

2008 Arbitration Awards - Minnesota B.M.S.

April 6, 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, 2008

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
09-PA-0022	Brooklyn Park, City of Brooklyn Park Police Federation	Latimer, George	24 hr. susp.	Police officer arrested for DUI & open bottle.	Denied.	Seeking credit for time served while license was revoked.
08-PN-0750	Buffalo, City of (Interest Award) Law Enforcement Labor Services, Inc.	Yaeger, Thomas	Interest	Health Insurance reopener: Family 2008 - \$780-u, (City \$740.49)	Union position	Non-Union internal pattern rejected Based on external % average.
08-RA-0781	Duluth Dodge, Inc. UAW Local 241	Gallagher, Thomas	Lay off	Senior technician, who was also union steward.	Denied.	Past practice used to interpret contract. Skills trump seniority.
08-PA-1363	ISD 701, Hibbing AFSCME Council 65	Fogelberg, J.C.	Leap year pay	Salary calculated by dividing annual amount by 24 pay periods.	Denied.	Seeking additional amount for leap day. Past practice prevailed.
FMCS	Loram Maintenance of Way, Inc. Steelworkers 2002-09	Jacobs, Jeffrey	Performance appraisal	Union wanted to remove items and bar as basis for discipline.	Denied. Sustained.	Mngmt right to document, but not basis for discipline.
FMCS	McQuay International Sheetmetal Workers Local 480	Flagler, John	Termination	Defaced an air conditioner case by writing a message on it.	Sustained.	Damage wasn't permanent. No back pay (off for 8 months.).
08-PA-1394	Minnesota State of, Human Rights AFSCME Minnesota Council 5	Flagler, John	Termination	Swore at patients and staff, bumped a patient (18 year employee).	Sustained.	Demoted from lead counselor, no back pay (off for 11 months.).
08-PA-4358	Minnesota, State of, Lottery AFSCME Minnesota Council 5	Imes, Sharon	Termination	Lottery warehouse worker harassing co-worker.	Sustained.	Due process flaws. Made whole.
09-PA-0064	Minnesota, State of, Tenth Judicial District (Two Part Award) AFSCME Minnesota Council 5	Miller, Richard	Timelines	Request for arbitration 2 days late.	Sustained	History of lax enforcement.
???	Minnesota State of, Transportation MN Assoc. of Professional Employees	Fogelberg, J.C.	Termination	Court employee failed to quash wrnt., amend charges & other errors.	Denied	Behavior so egregious so as not to restricted by progressive discipline.
08-PN-0453	Owatonna, City of (Interest Award) Teamsters Local 320	Bryant, Bernadine	Layoff/Recall	Laid off as an ITS 3, not recalled when new position posted.	Denied.	Resume did not meet minimums.
			Interest	Sgts group; wage reopener 2008. City offered 2.75%.	3.25%	No internal pattern.

November, 2008

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
08-PN-0303	Apple Valley, City of (Interest Award) Law Enforcement Labor Services, Inc.	Kircher, Andrea	Interest	2007-2009, City 3%,3%,2.5%	3%, 3%, 3.25%	First 2 yrs. Based on pattern. No internal pattern for 2009.
08-PN-0926	(Interest Award) Law Enforcement Labor Services, Inc.	Miller, Richard	Interest	First contract, 2 years 2008-2009.	3%, 3%	Main issue of a salary step matrix or merit pay left unanswered.
FMCS	Health Administration) National Council of Field Labor Locals	Anderson, Richard	Performance evaluation	Denied performance based cash as a result of poor evaluation.	Dismissed.	Evaluation from previous supervisor do not prove new ratings wrong.
FMCS	Union Local 1-B Health & Welfare Fund Union Local 1-B Health & Welfare Fund	McCoy, Arthur	Cost of Retiree health insurance.	full cost. pay full cost. How to calculate?	Can't combine with actives.	Combining active and retiree costs results in a subsidy for retirees.
FMCS	Group Health d/b/a Health Partners OPEIU Local 12	Bognanno, Mario	10 day susp. Termination	Receptionist at eye clinic-scheduling errors; rudeness to patients.	Denied. Sustained.	Grievant has bi-polar disorder. Will return to work if cured within 1 yr.
09-PN-0048	Metropolitan Council Assn.	Gallagher, Thomas	Interest	ER offered 2.5%, 2.5%. ER won Ins. & duration change from June to Dec.	2.7%, 2.7%	Added .2% saved by not awarding ER's merit request.
08-VP-1069	Minnesota, State of, Arts Board Individual Grievant	Jacobs, Jeffrey	Lay-off	Reorganization due to budget.	Denied.	Managements' right to reorganize.
???	Minnesota State Colleges & Universities Minnesota State College Faculty	Befort, Steven	Project payment	Award for excellence project was not paid \$5,000 per contract.	Split decision.	Awarded \$2,500 and parties to go back and negotiate language.
08-PN-0266	Stillwater, City of (Interest Award) Law Enforcement Labor Services, Inc.	Neigh, Charlotte	Interest	Court time incr. to 3 hrs; investigator	2007 - 3% 2008 - 3% 2009-3%, July.25%	Wages internal, ct time external.
07-RA-0130	Supervalu Teamsters Local 320	McCoy, Arthur	Termination	Violation of attendance policy - 11 unexcused absences.	Denied.	Union argued he was covered by the FMLA.

