

**IN THE MATTER OF INTEREST ARBITRATION BETWEEN**

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|---------------------------------------------------------|---|------------------------------------------|
| <b>County of Dakota, Hastings, Minnesota</b>            | ) |                                          |
|                                                         | ) | <b>Bargaining Unit: Jail Unit</b>        |
| <b>("County")</b>                                       | ) |                                          |
|                                                         | ) | <b>BMS Case No. 16-PN-0817</b>           |
|                                                         | ) |                                          |
| <b>and</b>                                              | ) | <b>Hearing Site: Hasting, MN</b>         |
|                                                         | ) |                                          |
|                                                         | ) | <b>Hearing Date: August 25, 2016</b>     |
| <b>Minnesota Teamsters Public &amp; Law Enforcement</b> | ) |                                          |
| <b>Employees' Union, Local No. 320</b>                  | ) | <b>Briefing Date: September 15, 2016</b> |
|                                                         | ) |                                          |
| <b>("Union")</b>                                        | ) | <b>Award Date: October 15, 2016</b>      |
|                                                         | ) |                                          |
|                                                         | ) | <b>Mario F. Bognanno, Arbitrator</b>     |

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**I. JURISDICTION**

During negotiations over their 2016 and 2017 Collective Bargaining Agreement ("CBA"), the above-captioned Parties were unable to agree on several Issues. Pursuant to Minn. Stat. 179A.16, Subd. 2, the Union elected to have the unresolved Issues determined *via* arbitration. On June 2, 2016, the Bureau of Mediation Services ("BMS") received the Union's written request for conventional interest arbitration and, on June 9, 2016, the BMS certified the following issues to arbitration:

- Issue 1. Hours of Work – Overtime – Article 14 – New Language;
- Issue 2. Clothing Allowance 2016 – Article 17.2;
- Issue 3. Clothing Allowance 2017 – Article 17.2;
- Issue 4. Clothing Allowance – Article 17.3 – New Language;
- Issue 5. Wages 2016 – General Wage Increase – Appendix A;
- Issue 6. Wages 2017 – General Wage Increase -- Appendix A; and

Issue 7. Wages 2016 – Market Adjustment -- Appendix A – New Language.

In an e-mail dated July 11, 2016, the BMS advised the undersigned that he had been selected to arbitrate the matters. Authority to resolve the Issues at impasse derives from Minn. Stat. 197A.16, Subd. 5.

On August 25, 2016, an arbitration hearing was convened in Hastings, Minnesota. Appearing through their designated representatives, the Parties were given a full and fair Hearing, witnesses testified under oath and witness testimony was cross-examined. Each Party submitted into evidence a large three-ring binder containing numerous exhibits. Said binders of exhibits were accepted into the record. Of relevance, the following also transpired at the Hearing:

1. The Arbitrator issued a Protective Order to safeguard data privacy pursuant to Minn. Stat. 3.01 and Minn. Stat. 626.89;

2. The County modified its final position on Issue 1. Initially, the County had proposed new Article 14, Section 14.1 CBA language to codify its right to adjust employee scheduled work shifts to accommodate scheduled training sessions and Sheriff's Office meetings. At the Hearing, the County made clear that its proposal was being offered on a trial or "pilot" basis. That is, if the new language to Article 14, Section 14.1 is awarded, then either the County or the Union could unilaterally annul same upon the CBA's December 31, 2017 expiration date;

3. Regarding Issue 4, the Union proposes the addition of the following new language:

17.3 If the basic clothing or uniform is changed in type, color or style by order of the Employer, the Employer shall bare (sic) any and all costs for the clothing or equipment required.

Vance Rolfzen, IBT, Local No. 320, Business Agent, testified that equivalent language was first proposed during the Parties' 2012 round of CBA negotiations. At that time the Union withdrew its proposal because the County "promised", going forward, that the uniform of Correctional Officers would not change. To document this testimony, the Union introduced Mr. Rolfzen's bargaining notes. (Un. Ex. Tab 11) The County questioned Mr. Rolfzen's use of the word "promised", and requested that the 2012 bargaining notes of its Chief Negotiator, Frank J. Madden, Attorney, MADDEN◦GALANTER◦HANSEN, LLP, be admitted into evidence. The undersigned granted the County's request to attach said bargaining notes to its Post-Hearing Brief. (County's Post-Hearing Brief, Attachment B);

4. The County withdrew its final position on Issues 5 and 6, acceding to the Union's final positions of a 2½% COLA increase *per* year, effective on January 1, 2016 and January 1, 2017; and

5. To afford the Parties a reasonable amount of time to exchange information about the sources each used in preparing tabular presentations of economic data, the Parties agreed to keep the record open until September 1, 2016. Thereafter, by September 15, 2016, the Parties Post-Hearing Briefs were to be e-mailed to the Arbitrator, at which time he would take the matter under advisement. The Parties filed timely Post-Hearing Briefs.

At the onset of analysis several relevant matters warrant mention. First, the instant CBA has an effective term of January 1, 2016 through December 31, 2017. Second, the County has CBAs with fourteen (14) public sector bargaining units, and 2016-2017 CBA settlements have been reached with twelve (12) of these units. A CBA ratification vote is pending with the MN Public Employees Association ("MPEA"), the representative of the Sheriff's Non-Licensed

Supervisors. (Un. Ex. Tab 3; Er. Ex. 9) Third, as of December 31, 2015, there were three (3) job classifications in the Jail Unit that were staffed by 49 employees, namely: Correctional Deputies (47); Inmate Service Outreach Coordinator (1); and Inmate Counselor (1)<sup>1</sup>. (See: Un. Ex. 13, Un. Ex. "Union's Final Position" Tab, pp. 3-4 and Un. Ex. "Contract" Tab, p. 22, and Un. Ex. 22) Last, whereas an employer's financial health or ability-to-pay is often a disputed matter in interest arbitration, such is not the case in this instance. The County's 2015 year-end General Fund balance exceeded 2 million dollars, and Moody and Standard & Poor rate its debt highly, which is to suggest that the Union's final positions are affordable. (See: Un. Ex. Tab 2, p. 21 & p. 23; Un. Ex. 19)

## II. APPEARANCES

### For the Union:

Halla Elrashidi

Attorney and IBT, Local No. 320 Business Agent

Joshua Loahr

IBT, Local No. 320 Business Agent

Vance Rolfzen

IBT, Local No. 320 Business Agent

Craig Altendorfer

Correctional Deputy

Cartier Russell

Correctional Deputy

### For the County:

Frank J. Madden

Attorney, MADDEN◊GALANTER◊HANSEN, LLP

Susan K. Hansen

Attorney, MADDEN◊GALANTER◊HANSEN, LLP

Joseph Leko

Chief Deputy Sheriff

Nancy Hohbach

Director, Employee Relations

Andy Benish

Deputy Director, Employee Relations

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<sup>1</sup> The Jail Unit has 57 budgeted positions for Correctional Officers. (Co. Ex. 9)

### III. DECISIONAL THINKING IN INTEREST ARBITRATION

The give and take of collective bargaining negotiations is how public sector labor contracts are thought to be determined in Minnesota. Binding interest arbitration – a substitute for the strike and lockout – is the default option that specific bargaining units in Minnesota may use when bilaterally negotiated settlements cannot be reached. The policy preference nested in MPELRA, Minn. Stat. 179A, is that the parties should negotiate – not arbitrate – their contracts. Labor contracts that are determined by the parties are more likely to maximize their joint (i.e., the *public's*) welfare than are contracts that interest arbitrators determine. As the parties' creation, negotiated contracts are likely to be more *livable*, while arbitrated contracts imposed by outsiders are likely to be less so. In sync with public policy, Minnesota's interest arbitrators endeavor to issue awards that are comparable to the settlements the parties might have reached had their collective bargaining negotiations been successful.

