counties, Wabasha has a lower tax base and net tax capacity. Thus, the Employer lacks the capacity to meet the Union's requested salary increases.

#### **4. Other Considerations**

The last consideration the County points out is whether it has difficulty getting applicants for open positions or retaining employees. The County contends that the Union failed to meet its burden of proof on this issue and the testimony at the hearing provided by the Employer showed that there is no difficulty in this area.

#### **ARBITRATOR'S ANALYSIS AND AWARD**

The standard applied to interest arbitrations and adopted by this Arbitrator is to examine (a) internal comparisons between the Employer's bargaining units, (b) external or market comparisons with other employers, (c) the Employer's ability to pay for proposed terms and (d) the context of other general economic conditions. This Arbitrator adheres to the principle that his task is to resolve the disputed issues as closely as possible to what the parties would have bargained, had there been no impasse.

As to the internal comparisons between the Employer's bargaining units, there are threshold determinations necessary to frame a fair judgment. Each represented bargaining unit should have its own voice at the bargaining table, requesting what is important to its members. Employees are in different bargaining units for legitimate reasons. The principles of internal comparisons, however, require that there be some consistency in the comparative changes between the units. Employers commonly argue that awarding a more generous settlement to a

unit through arbitration will encourage ‘whip saw’ bargaining. However, to rigidly adopt this view risks imposing the terms and conditions of the first bargaining unit’s settlement on all other units. This would effectively strip exclusive representatives of their right to bargain.

As to external or market comparisons with other counties, the Union argues that the Deputies are paid significantly less than the deputies in the other, comparable counties. However, the fact that the County has such a successful track record of recruiting and retaining qualified Deputies at the current compensation level is telling. If the County were unable to attract applicants for this position, an external wage comparison would bear more weight.

As to ability to pay, the parties in this case disagree concerning whether the County has the ability to pay. The County stresses the cost of implementing the Union’s wage requests would result in an increase of approximately \$47,000 in 2014 and \$58,000 in 2015. However, in the State Auditors Report, an exhibit presented by the County for the year ending December 31, 2013, Wabasha County has over \$9 million in unassigned funds. The Union correctly points out that the costs for implementing its requested increases would amount to only 0.5% of the unassigned funds in 2014 and 0.6% in 2015. That finding, however, to this Arbitrator does not resolve the issue since the ability to pay does not carry with it the requirement that it should be paid. Affordability is not the controlling factor in this case.

The Union’s argument that the County failed to fully analyze compliance with the Pay Equity requirements is strong. At the hearing the Wabasha County HR Generalist testified that granting the Union’s positions on wages would result in the County being out of compliance. However, the County did not present any evidence that it would be out of compliance if part of the Union’s positions on wages were granted. As Arbitrator Remington has noted in Pine County and Teamsters Local 320, 96-PN-1531 (Remington, 1996), “Consideration of the wage

issue cannot be unduly influenced by Pay Equity considerations absent clear proof from the Employer that the Union position will result in noncompliance.”

The facts here lead this Arbitrator to adopt the County’s claim that internal comparisons should carry significant weight. The contract terms reached in the negotiation sessions between the County and all of the other bargaining units established Wabasha County’s internal pattern. It is acceptable and reasonable for this bargaining unit to remain consistent with the others. However, the external comparisons relied upon by the Union cannot be ignored.

County exhibit 7, graph 6, which highlights five counties within the region (Winona, Rice, Olmsted, Mower, and Goodhue) clearly establishes their capacity to pay higher wages than Wabasha, and the County correctly argues that the external disparities are small when Wabasha County is compared with Fillmore, Freeborn, and Houston. Although not persuasive on the issue of ability to pay, some merit must be given to the Employer’s argument relative to the external comparisons.

In its brief the Union correctly argues that by awarding the County’s position on general increases, but awarding the Union’s position of a 3.34% market adjustment, the Deputies in this bargaining unit will still be below the regional market average using primarily 2014 data. A blending of the ameliorating effects of granting the Union the market adjustment in the amount of 3.34% seems to be a fair conclusion consistent with what the parties may have agreed to had the bargaining not come to impasse.

## **ISSUE 6: SHIFT DIFFERENTIAL**

### **UNION ARGUMENTS**

According to its argument above, the Union believes the County has the ability to pay the requested increase in shift differential from \$0.25 per hour to \$0.55 per hour.

Internally, the Jail and Dispatch unit receives a shift differential of \$0.55 per hour, which went into effect on January 1, 2015.

Externally, the average shift differential in the Contiguous Counties is \$0.72 per hour. The average for the remaining counties in Region 10 who have a shift differential is \$0.67 per hour. Therefore, Wabasha County is significantly below the market average for shift differential pay, and will continue to be below average even if the requested increase is awarded.

