

2017 Arbitration Awards - Minnesota B.M.S.

April 13, 2020

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

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

December, 2017

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
17PA0928	ISD 88, New Ulm New Ulm Education Association	Latimer, George	Staff Meeting Pay	Teachers asked to attend meeting to plan kindergarten registration. Meeting 3:00 to 4:00, basic school day ends 3:30pm.	Denied	No clear practice, but contract allows for reasonable participation in school activities including staff meetings.
17PA0999	ISD 435, Waubun-Ogema-White Earth Waubun Education Association	Biggar, David	Lane Advancement	Can graduate credits earned prior to a Master's be used to advance to MA +15.	Sustained	No clear practice barring use. Argument credits weren't germane rejected-reason it wasn't brought up until arbitration.
17PA0728	SSD 1, Minneapolis Minneapolis Federation of Teachers	Beens, Richard	7 day suspension	Behavior Dean failed to follow sign in/out policy;combined lunch w breaks; refused to handle student behavioral issues.	Denied	Displayed lack of sound judgement, defiance & inability to get along with co-workers.
17PN0325	Wright County (Interest) Teamsters Local 320	Jacobs, Jeffrey	Interest	Sheriff's supervisors. Wages-'17,18,19-2.5%,2.5%,2.5% (parties agreed). 10% Mrkt Adjust-no-e; Retro pay-u Uniform-'17,18,19-\$800-u (e-\$700), Off duty MOU-\$ amt.=1.5% sgt rate-u.	2017 - 2.5% 2018 - 2.5% 2019 - 2.5%	Wages-internal pattern-agreement at arb. "Few if any, interest arbitration's in recent years have awarded market adjustments. Uniform-same as deputies. Off duty listec as \$ amt. not increased since 2014.

November, 2017

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
17PA0789	Brooklyn Center, City of Law Enforcement Labor Services, Inc.	Daly, Joseph	2 day suspension	Violation of chase policy and language used to control suspect.	Denied	Language use was appropriate for the situation. Although in compliance with parts of chase policy, excessive speed warranted 2 days.
17PA0653	Rice County Minnesota Public Employees Assoc.	Jacobs, Jeffrey	Overtime Past Practice	Voluntary take home car policy required deputies to start 15 minutes early. Union asking for OT going back 2 yrs. per statute.	Denied	23 yr. practice-BA did not know practice but steward did. Issues of FLSA, Unfair Labor Practice, Statute re backpay limits are outside Arbitrators authority. Good discussion of past practice.
17PA0127	State of Minnesota, MSAB State Residential Schools Ed Assoc.	McCoy, Arthur Ray	Creating New Pay Schedule	Music Therapist at MN Academy for the Blind moved from MAPE to Teacher contract due to legislation defining position as a teacher. W/o required license she would receive \$10,000 below current pay so ER added MAPE pay schedule into contract.	Sustained	ER erred by unilaterally placing MAPE schedule into teacher contract and for not recognizing position as a teaching position as a result of legislation. EE had academic qualifications & ER could have applied for provisional license.

16PA1015	University of Minnesota Teamsters, Local 320	Finkelstein, Phillip	10 days to return to old position? - Past Practice	Past practice for Building & Grounds workers who have 10 days to return to old position. Does practice carry over to Senior B&G positions - no.	Denied	No contract language & never applied to Senior Building & Senior Grounds positions - therefore no past practice.
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October, 2017

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
16PA0912	Hennepin County Hennepin County Sheriff's Deputies	Jacobs, Jeffrey	Termination	Deputy charged w stalking-acquitted; felony drug possession-Alford plea; storing gun in unsecured location with children in house.	Denied	7 yrs., no discipline. Violations so serious normal progressive discipln inappropriate, & loss of trust warrants removal. Media attention considered an important factor.
17PA0466 17PA0470	Maplewood, City of Law Enforcement Labor Services, Inc.	Crump, Harry	Body-Worn Camera	U challenged policy prohibiting officers from reviewing camera video prior to providing a voluntary statement & random supervisor review of video.	Denied	U injunction denied in District Court citing inherent managerial authority. Arbitrator ruled not substantively arbitrable

September, 2017

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
17PA0050	Isanti County Law Enforcement Labor Services, Inc.	Neigh, Charlotte	Demotion	Made hostile & harassing calls to officer in another Dept. Failed to monitor a chase.	Denied	Failed to follow policy & procedure after repeated coaching & discipline.
17PA0469			Termination	Falsified a report relating to his patrol	Denied	Violated policy re required Rural Patrol falsified log and lied about it.
17PA0818	Litchfield, City of Teamsters Local 320	Tidwell, Carol	Termination	Sgt. arrested for DWI. Lied to arresting officer about drinking. Lost license for 1 year. Prior alcohol problems.	Denied	Installing an ignition lock on squad would be expensive, potentially unsafe, & not operationally feasible.
16PA1073	Ramsey County Teamsters, Local 320	Befort, Stephen	Termination	Probation officer at Boy's Totem Town failed to report contact with a released offender & touched a female inmate.	Denied	25 yr ee with good record, but egregious act can overcome good work record & a general desire for progressive discipline.