October, 2008

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
FMCS	Allstate Sales Corporation IAMAW District Lodge 77	Gallagher, Thomas	Termination	Didn't get along with other Bodyshop workers, reluctant to do some work.	7 mo. Susp.	Insubordinate, others threatened to quit-but no progressive discipline.
08-PN-1039	Apple Valley, City of (Interest Award) Law Enforcement Labor Services, Inc.	Miller, Richard	Interest	City offered 2.5% for 2009. Awarded uniform request of +\$25 for 08 & 09.	3.25%	Wages same as 2009 sergeant's arbitration award.
08-PN-0816	Brainerd, City of (Interest Award) Law Enforcement Labor Services, Inc.	Miller, Richard	Interest	City's duration 1yr and wages 3.0% Union won longevity incr. at top .5%.	3.00%	Internal pattern. Longevity equals top administrators.
FMCS	Ferguson Enterprises, Inc. Teamsters Local 346	Gallagher, Thomas	Pay steps	Step progression shortened, but only applied to new hires.	Denied	Parole evidence & plane meaning of the contract language.

07-PA-0717	Grant County AFSCME Council 65	Tonges, Rolland	Termination	Mechanic lost CDL due to DUI. Given 5 day susp then terminated when learned of CDL loss of 18 months.	Denied	U claimed double jeopardy. Discp. Can be increased if "more serious than it looked at first". CDL required for job.
08-PA-1070	ISD 115, Cass Lake Association	Lundberg, James	Scheduled hours	Bus monitoring duties part of paras regular schedule instead of adding hr.	Sustained	Issue previously led to a mediated agreement. Must neg. change.
08-PA-1107	ISD 775, Kerkhoven-Murdock Kerkhoven-Murdock Education Assn.	Fogelberg, J.C.	Prep time	Special Ed teacher lost prep time when given more students.	Denied	Contra proferentem-language construed against party drafting.
FMCS	Methodist Hospital Minnesota Nurses Association	Befort, Steven	Termination	Nurse failed to report medication error.	Denied	Error was concealed, which trumped no priors discipline.
???	Metropolitan Council Individual Grievant	Toenges, Roland	Termination V.P.	Accidents, rider complaints, poor judgment & absences from work,	Denied	Limits on acceptability of sub-standard performance.
08-PA-0145	Paynesville, City of (Interest Award) AFSCME Council 65	Jacobs, Jeffrey	Interest	First contract, 2007-2009. Awarded mngmt rghts, OT, reduced retiree ins.	2007-5.3% 2008-2.25% 2009-2.5%	2007 schedule adjusted 5.3% vs. city offer of 1% - pattern for 08-09.
08-PA-1081	Stillwater, City of Operating Engineers Local 49	Fields, Bernice	3 day suspension	Unable to answer call to plow snow - cited for insubordination.	Sustained	Contract did not have mandatory language.
08-PN-0127	Stillwater, City of (Interest Award) Law Enforcement Labor Services, Inc.	Bryant, Bernardine	Interest	2007 - 1% above city's offer; 08 & 09 city pattern.	2007-4% 2008-3% 2009-3% +.25%	Market 2007, pattern 08, 09.

September, 2008

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
FMCS	American Crystal Sugar Company Bakery Workers Local	Reynolds, James	9 day suspension	Insubordination for failing to turn off a tape recorder in a meeting as ordered	Denied	Arb did not reduce susp, because no claim it was excessive.
08-PN-0349	Becker County (Interest Award) Teamsters' Local 320	Daly, Joseph	Interest	24 hr funeral leave, longevity, shift diff increase-pattern; zipper clause-no.	2008-3% 2009-3%	Pattern for 2008-2009..
08-PA-0614	Corcoran, City of Teamsters Local 320	Wallin, Gerald	4 hr. suspension Assignments	Mishandled DUI. Removed from FTO and range officer assignments.	Denied	Removal from assignments is not considered discipline.
FMCS	DCI, Inc. Boilermakers Local Lodge 647	Jacobs, Jeffrey	Termination	Interpretation of no fault attendance language-points that fall off after 1 yr.	1 day susp.	Contra proferentem-lanugage construed against party drafting.
07-PA-0857	Dakota County Assn	Kircher, Andrea	Return from leave	Probation officer assigned to a different job upon return to work.	Denied	Employers failure to exercise a right not create a practice.
FMCS	Electrolux IAMAW District Lodge 165	Bognanno, Mario	Safety Policy	Plant policy requiring safety sleeves and gloves to & from work stations.	Split	Some provisions unreasonable.
08-PA-0275	ISD 186, Pequot Lakes School Service Employees Local 284	Wallin, Gerald	Substitute Empl. Benefits	Substitute employee worked full time for 1 year and is seeking benefits.	Denied	No contract language. Bar from negotiating for non-public employee.
08-PA-0964	Mille Lacs County AFSCME 65	Jacobs, Jeffrey	Senior Qualified	New empl hired who knew software vs.senior employee who scored better.	Denied	Process reasonable and related. Contract requires relative ability.

