

2006 Arbitration Awards - Minnesota B.M.S.

March 19, 2015

Summary of Arbitration Awards listed on the Bureau of Mediation Services' web site (<http://www.mn.gov/admin/bms/arbitration/awards/>).

"Sustained" means the grievance prevails overturning the original action. "Denied" means the original action prevails.

December, 2006

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
05-PA-0703	Austin, City of AFSCME, Council 65	Jay, Sara	Comp time - exempt employees	City discontinued hour for hour comp accrual for exempt employees wrking more than 40 hrs/week.	Sustained	Accepted practice for over 12 yrs. City's repudiation not valid due to subsequent actions.
06-PA-1223	Hennepin County AFSCME Minnesota Council 5	Jacobs, Jeffrey	1 day suspension	Social worker was critical of another's actions yelled at her in front of a child.	Wrtn reprmnd	1 day based on prior discipline. Dispute if previous letter dropped?
???	ISD 199, Inver Grove Heights Education Minnesota, Inver Grove Heights	Gallagher, Thomas	Retiree Insurance	Does time on leave count towards 20 years of continuous service required?	Denied	Requirement for full time service bars counting leave time.
06-PN-0462	LaCrescent, City of (Interest Award) Law Enforcement Labor Services, Inc.	Latimer, George	Interest	1 year-u; 3%-e (u-8%); out of class pay-no-e; court cancellation-u;	2007 - 3%	1 yr-lack of date 2nd yr; 3% internal; out of class-not enough evidence.
06-HN-0986	Rice Memorial Hospital (Interest Award) Minnesota Nurses Association	Bognanno, Mario	Interest	3yrs-e; Wages (u-3%, 6%; e-0%, 3.5%, 3.5%); Insur-new ees fixed \$-e. On call, EST, PTO, Easter & Mngmnt rights - no change.	2006 - 0% 2007 - 4% 2008 - 5%	Duration-history of 3yrs; wages-external; Insurance-internal. remaining issues Issues best resolved in negotiations.
FMCS	St. Mary's Duluth Clinic Health System United Steelworkers of America, Local 9460	Bognanno, Mario	Lump sum pay	New pay grid, ees above the grid were to receive lump sum but words "at or above" calls for double payment? ER drafted language.	Denied	Intent of what was negotiated not disputed. Words are ambiguous.

November, 2006

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
06-RA-1059	Ely-Bloomenson Hosp & Nursing Home Minnesota Nurses Association	Bognanno, Mario	3 day suspension	Charge nurse rude & unprofessional. Removed from charge duties & suspended 3 days.	Split	Counseling is not discipline, doesn't count as progressive discipline. 1 day susp & loss of charge duties.
06-PN-0823	Fergus Falls, City of (Interest Award) Law Enforcement Labor Services, Inc.	Daly, Joseph	Interest	Sgts. Work yr-FLSA language-e; OT-Union seeking pay v comp only-no-e; Severance incr-no-e; Insurance change \$ to %-no-e; Wages-2.5%,2.5%-e (u-3.5%,3.5%); Uniforms \$600-e(U-\$700)	2006 - 2.5% 2007 - 2.5%	No compelling reason for proposed new language. Xmas eve-external. Insurance, severance, wages-internal.
06-PA-1223	Hennepin County AFSCME Minnesota Council 5	Jacobs, Jeffrey	1 day suspension	Child protection social worker loud & unprofessional in criticizing co-worker.	Wrtn Warning	Lack of prior discipline.
06-PN-1089	Hopkins, City of (Interest Award) Hopkins Police Association	Fogelberg, J.C.	Interest	Insurance 06 & 07-e (u seeking %) Opt out of Insurance increase-n-e	City's positions	Internal patterns.

06-PA-1251	ISD 833, Cottage Grove Association of School Bus Drivers ISD 833	Anderson, Richard	Blackout of Vacation	District barred use of unpaid vacation in fall and spring due to higher use of buses - cited management approval requirement in the contract..	Sustained	Management approval is for individual requests - does not create right to black out periods. Also in conflict w language list number authorized off.
06-PA-1183	Metro Transit Amalgamated Transit Workers, Local 1005	Kircher, Andrea	Termination	False FMLA information re ineligible condition & failing to file Dr's reports that drugs would not affect driving.	Denied	FMLA used to shield from terminable violation of absence policy. Dr slip re drugs reasonable safety policy.
07-PA-0089	Minnesota, State of, Fergus Falls Regional Treatment Center AFSCME Minnesota Council 5	Befort, Stephen	Termination	After passing probation, employer discovered LPN had submitted false resume.	Denied	Dishonesty and would not have been hired if resume was complete.
MSCF	Minnesota State Colleges & Universities, Lake Superior College Minnesota State College Faculty	Ver Ploeg, Christine	Sabbatical	6 teacher's sabbaticals were denied.	Sustained	Insufficient notice of change in evaluation process and failure to give explanation for denial.
07-PA-0079	Minnesota, State of, Department of Transportation AFSCME Minnesota Council 5	Reynolds, James	Termination	Using state car to pick up child, surfing the internet & misusing cell phone.	Denied	Continuing pattern of misusing time and state assets.
06-PN-0903	Nicollet County (Interest Award) Law Enforcement Labor Services, Inc.	Jacobs, Jeffrey	Interest	Shift differential-no-e; Shift suprv pay-no-e; Training officer-no-e; Comp time-60hrs-e (u-100hrs); Uniform voucher-e.	Co. positions	Jailers. Differential, Shift suprv. & Training-new items no market support. Comp & Uniform - same as deputies.
06-PA-0371	Ramsey County AFSCME Minnesota Council 5	Gallagher, Thomas	Discharge	Counselor slapped mentally disabled patient. Pled to disorderly conduct.	16 mo susp No backpay	State ruled abuse not recurring & is eligible to work w vulnerable adults.
06-PA-0938	Rogers, City of Teamsters, Local 320	Frankman, Janice	Susp w/o pay Termination	Off-duty officer pulled his gun while stopping a speeding car. Charged & pled to 2 misdemeanors.	Sustained Sustained	Admin leave w/o pay = unsupported suspension. Termination rested on felony criminal case.
FMCS	St. Michael's Health & Rehabilitation Ctr United Steelworkers, Local 9349	Jacobowski, Daniel	Termination	LPN failed to take proper steps in an emergency where 88 yr old died.	Denied	Failed to apply CPR; left for suction machine vs sending someone; lied in report.