August, 2017

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
17PN0560	Hennepin County (Interest) Law Enforcement Labor Services, Inc.	Miller, Richard J.	Interest	Ammended award 4/2/18 - Lic. Suprv. Market. Adjustment '18-5%-u (e-0%). ER failed to provide requested data.	2018 - 5%	ER agreed to reopen arbitration w new data showing Deputy Chief & Majors received 7.5% mrkt adj. despite n turnover
17PN0560	Hennepin County (Interest) Law Enforcement Labor Services, Inc.	Miller, Richard J.	Interest	Lic. Supervisors. Initial award 8/25/17. Market adjustment '16, '17, '18 - 0%-e. Wages '16-1.5%, top 2.5%; '17-1.5%, top 2.5%; '18-2.5%-agreed based on pattern.	2016 - no 2017 - no 2018 - no	Wage pattern agreement. U seeking market adjustment of 5% over 3 yrs- No. No adjustments unless attraction/retentio issues.
17PN0203	Hennepin Co. Medical Center (Interest) Hennepin County Paramedics & EMT's	Befort, Stephen	Interest	Wage reopener. 2017-2% first 5 steps, 1.75% for remaining steps-e (u-3% 1st 5 steps, 2.5% remaining steps).	2017-1.75%	Clear internal pattern & Hospital's finances are in a distressed state.

17PA0866	Metropolitan Council, Metro Transit Amalgamated Transit Union Local 1005	Remington, John	Record of Counseling	Bus driver relieving another driver on an in service bus, thought the driver said something upon leaving bus. He followed him demanding to know what was said.	Split	Leaving the running bus did not constitute abandonment - he could still see bus. Confronting driver improper but record expunged due to no discipline for other e
17PA0597	Metropolitan Council, Metro Transit Amalgamated Transit Union Local 1005	Tidwell, Carol	Written Warning	Bus driver received written warning for a 2nd accident within 3 years.	Denied	Responsible accident standard - could diver have prevented accident? Yes.

July, 2017

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
17PA0215	Hennepin County AFSCME Council 5	Kapsch, Frank	3 day suspension	EE refused to give his chair to suprv. at roll call meeting. Suprv tipped over chair and took it. EE claimed he was placed in head lock & leg was lifted. Witnesses did not see the physical assault.	1 day susp.	ER failed to establish willful lying about incident, but ee was insubordinate and failed to cooperate with co-workers.
17PA0276	Hennepin Healthcare System, Inc. AFSCME Council 5	Paull, David	Termination	Hospital protection officer punched a restrained patient after he was slugged, threatened, and spat upon.	Denied	Regardless of provocation, gratuitous violence can't be tolerated. Grievant's denial of striking patient makes it less likely he could correct his error.
17PA0342	Minnesota Department of Corrections AFSCME Council 5	McCoy, Arthur Ray	Termination	Corrections officer assaulted woman at a bar. Not truthful during investigation.	Denied	Found not guilty at trial. But "just cause" has a different standard. Discussion of "Clear & Convincing" standard.
16PA0065	West St. Paul, City of Law Enforcement Labor Services, Inc.	Crump, Harry	Overtime	Officer on vacation volunteered to work off-duty at Wal Mart (who contracts officers through the city) - seeking OT.	Denied	City policy prohibits using sick or vac. to create OT situation. Voluntary work at Wal Mart does not require FLSA OT.

June, 2017

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
17PA0643	Cass County AFSCME Council 65	Daly, Joseph	Termination	Child protection worker's 2day absence due to DWI arrest. Prior verbal & written.	10 day susp.	Progressive suspension step ignored due to ees cavalier attitude - not proven. Ees embarrassment more likely cause.
17PA0510	Elk River, City of Operating Engineers, Local 49	Bognanno, Mario	Rental Uniforms	1st contract. Uniform amount from prior policy & a new shoe allowance negotiated. U didn't neg. rental option from old policy.	Denied	U-benefit is a past practice, since not specifically barred it continues. ER - zipper clause eliminates past practice.
17PA0147	Metropolitan Council, Metro Transit Amalgamated Transit Union Local 1005	Roberts, Andrew	Arbitrability Medical Absence	Can ees be held to DOT requirements if States can opt out? -Yes. Was ER required to accommodate disability beyond 185 days of light duty? - No. Then laid off until 1yr DOT requirement met.	Denied Denied	Reasonable safety requirements are a management right - not arbitrable. ER provided light duty job, then offered another job but U would not allow seniority to accrue. ER agreed to accept exception to DOT if approved by Mayo DR.- ee-no.

