

IN THE MATTER OF ARBITRATION)	INTEREST ARBITRATION
)	
between)	
)	
Freeborn County)	Dispatchers Unit
)	
-and-)	
)	BMS Case No. 15-PN-0326
Minnesota Teamsters Public)	
& Law Enforcement Employees')	
Union, Local No. 320)	December 27, 2015
))		

APPEARANCES

For Freeborn County

Scott M. Lepak, Attorney, Barna, Guzy & Steffen, Ltd.,
 Minneapolis, Minnesota
John Kluever, Administrator
Candace Pesch, Human Resources Officer

For Minnesota Teamsters Public & Law Enforcement Employees' Union, Local No. 320

Patrick J. Kelly, Attorney, Kelly & Lemmons, Little Canada,
 Minnesota
Vance Rolfzen, Business Agent
Penny Grangruth, Dispatcher
Jodie Lindell, Dispatcher

JURISDICTION OF ARBITRATOR

Minnesota Teamsters Public & Law Enforcement Employees' Union, Local No. 320 (hereinafter "Teamsters Local No. 320 or "Union") is the exclusive representative for all Dispatchers employed by the County Sheriff's Department in Freeborn County (hereinafter "Employer" or "County"). There are eight Dispatchers in this classification, with one vacancy to be filled in the near future.

This is the first collective bargaining agreement (also referred to as "contract") between the County and Union (hereinafter referred to as the "Parties"). The Freeborn County Sheriff's Office assumed dispatch services from the City of Albert Lea, Minnesota ("City" or "Albert Lea") in 2014. In order to provide dispatch services, the County hired the Dispatchers that had previously worked for the City. The County hire date for the Dispatchers was December 21, 2014. There has been one resignation since the County assumed the dispatch operations.

While at the City, the Dispatchers were represented by Teamsters Local No. 320. They were covered by a collective bargaining agreement, which was effective January 1, 2013 through December 31, 2014. The City and the Union consummated a Severance Agreement on December 1, 2014 for the Dispatchers, prior to the cessation of dispatch operations by the City. The Severance Agreement included payouts for earned but unused vacation, holiday, sick leave (up to a maximum accumulation of 960 hours) and make-up of any lost hours during the pay period of December 8, 2014 and December 21, 2014.

Upon becoming County employees, the Parties engaged in lengthy negotiations and mediation over their new first collective bargaining agreement. During these negotiations and mediation, the Parties were able to agree to a number of issues.

The Parties entered into negotiations for a new two year 2015-2016 collective bargaining agreement beginning on January 1, 2015 and shall remain in full force and effect until December 31, 2016. The Parties were unable to during bargaining and mediation to resolve all of their outstanding issues. As a result, on March 20, 2015 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 13, 2015 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) Wages 2015 - Initial step placement on general County 2015 Pay Plan? New - Article 21
- 2) Wages 2016 - Amount of General Increase, if any? New - Article 21
- 3) Wages - Movement - How should employees move through pay range? New - Article 21
- 4) Hours of Work - Overtime - When should overtime be paid? New - Article 11
- 5) Hours of Work - Overtime - What hours count toward overtime? New - Article 11
- 6) Hours of Work - Overtime - What language, if any, should govern distribution of overtime? New - Article 11
- 7) Compensatory Time - Should contract allow for accrual of compensatory time? If so, how much? New - Article 11
- 8) Working Alone Pay - Amount, if any, an employee should be paid for working alone for more than six (6) hours? New - Article 13
- 9) Court Time, Call Back & Standby - Amount, if any, an Employee should be paid if called back to work or placed on standby? - New - Article 12

- 10) Shift Differential - When should shift differential be paid? New - Article 13
- 11) Shift Differential - How much should an employee be paid? New - Article 13
- 12) Vacation - Should an employee transitioning from City to County employment be given a starting balance? If so, how much? New - Article 14
- 13) Vacation - What should be the vacation accrual? New - Article 14
- 14) Holidays - Compensation for time worked on a holiday? New - Article 15
- 15) Holidays - Compensation for time not worked on a Holiday? New - Article 15
- 16) Holidays - What should part-time employees receive for holidays? New - Article 15
- 17) Holidays - Whether to add language on the Sheriff's right to schedule employees on a holiday? New - Article 15
- 18) Holidays - Whether to add language limiting holiday pay when an employee calls in sick? - New - Article 15
- 19) Holidays - Which dates, if any, should be assigned to holidays? New - Article 15
- 20) Severance - Whether City service time should count toward the severance benefit eligibility? New - Article 16
- 21) Sick Leave - Beginning Balance - Should an employee transitioning from City to County employment be given a starting balance? If so, how much? New - Article 17
- 22) Sick Leave - Amount of sick leave accrual? New - Article 17
- 23) Health and Welfare - Amount of Life Insurance the County should provide? New - Article 19
- 24) Definition - Part-Time - What definition, if any, should be given to part-time employees? New - Article 3
- 25) Definitions - Full-Time - What definition, if any, should be given to full-time employees? New - Article 3
- 26) Definitions - Overtime - What definition, if any, should be given for overtime? New - Article 3
- 27) Definitions - Scheduled Shift - What definition, if any, should be given for scheduled shift? New - Article 3
- 28) Definitions - Rest Breaks - What definition, if any, should be given for rest breaks? New - Article 3
- 29) Definitions - Lunch Breaks - What definition, if any, should be given for lunch breaks? New - Article 3

The Arbitrator, Richard John Miller, was mutually selected by the Parties. A hearing in the matter convened on November 25, 2015 at 9:30 a.m. at the County Government Center, Albert Lea, Minnesota. The Parties were afforded full and ample opportunity to present evidence and arguments in support of their respective positions.

The Parties agreed to waive the filing of post hearing briefs. The Parties also agreed to waive the 30-day period, if necessary, for the Arbitrator to render his decision due to the vast number of issues certified to arbitration (29) and the holidays. The Arbitrator thanks the Parties for their professional courtesy.

BACKGROUND

Freeborn County is located in the most southern part of Minnesota, which borders Iowa. The County was established in 1855 and named after an early Minnesota politician. It includes the intersection of major transportation routes Interstate 35 (north and south) and Interstate 90 (east and west). The County has an estimated 2014 population of 30,840. The County has a land total of 707 square miles and a water total of 15 square miles.

The County includes 19 cities and 20 townships and 4 unincorporated communities, all of which rely on the County Sheriff's Department as their primary law enforcement agency or

back-up agency. The County seat is located in Albert Lea, which has an estimated population of 17,815 (over 57% of the County's total population). Albert Lea has their own law enforcement agency, but uses the County Sheriff's Department as their back-up agency when needed.