October, 2006

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
06-PN-0457	Hubbard County (Interest Award- Sheriff's Deputies) Teamsters, Local 320	Toenges, Rolland	Interest	3 yrs-e (u-2y); Wages: 3%, 3%, 3%-e (u-\$1+4%, 4%, 4%); Insurance-new plan-e; Comp accrual 80 to 120-no-e; OT (1st claim to part time hrs)-no-e; Severance: lower hrs required-u; Uniform incr-yes-u; Personal leave day-no-e; longevity increase-no-e.	2006 - 3% 2007 - 3% 2008 - 3%	History of 3 yrs.; wages, insurance, longevity internal comparisons. Lack of compelling need for change on other issues. Can change to aggregate value of ins be arbitrated? - yes.

06-PN-0456	Hubbard County (Interest Award- Jailers/Dispatchers) Teamsters, Local 320	Toenges, Rolland	Interest	Jailers, similar to deputies requests. Wages: 3%, 3%, 3%-e (u-\$.80+4%; \$.50+4%, 4%). Increase longevity-no, Eliminated triple gold insurance plan. Comp accrual increase-no-e; 1st choice to all OT-no-e; Severance:lower min hrs-yes-u Uniform increase-yes-u; Persnl leave day-no-e..	2006 - 3% 2007 - 3% 2008 - 3%	Wages internal pattern - comparable to market when insurance & longevity considered. Longevity is a uniform benefit. Union made aggregate value of insurance reduction argument-no bar to arbitrator changing value. Soc services severance min lowered.
06-PA-1243	Itasca County of AFSCME Minnesota Council 5	Jacobs, Jeffrey	Seniority Promotion	Systems manager position bypassed qualified internal candidate.	Denied	Contract qualifies seniority by adding providing it is in best interest of Co.
06-PA-0620	Steele County Law Enforcement Labor Services, Inc.	Before, Stephen	Written reprimand	Changed shift without informing his supervisor.	Oral reprimand	Change necessary to complete arrest reports w/o incurring OT.
06-PA-1147	Todd County Teamsters, Local 320	Daly, Joseph	Me too clause	Are elected officials employees under "me too clause"? - No.	Denied	179A.03, subd 14 excludes elected public officials as "public employees".
06-RA-1144	United Parcel Service IAMAW, District Lodge 77	Jacobs, Jeffrey	Termination	Violation of Anti Harassment policy. Called ee queer & challenged to fight.	Denied	No progressive discipline, but many counseling sessions.
06-PA-0192	University of Minnesota AFSCME Minnesota Council 5	Paull, David	1 day suspension	While being counseled, ee made a fist and threw a water bottle.	Wrtn warning	Split award. Blameworthy but no progressive discipline.
06-PN-0650	Winona, City of (Interest Award-Includes Clarification) Law Enforcement Labor Services, Inc.	Jacobs, Jeffrey	Interest	Wages-u (e 06-2%/1%, 07-3%); Insur. employer's position (u has PEIP);	2006 - 3.25% 2007 - 3.25%	Wages-external & history of police receiving more than other ees.
06-PN-0743	Wright, County of (Interest Award) Law Enforcement Labor Services, Inc.	Gallagher, Thomas	Interest	3 yrs-e (u-2yrs); Wages-e (u-4%,3.5% & 3.5%); Insurance-e; Comp carryover accrual-no-e; Uniforms+25 ea yr-u; Court minimum incr-no-e; Invst on call incr-no-e; Sick accrual incr-no-e; Shift diff-no-e; Chnge Mileage lang-no-u Out of title must wk 5 days-no-u.	2006 - 2% 2007 - 2.75% 2008 - 2.75%	Duration wages & insurance - internal pattern. Performance pay systems distort wage comparisons. Other requests denied when not supported by evidence.

September, 2006

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
AAA	ADT Security Services, Inc. IBEW, Local 110	Daly, Joseph	Unit Work	Unit described as ees working out of Twin Cities office. Are ees working from home required to join union?-yes.	Sustained	35% of wrk done by ees of subdivision is unit work therefore they must join union.
05-PN-1185	Arrowhead Regional Corrections Board (Interest Award) AFSCME Minnesota Council 5	Holmes, Barbara	Interest	OT: calculate based on compensated hrs-no-e; Training: pay OT for training- no-e; Shift differential increase-no-e.	Employer's positions	Union failed to prove a compelling need for the changes requested.
06-PN-0798	Cottage Grove, City of (Interest Award) Law Enforcement Labor Services, Inc.	Daly, Joseph	Interest	Sgts wages-c (u-06-4%, 07-3.5%)	2006 - 2.5% 2007 - 3.5%	Wages-internal, same as police.
FMCS	Garellick Manufacturing Company IUE-CWA, Local 87042	Jacobowski, Daniel	Termination	Workplace feud with 2 co-workers. Joked about using his pistol.	3 day susp.	Was not a threat, rather a joke w a friend. Other 2 were the instigators.
FMCS	Highland Chateau Care Center UFCW, Local 789	Toenges, Rolland	Termination	Nursing home worker failed to work a shift he signed up for - claimed not properly posted.	Denied	Failure to report to work is presumed to be a resignation. Alleged errors in posting were not significant.

