

IN THE MATTER OF ARBITRATION) INTEREST ARBITRATION
)
 between)
 Nobles County) Jail Sergeant Unit -
) Shift Differential
)
 -and-)
) BMS Case No. 15-PN-0458
 Minnesota Teamsters Public)
 & Law Enforcement Employees')
 Union, Local No. 320) January 4, 2016
))

APPEARANCES

For Nobles County

Terrance J. Foy, Attorney, Ratwik, Roszak & Maloney, P.A.,
Minneapolis, Minnesota
Sue Luing, Human Resources Director/Deputy Administrator
Tom Johnson, Administrator
Gene Metz, Commissioner
Bob Demuth, Commissioner

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

Martin H.R. Norder, Attorney, Kelly & Lemmons, Little Canada,
Minnesota
Patrick J. Kelly, Attorney, Kelly & Lemmons, Little Canada,
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Terry Neuberger, Business Agent
Dan Bosman, Jail Sergeant
Adam Bohrer, Jail Sergeant

JURISDICTION OF ARBITRATOR

Minnesota Teamsters Public & Law Enforcement Employees'
Union, Local No. 320 (hereinafter "Teamsters Local No. 320" or
"Union") is the exclusive representative for all supervisory
essential employees (Jail Sergeants) employed by the Nobles
County Sheriff's Department ("County Sheriff's Department") in

Nobles County (hereinafter "Nobles," "Employer" or "County"). There are four Jail Sergeants in this classification, with Aaron Ahlers having ten years and ten months of seniority, followed by Gregory Wallace having ten years and ten months of seniority, followed by Daniel Bosman having ten years and nine months of seniority, and Adam Bohrer having five years and one month of seniority.

The County and Teamsters Local No. 320 (hereinafter referred to as the "Parties") are signatories to an expired collective bargaining agreement (also referred to as "contract") that was effective January 1, 2012 through December 31, 2014.

The Parties entered into negotiations for a successor collective bargaining agreement. The Parties were able to during bargaining and mediation to resolve all of their outstanding issues, except for one impasse issue - whether shift differential language and pay should be placed in the successor contract. As a result, on April 24, 2015, the Minnesota Bureau of Mediation Services ("BMS") received a written request from the Union to submit the one unresolved issue to conventional interest arbitration. On April 27, 2015, the BMS determined that the following item was certified for conventional interest arbitration pursuant to Minn. Stat. § 179A.16, subd. 2 and Minn. Rule 5510.2930:

PAY PLAN - Shift Differential - Article 21.2: Shall a shift differential be established for bargaining unit members? If yes, for what hours and in what amount?

The Arbitrator, Richard John Miller, was mutually selected by the Parties from a panel submitted by the BMS. A hearing in the matter convened on December 2, 2015, at 9:00 a.m. at the County Government Center, 315 Tenth Street, Worthington, Minnesota. The Parties were afforded full and ample opportunity to present evidence and arguments in support of their respective positions.

The Parties' counsel elected to file electronically post hearing briefs, with receipt by the Arbitrator no later than December 18, 2015. The post hearing briefs were submitted in accordance with that deadline date. The Arbitrator then exchanged the post hearing briefs electronically to the Parties' counsel on December 18, 2015, after which the record was considered closed.

BACKGROUND

The Nobles County Jail ("County Jail") located in Worthington, Minnesota was built in 2003 and has an approved capacity of 80 inmates. The County Jail is primarily used by the County Sheriff and the Worthington Police Department but also is used by several other law enforcement agencies, including U.S. Immigration and Custom Enforcement, for booking and housing of inmates.

As of November 23, 2015, the County Jail has confined 891 inmates (724 males and 167 females) and 5 male juveniles. The average daily population for inmates is 46.80 and the average days of confinement is 17.18. The average daily population for juveniles is 0.02 and the average days of confinement is 1.14. The majority of these bookings occurred between 5:00 p.m. and 7:00 a.m.

The Jail Sergeants currently work two 10 hour shifts with one Sergeant on duty per shift. The shift hours are from 7:00 a.m. to 5:00 p.m. and 5:00 p.m. to 3:00 a.m. There is no Jail Sergeant on duty from 3:00 a.m. to 7:00 a.m. The Jail Sergeants work on a 5 days on, 1 day off, 1 day on, 4 days off schedule, and are on a rotation of 8 weeks working days and 8 weeks working nights. The Jail Sergeants are assigned to work days and nights and are not allowed to bid for these shifts.

ISSUE

PAY PLAN - Shift Differential - Article 21.2: What language, amount and hours, if any, should be added to the contract regarding shift differential.