Interest arbitration is not a process by which a party's final position on Issue X is awarded willy-nilly. Moreover, interest arbitrators should not issue *compromise* awards. That is, absent compelling reason, they should not issue awards that split-the-difference between the parties' final positions on a given issue, and they should avoid awarding a party's final position on Issue X because the opposite party's final position was awarded issue Y. If the opposing parties expect interest arbitrators to issue *compromise* awards – awards the parties would never have negotiated – then the arbitrator is unwittingly damaging their incentive to bargain hard in subsequent bargaining rounds. They become "hooked" on interest arbitration round after bargaining round: A so-called "narcotic effect" takes hold. Hence, the interest arbitrator is damaging the institution of collective bargaining.

If the interest arbitrator's decisional process results in random and/or *compromise* awards, then the opposing Parties would reason: "Let us ask for more than we could ever get at the bargaining table and, by default, take our *sweetened* unresolved issue to arbitration because the odds of a win at interest arbitration are greater than zero and the costs of losing are minimal." By way of contrast, the incentive for a party to achieve a *sweetened* outcome at the bargaining table is significantly moderated when the default option is a costly strike or lockout.

Thus, interest arbitrators, acting in the public's interest – in support of collective bargaining negotiations – endeavor to *issue awards that are analogous to the settlements the parties might have reached had their negotiations not failed*. The evidence that best approximates what the parties' settlement on an issue might have been is found in labor contracts that were successfully negotiated by other bargaining units and the instant employer – *internal comparisons* – and/or by similarly situated bargaining units that share a common regional or labor market – *external comparisons*. In the present matter, the Parties' Post-Hearing Briefs cite an abundance of arbitral precedent that sustains this opinion.

#### **IV. ISSUES, DISCUSSION AND AWARDS**

##### **ISSUE 1. Hours of Work – Overtime – Article 14.1 – New Language**

(a) Current Contract Language:

Article 14.1 Authorized overtime shall be compensated at the rate of time and one-half (1½) for work performed in excess of the employee's scheduled work shift. For the purpose of computing the number of hours worked to determine overtime payment, the figure of eighty (80) hours per pay period shall be used. Overtime pay shall be paid for authorized overtime only. Except in cases of emergency, the employees may be assigned to work beyond (12) hours per shift on a voluntary basis only. All claims for overtime payment must be submitted for verification and payment within the pay period in which the overtime work was performed. In

lieu of such overtime payment, an employee may request compensatory time off for overtime worked as time and one-half (1½). Compensatory overtime shall not exceed eighty (80) hours.

(b) County's Final Position:

The County proposes to add new language to Article 14.1, *with the understanding that upon the CBA's December 31, 2017 termination date, either the County or the Union may unilaterally chose to have the new language stricken from the Agreement.*

The County's proposed new language is as follows:

The County may adjust employee's scheduled work shift to accommodate for scheduled training and meetings.

For employees assigned to the 1800 to 0600 shift, when authorized training or meetings occur that are four hours or less in length during non-work time on their scheduled work day, those employees will receive overtime compensation for the hours worked related to such authorized training or meetings.

For employees assigned to shifts other than 1800 to 0600, when authorized training or meetings occur that are four hours or less in length, during non-work time on their scheduled work day, those employees may have their shift adjusted where the schedule allows. If it is not practicable for management to adjust the shift, those employees will receive overtime compensation for the hours worked related to such authorized training or meetings.

The County agrees that in instances where it is adjusting a shift for authorized training or meetings more than 14 days in advance, the County will reasonably attempt to accommodate the employee in getting a day off that coincides with their regularly scheduled days off. The adjustment of shift with less than 14 days' notice may be accommodated if agreeable to both employer and the employee.

(c) Union's Final Position:

The Union rejects the County's proposal in its entirety.

(d) Parties' Arguments:

Joseph Leko, Chief Deputy Sheriff, testified that scheduled training sessions and meetings frequently occur within the ambit of the Sheriff's Office, and sometimes they occur without prior notice. Further, to enable attendance at these training sessions/meetings

employee work schedules are routinely changed. The County's proposed new language, Mr. Leko stated, will provide covered employees with advanced notice of shift adjustments, will accommodate the employee's choice of a day off, and will clarify when overtime compensation is paid. Consequently, he remarked, he is puzzled by the Union's resistance to the proposal.

The County's proposed new language parallels that which was agreed to between the County and the Licensed Deputies' exclusive representative, Law Enforcement Labor Services ("LELS"). That agreement – a Memorandum of Understanding dated March 21, 2013 – resolved a LELS grievance, which alleged that County adjustments to work schedules that enable affected employees to attend training sessions/meetings, with little or no prior notice, work a hardship on Licensed Deputies. The grievance settlement is a "pilot" program in which either party may discontinue participation upon the expiration of their current CBA. (Er. Ex. 50)

The County argued that its proposed pilot program should apply to Correctional Officers as well as to Licensed Deputies. Both bargaining units are in the Sheriff's Office, and both experience scheduled shift disruptions, without prior notice, to enable employee attendance at training sessions and meetings. Hence, for reasons of "consistency" within the Sheriff's Office, the County continued, the same shift adjustment policy should apply to both Licensed Deputies and Correctional Officers.

Joshua Loahr, IBT, Local No. 320 Bargaining Agent, testified that while scheduled shift perturbations caused by training sessions/meetings were a problem for Licensed Deputies they are not a problem for the Jail Unit's Correctional Officers. In fact, as he pointed out, Mr. Leko admitted that Jail Unit employees had never complained to him about having their scheduled shifts changed to accommodate training sessions/meetings. Further, the County's proposed

language was the result of grievance settlement – not a CBA settlement – between the County and LELS. The IBT, Local No. 320 was not a party to the referenced grievance discussions. Ultimately, the Union concluded, said grievance settlement falls outside the domain of a *bona fide* internal pattern or comparison.