FMCS	Indian Health Board of Minneapolis SEIU, Local 113	Bognanno, Mario	Extra Shift Pay	Dr.'s schedule changed frm 4 to 5 day total hours the same. Claiming pay for extra shift.	Sustained	MOU "The current practice of Physicn Administrator time shall continue", is a bar to mngmnt changing schedule.
06-PA-0181	ISD 316, Greenway-Coleraine AFSCME Minnesota Council 5	Kircher, Andrea	Termination	Food service worker complained to school board member re supervisor. Violated a written warning not to retaliate vs anyone who criticized her wk.	Sustained	Letter re needed changes & warning against retaliation was marred by inscrutable verbiage. Also - lack of progressive discipline.
06-PN-0742	Marshall, City of (Interest Award) Law Enforcement Labor Services, Inc.	Remington, John	Interest	Officers-1yr-u; Wages-4%-u (e-3%); FTO pay-no-e; Shift pay increase-n-e; Uniform allowance-no change-e.	2006 - 4%	Duration - expecting compensation study in 2007. Wages-external. FTO Shift & Uniform - insufficient evidence.
06-PA-0161	Roseville, City of Law Enforcement Labor Services, Inc.	Holmes, Barbara	1 day suspension	Officer failed to follow an order.	Sustained	Order wasn't clear and investigation was insufficient.
FMCS	Steele-Waseca Cooperative Electric IBEW, Local 160	Daly, Joseph	Loss of Seniority	Clarification of 12/23/2002 arbitration award regarding seniority date. Denied medical leave & terminated. Reinstated-given new seniority date.	Sustained	Seniority given in arbitration can't be challenged using contracts medical leave provision because they never gave the employee medical leave.

August, 2006

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
FMCS	Ainsworth Engineered (USA), LLC United Steelworkers of America, Local 1095	Reynolds, James	Termination	Employee repeatedly instructed to return to her work area. She did not - insisting he answer her questions.	Denied	Contract allows termination upon 1st act of insubordination. No prior record presented. Not interviewed.
06-PN-0527	Alexandria, City of (Interest Award) Law Enforcement Labor Services, Inc.	Anderson, Richard	Interest	Sgts: Vac incr-no-e; 1.5 pay for all Hol.-y-u; Uniform incr-no-e; 2006-4%-e (u-4%+\$200); 2007-2% Jan, 3%July-e (u-4%+\$200); Insur-same as officers	2006 - 4% 2007 - 2%, 3%	Vacation, Wages, Insurance,Uniforms based on internal pattern-same as officers. Holiday premium - external market.
06-PN-0479	Belle Plaine, City of (Interest Award) Law Enforcement Labor Services, Inc.	Boyer, John	Interest	2yrs (u-1yr, e-3yr); Holiday prem-y-u; Uniform: +\$20, +\$15-u; Wages-u (e-3%, 3%).	2006 - 3.35% 2007 - 3.3%	Pattern of multiple year contracts. Holidays - external. Uniform-not increased for 3 yrs. Wages-external.
06-PN-0525	Crystal, City of (Interest Award) Law Enforcement Labor Services, Inc.	Jensen, Eugene	Interest	FTO +\$.05-u; Investigator no incr-e; 2006nsurace 2006 Insurance-e; 2007 ins reopener-u.	Employer's Positions.	Arbitrator rejected increasing prem. by % due to history of parties. Insurance - internal pattern.
05-PA-132	Eveleth, City of AFSCME Minnesota Council 5	Reynolds, James	Unit Work	Casual workers hired to cut lawns in the summer w/o first consulting union.	Denied	LOU has not been consistently enforced. No Union jobs lost.
FMCS	Fairview Oxboro & Ridges Clinics SEIU, Local 113	Bognanno, Mario	Health Insurance-unilateral change	Insurance change to high deductible plan are not substantially similar as required by contract.	Sustained	ER claims substantially similar when considering premium savings. But no actuarial study done to support this.
06-RA-0322	Griggs, Cooper & Company, Inc. Teamsters, Local 120	Boyer, John	Termination	Violated attendance policy-given last chance agreement which was violated.	Denied	Good discussion of attendance policies and last chance agreements.
06-PA-0136	ISD 182, Crosby-Ironton Education Minnesota Crosby-Ironton	Jensen, Eugene	Reprisal Clause	After a strike - teacher terminated for budgetary reasons. Later applied for for position but not selected.	Sustained	Totality of facts pointed to reprisal in violation of MOU.