The County Sheriff's Office consists of the Sheriff, Kurt Freitag; Chief Deputy; two Investigators; and thirteen Patrol Deputies. The Patrol staff have specialized training to participate in the South Central Drug Investigation Unit, Water Patrol and Snowmobile Patrol.

The County also has a detention center with a Jail Administrator, Assistant Jail Administrator and Ice Contract Administrator, coupled with a Program Administrator and included are approximately 36 Detention Deputies.

Studies have indicated dispatchers, in general, are required to demonstrate significant degree of initiative, organization, focus and judgment in responding to emotionally charged individuals involved in a variety of stress inducing and potentially life threatening situations. In addition, dispatchers are tasked with conveying information received from callers to officers in the field in a clear, timely and efficient manner. Although dispatchers are almost never directly exposed to threats aimed at their personal integrity, their work detail is characterized by numerous psychological

stressors that vary by degree and intensity, including being criticized by the general public, which has caused dispatchers to sometime perceive themselves as second class citizens within law enforcement organizations.

Police Dispatchers in the County (also commonly referred to as E911 Dispatchers) comprise a select group of emergency services workers who are the center of emergency response activity. Dispatchers work 24 hours, 7 days a week, 365 days a year. The Dispatchers' experience is monumental and goes back to the 1980s. They are familiar with geographic area they serve. The Dispatchers' experience for the City and County include a priceless amount of critical incident experience, proper procedures, proper call signs, and a complete understanding of the necessity of scheduling and the importance of time off due to their responsibility.

The Dispatchers are first responders in the County that involve life and death situations with proper and critical judgments. The number of calls in 2014 was 37,418. The number of calls in 2013 was 34,924. As of September 29, 2015 there have been 34,924-plus calls. The Dispatchers also serve 16 fire departments, 3 law enforcement agencies and ambulance service for the County and surrounding cities.

This case is unique in several aspects. First, the County Sheriff's Department has no experience in supervising or has a

qualified supervisor in the now County Dispatch Department and, in fact, the supervisors cannot even log in to assist the Dispatchers. Second, the former City Dispatchers do not require any training and have the ability with ease to supervise any new hires at the County. This is noteworthy because the County Sheriff's Department does not have a dispatch training program or a guideline for Dispatchers and, therefore, must rely upon the experience and expertise of those Dispatchers that were hired from the City. Finally, this case is unique not only because it is the first contract between the Parties, but that the majority of the impasse issues involve contract language.

FACTORS CONSIDERED IN RESOLVING ECONOMIC AND LANGUAGE ISSUES

Rome was not built in one day is an adage attesting to the need for time to achieve your desired end. In other words, you cannot expect to achieve everything in a short period of time.

There would be no need for collective bargaining if the party seeking the addition, subtraction or modification of contract language or establishment or addition to economic items gained them totally during their first round of negotiations. The Union appears to be seeking significant economic and non-economic awards in their first contract rather than waiting and gaining them through successor collective bargaining, which is a continual, slower and evolving process. Granting the Union everything they sought in negotiations without a result "trade"

(quid pro quo) is counter to traditional negotiations and can result in a party attempting to gain something in interest arbitration that they would have never been able to gain during negotiations. The Union needs to be patient in successor collective bargaining rather than expect to achieve everything in their first contract and first interest arbitration.

Unfortunately, the Parties had key areas of disagreement involving economics and the extent in which the base contract should differ from language that existed in the City's expired collective bargaining agreement and the language in the County and other Teamsters Local No. 320 bargaining units already at the County have negotiated in their collective bargaining agreements. Teamsters Local No. 320 is the bargaining representative for Corrections Officers and Corrections Sergeants at the County. In addition, there are two newly represented units in the County Sheriff's Office as of 2015, represented by MNPEA. The units are Transportation Deputies and Detectives.

The collective bargaining agreements in the County Sheriff's Office disclose that their contracts have largely the same language with relatively minor differences to account for unique features of the respective collective bargaining units. The reason for this uniformity is that the contracts all arose out of the language initially negotiated between the County and

Teamsters Local 320 for the Deputy and Correctional Officer bargaining units. These negotiations produced uniform language. When the County created a licensed Sergeant classification, this became a bargaining unit represented by the Teamsters Local 320. The parties utilized the same base contract as the Deputies. When the County created a Correctional Sergeant classification, this became a bargaining unit represented by the Teamsters Local 320. The parties utilized the same base contract as the Correctional Officers (which in turn was the same base contract as the Deputies and Patrol Sergeants). When the Patrol Deputies and Patrol Sergeants switched to representation by MNPEA, they maintained the same business agent that was formerly associated with the Teamsters Local 320 and continued the Teamsters Local 320 base contracts.

When MNPEA became the exclusive representative of the Transport Deputies and Detectives, the parties started negotiations over a first contract. In the first negotiation session with each group, there was a tentative agreement to utilize the County's common Sheriff's Office union contract language with a small number of changes unique to each group.

Accordingly, the Party proposing the change in existing contract language among other County bargaining units or expired contract language from the Albert Lea contract bears the burden of showing the need for this language.

The legislature has established standards that interest arbitrators must use when resolving wage and salary issues:

In all interest arbitration involving a class other than a balanced class held under sections 179A.01 to 179A.25, the arbitrator shall consider the equitable compensation relationship standards established in this section and the standards established under section 471.993, together with other standards appropriate to interest arbitration. The arbitrator shall consider both the results of a job evaluation study and any employee objections to the study.

Minn. Stat. Sec. 471.992, Subd. 2. These standards apply in the present case because the Dispatcher classification is a female dominated classification as that term is used in the pay equity law.

In addition to equitable compensation relationships, the standard referred to above requires the arbitrator to consider the extent to which:

Subd. 1...

- (1) compensation for positions in the classified civil service, unclassified civil service, and management bear reasonable relationship to one another;
- (2) compensation for positions bear reasonable relationship to similar positions outside of that particular political subdivision's employment; and
- (3) compensation for positions within the employer's work force bear reasonable relationship among related job classes and among various levels within the same occupational group.

Subd. 2 **Reasonable relationship defined.** For purposes of subdivision 1, compensation for positions bear "reasonable relationship" to one another if:

- (1) the compensation for positions which require comparable skill, effort, responsibility, working conditions, and other relevant work-related criteria is comparable; and

- (2) the compensation for positions which require differing skill, effort, responsibility, working conditions, and other relevant work-related criteria is proportional to the skill, effort, responsibility, working conditions, and other relevant work-related criteria required.

Minn. Stat. Sec. 471.993.

There are four established factors that are being utilized by most interest arbitrators in resolving impasse items, especially economic items. Those factors are: the employer's ability to pay; 2) internal equity; 3) external or market comparisons; and 4) other economic or non-economic factors.