(e) Analysis:

The Union presented persuasive arguments in opposition to the County’s proposed new language. First, its members are comfortable with the current system in which the Sheriff’s Office adjusts work schedules and authorizes overtime compensation to accommodate scheduled training and meetings. Second, at the Hearing, the Union did not object to the County’s assertion that it may adjust employee schedules at any time, without prior notice, for the purpose of accommodating scheduled training and meeting events. Third, the County did not show that any other Sheriff’s Office within its orbit of external (i.e., similarly situated) bargaining units has language in their CBAs that is comparable to its proposed language.

Too, although the County and LELS’ Licensed Deputies unit were able to settle the referenced grievance and to incorporate that settlement into their CBA, the County did not show that similar CBA language exists in either the LELS-represented Sheriff’s Licensed Supervisory unit or the MPEA-represented Sheriff’s Non-Licensed Supervisory unit. Indeed, the same applies to the County’s remaining non-Sheriff’s Office nine (9) units. To summarize, the instant proposal fails the “internal comparison” test used by interest arbitrators.

In the final analysis there is no compelling reason to believe, *ceteris paribus*, that the Parties would have reached a negotiated settlement that included the County’s proposed new language. Apparently the Sheriff’s Office is not having problems with changing the work

schedules of Correctional Officers when training sessions and meetings are scheduled, and the Correctional Officers are not objecting to the County's prevailing practice regarding same. Applicable in this instance is the old axiom, "If it ain't broke, don't fix it".

(f) Award – Issue 1:

*The County's proposal to add new language to Article 14, Section 14.1 is rejected.*

**ISSUES 2, 3 and 4: Clothing Allowance 2016 and 2017 – Article 17.2; and New Clothing Allowance Language – Article 17.3**

(a) Current Contract Language:

17.2 Effective January 1, 2016, the Employer will provide five hundred dollars (\$500.00) to replace and maintain articles of the uniform for Correctional Deputies. For employees not working a full calendar year, this amount will be adjusted on a pro rata basis. The allowances will be paid in two (2) equal installments in January and June.

(b) County's Final Position:

17.2 Effective January 1, ~~2014~~ 2016, the Employer will provide five hundred twenty-five dollars (~~\$500.00~~ \$525.00) to replace and maintain articles of the uniform for Correctional Deputies. Effective January 1, 2017, the Employer will provide five hundred and fifty dollars (\$550.00) to replace and maintain articles of the uniform for Correctional Deputies. For employees not working a full calendar year, this amount will be adjusted on a pro rata basis. The allowances will be paid in two (2) equal installments in January and June.

17.3 The County is opposed to the Union's new – Article 17.3 – contract language.

(c) Union's Final Position:

17.2 Effective January 1, ~~2014~~ 2016, the Employer will provide ~~five hundred dollars (\$500.00)~~ seven hundred dollars (\$700.00) to replace and maintain articles of the uniform for Correctional Deputies. Effective January 1, 2017, the Employer will provide ~~five hundred dollars (\$500.00)~~ six hundred dollars (\$600.00) to replace and maintain articles of the uniform for Correctional Deputies. For employees not working a full calendar year, this amount will be adjusted on a pro rata basis. The allowances will be paid in two (2) equal installments in January and June.

17.3 If the basic clothing or uniform is changed in type, color or style by order of the Employer, the Employer shall bare (sic) any and all costs for the clothing or equipment required.

(d) Parties' Arguments:

The Issue 2 dispute centers on the Union's final position that the clothing allowance for Jail Unit employees be increased from \$500.00 to \$700.00 in 2016, while the County's final position is that it be increased to \$525.00. Regarding Issue 3, the Union is proposing a 2017 clothing allowance of \$600.00, while the County's final position for 2017 is \$550.00. Issue 4 has to do with the County's rejection of the Union's proposal to add the above-quoted language to Article 17, Section 3 of the CBA.

Messrs. Loahr and Leko testified that in March 2015 a Uniform Committee recommended changing the policy governing the set of approved clothing items that are to be worn by all licensed, non-licensed, and support employees in the Sheriff's Office. (Er. Ex. 55) Said policy change was adopted in the summer of 2015, and it became effective on May 1, 2016. Also, the Sheriff's Office required that a new shoulder patch must to be affixed to each approved shirt by May 1, 2016. Each patch cost \$1.50 (Er. Ex. 50A) The items of clothing that changed are pants, short-sleeve shirt and long-sleeve shirt. The price of the new pants is \$74.99 a pair, and that of a short-sleeve shirt is \$38.50 and long-sleeve shirt is \$42. 50. (Un. Ex. Tab 6; Er. Ex. 51)

Excluding the \$3.00 that two shoulder patches would cost, Mr. Loahr pointed out that to buy all three items would cost \$155.99. However, Correctional Officers work four, twelve hour shifts *per* week, plus overtime. Thus, he opined, for reasons of appearance and hygiene, an Officer should wear a clean pair of pants and a clean shirt on every shift, necessitating that

he/she add four pair of pants, four short-sleeve shirts, four long-sleeved shirts and eight new patches to his/her wardrobe. Such a purchase would cost \$635.95 (= 4 x \$155.99 + \$1.50 x 8). In addition, the officer may have to purchase other required items in 2016, such as, neckties, nameplates, patches and shoes. (Un. Ex. Tab 6; Er. Ex. 51)

As Mr. Loahr explained, the Union is requesting a clothing allowance of \$700.00 in 2016, which is reduced to \$600.00 in 2017, because of the exceptionally high 2016 cost of acquiring the newly required pants and short- and long-sleeved shirts. Too, from among its set of externally comparable counties, it was pointed out that Correctional Officers in Ramsey County receive a 2016 clothing allocation of \$710.00, and continuously located Goodhue County has a 2016 clothing of \$925.00. (Un. Ex. 8)

The County argued that Correctional Officers knew about the new uniform policy eleven months prior to its effective May 1, 2016 date. (See: County's Post-Hearing Brief, p. 22) Further, the County observed, pursuant to Article 17, Section 2 clothing allowance money is distributed to employees in two equal installments, January 1 and June 1.<sup>2</sup> Hence, it argued, Correctional Officers could have used their June 1, 2015 distribution of \$250.00 to begin purchasing the newly required uniform items, and their January 1, 2016 distribution of \$250.00 to complete the purchase of said items. On point, the County continued, more than one-half of the Jail Unit's Correctional Officers did not use all of their clothing allowance in 2015.<sup>3</sup> (Er. Ex. 60)

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<sup>2</sup> The County mistakenly stated that said installments were made on March 1 and September 1 of each year. (See: County's Post-Hearing Brief, P. 22)

<sup>3</sup> Any unused clothing allowance is distributed to employees as taxable income.