17PA0367	Minnesota Judicial Branch - Anoka AFSCME Council 65	Laumeyer, James	1 day suspension	Sr. Court Clerk rude & unprofessional with court staff & clients. 1 day susp. & removed from court assignment.	Denied	17 complaints from 11 individuals. Union challenged hearsay nature of complaints. Discussion on how hearsay analyzed.
17PG0261	St. Paul, City of Electrical Workers, Local 110	Jacobs, Jeffrey	Arbitrability	Assignment made to accommodate ee with medical restrictions under ADA -no contract issue. U cited bumping rights.	Sustained	ADA does not trump contract.
			Seniority	U relied on bumping language put into contract in 1976 when new Sunday shift implemented. ER-for Sunday shift only.	Sustained	App B "For all normal work weeks..., which includes Sunday..." does not eliminate coverage to shifts w/o Sun wrk.
17PA0475	Sauk Rapids, City of Law Enforcement Labor Services, Inc.	Tidwell, Carol	Termination	2 complaints of unnecessary tasing & 6 times he left city in squad car to go home.	2 day susp.	Troubling that 1st tasing & leaving the city incidents only investigated to support termination. 2nd tasing violated policy.

May, 2017

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
16PN0798	Crow Wing County (Interest Award) Law Enforcement Labor Services, Inc.	Paull, David	Interest	Corrections. 3y-u (e-1y); Wages; *steps 0 0%, 0%-e (u-2.75% each yr.), if already at top 3.24% (based on average differential between steps)-u (e-0%). Add 2 steps to schedule so those moving to top in future could catch those who moved to top in a prior year-n-e	2016 - 0%* 2017 - 0%* 2018 - 0%*	Duration-labor stability & 1st yr. passed. Wages: County has a performance pay system, a few groups still have steps & they received 0% on steps & 2% to 2.5% for those at top. Wages patterned after Miller's Feb 2015 award. New steps-n. Award only intended as a "patch".
None listed	Minneapolis, City of Police Officers Federation of Minneapolis	Before, Stephen	Demotion	Lt. demoted to Sgt. for untruthfulness, use of derogatory language & inability to work with interjurisdictional partners.	Denied	Insufficient evidence re derogatory language. A discussion on the weight given hearsay evidence in Arbitration.
16PA0739	Moorhead, City of Law Enforcement Labor Services, Inc.	Gordon, Paul	Tuition Reimbursement	Officer denied tuition reimbursement due to lack of funds. Program not funded for almost 10 yrs. Denial was arbitrary & capricious.	Denied	Issue previously arbitrated (Jacobs 2011) Language gives City right to approve or fund tuition reimbursement. Recession & hiring 24 officers valid reason to deny.

April, 2017

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
16PN0614	Anoka County (Interest) AFSCME Council 5	Miller, Richard J.	Interest	Probation Officers-1st contract. 2 yrs (e-1yr, u-3yrs). Wages-parties agreed on merit incrs. Stewards paid to negotiate-n-e; OT over 40hrs vs 171hrs-u; OT accrual-n-e; 5% shift leader pay-y-u. Xmas eve hol-e; Transfers & shift assignments-u. PT benefits-e. Seniority-no award; Tort language-n-e; Placing policies in contract-n-e; Paid breaks-no-e; ESS differential of 5%-y-u; Payroll deduction for U PAC-n-e	2016 - 2% 2017 - 3%	Duration-1st yr. expired, no data for 3rd Pay to negotiate-not common, requires quid pro quo. OT over 40hrs has been the practice. OT accrual stopped by ER prior to organizing. Xmas eve, U trying to add benefits for PT. Transfer & Shift language to other contracts. PT benefits-no incrs. Seniority-important issue should be neg. Tort and Policies already covered in other places.

