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**IN THE MATTER OF ARBITRATION**

**OPINION AND AWARD**

**between**

**ANOKA COUNTY, MINNESOTA**

**BMS CASE NO. 16PNO484**

**and**

**LAW ENFORCEMENT LABOR  
SERVICES, INC., LOCAL NO. 199  
(WORK RELEASE UNIT)**

**Gil Vernon, Arbitrator**

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**APPEARANCES:**

**On Behalf of the Union:** Kim Sobieck--Staff Attorney and Dennis O. Kiesow, Business Agent - LELS

**On Behalf of the Employer:** Scott Lepak, Attorney – Barna, Guzy & Steffen, LTD

**I. BACKGROUND AND FACTS**

The instant matter is before the Arbitrator following the certification of contract proposals for final and binding interest arbitration by Bureau of Mediation Services pursuant to Minn. Stat. Section 179.16, Subd. 2 and Minn. Rule 5510.2930. The proposals were submitted by the Parties following unsuccessful efforts to reach a successor to their 2014-2015 Labor Agreement.

The Employer (Anoka County) is located in the northwestern portion of the traditional seven county Twin Cities metropolitan area. It is the 4<sup>th</sup> most populated county in the state with a 2014 estimated population of 344,151. As part of its delivery of public services the Employer operates a juvenile detention system and as an adjunct to its corrections system operates a work release program that, as is typical, allows certain convicted offenders to work at jobs during the workday and reside in a restricted facility during non-work hours. Administratively, these programs are part of the Human Services Department.

Aptly, the job title for employees in the juvenile operation is “Juvenile Detention Officer” and those in the work release program as “Work Release Officers”. Respectively, there are 18 and 20 incumbents. Both are classified under the County’s pay system as Grade 8. For ease of reference, the combined group will be referred to as “WRO’s” as the group on a whole is commonly referred to as the Work Release Unit.

It is also noted that at one point the bargaining unit included 3 grade 10 shift coordinators at the County’s medium security facility but it closed during the term of the prior contract. The County, however, still maintains typical jail facilities under the supervision of the Sheriff’s Department. The security functions there are largely provided by employees titled Detention Deputies (“DDs”). They are also classified as Grade 8 but are paid more than WROs as the pay grade has a salary

range. DDs are members of a separate bargaining group that is also represented by the Union (LELS). Both WROs and DDs are considered “essential employees” under applicable state law. (See Arbitrator Anderson’s 2007 decision between the Parties at pages 26 and 27, citing Minn. Stat. Section 179.03.SubD 7-1998).

Following certification of final proposals the undersigned was selected by the Parties to serve as Arbitrator and to issue a final and binding decision as to the matters at issue to be included in the Parties’ successor to the 2014-15 Agreement.

A hearing was held July 19, 2015. Post hearing briefs were exchanged August 17, 2016.

## **II. ISSUES AND PROPOSALS**

The Commissioner of the Minnesota Bureau of Mediation Services initially certified seven items that remained at impasse before arbitration with one being resolved later. The remaining issues are as follows:

### **A. Duration**

1. The Union proposes a two-year contract.
2. The Employer proposes a one-year contract.

### **B. General Wage Increase**

1. The Union proposes a 5% general increase for 2016 and another 5% in 2017.

2. The County proposes a 0% general increase of its one-year contract term (2016).

**C. Merit Pay Increase**

1. The Union proposes a 3% merit increase in each of the two-years of its proposed contract term.
2. The Employer proposes a 2% merit increase for 2016 and if a two-year contract duration is ordered, it proposes a 2% merit pay increase in 2017.

**D. Stability Ranges**

1. The Union proposes to scrap the current “stability ranges” and replace it with a longevity system it describes as something close to (but not a complete adoption of) the detention deputies “hybrid” wage structure.
2. The Employer also proposes to eliminate the stability range system and replace it with a much simpler system now in place for non-union employees.