As to the first factor, since our national, state and local economies have significantly improved since the most recent recession years, the inability to pay argument is no longer viewed literally by whether the employer can pay for the economic items sought by unions. Instead, interest arbitrators are now placing greater reliance upon the standard codified in Minnesota Statutes, which provides:

In considering a dispute and issuing its decision, the arbitrator or panel shall consider the statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations.

Minn. Stat. § 179A.16, subd. 7.

In essence, the statutory rights and obligations of public employers to efficiently manage and conduct their operations must be viewed now in the context of a financial "restraint" or

"constraints" setting rather than an inability to pay argument. The public employers need to make astute financial decisions that allow their financial resources to be used in the most efficient and effective manner, including maintaining an appropriate fund balance.

In interest arbitrations, since the adoption of the Minnesota Pay Equity Act, Minn. Stat. Sec. 471-991-471.999, the principal, but not exclusive, factor relied upon by most interest arbitrators in deciding economic and non-economic issues related to wages, benefits and other terms and conditions of employment has been internal consistency with the settlements negotiated with respect to other bargaining units in the same jurisdiction. The noted exception is where the employee group at issue is so vastly underpaid or "out of sync" with the majority of the external comparables, which causes a serious inequity to those employees seeking relative equity.

The fact that interest arbitrators now place equal or greater weight on internal consistency in resolving economic and non-economic issues rather than solely on external market factors does not mitigate or eliminate the need for reviewing the external market. However, neither Party in this case relied heavily upon external comparables to justify their positions as to the impasse items. The Parties instead relied heavily upon internal settlement patterns to sustain their positions.

The impact on the changes in the cost-of-living has diminished in recent years due to relative economic stability in the economy with low inflation. The U.S. Department of Labor's Consumer Price Index ("CPI") is typically used as a measure of cost-of-living increases or decreases. The Department of Labor, Bureau of Labor Statistics list of the CPI-U All Urban Consumers for the applicable 2015 data shows the CPI staggering around zero.

Due to the litany of issues before the Arbitrator in this case, it would be redundant to reiterate, in full, the factors usually employed by arbitrators to decide each and every economic and non-economic issue at impasse. Therefore, these factors will be addressed, in brevity, where applicable, with the assurance that they were considered by the Arbitrator and given their proper weight in deciding all of the impasse items.

**ISSUE ONE: WAGES 2015 - INITIAL STEP PLACEMENT ON
GENERAL COUNTY 2015 PAY PLAN - NEW - ARTICLE 21**

**ISSUE TWO: WAGES 2016 - AMOUNT OF GENERAL INCREASES,
IF ANY? NEW - ARTICLE 21**

POSITION OF THE PARTIES

The County seeks to place the individual Dispatchers employed by the City of Albert Lea who were hired as Freeborn County Dispatchers on December 21, 2014 "at the 2015 pay plan Step closest to their base wage at the City of Albert Lea that involves a wage increase exclusive of differentials." In

contrast, the Union is seeking to have the same individuals placed at the top step (Step 12) of Grade 10.

The Parties agree that the amount of general wage increase shall be 2.25% on January 1, 2015 and 2.25% on January 1, 2016.

AWARD

The County's position is sustained as to initial step placement on the general County 2015 pay plan. The Parties have mutually agreed to the amount of general wage increase for both 2015 and 2016.

RATIONALE

It is important to note that the Parties agreed to the following base elements of the Dispatchers' compensation:

- The appropriate pay plan is the general County pay plan applicable to all regular County employees (union and on-union).
- The Dispatchers will be compensated at Grade 10 of the pay plan consistent with their pay equity report designation.
- The 2015 pay plan represents a general increase of two and one-quarter percent (2.25%) over the 2014 pay plan.
- The 2016 pay plan represents a general increase of two and one-quarter percent (2.25%) over the 2015 pay plan.

The cost of the Union's position to the County (and City through a cost sharing arrangement for the initial years of the Dispatchers operating as County employees) is an additional \$58,560.36. In addition to the significant cost, the Union's proposal would result in a substantial wage increase of

approximately 12.5% (including the additional 2.25% for 2015 as a general wage adjustment for the bargaining unit members), which far exceeds the wage adjustment received by other unionized employees in the County who received a 2.25% wage increase for 2015 and the same for 2016.

The Union's position is further weakened by the fact that the record is devoid of any "market" wage adjustment that needs to be made to make the Dispatchers more competitive among comparable counties. Finally, there is no need to sustain the Union's position based on the CPI in light of the wage increases given to Dispatchers for 2015 and 2016 and their initial step placement.

In contrast, the County's position represents the most practical, efficient and effective use of the County's (and City's) financial resources. It results in the placement of Dispatchers at a specific step within the County pay plan, which integrates them within the County's compensation system.

The County's position is also equitable to the Dispatchers in that it results in no loss of pay as they become County employees because it is the closest step resulting in a wage increase. This wage step placement gives recognition to the expertise and experience of the Dispatchers coming to the County from the City rather than the typical placement of new employees at Step 1 of Grade 10.

Furthermore, the County's 2014 top wage rate of \$25.24/hour for Dispatchers is significantly above the City's 2014 top rate for Dispatchers of \$23.39/hour. Given the top wage rate comparison, the Dispatchers significantly advanced their position relative to the external comparable groups by transitioning to the County pay system.

Finally, with the applicable 2015 data showing the CPI staggering around zero, the Employer's position as to step placement and resultant general wage increases of 2.25% for 2015 and 2016 will keep the Dispatchers well above the CPI. No additional wage adjustment is warranted based upon this recognized factor.

Analysis of the four factors usually employed by interest arbitrators in economic issues, in addition to other noted considerations, establishes that there are no convincing reasons to pay the step placement costs sought by the Union in this case.

**ISSUE THREE: WAGES – MOVEMENT – HOW SHOULD EMPLOYEES
MOVE THROUGH PAY RANGE? NEW – ARTICLE 21**

POSITION OF THE PARTIES

The Union proposes the following contract language:

21.3 Movement within the range. Effective the start of the 14th payroll of the year, any person below range top shall be eligible for an annual step increase upon receipt of a satisfactory performance evaluation from the appropriate supervisor. No such increase shall exceed the range maximum.

The Employer is proposing the following language:

21.2 Movement within the range. Effective the start of the 14th payroll of the year, any regular full time or part time person below range top shall be eligible for an annual step increase upon receipt of a satisfactory performance evaluation from the appropriate supervisor.

No such increase shall exceed the range maximum.

AWARD

The County's position is sustained.