POSITION OF THE PARTIES

The Union proposes the following new contract language on this issue:

PAY PLAN - Shift Differential - Article 21.2: Employees covered under this collective bargaining agreement shall be paid an additional \$1.50 per hour for all hours worked between 5 p.m. and 7 a.m. as a shift differential.

The County opposes the addition of any shift differential language and pay to the collective bargaining agreement.

AWARD

The County's position is sustained.

RATIONALE

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

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

Minn. Stat. Sec. 471.992, Subd. 2.

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

Subd. 1...

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

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

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

Minn. Stat. Sec. 471.993.

There are four established factors that are being utilized by most interest arbitrators in resolving impasse items, especially economic items such as payment for shift differential. Those factors are: 1) the employer's ability to pay; 2) internal equity; 3) external or market comparisons; and 4) other economic or non-economic factors.

As to the first factor, our recent economic turnaround has lessened the financial burden on public employers to the extent that a pure "inability to pay" argument no longer exists to pay for wages and other fringe benefits sought by employees and their unions. Instead, interest arbitrators are now placing greater reliance upon the standard codified in Minnesota Statutes, which provides:

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

Minn. Stat. § 179A.16, subd. 7.

Accordingly, the statutory rights and obligations of public employers to efficiently manage and conduct their operations must be viewed now in the context of financial "restraint" or "constraint" settings rather than an inability to pay argument. The public employers need to make prudent financial decisions that allow their financial resources to be used in the most efficient and effective manner, including maintaining an appropriate fund balance for continuation or establishment of necessary services to the public they serve.

As previously noted, no Jail Sergeant is on duty from 3:00 a.m. to 7:00 a.m., which is included in the Union's proposed shift differential. Thus, the Union's proposed shift differential of \$1.50 per hour from 5:00 p.m. to 7:00 a.m. would only be applicable for 10 hours which would cost the County an extra \$15 per shift. For an 80 hour two week pay period, this would cost the County an additional \$120, which would total an additional \$3,120 for the year.

The Union's proposed shift differential is a reasonable cost that the County can afford. In fact, the County admits that it has the financial ability to fund the cost of the Union's shift differential proposal. However, the fact that the County can afford to pay the proposed shift differential does not automatically mean that the County should provide this additional income to Jail Sergeants. This argument could be

made for any single economic item made by any single bargaining unit in the County. Thus, the Arbitrator cannot ignore the other three established factors that are being utilized by most interest arbitrators in resolving impasse items simply because the County can afford to pay for the Union's shift differential proposal.

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

The factor of internal consistency among County bargaining units strongly supports the Employer's position of no shift differential for Jail Sergeants. The County currently has six bargaining units in addition to the Jail Sergeants: Jailers (represented by Teamsters Local No. 320), Deputies (LELS), Courthouse and Library (Teamsters Local No. 320), Family

Services (Teamsters Local No. 320), Public Health (AFSCME), and Highway (AFSCME).

In 2015, the County negotiated the implementation of a job evaluation market study with its various bargaining units. The study resulted in a new salary range structure, which was increased 1% for 2015, 2.25% for 2016 and 2.5% for 2017. Five of the County's seven bargaining units have settled for the negotiated salary pattern. None of the County's settled bargaining units, including the Deputies, who also work night shifts, received a shift differential. In addition, Jailers, who also work night shifts, but have not yet settled their contract for 2015-2017, did not receive a shift differential under their expired 2012-2014 contract. Consequently, granting the Jail Sergeants the additional pay increase in the form of shift differential would propel their wages above the new salary range and disrupt the equitable compensation relationships with other bargaining units. This would be unfair especially to those County bargaining units who have already settled for 2015-2017.

The Union has failed to offer any quid pro quo in exchange for altering or modifying the County's established internal salary settlement pattern. In the absence of such a quid pro quo, arbitrators generally maintain the status quo, unless the party advocating the change can establish a compelling need or

reason. The Union clearly bears the burden of justifying a deviation from the established wage settlement pattern by the addition of shift differential.

The Union alleges that they have established several reasons or needs to justify their shift differential position in this case.

The fact that interest arbitrators now place equal or greater weight on internal consistency in resolving economic and non-economic issues rather than solely on external market factors does not mitigate or eliminate the need for reviewing the external marketplace. The Union placed great reliance upon the external marketplace to sustain their shift differential position.