**III. DISCUSSION AND OPINION**

These Parties--to the extent interest arbitrations can be described as such-- have a long and colorful history. The record indicates that more often than not the Parties failed to resolve all their bargaining issues and resort to having a third party impose a contract settlement. Between 1990 and 2015 (a period of twenty-five years) Arbitrators have determined the contract terms for fourteen of those years. The Parties have managed voluntary agreements covering eleven years. In more recent years, their success rate in reaching voluntary agreement is more rare. Since 2010 they had only one contract year covered by a voluntary agreement (2011).

The contract issues (including duration) presently before the Arbitrator cannot be fully assessed without a careful study of all the prior arbitration decisions dating back to 1990. These decisions are listed below:

<u>Term</u>	<u>Arbitrator</u>	<u>BMS Number</u>
1990-91	Charles Swenson	90-PN-800
1992-93	Thomas Gallagher	90-PN-1231
1996-97	Gerald Wallin	96-PN-912
2001-2002	Thomas Gallagher	01-PN-956
2007	Richard R. Anderson	07-PN0661
2010	Richard John Miller	10-PN-1311
2012-13	Richard John Miller	12-PN-1217
2014-15	James A. Lundberg	14-PN-1086

When thoroughly examined, it is noted the same themes or battle lines in those cases are present in the instant matter. The main issues were also general wages and merit pay and many of the underlying arguments were the same. The Union consistently sought to catch-up to the wage levels of the Detention Deputies. The Union also often looked to compare its wage levels of similar employees in other area counties.

On the other side of these arguments in the prior arbitrations, the Employer thematically maintained WROs should not be compared to Detention Deputies in Anoka or any other county based on (1) their higher security environment and (2) the “unique blend” and “historical oddity” of combining a bargaining unit consisting of essential Juvenile Officers and non-essential Work Release Officers. They would also argue were the wage level changes (percentage increases) granted

to its other employees (80% of which were unorganized and whose wages were unilaterally determined) should be given controlling weight.

The present Arbitrator observes as well that—not only did the Parties make the similar arguments in prior arbitrations as they make here—there was a fair degree of consistency in the prior Arbitrators’ decisions. This conclusion is contrary to the arguments of the Employer and its characterization of those decisions.

The Employer contends the myriad of past arbitration decisions present differing and conflicting approaches of those interest arbitrators. They read these decisions (including one by Arbitrator Remington in 2012 involving the Detention Deputies) as contradictorily indicating that: 1) the Detention Deputies should be compensated more than the Work Release/Juvenile Detention Officers; and 2) on the other hand, the Detention Deputies should not be compensated more than the Work Release/Juvenile Detention Officers. It further argues its offer of 0% brings “order” to the “chaos” created by the arbitration decisions by being consistent internally with other employees in Anoka County.

The undersigned respectfully disagrees with the Employer’s overall interpretation of the arbitral history of prior decisions as it bears on this dispute. In short, the following themes of the prior decision emerge: (1) Detention Deputies, as Arbitrator Gallagher stated in 1992, are the only internal group that can be

“adequately compared” to WROs and thus their wage levels have a significant bearing in the wage determination disputes, (2) external comparisons to Detention Deputy type positions are appropriate and relevant, (3) historically WROs have been behind Detention Deputies internally and behind similar external employees, (4) WROs have an illusory and unobtainable maximum and (5) the need for catch-up has been consistently identified and addressed.

Indeed, the one exception in the cases cited by the Employer to these themes contained in the WRO decisions was the 2012-13 decision by Arbitrator Remington in a different bargaining unit. In essence, he bought the Employer argument that the duties of DDs and WROs were significantly different and that DDs deserved what could be called “keep ahead” pay. This analysis was adequately, if not starkly, identified as an outlier by Arbitrator Miller in his second arbitration decision for the County and the WROs. (He issued one in 2010 and again in 2012-2013). He noted in the latter that it appeared WROs weren’t losing ground due to Arbitrator Anderson’s 2007 decision but that the gap was still “enormous”. In the next arbitration decision between the Parties Arbitrator Lundberg, while he may have put more emphasis on external relationships as Anderson and Miller before him, addressed the need to close the gap with DOs:

Because the top wage for Work Release Officers can not be reached, the Arbitrator is convinced that wages for Anoka County Work Release Officers have fallen farther behind the comparison group than wages for Anoka County Detention Deputies and will not keep pace with Detention Deputy unit under the Employer’s proposal.