RATIONALE

The County's proposed language specifically recognizes that regular part time Dispatchers, like regular full time Dispatchers, are eligible for annual step movement through the salary range upon a satisfactory performance evaluation. This language establishes a fair and equitable treatment for regular part time employees in the bargaining unit. It also addresses the fact that Dispatchers differs from the other bargaining units in that the other units do not have regular part time employees included within the bargaining unit.

The County's language is also intended to clarify that this step movement for regular part time employees occurs at the same time as regular full time employees, and is based on a calendar year and not after 2,080 hours. It is supplemental to the language applicable to all other employee groups for part time employees.

The need for this language to be placed in the collective bargaining agreement at this time rather than being a subject of successor negotiations is that the County anticipates that regular part time employees will be subject to step movement prior to the time when the next contract is negotiated. Thus, there is some urgency, and the awarded language establishes when these Dispatchers are eligible to move to the next step with clarity. Delaying this decision for future negotiations makes no labor relations sense.

It is also noteworthy that this issue does not lend itself to quid pro quo. The County is not seeking some management right gain or diminished benefit detrimental to the Union. The award simply recognizes and clarifies the treatment of regular part time and regular full time Dispatchers.

ISSUE FOUR: HOURS OF WORK - OVERTIME - WHEN SHOULD OVERTIME BE PAID? NEW - ARTICLE 11

ISSUE FIVE: HOURS OF WORK - OVERTIME - WHAT HOURS SHOULD COUNT TOWARD OVERTIME? New - ARTICLE 11

POSITION OF THE PARTIES

The County is proposing the following language:

- 11.1 Authorized overtime shall be compensated at the rate of time and one-half (1 1/2) all hours worked over forty (40) hours in a week. All benefits earning time used shall be included toward the 40 hours.

The Union is proposing the following overtime language:

- 11.1 Overtime shall be paid for time worked in excess of the Employee's scheduled shift.

11.2 All authorized time off, whether paid or unpaid, shall count toward the calculation of overtime.

AWARD

The County's position is sustained.

RATIONALE

There is justification for the County's proposal as it mirrors the forty (40) hour overtime requirement of federal law under the Fair Labor Standards Act (FLSA). In fact, it exceeds the FLSA in that it allows hours that are not actually worked to be counted toward overtime eligibility.

Moreover, the Union's position cannot be justified by internal consistency and equity among other County bargaining units. The common language in the various County and Teamsters 320 collective bargaining agreements reference overtime after a specific number of hours worked, which is consistent with the County's proposal. For example, in County Patrol Deputy and Patrol Sergeant groups (which were Teamsters Local 320 represented groups when the applicable contract language was drafted), overtime is paid after 40 hours for those employees working 40 hour work weeks and 80 hours in a 14 day pay period for those employees not working a 40 hour work week. In contrast, there is no language in other law enforcement contracts that triggers overtime work after the completion of an employee's scheduled shift as proposed by the Union.

Unfortunately, the language on overtime paid after 84 hours (in Corrections contract) and 80 hours (in Patrol) cannot be included in the Dispatchers contract because Dispatchers are not eligible for the special overtime provisions of the FLSA for law enforcement or fire employees (commonly called the 207(k) exception).

The common language in the current County and Teamsters Local No. 320 collective bargaining agreements reference the County's proposed language that "all benefits earning time used shall be included toward" the required number of hours.

The MNPEA represented Patrol Deputies and Patrol Sergeants have language stating that "vacation, compensatory time, sick leave and holidays shall be considered time worked for premium pay purposes." This Patrol and Patrol Sergeant language has the same practical application as the language proposed by the County for Dispatchers. In contrast, the Union proposed language is not found in the other Freeborn County Sheriff's Office union contracts. Thus, there is no need for this language to achieve internal equity.

ISSUE SIX: HOURS OF WORK - OVERTIME - WHAT LANGUAGE, IF ANY, SHOULD GOVERN DISTRIBUTION OF OVERTIME? NEW - ARTICLE 11

POSITION OF THE PARTIES

The County is not proposing any language on this issue. In contrast, the Union is proposing the following language:

11.3 Overtime shall be distributed by seniority.

AWARD

The County's position is sustained.

RATIONALE

As the party proposing this additional language, the Union bears the burden of showing the need for this language.

The Union argues that their overtime proposal is needed because senior Dispatchers (based on seniority) will be needed to serve as training officers for new hires, with many of these training sessions occurring on an overtime basis. However, this same opportunity for overtime would occur under the County's proposal, and would also result in fair and equitable treatment to other County law enforcement bargaining units.

Internal equity does not support the Union's requested language. The Correctional Officer, Correctional Sergeant and Patrol Sergeant agreements do not provide any language requiring overtime to be distributed by seniority. The only contract that partially supports the Union's proposal is found in the Patrol Officer collective bargaining agreement. This contract language provides that the assignment of overtime shall be at the discretion of the County and shall be offered on a seniority basis, but it is subject to a number of qualifications that were voluntarily negotiated into the agreement. These qualifications include the right to waive overtime calls and the consequences

for doing so. The Patrol Officer contract also includes important language limiting the number of forced overtime events per pay period. Clearly, there is not a single contract in County law enforcement that fully encompasses the overtime language sought by the Union.

Another reason to deny the Union's proposed language is that it did not appear in the Dispatchers contract while with the City. The contract between the Dispatchers and the City noted that overtime should be distributed equitably.

Aside from the lack of comparable language in the other County Sheriff's Office contracts and in the language with the City, there is another important reason to deny the Union's requested language. Everyone recognizes that Dispatch work can be notoriously stressful and periodically full of non-stop work. There is a need for employees to take a break from the work in order to avoid burnout and lapses in concentration associated with working too many hours, which would be difficult or impossible for senior Dispatchers who would dominant overtime under the Union's proposal. The potential for diminished work performance, associated with working excessive overtime by a senior Dispatcher, is a real safety concern for everyone and should be left to the County's discretion unless there is a showing by the Union that the Dispatcher overtime distribution is arbitrary, capricious or discriminatory.

ISSUE SEVEN: COMPENSATORY TIME - SHOULD CONTRACT ALLOW FOR ACCRUAL OF COMPENSATORY TIME? IF SO, HOW MUCH? NEW - ARTICLE 11

POSITION OF THE PARTIES

The Union is proposing the following language:

11.4 Employees may elect on a pay period - by - pay period basis whether to be paid for overtime earned in the pay period or to bank the overtime as compensatory time. Compensatory time may be accrued to a maximum balance of two hundred forty (240) hours. Compensatory time may be liquidated at the close of each calendar year at the Employee's request by the Employee taking time off or the balance being paid at the Employee's base rate.

The County is not proposing to allow the accrual of compensatory time and is not proposing any language on this issue.