From 2005 to 2015, the Non-Licensed Supervisors in the Sheriff's Office and their supervisees, the Correctional Deputies, received an identical or nearly identical clothing allowance. In 2015, both classifications received a clothing allowance of \$500.00, and the MPEA has "tentatively" accepted the County-proposed \$525.00 and \$550.00 clothing allowance for 2016 and 2017, respectively. (Er. Ex. 56) The County argued that a Union-proposed clothing allowance of \$700.00 and \$600.00 for 2016 and 2017, respectively, would dramatically deviate from this internal pattern, favoring the supervised (i.e., Correctional Deputies) over their supervisors (i.e., Non-Licensed Supervisors) without justification.

Further, the County argued, between 2000 and 2015, the County's Licensed Deputies had received an average of \$190.00 more in clothing allowance than have the Correctional Officers. In 2014 and 2015, respectively, Licensed Deputies received a clothing allowance of \$750.00 and \$775.00, and it is agreed that they will receive a clothing allowance of \$775.00 in 2016 and 2017.<sup>4</sup> (Er. Ex. 57; Un. Ex. Tab 10) To sustain the Union's final clothing allowance positions would have the effect of reducing the long-held difference in the clothing allowance between Licensed Deputies and Correctional Officers from \$190.00 to \$75.00 and \$175.00 in 2016 and 2017, respectively. Such reductions, the County insisted, would never have been negotiated by the Parties.

The new Article 17, Section 3 clothing allowance language the Union is proposing requires that the County bear all costs associated with any subsequent changes that it may make to the Correctional Officer's required uniform type, style or color. Regarding same, Mr.

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<sup>4</sup> The Licensed Supervisor's Unit also negotiated a \$750.00 clothing allowance for 2016 and 2017. (Un. Ex. 9)

Rolfzen testified that on June 19, 2012, he had proposed comparable language during negotiations with the County. (Un. Ex. 11) However, he subsequently dropped the proposal because the County advised that “uniforms will not change from the current one”.<sup>5</sup> (Un. Ex. 11) Now, however, because of the County’s 2015 required uniform changes, the Union is again proposing said language.

Employer Exhibit 60 shows that in 2015 many Correctional Officers did not use all of their \$500.00 clothing allocations. However, the Union urged, that exhibit is incomplete. After making out-of-pocket purchases of required uniform items, Correctional Officers do not always present receipts to the County for reimbursement, knowing, in the alternative, that at year’s end they will be paid any unused balance that may exist in their clothing allocation bank.

Further, the Union acknowledged, none of the other bargaining units in the Sheriff’s Office has its proposed Article 17, Section 3 language in their CBAs<sup>6</sup>. (Er. Ex. 58) Nevertheless, the County’s proposed \$25.00 increase in 2016 clothing allowances is insufficient to cover the initial cost of purchasing the newly required uniform items and, additionally, the financial burden of buying said items is relatively heavier for Correctional Officers that it is for the other Sheriff’s Office bargaining units. Still further, the Union observed, its Article 17, Section 3 is not unique. Rather, among the Parties set of external comparable, Hennepin County bears all uniform replacement costs in excess of \$65.00 *per* calendar year that are the result of mandated changes in required clothing. (Un. Ex. Tab 8; Er. Ex. 59)

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<sup>5</sup> Mr. Madden’s bargaining notes of June 19, 2012 indicate that the Union had proposed the language in question. (See: County’s Post-Hearing Brief, Appendix B)

<sup>6</sup> The other Sheriff’s Office bargaining units are the Licensed Deputies (LELS), Licensed Supervisors (LELS) and Non-Licensed Supervisors (MPEA).

In contrast, the County argued that the Union's Article 17, Section 3 language is beyond anything that it would have agreed to at the bargaining table. Simply put, the County observed that no other bargaining unit in the Sheriff's Office has a provision that requires it to pay the cost of required uniform items whose type, color or style are changed. (Er. Ex. 58) Moreover, from among Dakota County's set of eight similarly situated county units, only Hennepin County provides for the Union's sought-after Article 17, Section 3 benefits. (Er. Ex. 59)

(e) Analysis:

At the hearing, the County argued that two of each new item of required clothing, plus patches, would cost \$311.98. Whereas, the Union's case is premised on the Correctional Officer's need to purchase four of each item, costing \$635.95. In the Arbitrator's opinion, it is far more reasonable to conclude that an officer would only need three pair of the newly required pants, not four as the Union urged, and that four of each of the newly required short- and long-sleeved shirts would be needed, not two as the County urged. After working a twelve hour shift – managing convict routine and comportment, and interacting with the public – a clean shirt would need to be worn on each day of the four shift workweek: Standards of proper attire demand as much. Yet, the Correctional Officer need not wear a clean pair of pants on each worked shift. It is reasonable to conclude that two pair of pants can be worn *per* week, while a third pair is being dry cleaned, for a total of three pair of pants. Given these conclusions by May 1, 2016 Jail Unit employees would have needed \$560.97 in clothing allowance to cover the cost of the County's new uniform requirements.

By mid-2015 Correctional Officers knew about the impending changes in uniform policy. So, the County argued, the Officers could have used the \$250.00 clothing allowance distribution they received on June 1, 2015 to begin purchasing the required new clothes rather than to use that allocation to purchase outdated items. Then, on January 1, 2016 when another \$250.00 would have been deposited in their clothing allowance bank, they could have completed the necessary purchases well before the May 1, 2016 deadline. To further its case, the County offered evidence showing that a majority of the unit's Correctional Officers did not use all of their 2015 clothing allocations. However, unanswered questions remain about the reliability of that evidence. (Er. Ex. 60)

The problem with the County's case is that the two referenced \$250.00 distributions (= \$500.00) would not have covered the \$560.97 the required uniform items likely would have cost. Additionally, as the Union argued, such required purchases are disparately harder on Correctional Officers *vis a vis* the Sheriff's Office licensed personnel. That is, the set of items on which the latter may spend their \$750.00 in clothing allowance is much larger than the Correctional Officers' set of items. Thus, licensed personnel could delay the purchase of equipment items like a Radio Holder, Duty Belt, Inter Duty Belt or Handcuffs – all covered by their clothing allocation -- in order to buy their initial set of newly required uniform items. In contrast, while Correctional Officers are issued these same items of equipment, their clothing allowance may not be used to purchase same. (Er. Exs. 51 and 52)

If the January 1, 2016 clothing allowance distribution has been \$300.00, then combined with the June 1, 2015 distribution of \$250.00, Correctional Officers would have had \$550.00 on hand to purchase the requisite items of clothing: A figure that approximates the \$560.97 in

expected cost of said items. A January 1, 2016 distribution of \$300.00 implies a 2016 annual clothing allowance of \$600.00. A \$600.00 clothing allowance for 2016 would be a reasonable and equitable one-year accommodation to Jail Unit employees who had no control over the requirement that they buy new items of uniform clothing. Such an accommodation might well have been negotiated between the Parties.