06-PA-0684	ISD 861, Winona Winona Education Association	Jacobowski, Daniel	Coaching position	Denied asst soccer coach position due to parent complaints.	Sustained	Complaints occurred as head coach but no opportunity to respond. ER failed to use dispute process.
05-PA-1036	Koochiching County Local 49	Daly, Joseph	Promotion - best qualified.	Part-time ee claimed seniority for full-time position based on senior qualified contract language.	Denied	Part-time ees don't have seniority to fill full-time vacancies. And testing showed he was not best qualified.
05-PN-1168	Lyon County (Interest Award-Includes Clarification) Law Enforcement Labor Services, Inc.	McCoy, A. Ray	Interest	05-0%, 4%merit-e (u-3%, 4%m); '06-0%, 2.5%merit-e (u-3%). Incr Court & Call back pay-no-e; remove sub-contacting-y-u; change Columbus day to floating hol-n-u; Insur change-n-u; Shift differential?-n-e	2005 - 0% 2006 - 0%	Wages-internal. Insurance-failed to provide compelling reason. Other issues not supported by region 8 data. Clarification order explores legal basis for change to award.
06-PA-0990	Metropolitan Council 1005	Before, Stephen	Pay Rate	Bus cleaner trying to alter specified wage rate because work is harder than other titles who are paid more.	Denied	Arbitrator's role is to read & apply the parties contract - not determine if different contract terms are preferable.
06-PA-1182	Metropolitan Council Amalgamated Transit Union, Local 1005	Jacobs, Jeffrey	Final Warning	3rd bus accident in rolling 3 yr period gave employee final warning that next accident will result in termination.	Denied	Denied accident. Case proven with circumstantial evidence.
FMCS	Midwest Coca-Cola Bottling Company Teamsters, Local 792	Frankman, Janice	Termination	Told co-worker to stop making racist remarks, pushed him dn on chair, told him to apologize - violation of violence policy.	30 day susp.	Impropriety of ee using form of self-help to address another ee's bad behavior. Reduced to 30 days.
05-PA-0910	Orono, City of Law Enforcement Labor Services, Inc.	Jay, Sara	Seniority Accrual	Sgt went back to patrol. City credited time as sgt for patrol seniority - no.	Sustained	Patrol seniority doesn't count towards Sgt seniority in spite of same language.
06-PN-0916	Ramsey, County of (Interest Award) Law Enforcement Labor Services, Inc.	Anderson, Richard	Interest	06-2% Mar1-e, '07-2% Mar1, 08-1.5% Mar1 & 1.5% July1-e, (U-3.5%, 3.5%, 3.5%); Change yrs of service for steps -n-u; Deferred comp-y-u; Lic premium-n-e	2006 - 2% 2007 - 2% 2008 - 3%	Wages & Deferred comp - internal. Yrs of service change and License premium - no compelling reasons given for change.
06-PN-0476	Redwood County (Interest Award) Law Enforcement Labor Services, Inc.	Remington, John	Interest	3 yrs-e (u-2yrs); Wages-e (u-4%,4%, 4%); Rotating shift pay-n-e; Uniforms-from \$525 to \$600-u (e-\$550).	2005 - 1.5% 2006 - 2% 2007 - 2%	Duration-18 months into new contract Wages-internal pattern; Shift pay-disputed schedules should be neg.
06-PA-0177	University of Minnesota AFSCME Minnesota Council 5	Fields, Bernice	Written Warning	Ee accidentally bumped her chair, she went to his desk & harassed him..	Denied	History of aggressive misconduct. Both received written reprimands.
06-PA-0645	West St. Paul, City of Law Enforcement Labor Services, Inc.	Bard, Stephen	Job Elimination	Dispatch services moved to Dakota County. City didn't negotiate impact.	Sustained	City policy requires 60 day notice of layoff - held to be part of contract. Awarded pay and benefits for last month of the contract.

July, 2006

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
FMCS	ABM Building Security SEIU, Local 26	Jacobs, Jeffrey	Pre-assignment Training Pay	ER pays for State mandated CEU & ER required training-not state required pre-assignment training.	Denied	Expressio exclusio -separate listing of required training excludes training not listed.
FMCS	Abbott Northwestern Hospital SEIU, Local 113	Jacobs, Jeffrey	Termination	Theft of cash from parking receipts in an integrity audit.	Denied	Clear and convincing standard of proof.
FMCS	Aramark Refreshment Services Teamsters, Local 792	Jacobs, Jeffrey	Recall	Laid off driver not called back prior to drivers less senior.	Sustained	ER claimed driver turned down recall but circumstances support driver.
FMCS	Cambridge Medical Center IUOE, Local 70	Jacobs, Jeffrey	No-pyramiding clause	Seeking weekend premium & double back pay in spite of no pyramiding.	Sustained	No pyramiding bars OT on top of premium pay- not 2 premiums.
FMCS	Centerpoint Energy and Minnesota Gas Company Gas Workers Union, Local 340	Jacobs, Jeffrey	Termination-last chance	Gas service tech violated Last Chance Agreement.	Sustained	Performance blameworthy, but didn't violate LCA. 8 mos. no back pay. Can't discipln for legitimate sick use?
06-PA-0422	Grant County Teamsters Local 320	Befort, Stephen	Senior qualified	Seeking financial worker position. Came in second in test-not hired.	Denied	Relative ability standard. Seniority only a factor if qualifications equal.
06-PA-0699	Hennepin County AFSCME Minnesota Council 5	Jacobs, Jeffrey	10 day susp.	Child protection wrkr reunited child with mother w/o supervisor's ok.	Denied	Long term ee w/o prior discipline. ER considered termination.
06-PA-0885	Hennepin County AFSCME Minnesota Council 5	Jacobs, Jeffrey	Termination	Sexual harassment.	Sustained	Failed extra-marital affair that took place outside the workplace.
06-PA-0401	ISD 306, Laporte Support Professionals	Jensen, Eugene	Recall	ER in SOD, all hrs equitably reduced "to share the pain".	Sustained	Layoff or reduction in hours must be by class - ees with least seniority must be laid off or reduced first.
???	Minnesota, State of, Department of Transportation Employees	Bognanno, Mario	Bumping	I.T. ee bumped into position but given different assignments. Assignments then reevaluated to lower grade.	Sustained	Software in position a bad fit for ee. Bumped ee still doing work thus not a real bump.
06-PN-0326	New Brighton, City of (Interest Award) Law Enforcement Labor Services, Inc.	Kircher, Andrea	Interest	Wages-e (u-4%, 4%); Insurance-e; School Resource+\$100-u; Det, FTO, Call back, Sick leave increase-n-e; Uniform+\$40-u; MLK Hol-y-u; SELF-u	2006 - 3% 2007 - 3%	Wages & MLK Hol-internal patterns. Det, FTO, Call back, Sick leave & SELF - insufficient data to support any changes.
06-PA-0801	Princeton, City of AFSCME Minnesota Council 5	Anderson, Richard	Termination - V.P.	Maintenance man accused of stealing gas from city garage.	Sustained	ER unable to prove charge.
06-PA-0719	Ramsey County AFSCME Minnesota Council 5	Jacobs, Jeffrey	FLSA Overtime	Tax clerk used sick day during week therefore not eligible for OT on Sat.	Sustained	Contract states OT paid for working on day off. But - did not work & not paid.
FMCS	St. Francis Regional Medical Center SEIU, Local 113	Jacobs, Jeffrey	Weekend pay to casual employees	\$50 bonus for "full extra/unscheduled weekend shift."	Sustained	Casual employees have no regularly scheduled hours so they qualify.
06-PA-0010	St. Paul, City of IAFF, Local 21	McCoy, A. Ray	2 shift suspension	Fire Capt (Union President) confronted black firefighter on Union OT dispute.	Sustained	Not harassment - legitimate role of Union President.
05-PA-0383	SSD 1, Minneapolis AFSCME Minnesota Council 5	McCoy, A. Ray	Termination	Are holidays "duty days" for meeting 130 day probationary period - yes.	Sustained	Also discussion of timelines.