AWARD

The following contract language shall be incorporated in Section 11.4:

In lieu of overtime payment, an employee may request compensatory time off for overtime worked at time and one-half (1 1/2). Compensatory time may be accrued to a maximum balance of one hundred twenty (120) hours. Compensatory time may be liquidated at the close of each calendar year at the employee's request by the employee taking time off or the balance being paid off in cash at the employee's base rate at employee's request.

RATIONALE

This is an issue in which both the County and the Union bear the burden of showing the need for their respective language. The County's proposal of no language would result in

the payment of overtime without a compensatory time off option. This proposal is contrary to all of the other union contracts in the Sheriff's Office. Each of these other Sheriff's Office union contracts provides for some form of compensatory time off - although the maximum accruals, use and payout language of each Sheriff's Office contract is somewhat unique. Thus, internal equity mandates that Dispatchers receive a mandatory compensatory time off option.

Internal equity, however, does not support the 240 hour maximum compensatory time off balance as proposed by the Union. The 240 hour maximum compensatory time off balance exists in the Patrol Deputy contract. The limit is 240 hours for existing employees and 220 hours for new hires in the Patrol Sergeant contract. There is a maximum 120 hours in the Correctional Officers and Correctional Sergeants union contracts. Given the inconsistent internal language in the other union contracts in the Sheriff's Office, granting compensatory time off at the 240 hour maximum accrual level is not warranted, but granting 120 hours is justified for fair and equitable treatment of Dispatchers with other bargaining units in the Sheriff's Office.

The Union's proposed language on the "pay period by pay period election" is not found in any of the other Freeborn County Sheriff's Office or City contracts. This proposed language would also be quite difficult to administer.

The last sentence of the Union's proposed language, "Compensatory time may be liquidated at the close of each calendar year at the Employee's request by the Employee taking time off or the balance being paid at the Employee's base rate" is common to the Correctional Officer and Correctional Sergeants County Sheriff's Office contracts. There is no evidence that the County is having difficulty in administering either the 120 hour maximum compensatory time accrual or the liquidation language in the last paragraph in the Correctional Officer and Correctional Sergeants contracts. Therefore, this same language is justified in the Dispatchers contract.

ISSUE EIGHT: WORKING ALONE PAY - AMOUNT, IF ANY, AN EMPLOYEE SHOULD BE PAID FOR WORKING ALONE FOR MORE THAN SIX (6) HOURS - ARTICLE 13

POSITION OF THE PARTIES

The Union is proposing the following language:

13.1 If a dispatcher works five (5) hour or more of their shift alone, (s)he will be an additional \$1.25 per hour for each hour worked alone.

The County is not proposing any language on this issue.

AWARD

The Union's position is sustained, effective January 1, 2015.

RATIONALE

The Union bears the burden on this issue as the call back language does not exist in the other union contracts at the

County, but did at the City. The Union met this burden. It is true that there are many County positions that involve working alone, such as Patrol Deputy, operating a snow plow in the Highway Department, Social Services employees, etc. None of these County employees receives a shift differential, but have supervision available to them for assistance, if needed.

Dispatchers are unique in that there is not a qualified supervisor to assist or even on duty in the case of night shifts to assist the Dispatchers. This adds to the stress of the job since Dispatchers must work independently with total responsibility to make informed and timely decision, so as to not jeopardize the safety of those they serve. It is also noteworthy that this stress is not diminishing in that the number of Dispatchers have not increased, but the number of calls have increased.

ISSUE NINE: COURT TIME, CALL BACK & STANDBY - AMOUNT, IF ANY, AN EMPLOYEE SHOULD BE PAID IF CALLED BACK TO WORK OR PLACED ON STANDBY? NEW - ARTICLE 12

POSITION OF THE PARTIES

The Union is proposing the following language:

12.1 If an employee is called back to work with less than four (4) hours notice, the Employee shall receive two (2) hours of pay at straight time in addition to compensation for the additional hours worked. The provisions of this section shall not apply to situations where a shift is to be extended.

The County is not proposing any language on this issue.

AWARD

The County's position is sustained.

RATIONALE

The Union bears the burden on this issue as the proposed call back language only exists in half of the union contracts in the Sheriff's Office. Accordingly, it is not needed for fair and equitable treatment to all bargaining units in County employment as this provision does not exist in the Teamsters Local No. 320 represented Correctional Officer or Correctional Sergeants contracts in the Sheriff's Office. The provision exists in the Patrol Deputy and Patrol Sergeant collective bargaining agreements.

The proposed Union language is also not necessary as there was no showing that there was a great need for this additional compensation. This proposal does not correct or address an operational efficiency or deficiency being experienced by the Dispatchers.

This is a benefit that should be obtained through quid pro quo bargaining since this differential is not one that is universally received by other County bargaining units in the Sheriff's Office.

ISSUE TEN: SHIFT DIFFERENTIAL - WHEN SHOULD SHIFT DIFFERENTIAL BE PAID? NEW - ARTICLE 13

ISSUE ELEVEN: SHIFT DIFFERENTIAL - HOW MUCH SHOULD AN EMPLOYEE BE PAID? NEW - ARTICLE 13

POSITION OF THE PARTIES

The County is proposing the following language on this issue:

22.1 Shift Differential: Effective on the date of the award, employees will receive a shift differential of seventy-five cents (\$.75) per hour if the majority of their hours are worked between 6:00 p.m. and 6:00 a.m.

In contrast, the Union is proposing the following language on this issue:

22.1 Employees shall receive a shift differential of \$0.75 (75 cents) per hour for their entire shift if 4 or more hours of it is between 5:00 p.m. and 7:00 a.m. This shift differential shall not be pyramided for overtime purposes.

AWARD

Section 22.1 of the contract shall read as follows:

22.1 Employees will receive a shift differential of seventy-five cents (\$.75) per hour if the majority of their hours are worked between 6:00 p.m. and 6:00 a.m.

RATIONALE

The substantive difference in the positions relate to: 1) the effective date of the change; and (2) when the differential applies.

In regard to the effective date of the shift differential, there is no compelling reason to penalize the Union by issuing a prospective award (date of award) rather than a retroactive award (January 1, 2015) for pursuing their statutory rights to proceed to interest arbitration. There is no evidence that

either party is guilty of bad faith bargaining, which could justify the awarding of a respective position. This is simply a case that took some time to negotiate, mediate and then arbitrate, especially since it was a new contract with many impasse items.

The County's proposed 6:00 p.m. and 6:00 a.m. qualifier is consistent with the Correctional Officer and Correctional Sergeants contracts. The Patrol Officer and Patrol Sergeants receive a shift differential if the majority of their shifts are worked between 5:00 p.m. and 7:00 a.m. While the 5:00 p.m. and 7:00 a.m. reference in the Patrol Officer and Patrol Sergeants contract is the same as the Union proposes for the Dispatchers, the Union proposal would apply this if the Dispatchers worked four hours in this time frame. In contrast, the Patrol Officer and Patrol Sergeant shift differential applies only if the individuals work "a majority of their hours" during this time. Given that the Dispatchers (and Patrol Deputies and Patrol Sergeants) work 10 hour shifts, this would have a significantly different application, which would grant the Union a much broader benefit than received by other bargaining units.