In this Arbitrator's opinion, what Arbitrator Miller and Lundberg found is still true. Based on the evidence in this case there is still a need for some measure of catch-up internally and externally even when considering the economic conditions in Anoka. Nonetheless, the Arbitrator does agree in one very limited sense with a notion implied in Arbitration Remington's decision. Parity or absolute equivalency between DOs and WHOs is not required. A reasonable relationship should exist and that could vary from contract to contract depending on the bargains struck by the different bargaining units and the dynamics of the bargaining table.

The Arbitrator also agrees with the County to a degree in one other respect (even though the undersigned would not describe the various results of the various Arbitrators as "chaotic"). As already noted, there is a central discernable theme. The Arbitrators may take different approaches in how they weigh all the applicable statutory criteria. This may be frustrating but it isn't "chaotic". Moreover, and more importantly, it is the risk the Parties take when relying on third parties to bridge their differences. Rather than chaos, the past few contracts could be described as a dependency on the part of the Parties on arbitration and on arbitral dicta. This is a tendency only the Parties control (or not). The Parties will be subordinate to a vagarious process only as long as they keep submitting themselves to it rather than making reasonable compromises and resolving their differences

voluntarily. Until they do--complaints about the process only deserve the faintest of validity.

None of this is to say that internal comparisons (as the Employer argues) aren't important. They are very instructive but a distinction between wage levels and wage level changes must be fully recognized. Wage level changes (the amount or percentage of a yearly increase whether it is a general increase or merit increase) ideally should be consistent between internal groups particularly organized groups of employees who have elected to bargain collectively rather than have their wages, hours and other conditions of employment be set unilaterally. However, when the wage levels between reasonably comparable internal groups and external groups become unreasonably disparate the desirable consistency of wage level changes (the amount of a yearly increase) must give way.

Arbitrator Anderson made this point in Cottage Grove and the Federation, BMS No 10-PN-1602 (Anderson 2011) when he wrote:

“This Arbitrator does not believe that simply fashioning awards solely for the purpose of maintaining internal consistency in wage increases is appropriate in all circumstances. Wage equity goes beyond giving the same wage increase to all employees if compelling reasons exist to deviate from general wage increases established for other employees. This is especially true where the group in question is being left behind in the external market place.”

This principle is well established and is even recognized and utilized by Anoka County in appropriate circumstances. They often vary the consistency of wage

level changes for groups they consider in need of “market adjustments”. In 2015 and 2016, many classifications received significant market adjustments, ranging from \$0.50/hour to \$7.60/hour. In 2013, the County made numerous market adjustments, while the Union received no general wage increase. Probation officers’ wages were increased from \$0.75/hour to \$1.75/hour. That same year Sergeants, Lieutenants, and Commanders received adjustments to their wages that averaged 4%. In 2007, the Range Maximum for Highway and Park employees increased by 5%, the Minimum increased by 8%, and wages increased by 2%. In 2005, Detention deputies received a market adjustment of 2% at the five-year step and an additional merit increase.

In this case, the Employer’s 0% general increase does literally nothing to address the wage level issues attendant to this bargaining unit. Indeed, other Arbitrators have recognized that because of the nature of the mostly unobtainable maximums relatively higher merit increases more effectively address the wage level disparity.

In this regard and in light of all the statutory factors and the evidence, the Arbitrator awards a 2% general increase and a 3% merit pay increase for 2016. The Union’s proposal on the stability range replacement is also granted as it brings the bargaining unit more in line with the Detention Deputies salary system and therefore will contribute to a more reasonable relative compensation relationship.

It is noteworthy that this Award does not disturb the balanced nature of this class under pay equity considerations.

Concerning duration, a one-year contract is most appropriate as it gives the Parties the flexibility to address the relative salary level relationships on a more informed basis than the evidence in this record allows for 2017.

**AWARD**

1. The contract duration is one year (2016).
2. There shall be a 2% general increase for 2016.
3. There shall be a 3% merit increase.
4. The Union's proposal on stability ranges is accepted.

(Signature on Original)

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Gil Vernon  
Arbitrator

Dated this 11<sup>th</sup> day of October, 2016.