However, the Union's proposed 2017 clothing allowance of \$600.00 would dramatically alter the long-held parity that has existed between the Jail Unit and Non-Licensed Supervisors. For decades the latter's clothing allowance had never exceeded \$20.00 more than the Correctional Officers' allowance. Interestingly, in 2012 the clothing allowance for Correctional Officers actually exceeded that for Non-Licensed Supervisors by \$5.00. Since 2013, both bargaining units have had identical \$500.00 allocations. Further, the Non-Licensed Supervisory unit has tentatively accepted the County's 2017 clothing allowance proposal of \$550.00 (Er. Ex. 56) Still further, a relatively fixed difference in clothing allowance between Correctional Officers and Licensed Deputies and Licensed Supervisors has existed for several years. (Er. Ex. 57; Un. Exs. and 10) Finally, the record is void of 2017 clothing allowance data covering the counties in Dakota County's external comparison group.

The County rejects the Union's proposed new Article 17, Section 4 language. Said language does not exist in any other Sheriff's Office CBAs. In addition, among Dakota County's five comparable with counties with 2016 CBAs only the Hennepin County/Detention Deputies CBA includes the discussed type, color and style language.

(f) Awards – Issues 2, 3 and 4:

*The County's proposed 2016 clothing allocation of \$525.00 (Issue 2) is*

*rejected. The Jail Unit's 2016 clothing allowance shall be \$600.00. The County's proposed 2017 clothing allowance of \$550.00 (Issue 3) is awarded. The Union's proposed new Article 17, Section 3 (issue 3) language is rejected.*

**ISSUE 7:                      Appendix A – Market Adjustment – New Language**

(a)    County's Final Position:

The County is opposed to the Union's new – Appendix A – contract language.

(b)    Union's Final Position:

Appendix A: A one-time market retention adjustment shall be given for certain employees whose year-end 2015 salary is below the Q2 of the salary range based upon time served as a Correctional Officer. Such adjustment shall be applied prior to any other wage adjustments provided in the collective bargaining agreement.

(c)    Parties' Arguments:

Dakota County's compensation system is somewhat unique. Three (3) separate mechanisms determine the change in employee compensation, namely: (1) the percent by which general wages are increased; (2) the County's pay equity set-up by job grades; and (3) the amount of merit-based compensation awarded an employee as reflected in a so-called Merit Matrix. It is undisputed that when there is a general wage increase, say 2½% as in the instant case, then each of the bargaining units in the County receives that same rate of increase. (Er. Ex. 10)

As for pay equity, the County Board annually adopts a uniform pay equity salary range for all of its job classifications/job grades.<sup>7</sup> (Er. Exs. 11 and 12) Correctional Deputies are in job

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<sup>7</sup> The 2016 pay equity salary range increased by 2% over 2015, and the 2017 salary range will increase by another 2%. (Er. Exs. 14, 15 and 16)

grade 106, and their 2016 and 2017 pay equity salary ranges are presented in Table 1. Footnotes to the pay equity tables in the Parties’ 2014-2015 CBA explain how the compensation structure in Table 1 is to be applied. To illustrate, effective on the first day of the payroll period in which January 1, 2016 falls, Job Grade 106 Correctional Officers – employees will receive the

**Table 1. Pay Equity Compensation Structure for Correctional Officers: 2016 and 2017<sup>8</sup>**

| Grade 106 | Minimum  | Q1       | Q2       | Q3       | Maximum  |
|-----------|----------|----------|----------|----------|----------|
| 2016      | \$45,245 | \$50,900 | \$56,556 | \$63,625 | \$70,695 |
| 2017      | \$46,150 | \$51,918 | \$57,687 | \$64,898 | \$72,109 |

Parties’ agreed upon 2½% general wage increase or an increase to the 2016 range minimum of \$45,245.00, whichever is greater. However, in no event will any Officer’s salary be increased above 2016’s salary range maximum of \$70,695.00. (See: Union Tab “Contract” pp. 22-23; Er. Ex. 1, pp. 22-23)

As with general wage increases, there is no question that for several years the Parties’ Merit Matrix has been consistent across bargaining units. (Er. Exs. 10-31) The 2016-2017 Merit Matrix, applicable to all County job classifications, is shown in Table 2. (Er. Ex. 13) The Parties’ 2014-2015 CBA includes a footnote to its Merit Matrix table that explains how the merit compensation system works. (Er. Ex. 1, pp. 22-23) In 2016, for instance, the Correctional Officer whose salary was below the maximum salary depicted in Table 1 (i.e., \$70,695.00) is eligible for a merit increase, which is effective on his/her anniversary date in Job Grade 106. If this condition is met, the Officer’s 2016 merit increase is based on Table 1’s Q2 salary for that job classification, which is \$56,556.00.

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<sup>8</sup> See: Er. Exs. 14 and 15.

**Table 2. 2016 and 2017 Merit Matrix<sup>9</sup>**

| Salary Range | Exceptional Standards    | Greatly Exceeds Standards | Exceeds Standards   | Meets Standards | Below Standards |
|--------------|--------------------------|---------------------------|---------------------|-----------------|-----------------|
| Q4           | Greatly Exceeds +1.0% LS | 4.0% LS                   | 3.0% LS             | 2.0% LS         | 0%              |
| Q3           | Greatly Exceeds +1.0% LS | 1.0% base + 3.0% LS       | 1.0% base + 2.0% LS | 2.0% LS         | 0%              |
| Q2           | Greatly Exceeds +1.0% LS | 4.0% base                 | 3.0% base           | 2.0% base       | 0%              |
| Q1           | Greatly Exceeds +1.0% LS | 4.0% base                 | 3.0% base           | 2.0% base       | 0%              |

If, for example, that Officer’s salary is below \$56,556.00 and his/her performance is rated “Greatly Exceeds Standard”, then reading from Table 2, the Officer will receive a merit raise of 4% (\$56,556.00 x .04) on the first day of the pay period in which his/her performance review falls. Said merit raise is added to the Officer’s base salary. If the salary of the Officer exceeds \$56,556.00, the merit increase is based on his/her actual salary unless said salary exceeds the salary range maximum in Table 1 of \$70,695.00 in which case the Officer is not eligible for either a lump sum or base salary increase.

No Jail Unit employee had a 2015 salary that exceeded \$70,695.00, and no unit employee’s 2016 salary exceeded that maximum subsequent to having received the Parties’ agreed upon 2½% general wage increase. Hence, for example, Jail Unit employees whose job performance “Meets Standards” will receive either a Table 2 merit increase to base of 2% or a 2% lump sum payout. If their job performance “Exceeds Standards” they will receive a Table 2

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<sup>9</sup> Generally, the entries in the “Generally Exceeds Standards”, “Exceeds Standards”, and “Meets Standards” columns in Table 2 were increased by 1 percentage point relative to the entries in the 2014-2015 Merit Matrix. (Er. Exs. 1, p. 22 and 13)

merit increase of at least 1% to base plus a 2% lump sum payout and at most a 3% increase to base.