Furthermore, the Dispatcher's shift differential with the City was based on a 12 hour period of time (5 p.m. to 5 a.m.). Like the City language, the County's shift differential qualifier is a 12 hour period of time.

Finally, the \$.75/hour agreed upon amount of the shift differential is substantial as it exceeds the applicable market and the interest arbitration award for 2013 and 2014 pertaining to the County Patrol Deputy group for the 2013-2014 contract (\$.60/hour shift differential). As a result, the County has succeeded in making Dispatchers competitive in the marketplace.

ISSUE TWELVE: VACATION - SHOULD AN EMPLOYEE TRANSITIONING FROM CITY TO COUNTY EMPLOYMENT BE GIVEN A STARTING BALANCE? IF SO, HOW MUCH? NEW - ARTICLE 14

ISSUE TWENTY-ONE: SICK LEAVE - BEGINNING BALANCE - SHOULD AN EMPLOYEE TRANSITIONING FROM CITY TO COUNTY EMPLOYMENT BE GIVEN A STARTING BALANCE? IF SO, HOW MUCH? NEW - ARTICLE 17

POSITION OF THE PARTIES

The County is not proposing to provide Dispatchers with a starting balance of either vacation or sick leave and is not proposing to add any language to the collective bargaining agreement on this issue.

In contrast, the Union is proposing the following language on this issue:

14.1 Upon transition from City to County employment, each Employee shall immediately receive 15 days in his/her vacation bank.

17.1 Upon transition from City to County employment, each Employee shall receive 300 hours in his/her vacation bank.

AWARD

The County's position is sustained.

RATIONALE

The Union's proposed language is not necessary because there were numerous discussion and final resolution by the Union, County and City concerning starting balances for many fringe benefits involving the Dispatchers. Initially, there were discussions about having the Dispatchers moving from the City to the County retaining vacation and sick leave balances with the City paying an amount to the County on this issue. From the City's perspective, this was a cost neutral issue in that paying for the banks to be transferred was comparable to paying out the banks to the Dispatchers. From the County's perspective, it would have been a deviation from the usual practice of having new County employees enter with leave banks, but would have been justifiable to accept from purely a cost standpoint.

The final resolution was that the Union and the City decided to pay out the vacation and sick banks for Dispatchers. This rightfully resolved the issue. The Dispatchers elected to be paid this benefit rather than have it as a transfer benefit. To permit the Dispatchers to both be paid for the benefit as part of the severance and have a balance created and in place at the County would be inequitable and would create a windfall for the Dispatchers, which would be unfair to other County employees. It would also be unfair to the City which paid out

this benefit and would be responsible for half of this cost of the new bank.

ISSUE THIRTEEN: VACATION - WHAT SHOULD BE THE VACATION ACCRUAL? NEW - ARTICLE 14

POSITION OF THE PARTIES

The County is proposing the following language on this issue:

- 14.1 Regular full-time employees shall earn and accrue vacation leave as of the first continuous date of employment. An employee's anniversary date shall serve as the appropriate date for determining the rate of vacation leave accrual. Regular full-time employees shall earn vacation leave in accordance with the following schedule:
- A. Up to and including 12 months (one year) of service, employees shall earn .0308 hours for each hour worked excluding overtime and/or paid to a maximum of 40 hours per work week (8 days based on a 8 hour day).
 - B. After 12 months (one year) through 48 months (four years) of service, employees shall earn .0462 hours for each hour worked excluding overtime and/or paid to a maximum of 40 hours per work week (12 days based on a 8 hour day).
 - C. After 48 months (four years) through 108 months (nine years) of service, employees shall earn .0538 hours for each hour worked excluding overtime and/or paid to a maximum of 40 hours per work week (14 days based on a 8 hour day).
 - D. After 108 months (nine years) through 168 months (14 years) of service, employees shall earn .0654 hours for each hour worked excluding overtime and/or paid to a maximum of 40 hours per work week (17 days based on a 8 hour day).

E. After 168 months (14 years) of service, employees shall earn .0846 hours for each hour worked excluding overtime and/or paid to a maximum of 40 hours per work week (22 days based on a 8 hour day).

In contrast, the Union is proposing the following language on this issue:

14.2 Employees shall receive annual vacation leave credits as follows:

<u>Length of Service</u>	<u>Hours per month</u>
1 through 5 years	8 hours
6 through 10 years	10 hours
11 through 15 years	12 hours
16 through 20 years	14 hours
21 through 24 years	16 hours
25 years and after	18 hours

Maximum accumulation of annual vacation will be 240 hours.

AWARD

The County's position is sustained.

RATIONALE

While it is true that six Dispatchers lost vacation hours transitioning from City vacation accrual rates to County vacation accrual rates from a minimum of 4 hours to a maximum of 12 plus hours is unfortunate, but now all County employees are on the same vacation accrual schedule. The County's position maintains internal consistency among all County bargaining units as to vacation accrual. Given this uniformity of vacation benefit at the County, the Union's proposed language should be denied.

The Union's basis for its proposed language is to mirror the vacation accrual the Dispatchers had at the City. Given that these employees are now County employees, the benefit levels at the City should no longer apply. Moreover, the loss of some vacation accrual hours from the transition from City to County Dispatch work were more than offset by the County's generous pay plan, plus all Dispatchers under the Severance Agreement were paid for earned but unused vacation when they left City Dispatch employment and were hired by the County.

**ISSUE FOURTEEN: HOLIDAYS - COMPENSATION FOR TIME
WORKED ON A HOLIDAY? NEW - ARTICLE 15**

**ISSUE FIFTEEN: HOLIDAYS - COMPENSATION FOR TIME
NOT WORKED ON A HOLIDAY? New - ARTICLE 15**

**ISSUE SIXTEEN: HOLIDAYS - WHAT SHOULD PART-TIME
EMPLOYEES RECEIVE FOR HOLIDAYS? NEW - ARTICLE 15**

POSITION OF THE PARTIES

The Union's position is as follows on these issues:

15.1 - Holiday pay for employees, both full-time and part-time, working on a holiday shall be provided as follows:

- A. Employees who are assigned to work on a designated holiday, shall earn either holiday pay for the hours worked or compensatory time, at the rate of one and one-half (1 1/2) times the normal rate for the hours worked on that holiday. Employees who work a shift on any holiday may request or the Sheriff may provide payment instead of compensatory time, to be calculated as regular pay plus time and one-half (1 1/2) for the hours worked to be paid within the current time period.
- B. Employees who have the holiday off will have straight time hours credited to compensatory time, to be calculated as regular pay.

