

2023 Arbitration Awards - Minnesota B.M.S.

31-Dec-23

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, 2023

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
23PA2625	ISD 625 St Paul Public Schools	Befort, Stephen F.	Demotion	Long-time EE demoted out of Student Wellness Clerk position following a series of poor performance evaluations and failure to correct via performance improvement plan. Union argued the new supervisor was seeking to remove her from the department.	Denied	ER had just cause to demote grievant for performance issues
23PA2624	MMB MGEC	Kundrat, Frank J.	Professional Dues	Grievance filed over failure to reimburse for MN Assoc. of Professional Development dues after concerns raised it appeared to be a part of the MN Government Engineering Council. MGEC negotiates terms and benefits of employment with MMB, so ER payment would appear to violate code of ethical conduct and questioned legitimate public purpose.	Sustained in part	MAPD is a distinct and separate entity from MGEC, and qualifies as professional organization. Dues paid by ER for MAPD membership are properly reimbursable except for that portion of dues allocated to direct reimbursement of professional licensure fees. EEs denied reimbursement made whole for portion NOT put towards professional license fees during 21-23 CBA.
24PA0127	Stearns County 65	AFSCME Kelly, Patrick J.	Seniority Date/Arbitrability	Grievant's salary review date was adjusted per the CBA due to an extended unpaid leave of absence. Grievance filed 5 years after the adjustment made. Union not informed of the change at the time to be able to file on Ees behalf. ER feels followed CBA, but issue is not arbitrable and should be denied due to missed timelines.	Denied	Not arbitrable, grievance timelines outlined in CBA not followed.
FMCS 230725- 07895	Guthrie Theatre Twin Cities Musicians Local 30, AFM	Befort, Stephen F.	Bargaining Unit Work	Grievance filed after third-party non-union composer used non-union musicians, and did not fill out an incidental music agreement for a dramatic production. ER cites multiple other examples where this has occurred in the past. Union attempted to negotiate clarification into the CBA but were unsuccessful.	Denied	Past practice of ER both directly hiring musicians, or having a third-party composer hire musician. ER has not used composer hiring as a means to avoid its contract obligations, therefore no compelling reason to disturb status quo.
FMCS 230721- 07818	Tschiggfrie Properties, LTD Teamsters 120	Daly, Joseph L.	Discharge following FMLA	Lead heavy-duty truck mechanic injured (not on the job). Light duty work was found, but need was exhausted and hours cut so went on short term disability. Took a voluntary layoff with hopes of coming back. Company assisted in filling out paperwork for 12 week unpaid leave under FMLA. He was still unable to return to the heavy-duty truck mechanic work, so was terminated. He was eligible and continued to receive long-term disability but wants to return to the light-duty work.	Denied	Termination upheld as allowed based on the Family Medical Leave Act law.

262633	Gregory Contracting, Inc. Doval Construction, LLC	Toenges, Rolland C.	Performance Liability	Gregory (contractor) entered into agreement with Doval (sub-contractor) to install siding on a residence in North Branch. The siding was not installed in accordance with manufacturer's specifications, resulting in loss of warranty and appearance quality. To satisfy property owner and provide product warranties, the siding will need to be removed and replaced with new siding installed with manufacturer's specifications.	Sustained. Doval is liable for the replacement of siding improperly installed.	Gregory Contracting is awarded the cost of replacement material plus labor costs and expenses for the siding replacement and awarded attorney' fees in the amount of \$6600.
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November, 2023

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
23PA2371	Hennepin County AFSCME Local 2398	Altman, Robert	Exceptional Pay	Top performing county attorney did not receive expected exceptional pay following completion of his annual performance review. Though increase supported by supervisors, HR did not receive appropriate paperwork/documentation to process. As this was being worked through, new County Attorney suspended the exceptional pay program due to budget questions and no established criteria.	Denied	Employer did not violate the contract by not implementing an Exceptional Pay increase for grievant.
23PA2572	Wadena County Teamsters Local 320	Remington, John	Sick Leave Use	Class action grievance filed. Negotiated changes to the 22-24 contract at issue. Union states intent was to separate sick leave and create a separate bank of leave time for funerals. Ers position was it did not intend to create a new type of paid time off.	Sustained	Clear and concise language in the contract must prevail. ER violated contract when it required Ees to use accrued sick leave to attend funerals of immediate family members. Entitled to maximum of 5 days per incident, those who had to use sic kafter 1/14/23 shall have sick leave reimbursed.