08-PN-1091	Mound, City of (Interest Award) Law Enforcement Labor Services, Inc.	O'Toole, Carol Berg	Interest	U-4%+\$.75, 4%+\$.25; E-2.5%, 2,5% Insur: \$25, \$25-E.	2008-3% 2009-3%	External avg. and city suggested it was reasonable.
FMCS	R. R. Donnelly & Sons Company GCC/IBT Local 1M	Gallagher, Thomas	Job Bidding	Temporary quality inspector position created, sought by laid-off proofreaders	Denied	Different duties-temporary position
08-PA-0277	Saint Cloud, City of AFSCME Council 65	Wallin, Gerald	Civil Service Testing procedures	Utilities maintenance mechanic job.	Denied	Civil service rules referenced in contract- mandatory v permissive.
FMCS	Sappi – Cloquet LLC United Steel Workers Local 11-63	Frankman, Janice	Termination	Threatened and harassed co-worker refused to enter EAP-"fire me".	Denied	Thoroughly investigated, followed progressive discipline.
08-PN-0547	Scott County (Interest Award) Law Enforcement Labor Services, Inc.	Jacobs, Jeffrey	Interest	County changed salary matrix that had just been negotiated in 2007.	2008-1% 2009-1%	Wages & other issues based on internal pattern.
07-PA-0220	Steele County Law Enforcement Labor Services, Inc.	Befort, Stephen	Termination	Deputy pulled out his penis. Hearsay and non appearance of complaining party discussed.	Denied	Off-duty conduct has a nexus to job as police officer.

August, 2008

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
08-PA-0724	Blaine, City of Law Enforcement Labor Services, Inc.	Scoville, James	Termination	Officer took leave due to stress - failed fitness for duty recertification.	Sustained	Test flawed, must be given new test in order to return to work.
07-PA-0990	Brainerd, City of IBEW, Local 31	Bognanno, Mario	1 & 4 shift susp.	Firefighter rude & threatening to co-workers.	Denied.	4 shift reduced to 3 shift. His wife calling should not be added to days.
08 PA-0886	ISD 138, North Branch Teamsters Local 320	Latimer, George	Termination	School bus driver fainted - her CDL was revoked. She took medical leave after CDL reinstated she was fired.	Sustained	District can restrict her driving but must offer another job.
08-PA-0562	ISD 194, Lakeville Education Minnesota Lakeville	Gallagher, Thomas	Written Reprimnd	Student threw carrot in lunch room, teacher grabbed & turned his head.	Oral Reprimnd	Infraction did not warrant jumping first step in grievance process.
08-PA-0243	ISD 316, Greenway-Coleraine Education Minnesota	Jacobs, Jeffrey	Sick buy back	\$5,000 available if family coverage is waived at retirement.	Sustained	Not necessary to have family coverage prior to retirement.
08-PA-1013	ISD 719, Prior Lake, Savage Prior Lake-Savage Education Assn.	Lundberg, James	30 minute lunch	District counted 5 minute passing before & after 20 minute lunch.	Sustained	5 minute passing time not duty free.
???	MN State Colleges & Universities Minnesota State College Faculty	Gallagher, Thomas	5 day suspension	College early childhood development coordinator entered into agrmnt with White Earth tribe for similar duties.	Denied	Conflict of interest, if in doubt she should have cleared it with her supervisor.
FMCS	Red Wing Shoe Company UFCW, Local 427	Befort, Stephen	Mandatory OT (failure to offer).	Employee not notified of OT. Union wants pay without need to work OT.	Denied	Make up opportunity-appropriate remedy.
08-PN-0912	Richfield, City of (Interest Award) Law Enforcement Labor Services, Inc.	Toenges, Rolland	Interest	City's pattern 3% Jan; .5% July. Award 3% Jan; .6% Aug.	2008-3.6%	Internal & external averaged. .6% in Aug.- same cost as .5% in July

08-PA-0597	Rochester, City of, Public Utilities IBEW, Local 949	Imes, Sharon	Promotion to Shift Foreman	Relative ability clause. Junior ees promoted on two occasions.	Sustained	Plant manager bias.
06-PA-1306	St. Louis County Teamsters Local 320	Befort, Stephen	Arbitrability Seniority Bidding	Class action grievance allowable? Eligibility definitions.	Sustained Denied	Representational role of Union. Past practice gives meaning to definitions.
FMCS	St. Paul Pioneer Press Newspaper Guild Local 37002	Befort, Stephen	Health Insurance Eligibility.	New employee injured after 9 days. Insurance requires 90 days.	Denied	Definition of continuous service vs, continuous employment.
AAA	Xcel Energy Electrical Workers Local 160	Daly, Joseph	Overtime	ER selected ee who lived closest to cite vs equal distribution requirement.	Sustained	ER claimed 1st responder exception, but none listed in contract.