Combining the agreed upon 2½% general wage increase with the prospect of a Table 2 merit raise for employees who at least “Meet Standards” suggests that Jail Unit employees’ total 2016 salary will increase from a possibly low of 2½% in base pay plus another 2% lump sum payout to a possible high of 6½% in base pay plus a 1% lump sum payout. Over the CBA’s two-year duration, some Jail Unit employees could receive base salary increases in excess of 12%. (Er. Ex. 36)

With the foregoing as background, the Union proposes a one-time market retention adjustment for Correctional Officers because the hourly wage rates of some have become disproportionately low relative to their years of service. In 2014 and 2015, the vast majority of Correctional Officers received performance ratings of “Meets Standards” and “Exceeds Standards”. (Un. Ex. 12) Referring to Table 2, the Union would argue as follows: Long serving Correctional Officers, those with generally higher salaries – quintile Q3 and Q4 – whose performance rating is “Meets Standards” would not receive a base salary merit raise; whereas, Correctional Officers with fewer years of service, those with lower salaries – quintile Q1 and Q2 – whose performance rating is “Meets Standards” would receive a base salary merit raise of 2%. If their performance rating was “Exceeds Standards,” the former would receive little or no increase in base salary due to merit, while the latter will receive a 3% merit increase in base salary. Hence, the Union argued, the base salaries of Jail Unit employees with less seniority relative to those with more seniority are disproportionately high, even to the point of “leap frogging” the salaries of the more senior employees. To emphasize this point, the Union

provided several examples of Jail Unit employees who are receiving higher hourly wages than colleagues who have more years of service or whose hourly wages are separated by mere pennies. Consider the following cases:

1. Deputy Blair Jones, a six year employee is making \$1.20 per hour less than Deputy Chris Steel, a three year employee;
2. Deputy Tim Bowman, a seventeen year employee is making \$0.04 per hour less than Deputy Kent Themmes, a fourteen year employee; and
3. Deputy Tchad Guckin, a twelve year employee is making only \$.74 per hour more than Deputy Chris Steel, a three year employee.

(Un. Ex. 23) Regarding Deputy Blair Jones, named above, the Union identified ten fellow Deputies who receive higher hourly wages than he and who have fewer years of service. (Un. Ex. 22) Notwithstanding the County's claim that the merit system rewards good performance, the Union argued that it has resulted in highly inequitable hourly wage rates that are damaging to unit morale and employee recruitment/retention.

The Union's proposed market retention adjustment corrects the above-discussed inequity by "leveling" the hourly wages of Jail Unit employees based on their years of service, calculated as a percent of Table 1's 2016 Q2 salary of \$56,556. Table 3 describes the Union's "leveling" formula. The inverse relationship between the entries in the **Years of Service** and **Percent of Q2** columns eliminates the referenced inequity, while adjusting upwards the wage rates of all but a few Jail Unit employees. (Un. Ex. 22)

Next, the Union showed that in 2015 the average hourly wage of Correctional Deputies by years of service is higher among some comparable counties for which reliable data are

**Table 3. Market Retention Adjustment Formula: 2016**

| Years of Service | Percent of Q2 or \$56,556 | Annual Salary | Annual Salary/2,088 = Hourly Wage |
|------------------|---------------------------|---------------|-----------------------------------|
| < 1 year         | 80%                       | \$45,244      | \$21.66                           |
| 1 - year         | 83%                       | \$46,941      | \$22.48                           |
| 2-years          | 87%                       | \$49,203      | \$23.56                           |
| 3-years          | 90%                       | \$50,900      | \$24.38                           |
| 4-years          | 93%                       | \$52,597      | \$25.19                           |
| 5-years          | 97%                       | \$54,859      | \$26.27                           |
| 6-years          | 100%                      | \$56,556      | \$27.09                           |

available. Specifically, relative to the eight (8) counties in Dakota County’s external comparison group, the 2015 average hourly wages at 4-, 5-, 6-, 7- and 8-years of service were generally higher in Anoka, Ramsey and Scott counties. (See: County’s Post-Hearing Brief, Appendix A) Hence, relative to these counties, the Union argued, its proposed one-time market retention adjustment will enhance the wage competitiveness of the Jail Unit’s Correctional Officers.

Regarding Dakota County’s negotiated 2016-2017 CBAs, the Union argued that the County has deviated from its long-held history of adhering to a fixed pattern of internal settlements, particularly intra-Sheriff’s Office settlements. Dakota County and three of its bargaining units have agreed to one-time 2016 market retention adjustments. Two of these units are in the Sheriff’s Office, namely, the Licensed Deputies and Licensed Supervisory, and the third unit is the MNA Public Health unit.

At the Hearing, the County argued that a one-time market retention adjustment with only two of the four bargaining units in the Sheriff’s Office, ones that constitute such a small fraction of the County’s total unionized workforce, does not constitute a “pattern”. Yet, the Union argued, this contradicts the position the County has previously taken when it has argued

that internally consistent settlements within the Sheriff's Office are a necessity. *Teamsters Local No. 320 and Dakota County*, BMS Case No. 05-PN-65, p. 5. (Ver Ploeg, 2005) The Union urged that the County cannot have it both ways.

In 2016 Dakota County has 1,228 unionized employees on payroll, including 60 and 17 Licensed Deputies and Licensed Supervisors, respectively. (Er. Ex. 9) The bargaining agents representing these employees and Dakota County entered into 2016-2017 settlements that included a one-time 2016 market retention adjustment. (Un. Exs. 24 and 25) Thirty-four Licensed Deputies whose year-end 2015 salary fell below Q2 in their job classification's salary range received a market retention adjustment. (Er. Ex. 47; Un. Ex. 25) Seven Licensed Supervisors whose year-end 2015 salary fell below Q2 for that job classification's salary range based upon time served as Sergeant or time spent as Sergeant and Captain received a market retention adjustment. (Er. Ex. 48; Un. Ex. 24)

There is ample arbitral precedent which holds that interest arbitrated exceptions to internal settlement patterns ought not to be awarded. Among Dakota County's fourteen bargaining units three – including two within the Sheriff's Office – have negotiated 2016-2017 CBA provisions that call for one-time 2016 market retention adjustments. Hence, the market retention adjustment sought by Correctional Officers is not an exception to the pattern of internal settlements, particularly with respect to the Sheriff's Office.