October, 2023

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
FMCS 230535 06451	Marsden Building Maintenance LLC Service Employees Intl Union, Local 26	Daly, Joseph L.	Termination	Short term EE issued several disciplinary actions, and placed on Performance Improvement Plan over course a few months. ER continued to receive complaints about her work, her creation of safety hazards, and hostility and insubordination when dealing with direct supervisor.	Denied	Termination was for just cause. Immediate termination based on poor past performance and insubordination upheld. No mitigating circumstances for lesser discipline.
23PA2684	City of Rochester 65	AFSCME Failor, Gregory L.	Suspension	Asst clerk issued 5 day suspension without pay for on-going performance issues. Progressive discipline followed with continued concerns. Union argued minor infractions used as basis for discipline, and inconsistent work direction received from supervisor.	Sustained in Part	Suspension reduced from 5 days to 3 days without pay. ER did not address some of the performance issues at the time they occurred to allow for EE to address them.

23PA1778	Anoka County Enforcement Labor Services, Inc.	Law	Bauman, Susan J.M.	Demotion	Grievant (lowest seniority Commander) laid off and offered opportunity to demote into vacant Ltn position, rather than be without a job, after new Sheriff elected, and former Chief Deputy reverted to his former Commander position.	Denied	ER did not violate the collective bargaining agreement when it laid off the grievant and afforded him the ability to demote in lieu of being laid off. County Personnel rules cover what happens when appointees revert back to previous status or position.
23PA2464	Ramsey County 49	IUOE	Jacobs, Jeffrey W.	Longevity Steps	Grievance filed for failure to provide longevity steps first full pay period following 1/1/23. Union asserted part of negotiated settlement. County asserted it has always granted longevity steps on anniversary date, and there was no intent to change that.	Denied	Compression of longevity steps was applied generally county-wide, with evidence that longevity steps was done on an individual's anniversary date. Plain meaning of contract language was applied.
23PA1313	Chisago County		Abelsen, James	Vacation Request	Grievance filed after past practice of balancing	Denied	Miscommunication about Available for Snow vs
23PA0720	University of Minnesota		Kapsch, Frank E.	Premium Pay	Grievance filed claiming delivery driver	Denied	Materials that grievant handles and transports in
24PA0066	ISD 286 Booklyn Center SEIU 284		Altman, Robert	Termination	Short-term EE terminated after investigation concluded conduct was highly disruptive, interfered with student's ability to feel safe and accepted, and alienated co-workers. Union argued grievant terminated for minor performance and communication issues that could and should have been dealt with through coaching.No effort to address concerns made until the termination.	Sustained	Grievant returned to former position, not necessarily former assignment. No backpay awarded. ER did not meet burden of proof to show termination was for Just Cause, that well documented progressive discipline was followed or that egregious conduct or insubordination occurred.
261832	City of Minneapolis AFSCME CO 5, Local 9		Befort, Stephen F.	Health Insurance for P/T	Grievance filed for ER's failure to provide health insurance for part-time EE. Later determined EE had been hired into an "intermittant" position. CBA has no provision for medical coverage for part-time or intermittant EEs. Union argued past settlement agreement had effect of opening up insurance to part-timers. ER argued union missed timelines to file grievance and grievant lack standing to file.	Denied	Grievance not arbitrable on procedural grounds (failure to observe time limits for filing, and lack of standing by grievant to file). No further need to determine merits of the case.
23PN1372	Steele County MNPEA		Stromquist, Steven R.	Interest Arbitration	Single issue of Pay Scale and Steps considered. Union seeking to eliminate bottom 2 steps, add new step to top. Move those on 1&2 to 3, all other EEs placed on next higher step effective 1/1/23. ER position to eliminate bottom 3 steps. Move those on 1-3 to 4, Step 4 to 5, all those not effected receive step on anniversary as outlined in current CBA.	Employers position awarded.	ER successfully argued that proposal is strong when compared to external competition, and more importantly, to maintain internal consistency in its compensation structure. Uniform implementation of new wage schedule accepted by 91% of bargaining unit members in county.