July, 2008

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
FMCS	Fairview Medical Center AFSCME, Minnesota Council 5	Jacobs, Jeffrey	Reasonable Accommodations	Employer failed to accommodate disabilities & find suitable work. Job postings changed retroactively.	Split	Arbitrator refused to order an ADA type policy or where to place ee. Job postings must be accurate.
08-PA-0278	Hibbing Public Utilities Commission AFSCME, Council 65	Jacobs, Jeffrey	Apprenticeship Standards	ER changed minimums for lineman. Contract requires negotiating Standards apprenticeship standards.	Denied	Management's right to establish minimum requirements for entry.
08-RA-0745	Human Development Center AFSCME, Minnesota Council 5	Bognanno, Mario	Termination	Rude and disrespectful behavior towards supervisors.	Denied.	Progressive discipline and due process followed.
08-PA-1150	ISD 2534, Bird Island-Lake Lillian Association	Bryant, Bernardine	Longevity Increases	New contract; 3% longevity each yr, does it compound? - No.	Denied	Contract ambiguity should be construed against drafting party.
???	Minneapolis, City of IBEW, Local 292	Befort, Stephen	Termination	Electrician with bad back discharged due to inability to lift over 50 pounds.	Denied	ADA accommodation required only if injury limits a major life activity.
08-PN-0114	Minnesota, State of (Interest Award) Minnesota Nurses Association	Miller, Richard	Interest	Union seeking 10%, 10%-e; shift dif. from \$.65 to \$.70-e; mandatory OT-u; attach MOAs to contract-u; on-call-u. vacation accrual new hires-u.	2007-3.25% 2008-3.25%	Budget constraints & internal pattern.
FMCS	Northern Management Corporation Bakery Workers, Local 22	Jacobs, Jeffrey	Severance Pay	Should time with previous owner be used to calculate severance.	Sustained	Contract language rather than impact.
08-RA-0575	Rainbow Foods, Inc. UFCW Local 653	Gallagher, Thomas	Termination	Grievant claimed his pay check was short 2 hours - video rebutted claim.	Sustained	No fraudulent intent. Only 75% back pay - ee to blame for claim.
08-PN-0862	Traverse County (Interest Award) Council	Toenges, Rolland	Interest	Non-essential, agreed to final offer arbitration. Dispute re mkt adj. Co. 3 yr w mrkt adj 2008; Union 1 yr-4%.	2008-mkt adj 2009-3.15% 2010-3.25%	County position. Union was less expensive for 2008, but County was consistent w internal pattern.

June, 2008

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
FMCS	Aggregate Industries Operating Engineers, Local 49	McCoy, Arthur	Termination	False time card. Claimed he was at training but did not attend.	Denied.	There was progressive discipline, act was intentional.
07-PN-1013	Anoka County (Interest Award) Law Enforcement Labor Services, Inc.	Fogelberg, J.C	Interest	2 yrs.-u; Wages 2%, 2%-e;Perf pay 2%,2%-e; PP eff Jan-u; spec pay-no;	2007-2% 2008-2%	Investigative Unit, award matches other internal LELS units.
FMCS	Interplastic Corporation United Steelworkers, Local 11-409	Flagler, John	Termination	Attendance and performance.	Denied	Arbitrator used seven steps to just cause approach in his analysis.
08-PA-0952	Martin County - Step Adjustment AFSCME, Council 65	Jacobs, Jeffrey	Step Adjustment	15 step pay schedule, but requires board approval beyond step 12.	Denied	with its terms despite the equities accordance with its terms despite the equities.
08-PA-1211	Martin County - Part Time AFSCME, Council 65	Jacobs, Jeffrey	Part Time Merit Increases	Contract-eligible employees receive a step increase on Jan.1. County held PT increases until 2080 hrs. earned.	Sustained.	PT eligible on Jan 1 regardless of hours, but arb cannot order step - they are subject to board approval.
08-PA-0901	Metropolitan Council Amalgamated Transit, Local 1005	Befort, Stephen	Termination	Disciplined numerous times-triggering event - late start when bus didn't start	Sustained.	Named event did not merit term. Reinstated w/o backpay (8 mos.). Placed on "last chance".
08-PA-0900	Metropolitan Council Amalgamated Transit, Local 1005	Jacobs, Jeffrey	Last Chance Agreement.	Terminated for exceeding 5 absences in a rolling year.	Denied	Very specific Last Change Agreement.
???	Minnesota, State of Minnesota Assn of Professional Empls.	Jacobs, Jeffrey	Extension of Medical Leave	Job related injury; seeking extension of one year medical leave.	Denied.	State was granted full discretion in contract re extension of leave.
???	Universities Inter-Faculty Organization	Gallagher, Thomas	Meet & Confer	Union not allowed to appoint reps to assistant V.P. selection committee.	Sustained	Analysis of Meet & Confer. Ok to exclude fair share frm rep duties.
08-PA-0790	MN, Department of Transportation Council	Lundberg, James	Termination	Computer tech filled out timesheet claimed 10 hr days - only wrkd 7 hrs.	Denied.	State documented 67 claimed, but unworked hours.
07-HIN-1058	Hospital District (Interest Award) Minnesota Nurses Association	Miller, Richard Tripartite Panel	Interest	Wages-u; Differentials-u; Diff retro-er; Weekend defined-er; STO/STC-er; 1 hr pay to meet new members-u; 457 plan-er; Provisional hires-er	2007 - 4% 2008 - 4% 2009 - 3%	Wages & differentials - external market. Status quo on most language items.
FMCS	Polar Tank Trailer, LLC IAM&AW, District Lodge 165	Kapsch, Frank	Termination	Welder threw washers at co-worker. Bad attitude.	Denied	Progressive discipline.
FMCS	Prospect Foundry GMP Local 63B	McCoy, Arthur	Termination	Foundry worker fell asleep under a while zero tolerance policy.	Sustained	Rules warn of discipline up to & including termination - inadequate notice for zero tolerance.