The Union takes serious issue with the Employer's statement at the hearing, in which it stated going back to January 1, 2014, to calculate the shift differential "would be a lot of work" for the finance department. The Union argues it is those employees' job to determine such calculations. Additionally, at the hearing, the County stated that had the Union agreed to its position on Uniforms (Issue 12) it would have agreed to the Union's proposed shift differential, similar to that of the Jail/Dispatch unit. However, the Union contends that this argument does not include any information on the quid pro quo offered to the Jail/Dispatch unit in exchange for the increase. When the Jail/Dispatch Unit contract is reviewed, those employees have the \$0.55 per hour shift differential and are not required to submit receipts to get uniform allowances, which is the County's final position with this bargaining unit. Therefore, the same "deal" was not offered to the Jail/Dispatch unit, and the quid pro quo argument is misleading.

## **COUNTY ARGUMENTS**

The County argues that it offered to raise the shift differential to \$0.55 per hour in exchange for an agreement from the Union that the uniform allowance clause match the language in the Jail/Dispatcher contract (i.e. requiring the submission of receipts). However, the Union did not accept this proposal.

The County also contends that it is unable to compute a shift differential adjustment back to January 1, 2014, because that information was not tracked. Ms. Koenig testified to this point at the hearing. Therefore, the Employer is unable to pay retroactively due to its lack of information.

### **ARBITRATOR'S ANALYSIS AND AWARD**

The Union's request for an increase to the shift differential is based on two premises. First, the increase should be granted because it would match that of the Jail/Dispatcher unit. Second, the external market comparison shows that the shift differential received by the Deputies in this bargaining unit is lower than the average received by deputies in the Contiguous Counties and Region 10, and would remain lower than these averages even if the requested increase is awarded. This Arbitrator is not persuaded by the County's argument that it would be unable to compute the shift differential retroactively. This Arbitrator does find the internal pattern should be given strong consideration, and therefore awards this bargaining unit a shift differential of \$0.55 per hour, effective January 1, 2014.

### **ISSUE 7: COMPENSATORY TIME BANK**

#### **UNION ARGUMENTS**

The autumn months are a busy time for the Wabasha County Deputies. The demand of the job increases due to hunting and tourism in the area. The Deputies tend to accumulate more comp time hours during the fall than at any other time of the year. Therefore, the Union argues that the Deputies should be allowed to bank 150 hours of comp time so they can carry over more hours into the winter and spring months.

## **COUNTY ARGUMENTS**

As noted above, the County's final position was amended at the hearing when it stated it would allow Deputies to bank compensatory time up to 120 hours, but not agree to the Union's proposed increase to 150 hours.

Internally, all other Wabasha County unions have a bank of 120 hours. The Union did not produce any evidence at the hearing to support its claim that some of the deputies want to be able to take additional time off to go hunting and that the fall is the busy time of year for these employees. The County's Finance Director testified that use of banked compensatory time in a 120 hour block so deputies can go hunting in the fall results in an increase in overtime.

Externally, only one county (Freeborn) has a compensatory time bank greater than 120 hours, and as stated above, the Employer believes this county to be an outlier in the comparison group, because it offers 240 hours. If one does not take Freeborn County into account, the average allowable banked time from the other counties on the Union's list is approximately 80 hours.

## **ARBITRATOR'S ANALYSIS AND AWARD**

This Arbitrator finds no compelling reason to increase the amount of allowable compensatory time banking. Therefore, the current contract language allowing 120 hours will remain.

### **ISSUE 8: CALL BACK PAY**

## **UNION ARGUMENTS**

Currently, if a Deputy is scheduled to appear in court, and the appearance is cancelled with less than 24 hours notice, the Deputy does not receive any pay unless he has already arrived at the appearance. The Union contends that when a deputy is schedule to appear in court, the

appearance governs his schedule. If a deputy requires daycare for a child due to a scheduled appearance, such an expense requires advance notice of cancellation or it is incurred.

Internally, no other bargaining units have this language. However, externally when compared to Region 10, it is typical to have language permitting deputies to be paid if a court appearance is cancelled with less than 24 hours notice.

### **COUNTY ARGUMENTS**

The Employer makes every effort to notify deputies quickly of cancelled appearances. There are some circumstances beyond the County's control, such as defense attorneys' contact with clients or changes in the court's schedule. There is no evidence presented by the Union that this failure to cancel an appearance occurs frequently.

### **ARBITRATOR'S ANALYSIS AND AWARD**

There is a general principle that an Arbitrator should be reluctant to award new language unless there is a compelling reason to do so. This Arbitrator recognizes the inconvenience a cancellation has on a Deputy, especially if childcare is involved. However, neither in its brief nor at the hearing did the Union present evidence that this inconvenience was a regular occurrence. The Arbitrator finds that the County credibly testified that it makes every effort to notify deputies in a timely manner to lessen the inconvenience. Therefore, this Arbitrator will not add language to the contract providing for call back pay.

### **ISSUE 9: INJURY ON DUTY**

#### **UNION ARGUMENTS**

The Union argues that extending the Injury on Duty pay from 3 months to 6 months would keep a Deputy's income steady for an additional three months, as well as give him peace

of mind that if it took longer than 6 months to recover, he would still have a sick leave bank to draw upon.