23PN0934	Itasca County Teamsters 320	Lundberg, James A.	Interest Arbitration	Number of issues certified, including updated Individual Rights language, new Sick Leave language, addition of Discipline language, and general wage increases and market adjustments. ER seeking the internal GWA pattern each year and no market increase. Union seeking 3% GWA each year, and additional 3% market increase in 22 and 23.	GWA: 2022 2% 2023 2% 2024 2.65% Market Adjustment 1% each year.	Arbitrator awarded updated Rights language, maintained status quo with regard to Sick Leave and Discipline language. Awarded ER's general wage adjustments to maintain internal equity. Awarded an additional 1% market adjustment each year to account for the external wage comparisons and the pressure on law enforcement market.
23PN0934	Itasca County (Clarification)	Lundberg, James A.	Interest Arbitration			No new discipline language will be added to the collective bargaining agreement.
23PA2009	Chisago County Teamsters 320	Kundrat, Frank J.	Class Action Past Practices	Multiple grievances filed for ERs non-negotiated change to past practice(s) of reporting to County site for paid breaks and meal breaks, advance notice and lead time for early snow removal, and when pay started in case of early start - non-emergencies (when work starts vs when contacted to come in). ER disputed arbitrability citing different timelines in expired 2022 CBA vs new 23-25 agreement.	Sustained	Arbitrator did not feel bound to timelines of CBA not in effect, so proceeded with case. Past practices upheld, absent conversation or negotiation with the Union to alter.

September, 2023

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
FMCS 23105- 02900	Mayo Clinic St Marys SEIU Healthcare	Beens, Richard A.	Mandatory Overtime	Grievance filed on behalf of Mayo Inventory Clinic staff working during COVID pandemic who felt ER was violating the CBA terms by requiring EES to work unreasonable overtime amounts by routinely requiring them to work more than their 8 hour shifts (including an additional 8 hour double). ER states nature of pandemic emergency and turnover rates of 45-67% necessitated the extra hours of remaining EEs while in "survival mode".	Denied	Under circumstances of providing healthcare during pandemic and declared National Emergency, it is impossible to consider the hours worked unreasonable. In the interest patient care, neither ER or EEs had any realistic choice. It is outside the Arbitrator's authority to issue a "cease and desist" for similar OT in the future. Parties must agree to shared definitions of reasonable or unreasonable at bargaining table, not thru arbitration.
23PA1827	City of Elk River	Finklestein, Phillip	Written Reprimand	Written Reprimand issued following accident	Denied	Good employee made serious mistake and level
23PA1027	City of Moorhead Enforcement Labor Services, Inc.	Law Daly, Joseph L.	Holiday Pay	Grievance filed for failure to pay 2x for non-scheduled hours picked up and worked on a holiday. ER argued since EEs volunteered for open shifts prior to the shift, was "scheduled" and only eligible for 1.5X rate of pay on holiday.	Sustained	Arbitrator determined "not scheduled to work" did include picking up shifts. Further, it was determined that there was a past practice of paying officers willing to work on a holiday double time.
23PA1728	Hubbard County Law Enforcement Labor Services, Inc.	Bauman, Susan J M	Step Progression	Union filed grievance for failure to advance Ees on their anniversary date.	Sustained	Arbitrator determined modification to step progression negotiated as part of 2022 class and comp study. ER ordered to follow step progression contained in CBA.