08-PN-0187	St. James, City of Law Enforcement Labor Services, Inc.	Latimer, George	Interest	Wages: City \$.66 across the board both year = to 3%, u 08-7%, 09-4%. Comp incr: no-e; Insurance change % to fixed \$: no-u; Sick leave change: no - union position.	2008-5% 2009-4%	External market, CPI & \$.66/hour = 4% for other city employees.
FMCS	3M Company USW, Local 11-75	Jacobowski, Daniel	Subcontracted Work	Safety inspections subcontracted out at Maplewood plant.	Sustained	Inspections done by Union at St. Paul plant until it closed-union wk.
04-PA-1416	University of Minnesota AFSCME Minnesota Council 5	McCoy, Arthur	Lay Off	Sr word processing specialist laid off due to budget. Questions re process.	Denied	Budget & obsolete title supported move. U failed to propose options.

May, 2008

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
07-PA-0931	ISD 11, Anoka-Hennepin Anoka-Hennepin Education Minnesota	Gallagher, Thomas	Staff Development	Pay for training that extends beyond regular school day.	Sustained	Specific language prevails over general language.
07-PA-0711	Lakeville, City of Law Enforcement Labor Services, Inc.	Yaeger, Thomas	Combining ECC Severance Pay	Dispatchers merged into Dakota Co. seeking sick leave severance.	Denied	Rollover of accrued leave was negotiated.
08-PA-0312	Minnesota, State of, Department of Corrections AFSCME, Minnesota Council 5	Bognanno, Mario	Shift Exchange	Can employer define reasonable basis for denying shift exchange?	Denied	Employer can establish work rules but reasonableness must be decided case by case.
08-VP-0612	Transportation Individual Grievant	VerPloeg, Christine	Termination	Violation of travel and cell phone policies.	Denied	Although no prior discipline, she was a high level manager.
08-PA-0650	Minnesota, State of, Department of Transportation Council	Flagler, John	Over Time for Exempt Emplys	Allowed to take off hours worked over 40. Seeking conversion to pay.	Denied	No violation of contract or FLSA.
FMCS	Pan-O-Gold Baking Company Teamsters, Local 289	Befort, Stephen	Unit Work	Part-time non-union employees stocking shelves.	Denied	Practice in place for over 20 yrs.
07-PN-0791	Red Wing, City of (Interest Award) Teamsters, Local 320	Laitmer, George	Interest	New pay scale; Sgts placed in step above current pay, seeking same placement as Fire Captains.	City's position	Capt's base higher since 1999 due to OT exempt status. Reversing would abrogate negotiations.
07-PA-0461	St. Cloud, City of Law Enforcement Labor Services, Inc.	Bognanno, Mario	Holiday Premium Pay	Should Labor day 12 hour shifts be paid OT in addition to holiday pay?	Sustained	No bar to pyramiding in contract.
FMCS	Weyerhaeuser Company UFCW, Local 9	Befort, Stephen	Termination	Employee fired when cardboard bailing machine jammed.	Sustained	Lack of investigation. Ee was on different assignment that day.