- C. An Employee called in or who signs up, on a holiday, while off-duty or required to report early or stay behind the scheduled time, on a holiday, shall be compensated at double time for all hours in excess of the regular scheduled shift.
- D. Holiday compensatory time earned (as opposed to holiday time paid) will not be considered as time worked for overtime purposes until it is used.
- E. An Employee will be considered to have worked a holiday if he majority of his/her scheduled shift falls during the 24 hours from midnight to midnight of the designated holiday.

This shall include multiple shifts worked on a holiday.

The County's position on these issues are as follows:

- 15.2 Holiday pay for employees working on a holiday shall be provided as follows:

- B. Employees who are assigned to work on a designated holiday, shall earn either holiday pay for the hours worked or compensatory time, at the rate of one and one-half (1 1/2) times the normal rate for the hours worked on that holiday. Employees who work a shift on any holiday may request or the Sheriff may provide payment instead of compensatory time, to be calculated as regular pay plus time and one-half (1 1/2) for the hours worked to be paid within the current time period.
- C. Full time employees who have the holiday off will have straight time hours credited to compensatory time, to be calculated as regular pay. Eligible part time employees who have the holiday off will have five (5) straight time hours credited to compensatory time, to be calculated as regular pay.

- E. An Employee called in, on a holiday, while off-duty or required to report early or stay behind the scheduled shift, on a holiday, shall be compensated at double

time for all hours in excess of the regular scheduled shift.

AWARD

The Union's position is sustained.

RATIONALE

In comparing final positions, it appears that the Parties have agreed to most, if not all, of the holiday language in these issues except for the holiday benefit for regular part time employees who do not work a holiday. The County's proposed language provides a lesser benefit for part time employees who do not work a holiday than applies to full time employees. In contrast, the Union proposes to compensate part time employees on the same basis as full time employees for time not worked on a holiday.

The County bears some burden on this issue as the Union's proposed language is found in the Correctional Sergeant agreement. The same language is also found in the Patrol Officer agreement. There is no corresponding language in the Correctional Officer agreement.

The County's proposed language is not found in the other Sheriff's Office collective bargaining agreements, albeit these groups do not have regular part time employees. Some support for the County's position of offering a lesser holiday benefit for part time Dispatchers is found in the Social Services and

non-union group benefit. The Social Services collective bargaining agreement notes that "part-time employees shall earn a holiday benefit based on the number of hours normally worked, which fall on the holiday, not to exceed eight (8) hours". Non-union part time employees are compensated at "the rate of four (4) hours per holiday for days on which they would normally be scheduled for work."

The County's proposed language of providing five hours for each holiday not worked generally reflects one-half shift. The basis for this reduced benefit is a recognition that a part time employee does not work a full schedule and would not be likely to be scheduled to work as many holidays as a full time employee. However, this argument is not persuasive in that both full time and part time Dispatchers may be scheduled to work on holidays, and when not scheduled on the holiday, they should be treated the same, on an equity basis, with the same holiday benefit and not a reduction to five hours for part time employees as proposed by the County.

ISSUE SEVENTEEN: HOLIDAYS - WHETHER TO ADD LANGUAGE ON THE SHERIFF'S RIGHT TO SCHEDULE EMPLOYEES ON A HOLIDAY? NEW - ARTICLE 15

ISSUE EIGHTEEN: HOLIDAYS - WHETHER TO ADD LANGUAGE LIMITING HOLIDAY PAY WHEN AN EMPLOYEE CALLS IN SICK? NEW - ARTICLE 15

ISSUE NINETEEN: HOLIDAYS - WHICH DATES, IF ANY, SHOULD BE ASSIGNED TO HOLIDAYS? NEW - ARTICLE 15

POSITION OF THE PARTIES

These issues were settled by the Parties without need for decision by the Arbitrator.

ISSUE TWENTY: WHETHER CITY SERVICE TIME SHOULD COUNT TOWARD THE SEVERANCE BENEFIT ELIGIBILITY? NEW - ARTICLE 16

POSITION OF THE PARTIES

The County is not proposing to provide these employees with a starting balance and is not proposing to add any language to the collective bargaining agreement on this issue. In contrast, the Union is seeking to include the following language in the collective bargaining agreement:

16.1 For purposes of severance pay, an Employee shall receive credit for all years of service as a Dispatcher with the City of Albert Lea.

AWARD

The County's position is sustained.

RATIONALE

The Union's proposal is not justified for several reasons. First, the severance language in all of the Union contracts and the non-union Personnel Rules and Regulations uniformly require 15 years of service and do not contain the language sought by the Union. Second, the County has hired three different Dispatchers from the City and none of them received credited service time for severance purposes. Finally, those Dispatchers previously employed by the City who were hired by the County

have already received a separation payout of their accrued sick leave from the City up to a maximum accumulation of 960 hours. It would not be fair for these employees to receive both the benefit of the payout of sick leave and credit for the years of service that resulted in the Dispatchers accumulating the sick leave banks that were paid out by the City.

ISSUE TWENTY-TWO: SICK LEAVE - AMOUNT OF SICK LEAVE ACCRUAL? NEW - ARTICLE 17

POSITION OF THE PARTIES

This issue was settled by the Parties without need for decision by the Arbitrator.

ISSUE TWENTY-THREE: HEALTH AND WELFARE - AMOUNT OF LIFE INSURANCE THE COUNTY SHOULD PROVIDE? NEW - ARTICLE 19

POSITION OF THE PARTIES

The County is proposing the following language on this issue:

19.4 The Employer agrees to provide, at its cost, life insurance in the amount of \$10,000.

In contrast, the Union is proposing the following language on this issue:

19.4 The Employer agrees to provide, at its cost, life insurance in the amount of \$50,000.

AWARD

Section 19.4 of the contract shall read as follows:

19.4 The Employer agrees to provide, at its cost, life insurance in the amount of \$25,000.

RATIONALE

Both Parties bear a burden on this issue as the respective life insurance amounts are applicable to various other County groups. The County's proposed language for a \$10,000 life insurance benefit is supported by the benefit applicable to the Social Services and non-union employee group. The Patrol Deputies and Patrol Sergeants have the Union's proposed amount of \$50,000. The Correctional Officers and Correctional Sergeants have an amount in between at \$25,000.

The amount of life insurance paid to Patrol Deputies and Patrol Sergeants is justified since they work on the road and face significant dangers and risks not shared by other County law employees. This group also takes great offense to having other law enforcement groups "catch" them in terms of the amount of the benefit.