FMCS	Stock Yards Meat Packing Company Teamsters, Local 120	Jacobs, Jeffrey	Termination	Ee denied time off for knee surgery fired for not showing up for work.	Sustained	ER's denial based on their Doctor. Ee's Doctor said surgery necessary.
------	--	-----------------	-------------	--	-----------	--

June, 2006

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
FMCS	Great River Energy IBEW, Local 260	Jacobowski, Daniel	Travel Pay	Scheduled for OT Sat. & Sun. ER claimed scheduled shifts exempt.	Sustained	Travel time paid when called back. Not limited to emergency situations.
06-PA-0644	ISD 281, Robbinsdale SEIU, Local 284	Fogelberg, Jay C	Arbitrability 5 d susp/demotion	Head custodian called principal a lesbian dictator. Timeliness?	Denied	Waited 8 mos before filing grievance. Contract has 30 day requirement.
06-PA-0383	ISD 283, St. Louis Park SPARK	Reynolds, James	Promotion - most qualified	Shall consider seniority. External candidate selected over internal.	Denied	ER determines most qualified. Used orderly process-committee selection.
06-PA-0053	Richfield, City of Law Enforcement Labor Services, Inc.	Paull, David	10 day susp	Made traffic stop using unmarked car; lied about showing his badge.	Wrtn Reprmd	Admitted violating policy for car stop. No improper motivation or intention re denial of showing badge.
05-PA-1121	Thief River Falls, City of Teamsters, Local 320	Flagler, John	3 day suspension Termination	"fighting words" to "fighting words" . Non-work related threat to insurance ee. Charge with felony - pled to DOC.	Denied Sustained	Previous reprimand re anger issues. Failure to provide Loudermill hearing created a fatal due process error.

May, 2006

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
FMCS	Advanced Shoring Company Teamsters, Local No. 120	Bognanno, Mario	Subcontracting	Cartage subcontracted in '90. Drivers guaranteed Union benefits as part of agreement expired in '92. Non-Union Trucking Co hired in 2005.	Denied	Agreement expired but honored for 15 yrs - enforceable past practice-no. Grievant never worked for ASC.
05-PA-0997	AFSCME, Council 65 Clerical Association	Jensen, Eugene	Termination	Business Agent's performance issues and felony drug conviction.	Denied	Section 504(a) of the Labor-Mngmnt Reporting & Disclosure Act (LMRDA) 29 U.S.C.A. § 504 bars employment as U Rep for 13 yrs if drug conviction.
FMCS	Allina Hospitals & Clinics - Abbott Northwestern Hospital SEIU, Local 113	Flagler, John	Termination	Parking ramp cashier stole money by failing to report overages placed in his cash box in an integrity test.	Denied	Clear and convincing" evidentiary standard. Discussion of circumstantial evidence.
06-PN-0102	Crow Wing County (Interest Award) Law Enforcement Labor Services, Inc.	Holmes, Barbara	Interest	Wages-u (e-1.5%, 1.5%, 2%); Court & Call out-no change-e; Shift diff incr-y-e; Floating Holiday from 2 to 3-n-e.	2005 -3% 2006 - 3% 2007 - 3%	Wages-external (deviations in internal settlements). Shift diff- internal and. external. Other issues-not compelling.
05-PA-0932	Duluth Housing and Redevelopment Authority AFSCME, Minnesota Council 5	Neigh, Charlotte	Contracting out. Timelines.	Union failed to meet step 3 grievance timelines.	Denied	Procedural deficiencies by Union.