When compared internally, the Jail/Dispatch unit has this benefit for 3 months. Externally, some counties do not have any injury on duty language in their contracts, while other counties grant various amounts of time to receive such pay.

### **COUNTY ARGUMENTS**

Externally, three of the counties provided by the Union do not have any language on this issue. Of the remaining seven counties, one offers up to one year, two offer up to six months, one offers 40 days, and the last offers 30 days. The average injury on duty time of the comparison counties is 3.5 months, which is only slightly more than this bargaining unit is currently receiving.

### **ARBITRATOR'S ANALYSIS AND AWARD**

While this Arbitrator recognizes the inherent risk the deputies represented by this bargaining unit have in this position, he is not persuaded by the Union's argument to increase injury on duty time from 3 months to 6 months. While additional time would allow a deputy injured on duty to recover and have peace of mind, the increase is neither supported by an internal comparison, nor by an external comparison. As the County highlights in its argument, the current contract language of 3 months is only slightly lower (0.5 months) than the average of the comparison group. Therefore, the County position is upheld, for contract language to remain as it is currently written.

## **ISSUE 10: TRAINING**

### **UNION ARGUMENTS**

The Deputies in Wabasha County are currently reimbursed up to \$8.00 per day for breakfast, \$10 for lunch, and \$15 dollars for dinner while attending required training. This amount has not been increased in at least nine years. The Union argues that the Deputies should receive per diem payments at the IRS rate, which is \$46 per day for Southern Minnesota for 2015. The Union contends that the reasoning for this request is simple: eating out, whether it be fast food or a sit-down restaurant, costs more today than it did nine years ago. Therefore, the current reimbursement rates are inadequate.

### **COUNTY ARGUMENTS**

All other County employees, union and non-union, receive up to \$33/day. Additionally, all employees must provide receipts so they are only reimbursed for what they actually spend. No other comparable group presented by the Union has such language in its contract.

### **ARBITRATOR'S ANALYSIS AND AWARD**

The Union's argument that the current rate of reimbursement has not increased in at least nine years is reasonable. However, the Union seems to be proposing a different system by offering a per diem rate of \$46 dollars and not requiring Deputies to submit receipts. This obviously would cost the County more, but moreover, from an accounting standpoint, it is harder for the County not to require receipts. In addition, while the rate has not changed in nine years, it has remained the same for all County employees. Therefore, the Arbitrator finds for the Employer on this issue.

## ISSUE 12: UNIFORMS

### UNION ARGUMENTS

The Union disagrees with the County's position that Deputies should be required to provide itemized receipts to verify purchases qualifying for uniform allowance. The Union contends that the County has not advanced a single compelling reason for this change. Neither internal nor external comparison groups require Deputies to provide receipts to get a uniform allowance.

### COUNTY ARGUMENTS

The County proposes that the contract language reflect actual money spent by the Deputies. The uniform allowance currently costs the Employer up to \$11,250 per year. The County argues that requiring receipts so Deputies can be reimbursed for money actually spent is more fiscally responsible. Furthermore, the Employer offered to give the Union its requested \$0.55 shift differential if the Union agreed to the language in the Jailer/Dispatcher contract. However, the Union rejected this offer and did not propose a counteroffer.

### ARBITRATOR'S ANALYSIS AND AWARD

This Arbitrator is not persuaded by the County's position that requiring itemized receipts for uniform reimbursement is more "fiscally responsible." There does not seem to be a compelling reason to alter the current contract language. Therefore, the Union's position is awarded and the current contract language will remain the same.

### FINAL AWARD

- 2. Wages 2014 – Amount of general increase? – The salary schedule shall be increased by 1.5% effective on January 1, 2014.**
- 3. Market Adjustment 2014 – Amount of market adjustment? – Employees of this bargaining unit shall receive a market adjustment of 3.34% effective on January 1, 2014.**

**4. Wages 2015 – Amount of general increase, if 2015 is awarded? – The salary schedule shall be increased by 2% effective on January 1, 2015.**

**5. Wages 2016 – Amount of general increase, if 2016 is awarded? – The salary schedule shall be increased by 2.5% effective on January 1, 2016.**

**6. Shift Differential – Shift differential amount effective January 1, 2014? – An employee working between the hours of 6:00 p.m. and 6:00 a.m. shall receive a fifty-five cent (.55) per hour shift differential in addition to his/her regular wage effective January 1, 2014.**

**7. Compensatory Time Bank – Number of hours allowed in compensatory time bank? – No change to the current contract language.**

**8. Call Back Pay – Amount of compensation if a court appearance is cancelled – No change to the current contract language.**

**9. Injury on Duty – Duration of coverage when injured on duty – No change to the current contract language.**

**10. Training – Meal reimbursement amount when attending required training – No change to the current contract language.**

**12. Uniforms – Should receipts be required to receive the uniform allowance? – No change to the current contract language.**

The Arbitrator retains jurisdiction for 90 days to resolve any implementation questions which may arise.

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George Latimer, Arbitrator

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Date