August, 2023

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
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23PA1015	City of North St. Paul Teamsters 320	Jacobs, Jeffrey W.	3 Day Suspension	Grievant used city PO and vendor to order specialty bulbs for headlights. Later filed work order claiming to install on his work vehicle. Investigation showed bulbs not installed, nor do they fit, on his or any other city vehicle. Bulbs could not be located. ER issued 3 day suspension without pay alleging he took the bulbs.	Denied	While based on circumstantial evidence, the ERs conclusion is reasonable. The union's argument of supervisory conspiracy is not supported by the papertrail of parts orders, work orders, etc that tie back to the grievant. Level of discipline is appropriate as it was not a simple paperwork error. Theft typically is an egregious terminable offense.
FMCS 2310 24-00584	Mille Lacs Health System IAEP Local 107 SEIU Local 5000	Hoffmeyer, Steven G. NAGE	PTO - OT Calculation	After negotiations for a first contract concluded, Union filed grievance when discovered Paid Time Off hours used were not counted towards overtime pay calculation. Feel "Employees will be paid PTO as hours worked" in the PTO article should apply to overtime. ER contends the language is an reflection of its broader PTO policy that does not/has never counted those hours towards OT. Throughout negotiations issue was framed as a language proposal, not an economic change to current practice.	Denied	ER did not violate the collective bargaining agreement. Union did not clearly declare its intent for overtime effect on PTO time used, nor was there any ER acknowledgment of a change. Union's arguments based on unverified assumptions, not a meeting of the minds.
FMCS 230508- 05882	Wellman Dynamics Corporation IUOE Local 234	Toenges, Rolland C.	Discharge	X ray Technician terminated for 4th active disciplinary action, which is subject to discharge per the CBA in effect at time. Union argued change in language that was later ratified should be applied.	Denied	ER had just cause to terminate for number of active disciplines related to attendance, work process, quality and confidentiality. Discharge was in accordance with applicable CBA provisions, as contract extension agreement in place that included discipline article.
FMCS 230316- 04344	CenterPoint Energy IBEW 949	Befort, Stephen F.	Discharge	Technician terminated after failing to detect presence of a gas line at scene of house fire. ER cited neglect of duty for failing to follow policies and training with respect to fire and gas leaks. Union argued EE relied on information given by Fire Marshall and visual inspection conducted at chaotic scene, not having been provided address or other property details in advance. Even had grievant checked electronic database, it had not been updated to show gas service line to the house vs. propane.	Sustained in part	Discharge reduced to a two week suspension without pay. Grievant's error of judgement was contributed to by a number of unusual circumstances. Was an unintentional mistake versus intentional misconduct due to neglect of duty.
FMCS 220406- 05004	Fairview University of Minnesota AFSCME Council 5	Befort, Stephen F.	Discharge	NST terminated after audit showed she had accessed a fellow employees medical chart to section outlining medical appointments and reasons for the visit. ER pointed to clear policy and federal law breaches, as well as the irreparable damage done to the work relationship in that unit. Union argued level of discipline inappropriate and inconsistent with other similar violations.	Denied	Discharge upheld. Grievant violated ER policies and federal law by accessing co-worker's e-medical records without business need. Level of discipline consistent with other similar violations.

23PA1094	City of International Falls IAMAW W33	Beens, Richard A.	Scheduling of Shifts	Grievance filed after Union believed practice of having night shift slot assigned to part-time, non-union EMT changed in negotiations to allow for full-time union Paramedics to bump into them. ER contends it did not change existing practice or contract language, nor is it foregoing any managerial rights.	Denied	Contract language is clear and unambiguous, as is scheduling past practice. ER has managerial right to determine schedules, staffing and control for overtime. Union Paramedics cannot bump non-union pt EMTs out of shifts. There is no inherent right to overtime.
23PA1511 23PA1512 23PA1513 23PA1514 23PA1515	Chisago County Teamsters 320	Loconto, Michael T.	Unilateral Health Insurance Implementation	Grievance filed after ER went forward with implementation of 2023 health insurance plan changes, despite not having bargained to agreement over the changes. Union cites MN Statute violation, ER asserts that would be considered an Unfair Labor Practice that must be heard by PERB, not a contract violation to be determined by an arbitrator.	Denied	The Employer did not violate the contract when it implemented the 2023 health insurance plans covering members of the Union's five bargaining units. ER met its minimal disclosure obligations in the CBA. Arbitrator does not have the authority to issue an Award based on the claim that Minnesota Statute 471.6161 was violated.
23PA1932	Minneapolis Park and Recreation Board LiUNA 363	Jacobs, Jeffrey W.	Verbal Reprimand	Grievant issued verbal reprimand for refusing to comply with supervisors work directive not to climb trees while trimming that day, asserting he knew better than his foreman, and not doing the ground base tasks assigned. Union argued grievant had skills and knowledge to safely climb trees and that supervisor was disparate when issuing discipline. ER points out clear case of insubordination and progressive discipline was followed.	Denied	Grievant was insubordinate when actively ignoring clear, repeated work directive from supervisor. Level of discipline was appropriate.