Correctional Officers also work with varying degrees of danger and risks, but less than Patrol Deputies and Patrol Sergeants. While seeking the same benefit as the Patrol Deputies and Patrol Sergeants, Correctional Officers have accepted an intermediate amount on the premise that it is well above what applies to more administrative focused positions at the County.

While Dispatchers may not have the same risks and dangers as other County law enforcement groups, they have equal or

greater job responsibilities and stress, which entitles them to receive a life insurance benefit at least what is being paid to Correctional Officers and not to what is being paid to Social Services and non-union groups.

ISSUE TWENTY-FOUR: DEFINITION - PART-TIME - WHAT DEFINITION, IF ANY, SHOULD BE GIVEN TO PART-TIME EMPLOYEES? NEW - ARTICLE 3

ISSUE TWENTY-FIVE: DEFINITION - FULL-TIME - WHAT DEFINITION, IF ANY, SHOULD BE GIVEN TO FULL-TIME EMPLOYEES? NEW - ARTICLE 3

POSITION OF THE PARTIES

The County is proposing the following language on these issue:

- 3.7 REGULAR FULL-TIME EMPLOYEE: An employee in the bargaining unit who has completed the required probationary period and who is normally scheduled to work eighty (80) hours per pay period.
- 3.8 REGULAR PART-TIME EMPLOYEE: An employee in the bargaining unit who has completed the required probationary period and who is normally scheduled to work at least forty (40) hours per pay period and less than forty (80) hours per pay period.

In contrast, the Union is proposing the following language on these issues:

- 3.7 REGULAR FULL-TIME EMPLOYEE: An employee in the bargaining unit who has completed the required probationary period and who is normally scheduled to work a forty (40) hour work week.
- 3.8 REGULAR PART-TIME EMPLOYEE: An employee in the bargaining unit who has completed the required probationary period and who is normally scheduled to work at least twenty (20) hours per week and less than forty (40) hours per week.

AWARD

The County's position is sustained.

RATIONALE

The County bears the burden of proof on this issue because internal consistency favors the Union's final position. Reference to the other Sheriff's Office contracts reveals that the 40 hour work week language proposed by the Union is the standard. However, there is a valid exception that supersedes the maintenance of internal consistency. As previously noted, the other collective bargaining agreements in the County do not reference a part time position because none are included in the respective bargaining units. Accordingly, the definitions in these agreements do not need to be precise as a matter of practical application.

The County's electronic records and payroll system tracks pay periods for incumbents. The pay period is currently utilized to determine full time and part time status. The County's pay system does not track work weeks as proposed by the Union. Because pay periods are currently utilized by the County to determine benefit eligibility status, the County's proposal incorporates a more accurate definition of part time and full time and should be used.

This definitional need also applies during the course of the existing contract. Accordingly, the usual recourse of

deferring the matter to be raised in the next negotiations and subject it to a quid pro quo bargaining would result in a gap on this important issue of who is full time and who is part time for purposes of the collective bargaining agreement. The County's position clarifies this meaning so as to avoid any ambiguities.

ISSUE TWENTY-SIX: DEFINITIONS - WHAT DEFINITION, IF ANY, SHOULD BE GIVEN FOR OVERTIME? NEW - ARTICLE 3

ISSUE TWENTY-SEVEN: DEFINITIONS - WHAT DEFINITION, IF ANY, SHOULD BE GIVEN FOR SCHEDULED SHIFT? NEW - ARTICLE 3

ISSUE TWENTY-EIGHT: DEFINITIONS - WHAT DEFINITION, IF ANY, SHOULD BE GIVEN FOR REST BREAKS? NEW - ARTICLE 3

ISSUE TWENTY-NINE: DEFINITIONS - WHAT DEFINITION, IF ANY, SHOULD BE GIVEN FOR LUNCH BREAKS? NEW - ARTICLE 3

POSITION OF THE PARTIES

The County is not proposing any language on these issues. In contrast, the Union is proposing the following contract language:

- 3.10 OVERTIME: Work performed at the express authorization of the Employer in excess of the Employee's scheduled shift.
- 3.11 SCHEDULED SHIFT: The Employer may define a shift, consisting of a period of consecutive hours of work, not to exceed 12 hours.
- 3.12 REST BREAKS: Rest Breaks must allow each Employee adequate time to utilize the nearest convenient restrooms as needed.
- 3.13 LUNCH BREAK: Meal breaks must permit each Employee who is working eight (8) or more consecutive hours sufficient time to eat a meal.

AWARD

The County's position is awarded on these issues.

RATIONALE

The Union's position is not justified for several reasons. First, the Union's proposed definitions do not exist in any other collective bargaining agreements at the County. Thus, there is no need for internal consistency among County bargaining units.

Second, the Union's proposed language is seeking to significantly expand the Definition section into a substantive rights provision. The Definition section should, as a matter of good contract drafting, be of assistance in detailing language used elsewhere in the agreement and not create unnecessary redundancy. For example, the Union's proposed language with respect to overtime is not necessary because the definition of overtime is already addressed elsewhere in the collective bargaining agreement and addressed as Issue Four in this arbitration. Thus, another contractual definition of overtime is not necessary for reference purposes, and may only result in confusion and ambiguity.

Third, the Union's proposed definition of Scheduled Shift would operate as a limitation on the County's management right to schedule the length of a shift. This is a management right that has been agreed upon by the Parties in Article 4, Employer

Authority at Section 4.1 A ("Except as limited by the specific provisions of this Agreement, the Employer shall retain whatever rights and authority are necessary for it to operate and direct the affairs of Freeborn County in all of its various aspects, including but not limited to the right to ... schedule working hours and assign overtime ...").

Finally, the Union's proposed language on rest breaks and lunch breaks is not needed because that matter is already addressed in state statute and should be addressed in successor collective bargaining between the Parties.

177.253 MANDATORY WORK BREAKS.

Subdivision 1. Rest breaks. An employer must allow each employee adequate time from work within each four consecutive hours of work to utilize the nearest convenient restroom.

Subd. 2. Collective bargaining agreement. Nothing in this section prohibits employers and employees from establishing rest breaks different from those provided in this section pursuant to a collective bargaining agreement.

177.254 MANDATORY MEAL BREAK.

Subdivision 1. Meal break. An employer must permit each employee who is working for eight or more consecutive hours sufficient time to eat a meal.

Subd. 2. Payment not required. Nothing in this section requires the employer to pay the employee during the meal break.

Subd. 3. Collective bargaining agreement. Nothing in this section prohibits employers and employees from establishing meal periods different from those provided in this section pursuant to a collective bargaining agreement.

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

Richard John Miller

Dated December 27, 2015, at Maple Grove, Minnesota.