17PA0155	Metropolitan Council Transit Managers and Supervisors Ass.	Malamud, Sherwood	Demotion	Suprv., off-duty, posted Facebook video that was racially charged. Seen by ees who complained to management.	Denied	Ability to perform supervisory duties was fatally compromised. Nexus to work-40 to 50 calls complaining about video.
17PA0032	Minnesota Judicial Branch AFSCME Council 5	Latimer, George	Termination	8 Senior Court Clerks terminated & 2 suspended, for using Court's electronic communication tools inappropriately for personnel conversations re court proceedings.	Denied	Certain types of ee misconduct are so offensive & harmful to the employer, that extensive warnings not required to justify termination of employment.
FMCS	Polar Tank Trailer, LLC International Assoc. Machinists & Aerospace Workers	Hoffmeyer, Steven	Spousal Insurance	Provision added to contract after U vote requiring spouse working for another ER carry single insur. to quality for family here.	Denied	Clearly communicated to U that insurance was still being neg. Contract provides for same insurance as non U & management
17PA0412	St. Paul, City of St. Paul Police Federation	Miller, Richard J.	Termination	Suspect in man w gun call, failed to comply w orders. K-9 bit suspect & while on ground grievant kicked him 3 times in chest.	30 day susp.	No policy barring kicks; K-9 officer's excessive use of force received 30days; Civilian review panel recommended 30d.

March, 2017

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
16PA0986	Dakota County Law Enforcement Labor Services, Inc.	Laumeyer, James	Special Duty Pay upon Promotion	Policy calls for 10% increase over base pay when promoted. Union seeking 10% above differential received while in a temporary assignment-citing past practice even though new language negotiated.	Sustained	Past practice controls because there wasn't discussion of intended meaning. Practices are not changed solely with appearance of new contract provisions.
17PA0139	ISD 727, Big Lake School Service Employees Local 284	Ver Ploeg, Christine	Subcontracting	District refused to negotiate decision to subcontract food service (mgmt. right). Effect neg. to impasse - then implemented.	Denied	Decision to subcontract is different than bargaining the Effects. Analysis of New Ulm Supreme Crt case.
17PA0140	Lac qui Parle County AFSCME Council 65	Miller, Richard J.	Arbitrability Filling Position	HEO applied for HEO position in a diff. location. ER challenged arbitrability claiming management right to assign. Junior ee selected. U claimed sr. denied because ER didn't want him to transfer. ER junior ee had better work attitude.	Arbitrable Denied	Discussion on factors determining arbitrability. Contract language on filling positions makes this arbitrable. Modified seniority clause. Selection not arbitrary, capricious or made in bad faith. Harsh consequences of reversing hire.
17PA0146	Metropolitan Council, Metro Transit Amalgamated Transit Union Local 1005	Miller, Richard J.	Record of Warning	Fellow bus driver swore & made threats grievant responded in kind.	Split	Instigator received 3y final warning which added to prior final wrng netted 5-1/2mo incr. Thus this 3y wrng reduced to 5-1/2m
16PA0581	Metropolitan Council, Transit Police Teamsters Local 320	Powers, Nancy	Termination	Officer engaged in St. Paul chase w/o notifying dispatch, failed to put it in the log. 2 other code of conduct violations. Brady impaired due to IA testimony.	Denied	Brady impaired? Just cause must be determined independently. New officer who demonstrated he is unable to follow policies & takes steps to conceal acts.
17PA0119	Springfield, City of AFSCME Council 5	Powers, Nancy	Parental Leave	Employee using sick/vacation for FMLA seeking additional Holiday pay on holiday.	Sustained	Contract provides, ees will receive extra days pay for each holiday.

16PA0435	ISD 284, Wayzata School Service Employees Local 284	Gordon, Paul	Senior Qualified	Jr. ee selected for truck driving position over Sr. ee. Contract requires seniority if candidates are "equally qualified".	Denied	Relative ability vs sufficient ability. Jr. ee was more qualified so seniority was not in play.
			Timeliness Acquiescence	Violated Contract's timelines U failed to follow through on previous G, tried to change language in negotiations	Timely Denied	Delay due to ER failure to provide info. Grievance are dropped for many reasons Failure to change language doesn't bar U right to challenge interpretation.
17PA0115	Western Lake Superior Sanitary District AFSCME Council 5	Neigh, Charlotte	Termination-Last Chance Agreement	An arbitrator found LCA unenforceable. District Court reversed ordering rehearing with a new arbitrator. Ee was tardy in Violation of LCA & terminated.	Denied	Arbitrator limited to reviewing if employee violated terms of LCA.
	Western Lake Superior Sanitary District	District Court	Vacate Decision	Arbitrator Lundberg did not determine if e violated LCA, but ruled LCA unenforceable.		Arbitrator exceeded scope of his authority Award vacated.