At the Hearing, Messrs. Leko and Loahr testified about their respective study of turnover among Licensed Deputies and the Jail Unit employees. Too, both witnesses discussed the inter-employee disparity between annual wages and years of service that exists in his respective unit,

and each commented about their market retention adjusted salary computations. (Er. Exs. 27 and 28)

The County acknowledged that there is turnover in the Jail Unit. However, the County considered the Jail Unit's turnover problem to be less severe than that of Licensed Deputies, and because the knowledge and experience that resigning Licensed Deputies take with them cannot be duplicated by hiring "off the street". In contrast, the County held, Correctional Officers can readily be replaced; new recruits quickly learn how to perform the position's essential functions; Correctional Officers work in a confined area, are more closely supervised, and their work is less dangerous than that Licensed Deputies.

Regardless, the Union argued, a one-time 2016 market retention adjustment would solve both the Jail Unit's retention/recruitment problems and the nagging inequities cause by wage compression and/or "leap frogging". Further, in 2015 and 2016, the Correctional Deputies in Wabasha County and Ramsey County, respectively, were awarded market wage adjustments because their annual salaries lagged behind those in similarly situated counties. (See: *Wabasha County and Minnesota Teamsters, Local No. 320*, BMS Case No. 14-PN-0916 (Latimer, 2015) and *Ramsey County, MN Sheriff's Department and Law Enforcement Labor Services, Inc., Local 322*, BMS Case No. 15-PN-0673 (Lundberg, 2016)).

Dakota County argued that the Union's proposed one-time 2016 market retention adjustment substantively changes Article XXIX – Wage Rates – in the CBA. The Union averred that because the Jail Unit, like the Licensed Deputies unit, is experiencing turnover it too should receive a one-time 2016 market retention adjustment. However, this reasoning, the County responded, disregards the units' differentiating circumstances.

The reason the County agreed to a market retention adjustment for certain Licensed Deputies is because it needed retain experienced Licensed Deputies in the face of an unprecedented “spike” in turnover. Mr. Leko and Nancy Hohbach, Director, Employee Relations, variously testified that from 2005 to 2013, only five Licensed Deputies resigned to take law enforcement positions elsewhere. Then, between May 2014 and March 2016, that number spiked to ten Licensed Deputies who resigned to take higher paying law enforcement positions. Thus, they observed, the County is being increasingly forced to substitute inexperienced recruits for experienced personnel, which implies an elevated risk of mistakes and loss of specialized skills (e.g., among those who have resigned is a SWAT Team expert, a Use of Force and Taser Instructor, a fluent Spanish-speaking and a fluent Russian-speaking Deputy, a Firearms Instructor, several minority officers, and so forth).<sup>10</sup> (Er. Exs. 38 and 40) Critically, they continued, Dakota County’s Licensed Deputies are taking higher paying similar positions with other municipal and state law enforcement agencies.<sup>11</sup> Therefore, the County needed to adjust its salary structure to be competitive. Hence, the County and the Licensed Deputies Unit added to their 2016-2017 CBA a negotiated Memorandum of Agreement that provided for a one-time, 2016 market retention adjustment.<sup>12</sup> (Er. Exs. 38 and 47)

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<sup>10</sup> The witnesses also testified that it takes less time to train Correctional Officers than Licensed Deputies. The closed, controlled environment in which Correctional Officers work readily facilitates OJT and, they testified, turnover among Correctional Officers does not pose the same level of risk to public safety as does turnover among Licensed Deputies.

<sup>11</sup> The data in Employer Exhibit 38 show that at least nine of the separating Licensed Deputies took comparable positions in Minnesota.

<sup>12</sup> In 2013 the salaries of approximately 50% of County’s Licensed Deputies were in the salary range’s minimum quintile (i.e., Q1). (Er. Ex. 38)

Mr. Loahr prepared and presented his above-referenced study to the Sheriff's Office. He showed that from 2010 through 2015 (6-years), 49 Correctional Deputies had resigned and 20 of these Correctional Deputies took higher paying positions in law enforcement. (Er. Ex. 40A) However, in a March 2, 2016 letter addressed to Mr. Loahr, Mr. Leko communicated his more detailed assessment of the Union's data, writing as follows:

1. Only 9 of Mr. Loahr's 20 Correctional Officers took comparable Correctional Officer positions and the balance took licensed positions;
2. Five of the 9 Correctional Officers took out-of-state Correctional Officer position; and
- (3) Four of the 9 Correctional Officers took comparable positions within Minnesota.

Based on his analysis of the Union's data, Mr. Leko wrote, "Unfortunately, these numbers do not show a spike in DCSO employees leaving for higher paying correctional jobs to surrounding agencies." (Er. Ex. 40) The loss of ten Licensed Deputies (or 17% of all Licensed Deputies) in slightly less than two years for other higher paying law enforcement positions in Minnesota is a "spike" that cannot be ignored. Mr. Leko also remarked, while it is true that 80% of Correctional Officers are below the Q1 range, it is also true that 71% of Correctional Officers have less than six years of service. (Er. Ex. 40)

Regarding wages, the County argued that its Correctional Officers are extremely well compensated: Correctional Officer wages are leading not lagging the market. First, external data demonstrate that all but one of the eight counties in Dakota County's comparison group had settled for a general wage increase of 2½% or less in 2016, and that the average general wage increase for the three comparable counties with 2017 settlements is approximately 2.33%. (Er. Ex. 32)

Second, without a market retention adjustment, Correctional Officers in Dakota County will receive a 2016 minimum and maximum annual salary of \$44,357.00 and \$69,308, respectively. These minimum and maximum amounts exceed the minimum annual salary of the four and the maximum annual salary of the seven counties in Dakota County's comparison group that have reached 2016 settlements. (Er. Ex. 34) Three of Dakota Counties' comparable counties have reached 2017 wage settlements. Dakota County's 2017 annual salary minimum is larger than that of two of these counties and its annual salary maximum is larger than all three counties. (Er. Ex. 35)

Third, to further establish that the wages earned by Correctional Officers is market competitive, the County pointed out that when it posts a Correctional Officer vacancy, it is inundated with job applications. For example, there were 414 applicants to a July 22, 2011 posting of a Correctional Officer vacancy; 509 applicants to a July 2, 2014 posting; and 112 applicants to a June 15, 2016 posting. Over the past several years, every posting has been well responded to by the market. (Er. Ex. 41)

Further, the County argued, that a 2½% general wage increase plus an assumed 3% merit raise for 2016 and 2017 will yield a compounded increase in Correctional Office salaries of nearly 13% over both years. (Er. Ex. 36) However, if the Union's sought after 2016 market retention adjustment is awarded, then the 2½% general wage increase and assumed 3% merit raise computations would follow said adjustments to the Correctional Officers' December 31, 2005 wage rate. As a result, including the Union's market retention adjustment, the County showed that the rate at which annual salaries would increase over both years could reach in excess of 25% in some individual cases. (Er. Ex. 37)

The County also addressed the circumstances that led to the one-time market retention adjustment for the Licensed Supervisors unit. It explained that in recent years retirements have resulted in several promotions to Sergeant and, consequently, the new Sergeants' salaries are relatively low. Thus, subsequent to the one-time market retention adjustments that some Licensed Deputies received, their salaries "leap frogged" those of Sergeants, necessitating a one-time market retention adjustment for some of the latter as well.