April, 2008

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
FMCS	Aggregate Industries Teamsters, Local 120	Toenges, Rolland	Work Rules	Must employer negotiate work rules more restrictive than existing rules?	Sustained	Must negotiate due to contract protection vs more restrictive rules
???	Consolidated Telephone Company Dist 7, Local 7212	Jacobs, Jeffrey	Termination	Confrontational at an ee meeting & previously counseled on behavior.	Sustained	Prior discipl. may never be used to determine if grievant is guilty.
07-PN-1174	Freeborn County (Interest Award) Law Enforcement Labor Services, Inc.	Kapsch, Frank	Interest	Wage reopener for 2007; u-3.5%, c-2.5%	2007-2.5%	Internal pattern and consistent with cost of living.
08-PA-0857	ISD 482, Little Falls Association	Bryant, Bernardine	Uniform Change	District historically required uniform color. Change to uniform style shirt.	Denied	Clear & unambiguous language. Not bound by practice.
07-PA-1072	ISD 2859, Glencoe-Silver Lake School Service Employees, Local 284	Anderson, Richard	Subcontracting	Challenge to subcontracting bus operations.	Denied	Arbitrator lacks jurisdiction to resolve issues raised.
07-PA-1071	ISD 2859, Glencoe-Silver Lake School Service Employees, Local 284	Jacobowski, Daniel	Termination vs. Resignation.	Bus driver's vacation denied, taken anyway - said it was his last day.	Denied	Not terminated, he quit his job.
???	Minneapolis, City of Minneapolis	Gallagher, Thomas	Out of Title Pay	Sergeant claimed she was doing lieutenants work.	Denied	Contract requires doing 40% of work for 5 consecutive days.
07-PA-0900	Minnesota, State of, Department of Human Services AFSCME, Minnesota Council 5	Holmes, Barbara	Termination	LPN deviated from treatment plan for a vulnerable adult.	Denied.	Cannot substitute judgment for the professionally developed treatment plan and did not admit error.
???	Minnesota, State of, Department of Military Affairs AFSCME, Minnesota Council 5	Befort, Stephen	Out of Class Pay	Firefighter assigned 2nd seat which is normally assigned to sr firefighter.	Denied	Did not substantially perform all of the duties of a senior firefighter.
09-PA-0064	Minnesota, State of, Tenth Judicial District (Two Part Award) AFSCME Minnesota Council 5	Miller, Richard	Termination	Judicial clerk made numerous errors in processing court orders.	Denied	Egregious conduct does not require progressive discipline.
			Timeliness	Request for arbitration was late.	Arbitrable	Lax enforcement practice.
FMCS	Park Nicollet Hospital, Inc. SEIU Local 113	Gallagher, Thomas	Work Plan	Nursing asst. got DUI and was forced to agree to a return to work plan.	Sustained	Considered discipline and no just cause demonstrated need for it.
FMCS	Progress Castings Group, Inc. 63B	Jacobs, Jeffrey	Termination	Factory wrkr asked to fill time card accurately-got into shouting match.	30 day susp.	Could not prove he pushed sprvsr. Suprvs also at fault, losing temper

March, 2008

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
07-PA-1179	Apple Valley-Lakeville-Farmington (ALF) Joint Ambulance Board AFSCME Minnesota Council 5	Gallagher, Thomas	160 hr. susp.	Medic declined 911 call & told clinic to call private ambulance.	Denied	Advised not to leave area due to snowstorm-should have responded to make 1st hand evaluation.
FMCS	Ely Bloomington Community Hospital ASFCME, Council 65	Orman, Tony	Termination	Exhausted Family Med Leave, offered extended med leave if documented	Denied	Failed to provide documentation required by last chance agreement

08-RA-0368	Fairview Range Regional Health Services AFSCME, Council 65	Jacobs, Jeffrey	Termination	Cook accused of stealing 2 chicken breasts.	Denied	Theft is an offense justifying termination on a first offense and even for a even for a relatively small amount
08-PA-0423	ISD 77, Mankato Association	Jacobs, Jeffrey	Out of Title Pay Timeliness	Para w LPN license assgn LPN wrk. discovers violation, not employee. discovers violation, not employee.	Sustained Denied	Pay at higher rate for all hours. Starts when ee discovers. On-going, backpay starts at filing .
08-PN-0262	ISD 241, Albert Lea (Interest Award) Albert Lea Education Association	Toenges, Rolland	Interest	D - 2%,2%; U - 2.3%, 2.4%.	2008-2% 2009-2%	Total package. District's position based on internal pattern.
03-PA-0652	ISD 728, Elk River School Service Employees, Local 284	Remington, John	Elimination of Bus Service	2004 arb ruled district failed to neg in good faith re subcontracting. Dispute regarding remedy.	Sustained	Backpay improperly deducted workers compensation. District not required to reinstate as drivers
FMCS	Jefferson Lines Amalgamated Transit Union Local 1498	Gallagher, Thomas	Termination	Driver left w/o checking to see if there were any passengers.	Denied	U acknowledged ground for disclp. argued for reversal for failure to put charges in writing.
FMCS	U.S. Department of Veterans Affairs Employees	Frankman, Janice	Termination	Failure to immediately respond to a call and sleeping on duty.	Denied	Respiratory Therapist responsible for patient safety.
07-PA-0380	University of Minnesota AFSCME, Minnesota Council 5	Holmes, Barbara	Termination	Survey interviewer accused of falsifying report.	3 day susp.	Could not establish intent, only proved mistakes were made.