February, 2017

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
16PA1014	Eagan, City of Law Enforcement Labor Services, Inc.	Lundberg, James	Vacation use	Officer denied vac on July 4 due to Dept. policy where all hands needed to police city festivities.	Sustained	Arbitrator did not agree all hands were necessary. Dept. must evaluate each request & justify city's need per contract.
			Comp use	Comp time denied on July 4. FLSA requires allowing use within reasonable time.	Not arbitrable	Contract is subject to laws of U.S. but does not incorporate laws into contract.
16PA1093	Freeborn County Minnesota Public Employee Assoc.	Roberts, Andrew	2 day suspension	Deputy failed to search prisoner who cut up back seat of squad. He blamed others.	Denied	He was deputy in charge. Didn't search even after he knew suspect had property.
			1 day suspension	Disrespectful when confronting female deputy for failing to search.	Wrtn Warning	His supervisor authorized talking to the probationary ee regarding searches.
17PA0142	Hibbing Public Utility Commission AFSCME Council 65	Frankman, Janice	Drug Testing	Random testing challenged due to law limiting random tests to safety-sensitive positions. Grievant & secretaries aren't safety-sensitive. Contract's requirement "all" are subject to random is fatal flaw.	Denied	Grievant is safety-sensitive. Discussion of requirement to make a case "class-action" which was not met. Discussion of LELS v Sherburne Co. MN Court of Appeals 2005.
17PA0049	Mendota Heights, City of Minnesota Public Employees Association	Miller, Richard J.	Termination	Probationary Sgt. Improperly advised officers to conduct a search w/o a warrant.	Denied	City has sole discretion to terminate ee during the 1 year probationary period.
16PA0386	Minnesota Department of Commerce Minnesota Law Enforcement Association	Before, Stephen	Implementing a new pay schedule	Fraud Specialist moved from range 20H to 21H due to pay equity study. Ees placed nearest to current pay. U seeking placement based on years of service.	Denied	No contract language specific to this situation. Practice w other groups does not establish practice here. Management rights prevails.
16PN1094	St. Louis Park, City of (Interest Award) Law Enforcement Labor Services, Inc.	Miller, Richard J.	Interest	Officers. Agree on wages. U seeking new 2016 - 2.5% top step 4.56% above current top - n-e. 2017 - 2.75% Supplmnt pay:'16-2.5%, '17-2.75%-u (e-0%, U seeking % of pay vs increase to fixed \$)		New top step intended to match Sgts. Dec 2016 arb award - Sgts underpaid per pay equity & in market. Officers paid in both.

17PA0042	Wright County Wright County Deputy's Association	Crump, Harry	1 day suspension	Deputy misjudged distance and backed into a parked semi causing \$1500 damage..	Denied	Progressive discipline - relied on incident: 7 years old.
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January, 2017

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
17PA0025	ISD 2687 Howard Lk-Waverly-Winsted School Service Employees Local 284	Latimer, George	Subcontracting Timeliness	ER subcontracted bus service. U claims anti U animus because it will eliminate U. U filed regarding plan to sub-contract. Either not ripe or should have been filed when board first gave notice.	Denied Denied	No prohibition in contract. Valid business reason provided. All drivers rehired. Triggering event not always clear. At this point clearly ripe. Both cited Supreme Court Case New Ulm v SEIU 284 (1993).
16PA0712	Sartell, City of Law Enforcement Labor Services, Inc.	Gallagher, Sharon	Holidays	The city required its investigator & SRO to take the Holiday off on the Holiday, so they could not work & receive Hol premium.	Denied	Management right to schedule, trumps language that Holiday bank can be used same as Vac.bank. Bank are different.
16PN0525	Metropolitan Council (Interest Award) Metropolitan Council Management Ass.	Toenges, Rolland	Interest	Supervisory & Managerial. Add 2 steps- no-e; Wages: '16-2% on steps-e (u-3%), 2%performance(PGIN)-u (u-3%,e-1.5%), 1.5%pool (PZ)-both; '17-2%steps-u (u-3%, e-1.25%), 2%perfrmce-u (u-3%,e-1%) 1.5%pool (PZ)-u (e-1%), Increase Annual Leave-n-e; Retiree passes-n-e; Insurance -e; Retiree insurance-same as active-both.	2016 - 2% 2017 - 2%	Compensation schedule only 3 years old. Any change should be negotiated. Wages-pattern; Leave-existing 32 days. is generous. Retiree passes-not ees therefore no authority to decide. Insurance based on pattern.