06-PA-0564	ISD 314, Braham SEIU Local 284	Richard J. Miller	Promotion Timeliness Arbitrability	Senior qualified language. Ee not qualified due to poor performance, felony record (unable to trust unsuperv), & lack of skills required.	Sustained	District's determination re qualifications were arbitrary, capricious & wrong. Discussion on Timeliness & Arbitrability regarding a management right.
FMCS	Lund Food Holdings, Inc. UFCW, Local 789	Gallagher, Thomas	Work Schedules	4 sr ee's work 10 hr shifts. All others on 8 hrs. All ees scheduled to start 2 days at 10:00am so the sr ees must work until 8:00pm-feel jr should work nights.	Sustained	Management right to schedule upheld but contract requires consideration of (ees interest & ability of ER to cover needed hrs.) No solution provided.
06-PA-0658	Metro Transit Commission Amalgamated Transit Union, Local 1005	Holmes, Barbara	Recognition Program	ER failed to post ridership numbers that are used to determine eligibility for a recognition bonus.	Denied	Not required per contract. Past practice argument fails-have not been posted for four years.
05-PA-0711	St. Louis County Teamsters, Local 320	Daly, Joseph	Seniority Accrual	Union denied seniority to supervisor who left unit, then voluntarily returned.	Denied	Neither practice nor contract bar accrual.
FMCS	Star Tribune IAMAW, District Lodge No. 77	Anderson, Richard	Termination	Unacceptable attendance.	30 day susp.	Medical and alcohol issues. Sought and completed treatment. Given LCA
FMCS	Weyerhaeuser Company UFCW, Local 9	Bognanno, Mario	Termination	EE came to work drunk, passed out on parts shop floor. Prior DUI can't be used since it didn't occur at work.	Sustained	M.S.§181.953, Subd.10, requires 1st offenders be given opportunity to enter a substance abuse program.
05-PA-1001	University of Minnesota University Education Association	Holmes, Barbara	Merit Pay	Seeking written criteria for distribution of merit pay.	Denied	None exist, not required by contract nor policy governing non-union.

April, 2006

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
05-PN-0772	Austin, City of (Interest Award) AFSCME Minnesota Council 5	Jacobs, Jeffrey	Interest	Comp time-u (see S Jay Dec'06 arb) Er Authority language-y-e; Waiver language-n-u; Sick payout-e; Insur-e; Longevity-no-e; On call pay-no-e; Clothing-e; Wages: '05-0%, '06-2.4% April, 1.6% July; '07-2.4%January, 1.6% Jul; Fire Chief incr of \$3,500-u	2005 - 0% 2006 - 4% 2007 - 4%	Er argued comp time policy not subject to negotiation, but Er listed it as issue. Language dependant on Sara Jay arb. Er Authority-statutory lang;Waiver-new-no compelling reason; Fire chief external market; all other issues - internal pattern.
06-PA-0009	Fergus Falls, City of Teamsters, Local 320	Fogelberg, J.C.	Overtime	Ee told he would be working 12 hrs, than only 4hrs Friday to eliminate OT.	Sustained	Contract-hrs in excess of assigned shift paid OT-means normal shift.
06-PA-0005	ISD 91, Barnum Education Minnesota - Barnum	Toenges, Rolland	Prep Time	Teacher transferred & lost 1hr used for Activity Directors duties forcing use him to use prep time.	Sustained	Transfer proper. Even though he received schedule C compensation for Directors duties, there was a 5 year practice of allowing extra hour.
05-PA-0269	ISD 2154, Eveleth/Gilbert Education Minnesota Eveleth-Gilbert	Anderson, Richard	Class period day	Increase from 5 to 6 classes. Timely? District Court compelled arbitration.	Denied	Went to 6 classes in 1999 (1 was 20 minute home room). Changed home-room to regular class in 2004. Fails on timeline (1999 change) and merit.
06-PA-216	Minnesota, State of, Dept of Corrections AFSCME Minnesota Council 5	Anderson, Richard	Demotion	Sgt.demoted 6 months for filing false report inmate punched him. Video did not support accusation.	Denied	Report was not accurate and could have led to inmate being charged.

06-PA-0325	Treatment Center AFSCME Minnesota Council 5	Jacobs, Jeffrey	Accommodating job restrictions	Barred frm contact w vulnerable adults unless under supervision. Unable to accommodate so placed on unpaid leave.	Sustained	Contract required "every reasonable effort to accommodate". Can't deny placement due to inconvenience.
FMCS	Owens & Minor SEIU, Local 113	Toenges, Rolland	Termination	Warehouse worker was warned about poor productivity (lines of orders filled).. He started generating additional lines.	Denied	Accurate records necessary to check productivity, Action were dishonest.
FMCS	Pepsi Bottling Group, Inc. Teamsters, Local 792	Daly, Joseph	Termination	Driver told store manager he doesn't shop at Wal-Mart because they don't provide ees health care. Store complained;	Sustained	Comments not inappropriate. They were in response to manager's question.
FMCS	University of Minnesota Medical Center 1164	Anderson, Richard	Termination	Last chance agreement. Falsified request for 3 day funeral leave to attend sister's funeral.	Sustained	Claiming half-sister as a sister not grounds for discipline. Unclear if funeral bulletin was changed.
FMCS	Viking Drill and Tool, Inc. Teamsters, Local 120	Anderson, Richard	3 day suspension	Unwanted sexual comment to female ee was sexual harassment.	Wrtn warning	One time event. Lack of progressive discipline.
05-PA-0599	Washington County Law Enforcement Labor Services, Inc.	Befort, Stephen	Termination	Officer pointed his gun at others in horseplay.	30 day susp	Supervisors failed to take corrective action. No progressive discipline.
04-PA-0670	West St. Paul, City of Law Enforcement Labor Services, Inc.	Remington, John	2 day susp	Officer failed to return to training class after noon break-did not notify superv.	Wrtn reprmnd	Discourteous to a superior officer.