February, 2008

BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
FMCS	Abbott Northwestern Hospital SEIU, Local 113	Jacobs, Jeffrey	Written Warning Final Warning	Attendance - 7th violation of policy. Head on desk sleeping, in an office not designated for breaks.	Denied Sustained	Union asked for an oral; overall record supports discipline. Stretching injured back - not sleeping sleeping. Lax enforcement of rule on using office for breaks.
07-PA-1026	Anoka County Juvenile Center Educators	Gallagher, Thomas	Failure to Post for Positions	Co. failed to post for para positions.	Denied	Contract requirement written prior to para's being added to unit.
07-PN-0285	Bemidji, City of (Interest Award) Law Enforcement Labor Services, Inc.	Toenges, Rolland	Interest	Duration: 3yrs (u-2y, e-3y); W.3%/yr. (u-5.5%, e-3%); Insur: internal patrn. (u position, e offered less due to u moving to PIEP).	2007-3% 2008-3% 2009-3%	Duration, wages and insur based on internal pattern. Shift diff incr \$.5 in 08 & 09. 1 yr bar to disclp. invest removed.
FMCS	Children's Hospitals and Clinics SEIU Local 113	Gallagher, Thomas	Change in Work Rules	Stopped practice of checking out 1 to 7 minutes early - arb said no.	Sustained	Protected by a Maintenance of Benefits article for contract duration
07-PA-1127	Hastings, City of Law Enforcement Labor Services, Inc.	Frankman, Janice	Termination	Officer pursued drunken man running from him and hit him with squad car.	30 day susp.	Faulty investigation, failure to prove charges.
FMCS	Hickory Tech Corporation IBEW Local 949	Jacobs, Jeffrey	Overtime	Can employer change one day of a shift w/o incurring OT?	Denied	Even if employer always changed a whole week in past - not limited.

07-PA-0726	Metropolitan Council/Met Transit Amalgamated Transit Union Local 1005	Miller, Richard	Bargaining Unit Work	Payroll work transferred from ATU to St. Paul AFSCME employees	Sustained	Efficiency does not trump contract language. ATU retains work.
RCDC	Metropolitan Council/Met Transit (District Court Vacated Award) Amalgamated Transit Union Local 1005	Ramsey County District Court	Arbitration Award	BMS ruled payroll wrk was AFSCME. Arbitrator ruled it was ATU's.	Vacated -Arb 07-PA-0726	BMS representation ruling trumps contract language.
Court of Appeals	Metropolitan Council/Met Transit (Court of Appeals Reversed and Remanded) Amalgamated Transit, Local 1005	State of Minnesota Court of Appeals	District Court Decision	ATU Union challenged District Court reversal of Arbitration award.	Reversed and Remanded.	BMS ruling not in conflict, contract language prevails.
08-RA-0067	Northern Communities Credit Union AFSCME, Minnesota Council 65	Jacobs, Jeffrey	Pay for Severe Weather	Paid if open, then sent home, Were sent home upon arrival & not paid.	Sustained	Memo - would open if buses ran. Failed to notify they were closed.
FMCS	Progress Castings Group, Inc 63B	Jacobs, Jeffrey	Elimination of 10 hour shifts. Timeliness	Contract states shift are 8 or 10 hrs. Grievance not filed when policy posted.	Sustained Arbitrable	Specific language trumps the general. Can be filed immediately or upon implementation.
05-PA-0532	SSD 1, Minneapolis Education Minnesota	Toenges, Rolland	Continuing Pay Pending Appeal of Lay Off.	Are teachers entitled to be paid under M.S.21A.41 pending recall or final Board Action?	Denied	Issue alleges violation of statute - not grievable.
07-PA-0044	Wright County Law Enforcement Labor Services, Inc.	Neigh, Charlotte	Termination	Off-duty deputy served underage girls alcohol. Tried, found not guilty.	Denied	Failure to stop illegal activity sufficient just cause.