Still further, for several reasons, there is a shortage of nurses in the region. Thus, it has become increasingly difficult for Dakota County to recruit Public Health nurses. In 2015 and 2016, several of the County's Public Health nurses have resigned to work for Ramsey County, some earning up to \$10,000.00 more for similar work and lighter caseloads. Several Dakota County's postings to fill the vacated nurse positions failed to attract qualified applicants. Thus, to abate the exodus of nurses and to be more market competitive, Dakota County and the Minnesota Nurses Association ("MNA") negotiated a one-time 2016 market retention adjustment for nurses whose salaries fell below Q1 of the applicable salary range. As a result, 9 of 44 nurses received a one-time wage adjustment effective January 1, 2016. (Er. Ex. 49)

Finally, the County argued, each of the above-discussed one-time 2016 market retention adjustments was due to highly unique circumstances and no such circumstances apply to Correctional Officers. A one-time market retention adjustment for the Jail Unit would upset the Dakota County's otherwise stable and rational pattern of County-wide negotiated settlements, damage morale and trigger more, not less, interest arbitration over the years to come.

(d) Analysis:

Dakota County has settled 12 of its 14 2016-2017 public sector CBAs. Three of the 12 settled CBAs include market retention adjustment language. The Licensed Deputy, Licensed Supervisor and MNA Public Health units one-time, 2016 market retention adjustments resulted in overall 2016 salary increases for 34 of 60 Licensed Deputies, 7 of 17 Licensed Supervisors and 9 of 44 Public Health nurses. In contrast, Dakota County rejected the Jail Unit's one-time 2016 market retention adjustment proposal that would have increased the overall 2016 salaries for 44 of 48 Correctional Officers. Dakota County and the Non-Licensed Supervisor unit have reached a tentative CBA that does not include one-time market 2016 retention adjustment language.

The County credibly explained why it negotiated market retention adjustment language with the three referenced bargaining units. First, between May 2015 and March 2016 – less than two (2) years – 10 or 17% of the County's Licensed Deputies had resigned to take higher paying law enforcement positions elsewhere in Minnesota. Relative to previous years, this level/rate of resignations among Licensed Deputies was unprecedented, compromising the Sheriff's Office ability to meet its responsibility for public safety.

Second, subsequent to implementation of the above-discussed one-time 2016 market retention adjustment for Licensed Deputies, the County was compelled to grant a similar adjustment to its Licensed Supervisors unit in the interest of restoring a compensation structure in which Sergeants would be paid more than the Licensed Deputies they supervise. This vertical alignment problem resulted from a recent rash of retirements by Sergeants whose vacated positions were filled by promotions into the lower quintiles of the applicable salary

range. Hence, because of their 2016 market retention adjustment the salaries of some Licensed Deputies had “leap frogged” those of the newly promoted Sergeants.

Third, in 2015 and 2016, several of the County’s Public Health nurses had resigned to take higher paying nursing positions elsewhere throughout the Metropolitan Minneapolis-St. Paul region. That Dakota County’s salaries were not competitive is made manifest by the fact that it was having serious problems recruiting qualified replacements. As a result, a one-time 2016 market retention adjustment agreement was negotiated between Dakota County and the MNA Public Health unit.

The lack of labor market competitiveness explains why Dakota County and the Licensed Deputies and MNA Public Health units negotiated one-time 2016 market retention adjustment agreements. The rationale for such an agreement was different for the Licensed Supervisors unit. In that case, it was the necessity of maintaining a vertical separation in the salaries earned by Sergeants over Deputies.

For Correctional Officers, the Union is seeking a one-time 2016 market retention adjustment mainly because the salaries of some Correctional Officers with less years of service are often pennies less than, equal to or greater than the salaries of other Correctional Officers with more years of service. “Leap-frogging” is not at all unusual within the Jail Unit. In addition to this reason for its sought-after market retention adjustment, the Union argued that turnover among Correctional Officers is because the Jail Unit’s salaries are not competitive. However, the County succeeded in discrediting the Union’s non-competitiveness argument. The facts are that within the past six years, 20 Correctional Officers had resigned to take higher paying positions in law enforcement. Among these 20 Correctional Officers only four took comparable higher

paying positions in the region. Moreover, the County showed that its job postings to fill Correctional Officer vacancies are met with a plethora of job applicants. These facts do not support a non-competitiveness finding. Moreover, the record lacks convincing external comparable salary data that would otherwise support the Union's theory that salaries of Correctional Officers in Dakota County are not competitive.

Nevertheless, the Union did prove that the salary distribution is highly skewed toward the "Minimum" of the salary range that is depicted in Table 1 above. And the Union did prove that salary inequities exist. That is, in Dakota County some Correctional Officers with just a few months or years of service make nearly as much or more than Correctional Officers with more years of service. However, to find such inequalities is not unusual in a merit-based compensation system. The structure of the Parties' negotiated Merit Matrix (see Table 2) clearly favors lower paid (e.g., Q1 or Q2) employees because it adds more merit money to their base salary than it does to the base of higher paid (e.g., Q3 or Q4) employees, and the rate at which such merit money is added to one's base salary increases with the level of one's performance rating.

In a merit-based compensation system inequities are not morally "bad": Salary-wise, the better performer is treated better than the poorer performer. Unlike the lane-step compensation system that explicitly rewards length of service, the merit-based compensation does not. Thus, that "leap frogging" by length of service exists among Correctional Officers is not sufficient cause to issue an award favoring the Union. Unlike the instant case, the market competitiveness issues that faced the Licensed Deputies and MNA Public Health units required a wage adjustment, and it was necessary to establish an inter-job classification salary hierarchy

that recognized that the duties and responsibilities of Sergeants are greater than those of Deputies.

Yes, two bargaining units within the Sheriff's Office negotiated one-time 2016 market retention adjustment agreements and, yes, these agreements established an intra-Sheriff's Office pattern. Moreover, this pattern of settlements would result in an award favoring the Union's position, but only if the Jail Unit had experienced circumstances like those that prompted the two intra-Sheriff's Office settlements. However, such circumstances did not exist, and, further, the Correctional Officers' salaries are market competitive. Thus, there are compelling reasons for making an exception to the intra-Sheriff's Office pattern. Finally, the odds that the Parties would have negotiated a one-time 2016 market retention adjustment approach zero in the absence of offsetting bargaining concessions the County would have demanded from the Union.

(e) Awards – Issue 7:

*The Union's one-time 2016 market retention adjustment language (Appendix A) is rejected.*

**THE ABOVE AWARDS ARE ISSUED and ORDERED on this the 15<sup>th</sup> day of October 2016 from Tucson, Arizona.**



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Mario F. Bognanno,  
Labor Arbitrator and Professor Emeritus