March, 2006

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
FMCS	Aggregate Industries Teamsters, Local 120	Jacobowski, Daniel	Termination	Cement truck driver w excessive tardiness in violation of policy. Union denied policy ever posted.	3 day susp.	Policy does not distinguish between tardies & no shows which detracts from just cause element in the policy.
05-PA-0610	Brainerd, City of Law Enforcement Labor Services, Inc.	Bard, Stephen	Evading OT by changing shift	Sgts schedule changed to eliminate need for an officer's holiday OT to fill in shift at the airport.	Denied	No guarantee of OT in contract. No schedule changed for any officer. Issue of subcontracting not raised.
FMCS	Electrolux Home Products International Association of Machinists and Aerospace Workers, District Lodge 165	Flagler, John	Termination	Refused to do work involving pushing & pulling a cart, claiming medical restrictions.	Denied	Restriction to raise arm over his head. Dispute between doctors diagnosis resolved by assessing ee's lack of credibility.
FMCS	Group Health SEIU, Local 113	Gallagher, Thomas	OT Seniority	Lab Tech went on vac. Hours offered to Lab assistants.	Denied	ER free to adjust its staffing. Bid was for Assistants - only.
06-PA-0262	Hopkins, City of Hopkins Police Officers Association	Befort, Stephen	Senior Qualified	Jr officer selected as investigator both had experience in investigations.	Denied	Jr officer had 14 mos experience v 3 mos. & is was more recent.
06-PA-0150	ISD 115, Case Lake/Bena Cass Lake Education Association	Anderson, Richard	Senior Qualified	Jr teacher selected for counseling position despite seniority language.	Denied	District has right to determine qualifcn & if applicant possesses qualifications.
FMCS	Kemps, LLC Teamsters, Local 160	Befort, Stephen	Termination	Profane language towards female ee.	Denied	Words constituted sexual harassment. Previously disciplined for similar acts.
06-PA-0219	Minnesota, State of, Anoka Metro Regional Treatment Center AFSCME Minnesota Council 5	Jacobs, Jeffrey	Termination	Staff person brought in cigarettes for sale to patients. Tobacco barred by MN Statue from facility grounds.	Denied	Financial exploitation of vulnerable adults.

???	Minnesota, State of, Dept of Revenue Employees	Bognanno, Mario	5 day suspension	Failed to meet performance standards	Denied	Received prior discipline & counseling regarding failure to meet standards.
FMCS	Progress Casting Group, Inc. Glass, Molders, Pottery, Plastics and Allied Workers, Local 63B	Toenges, Rolland	Termination	Factory worker pushed metal casting with his foot, knocking it off conveyor - potential for injury to others.	Denied	Repeatedly kicked castings even after being asked to stop by co-worker. Counseled previously on behavior.
FMCS	Veterans Administration - St. Cloud Medical Center American Federation of Government Employees, Local 390	Remington, John	Senior Qualified Timeline	Junior nurses selected based on "clinic experience preferred". It was not a requirement for position. Two grievances. 1 filed 75 days after step 3 vs 30 day limit.	Sustained Denied	Eliminating qualified senior nurses for candidates they prefer is an abuse of discretion. Untimely, no ongoing evidence chain that could waive time limit.
FMCS	Viking Drill & Tool, Inc. Teamsters, Local 120	Toenges, Rolland	Vocational Rehab -Termination	Ee place on permanent disability. Union grieved as a discharge.	Denied	Unable to perform essential functions of any available job.

February, 2006

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
06-PA-0228	Arrowhead Regional Corrections AFSCME Minnesota Council 5	Dichter, Fredric	Termination	Probation officer went to gentlemen's club where his client was dancing.	60 day susp.	Poor judgment crossed boundary of PO & Client. Did not violate any rule.
05-PA-1076	Carver County Law Enforcement Labor Services, Inc.	Lundberg, James	Overtime Pay/ Past practice	Year end adjustments for OT if over 2080 hrs eliminated.	Denied	Proper notice given to end practice.
FMCS	Cemstone Products Company International Association of Machinists and Aerospace Workers, District Lodge 77	Gallagher, Thomas	Holiday - work schedule change.	New Yrs holiday on Sat. - Co. closed Fri and paid ees for holiday. Contract dealt with holiday falling on Sun, but not Sat. Ees seeking right to work Fri.	Sustained	No allowance in contract. One prior situation didn't create practice. May have had different award if ees given more than 1 day notice.
05-PA-0996	Coon Rapids, City of Law Enforcement Labor Services, Inc.	Paull, David	Termination	Officer went to a women's home after a traffic stop seeking sexual favors.	Denied	Unprofessional behavior. Prior 30 day suspension w similar situation.
FMCS	Federal Deposit Insurance Corporation (Duffney Grievance) National Treasury Employees Union, Chapter 274	Remington, John	Merit award	MOU provides 3% merit award if ee made significant contribution. Ee was not nominated, nor would ER share what winners contributed.	Sustained	ER has broad discretion to decide who will receive awards. But it must be prepared to defend its discretion. Same facts as arbitration below.
FMCS	Federal Deposit Insurance Corporation (Tommons Grievance) National Treasury Employees Union, Chapter 274	Remington, John	Merit award	MOU provides 3% merit award if ee made significant contribution. Ee was not nominated, nor would ER share what winners contributed.	Sustained	ER has broad discretion to decide who will receive awards. But it must be prepared to defend its discretion. Same facts as arbitration above.
06-PA-0066	ISD 15, St. Francis (Arbitrability) School Service Employees, Local 284	Remington, John	Arbitrability	Timeliness, grievant failing to sign grievance, selection of arbitrator.	Sustained	Offer to accept resignation anytime amounts to waiver. U owns grievance.
06-PA-0066	ISD 15, St. Francis (Merits) School Service Employees, Local 284	Remington, John	Termination	Maintenance worker's excessive unexcused absences.	Denied	Failure to suspend meaningless, he only showed up for 38% of days schd.
06-PA-0012	ISD 726, Becker, Minnesota School Service Employees, Local 284	Torosian, Herman	Senior Qualified	"Senior most qualified" means senior qualified.	Sustained	Addendum is part of contract. Past practice gives meaning to the words.