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BMS #	Employer/Union	Arbitrator	Issue	Details	Award	Basis/Argument
FMCS	Ainsworth Engineered 1095	Bognanno, Mario	Outside Contracting	Plant is shut down. Sub contracted work vs. calling laid-off workers.	Sustained	Not an emergency exception. Failed to even call a laid-off worker.
FMCS	Ainsworth Engineered 1095	Flagler, John	Supervisor doing Unit Work	Supervisors doing work considered common sense efficiency	Remanded for Vol. Resolutn	De minimus wrk to avoid delays in work don't qualify for wage remedy
FMCS	Ainsworth Engineered 1095	Reynolds, James	Recall from Layoff	Can senior employees decline recall?	Sustained.	Can decline temporary or partial recall - not permanent recall..
			Recall Notification	Union wants phone call in addition to certified mail - no mail sufficient.	Denied	No contract prohibition, mail creates paper trail.
07-PN-0910	Anoka County (Interest Award) Law Enforcement Labor Services, Inc.	Kapsch, Frank	Interest	Wages: 2%, 2% - e (u-5%, 5%); change Retiree Ins-no-u.	2007-2% 2008-2%	Wages internal pattern. Retiree Insurance awarded in arbitration.
08-PA-0053	Hibbing, City of International Assn of Firefighters 173	Kapsch, Frank	Call Back	Chief change practice of releasing called back firefighters immediately/	Denied	Union claimed 20 yr practice, but contract language is clear.
FMCS	Honeywell International, Inc. Teamsters, Local 1145	Toenges, Rolland	Termination	Failed to attend fitness for duty exam leading to violation of time and attendance policy.	Denied	Won Worker's Comp appeal 1 yr after termination - just cause determined by facts known at time
08-PA-0082	ISD 94, Cloquet AFSCME Council 65	Gallagher, Thomas	Bumping Rights	Union claims bumping rights if a position or assignment is eliminated.	Denied	Contract right to assign continues even if bumping allowed in past.

07-PA-1203	ISD 319, Nashwauk-Keewatin Education Minnesota, Local 1444	Bognanno, Mario	Retiree Health Benefits	Retiree with 2 yrs sought insurance. District seeking definition in new contract is not dispositive.	Denied	Past practice gives meaning to definition of eligible retiree.
08-PA-0052	LaCrescent, City of IUOE, Local 49	Daly, Joseph	Recall Rights	Was golf course employee laid off or terminated each year?	Sustained	Laid off - duties not description determined recall rights.
???	MN State Colleges and Universities Inter Faculty Organization	Befort, Stephen	Tuition Waiver	Does waiver apply to new high cost doctoral program created mid contract.	Sustained	Economic need does not provide a basis for repudiating contract.
???	MN State Colleges and Universities Minnesota State College Faculty	Befort, Stephen	Tuition Waiver	Tech & community college faculty. Same issue as above	Sustained	Same award as above.
08-PA-0157	Mower County UFCW, Local 9	Anderson, Richard	Short Term Disability Leave	Grievant failed to comply with policy requirements.	Denied	Contract references policy - policy determinative.
07-PA-1041	Northfield, City of IUOE, Local 70	Daly, Joseph	Continuing Contract	Contract expired Dec 2005, New pay study called for reductions. Union would not negotiate new contract.	Sustained	Continuing contract statue. Steps & COLAs awarded for 2006 2007 and 2008.
07-PA-0903	Redwood County - Payscales Law Enforcement Labor Services, Inc.	Scoville, James	Pay Scales vs. Steps	Salary increases occur on anniver, so new schedule not used until anniver.	Sustained	Contract refers to step movement not schedule implementation.
07-PA-0540	Redwood County - Uniform Allowance Law Enforcement Labor Services, Inc.	Scoville, James	Uniform Allowance	How retroactive uniform increase was handled.	Denied	Union sought cash payout, but contract has voucher system.
06-PN-0946	St. Louis County (Interest Award) Law Enforcement Labor Services, Inc.	Remington, John	Interest	Union 5%, 5%; County 2%, 2% On call-no; Sick leave def of child=yes	2006-2.5% 2007-2.5%	Wages exceed 2% pattern - based on CPI & externals.
07-PA-506	University of Minnesota AFSCME, Minnesota Council 5	Jacobs, Jeffrey	Termination	Created a fraudulent parking card for her boyfriend. Lied at hearing.	6 mo. Susp.	Depts lax enforcement of rules. Returned to work with no backpay.
07-PA-0879	University of Minnesota, Crookston University Education Association	Moeller, Lon	Merit Increase	Increase was a fixed dollar amount rather than a percentage of base.	Sustained.	Past practice - percentage incr.
FMCS	University of St. Thomas Teamsters, Local 120	Jacobs, Jeffrey	Termination	Punching timecards for her children.	Sustained.	Weingarten violation and children claimed they committed fraud.
FMCS	(Supplemental Award to Above) Teamsters, Local 120	Jacobs, Jeffrey	Back Pay	Does make whole remedy require pay for OT not worked?	Denied.	Voluntary OT is different than mandatory OT.
07-PN-1161	Wayzata, City of (Interest Award) Law Enforcement Labor Services, Inc.	Gallagher, Thomas	Interest	County 3%, 3%; Union 4%, 4%. Reduce IOD-no; FTO-no; Tuition -no.	2007-3.3% 2008-3.4%	Wages - external average.
07-PN-0602	Wilkin County (Interest Award) Teamsters, Local 320	Powers, Nancy	Interest	County 3%, 3%; Union 5%, 5%. Union, comp time carry over - no.	2007-3% 2008-3%	Wages - internal pattern.