The Parties agreed that Nobles County best compares with the other counties contained in Minnesota Economic Development Region 8 ("Region 8"). These counties in Region 8 include: Cottonwood, Jackson, Lincoln, Lyon, Murray, Nobles, Pipestone, Redwood, and Rock. Of the nine counties located in Region 8, four counties provide shift differential payment for employees. The county and employee type that receives shift differential is as follows:

- **Lincoln County and County Sheriff's Department**
 - Jailer/Dispatcher: \$1.00 additional for hours worked between 11:00 p.m. and 7:00 a.m.

- **Cottonwood County and Jailer/Dispatcher**
 - \$0.30 per hour for hours worked between 11:00 p.m. and 7:00 a.m.
- **Murray County and Jailer/Dispatcher**
 - \$0.10 per hour for part-time employees between hours of 4:00 p.m. and 8:00 a.m.
 - \$0.15 per hour for full-time employees between hours of 4:00 p.m. and 11:59 p.m.
 - \$0.25 per hour for full-time employees between hours of 12:00 a.m. and 8:00 a.m.
- **Rock County and Dispatcher Unit**
 - \$3.75 an hour for employees who work on a shift beginning earlier than 6:00 a.m. or ending later than 6:00 p.m. for the entire shift, provided that at least 4 hours of shift are worked between the hours of 6:00 p.m. and 6:00 a.m.
 - All hours worked on the weekends qualify for shift differential

In addition, the dispatchers for the City of Worthington receive a shift differential of \$0.26 per hour for hours worked between 11:00 p.m. and 6:00 a.m. The dispatchers work along with the Jail Sergeants at the County Jail.

Half of the counties in Region 8 provide a shift differential and half do not. Similarly, three of the five contiguous counties (Cottonwood, Jackson, Murray, Pipestone, and Rock) have shift differential. While it is true that one-half of the comparable counties and sixty percent (60%) of the contiguous counties have shift differential, the amount of the differential and the hours to which it applies vary greatly among these counties.

Rock County is the only comparable that pays more for shift differential (\$3.75 per hour) than being sought by the Union in this case (\$1.50 per hour). The other comparable counties are paying between \$1.00 per hour to \$.15 per hour for shift differential. This is a far cry from the \$1.50 per hour being requested by the Union, albeit the Jail Sergeants supervise a much larger correctional facility than any of the other comparable counties in Region 8. In addition, the Union's demand for shift differential payment is for 14 hours (5:00 p.m. to 7:00 a.m.), albeit 4 hours is not scheduled for Jail Sergeants (3:00 a.m. to 7:00 a.m.). Two of the counties only provide for shift differential payments between 11:00 p.m. and 7:00 a.m. (Lincoln and Cottonwood Counties).

Clearly, the external comparability for providing shift differential is not overwhelming to justify deviation from the internal settlement pattern of providing no shift differential payments to any County bargaining unit.

The fourth factor to be considered is other economic or non-economic factors. This factor usually involves the impact on the changes in the cost-of-living. The U.S. Department of Labor's Consumer Price Index ("CPI") is typically used as a measure of CPI increases or decreases. Neither Party presented any evidence as to the CPI measure, which is an indication that this factor has no bearing on the outcome of this case.

The Parties, however, raised other arguments pertaining to this factor. The Union argued that the Jail Sergeants should receive a shift differential because the Deputies bid night shifts based on seniority, but the Jail Sergeants cannot bid on shifts and are assigned to work 5 days on, 1 day off, 1 day on, 4 days off, and are on a rotation of 8 weeks working days and 8 weeks working nights. The County argues that their pay equity compensation consultant, George Gmach, advised the County that a shift differential was not necessary because of Jail Sergeants working rotating shifts and the job evaluation considered working conditions, including working nights in his wage study and recommendations to the County Board of Commissioners.

These arguments are circular and result in a distinction without a difference. On one hand, the Union failed to provide any evidence as to why the work of a Deputy on night shift was any less onerous or demanding than that of a Jail Sergeant. On the other hand, the Employer failed to provide any evidence that a Jail Sergeant working at night was performing work less onerous or demanding than that of a Deputy. Simply, it makes no difference whether a Jail Sergeant or Deputy is assigned to work nights or bids on working at night. The end result is that there are fatigue and stress factors associated with working at night for both a Jail Sergeant and Deputy, but they are treated equally in terms of not receiving shift differential for work

that involves the majority of the bookings in the jail, which are between 5:00 p.m. and 7:00 a.m.

Finally, there is no need to award shift differential as an incentive to attract or maintain Jail Sergeants. The County has experienced no wage related turnover in this bargaining unit. In fact, three of the four Jail Sergeants have seniority in excess of ten years and the fourth has over five years seniority.

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

Richard John Miller

Dated January 4, 2016, at Maple Grove, Minnesota.