05-PA-0588	ISD 993, Minnesota River Valley Special Education Cooperative Minnesota River Valley Education Association	Toenges, Rolland	Severance	Teacher w 23 yrs service left district to teach in another district - denied severance/retirement benefit because she didn't retire from teaching.	Denied	Union - contract requires retirement from District, not teaching; but MS 122A.48, sec 5 governs. It requires leaving actual teaching.
05-PA-0849	Minnesota, State of, Department of Human Services AFSCME Minnesota Council 5	Reynolds, James	Termination	Stopped w van of clients to conduct extended personal business & took a cooler from work.	Denied	Poor judgment & lack of boundaries. Prior 3 day suspension.
FMCS	Pan-O-Gold Bakery Company BCTGM Local 22	Flagler, John	Holiday Pay	25 yr practice of not paying for holiday unless worked.	Sustained	Grievance serves notice to end practice & force compliance w contract language.
FMCS	Regina Medical Center Minnesota Nurses Association	Fogelberg, J.C.	Insurance Plan design	Contract bar to substantially reducing plan benefits. Base plan remained similar, but the 3 plans were replaced by 2 new plans.	Denied	Plan (singular) language met by base plan. Keeping current plans constitutes substantial diminishment in benefits due to large jump in required premiums.
06-PA-0056	St. Paul, City of St. Paul Firefighters, Local 21	Beafort, Stephen	Sick slip	Reimburse cost to obtain sick slip? MN Stat 181.61 prohibits requiring ee to pay cost of medical exam.	Denied	Not arbitrable. Is a matter of statutory construction excluded from arbitration by the contract.
05-PA-1233	St. Paul's Church Home SEIU, Local 113	Neigh, Charlotte	Termination	Nursing Asst. failed to feed diabetic patient all of his lunch.	Sustained	Faulty investigation. No evidence of any improper act.
05-PA-1233	SSD 1 - Minneapolis AFSCME, Council 5	Bard, Stephen	Termination	Health care asst continued using perform when told to stop. No rule nor was anyone else so barred.	Denied	Insubordination re scented products poor job performance & attendance cumulatively constituted just cause.
05-PA-1221	Winona County AFSCME, Council 65	Lundberg, James	4 week susp.	Child protection worker accessed & added personal info to a complaint re ex-husband.& sought restricted data.	Denied	Using position to further personal goals is a conflict of interest violating policies central to County's operation.

January, 2006

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
FMCS	Gopher Resources, Inc. Teamsters, Local 120	Toenges, Rolland	Senior Qualified Overtime	Ee not trained on loader. Seeking training so he can bid for OT. ER only trains for need.	Denied	Ee not qualified. No requirement to train ees outside a department No fixed & established practice.
05-PA-1113	Grant County Teamsters, Local 320	Bognanno, Mario	Payroll Period	ER implemented hold back of pay by holding back 1 day for 5 pay periods.	Split	ER had right to hold back pay, but must negotiate impact.
05-PA-0443	ISD 276, Minnetonka Minnetonka Teachers Association	Toenges, Rolland	President's 40% release time	New president denied ,4 release time afforded prior presidet. ER - release was given to individual, not to the title.	Denied	MS 179A. Sub.3,(10) - it is unfair practice for ee organization to cause pay for services not performed.
05-PA-1093	ISD 595, East Grand Forks Association	Gallagher, Thomas	Lane advancement	Teacher took 2 internet golf classes & was seeking lane advancement.	Denied	Classes were continuing education. CBA requires grad or undergrad level.
FMCS	Kerry Ingredients Teamsters, Local 1602	Flagler, John	Job Elimination	Old light duty jobs were combined due to declining busn. Incumbent ees not qualified due to medical conditions.	Denied	Management right. Discussion of effects vs decision bargaining.

06-PN-0030	Minneapolis Park and Recreation Board (Interest Award) Minneapolis Professional Employees Assn.	Kircher, Andrea	Interest	Add a 6th step to Environment Prog Coordinator-no-e. Union made a pay equity argument.	Employer position	Statute requires a reasonable relationship, not that comparable jobs be paid the same.
FMCS	Pierz Villa USW, Local 9359	Frankman, Janice	Union work	Part-time maintenance ee laid off due to budget cuts. Community volunteers continued working.	Sustained	Can't use volunteers while employees laid off.
FMCS	Saint Paul's Church Home SEIU, Local 113	Daly, Joseph	Termination	Nurse violated safety and policy requirements.	Sustained	ER failed to sustain burden of proof.
FMCS	Sappi - Cloquet LLC PACE, Local 63, USW	Jacobowski, Daniel	Termination	Viewing pornography and lying when questioned.	6 day susp.	Policy of automatic termination is excessive & was unilaterally imposed.
???	University of Minnesota AFSCME, Council 5	Flagler, John	Termination	Sprayed co-worker in eyes w window cleaner. 1st claimed horseplay then denied involvement.	Denied	3rd incident of disruptive behavior. Discussion on circumstantial evidence.
FMCS	Virginia Regional Medical Center (Interest Award) Minnesota Nurses Association	Remington, John	Interest	Wages: July '04-4%, July '05-3%, July '06-3%-u (e-2% Jan '05, 3% July '06, 3% Jan '07). Longevity-no-e. Vacation for 12 hr nurses-u. Eliminate Retiree insurance-no-u. Increase life insurance-yes-u. Health Insur. 50/50-e. Change insurance waiting period-no-u.	2004 - 4% 2005 - 3% 2006 - 3%	Wages-external comparisons. Long-no due to financial situation. Vac-benefit enjoyed by 8hr nurses. Retiree change should be negotiated. Life insurance-external comparisons. Health insurance-hospital's finances. Waiting period-failed to show need.