July, 2023

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
23PA0914	City of Northfield Local 70	IUOE O'Toole, Carol Berg	Bargaining Unit Work Assignment	City created non-union Horticulturist position without notice to the union. Position consisted of majority of tasks previously performed by bargaining unit member. Union had no opportunity for unit clarification or challenge of position at negotiations.	Sustained	Employers actions resulted in loss of overtime and low morale for bargaining unit members. The Employer is ordered to cease and desist from assigning bargaining unit grounds keeping work to non-unit employees.
23PN0954	City of Barnesville Teamsters 120	Altman, Robert	Interest Arbitration		Implemented new base wage amounts, and general wage increases of 3.5% for 23 and 24.	Arbitrator guided by market adjustment and general wage increase recommendations of consultant hired to conduct salary survey. Maintained all current classifications, regardless of incumbants in position, and maintained incentive pay to be dealt with quid pro quo in future negotiations.
FMCS 2208 29-08795	Essentia Health HC	SEIU Hoffmeyer, Steven	"Me Too" Market Adjustment	ER increased salaries to non-bargaining unit Ees in common job titles and in same labor market without making adjustments to bargaining unit Ees.	Sustained	ER has violated the Market Differential article in the CBA. Union positions below the \$15 minimum wage rate should have received the same market adjustment via the same process used for non-bargaining staff.

June, 2023

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
FMCS 2209 29-09667	St. Paul Automobile Dealers Association IAMAW No 77	Befort, Stephen F.	Premium Pay	Different levels of allowable labor time standards in place for repair work paid for by individual customers and warranty work that is covered by the manufacturer. CBA allows for premium pay for performing warranty work that specifically excludes factory maintenance. Union claimed premium should be applied to Pre Delivery Inspections, though never discussed in negotiations for CBA. ER does not consider PDIs to be a repair, or eligible for premium.	Denied	Work performed during the Pre-Delivery inspection are not considered a "warranty repair" and are not paid at the artificially low labor time standard. The Warranty Period begins when the vehicle is first delivered and put in use, it is warranty work performed after this time that is eligible for the CBA premium.
23PA0632	Special School District 1, Minneapolis	Jacobs, Jeffrey W.	MOA Continuity /Past Practice	MOA limiting school administration to one meeting per week with teachers (in effort to increase student contact and thus student achievement/test scores) developed in 2015-2017 negotiations. Did not include sunset date or continue in effect language, and was not attached as part of any future contracts. Parties agreed to its renewal via mediation in 17-19. District put union on notice in 21-23 bargaining of its intent to discontinue, and no new language or MOA renewal was negotiated. Union grieved after post strike agreement in place arguing MOA is part of on-going contract and cannot be unilaterally ended.	Denied	District sent repudiation notice a) not continue MOA and b) ending any past practice(s) related to it. There was no negotiation of new language or extension to the MOU in latest round of negotiations. It was specifically not incorporated into post-strike CBA, and union signed anyway after request to do so was denied.
23PA0957	St Paul Public Schools ISD 625 Teamsters 320	Kundrat, Frank J.	FMLA - Sick Leave Bank Usage	EE facing major medical issue had exhausted all paid leave, been granted unpaid FMLA leave, qualified for, requested, and was granted donated hours from established sick leave bank. SLB donations occur after 5 days in unpaid status and are paid in \$\$\$. Union argues District should consider these as hours paid to extend paid status and eligibility for active status health insurance contribution rather than unpaid/inactive COBRA coverage.	Denied	Language in the CBA and Sick Leave Donation MOU very clear. Donations paid out in cash once all other paid leave exhausted and in unpaid status for 5 days. Insurance coverage for active employees ends the month they switch to unpaid status and they are given COBRA notice for continued coverage as inactive moving forward. District provided clear and consistent communication on this. No evidence that the District erred in its administration of FMLA health care coverage and sick leave bank usage. Issues raised with the actual language or application of sick leave bank donations are open for negotiation during future bargaining.

May, 2023

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
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FMCS 2303 31-04818	City of Orono 12	OPEIU	Jacobs, Jeffrey W.	Vacation Accrual	CBA grants those with 0 - 5 years employment 10 days vacation. ER and Union had agreement for salary placement deviation consideration for new hires. MOAs drafted showing agreed upon salary placements, but no mention of, or agreement to, alternate vacation accruals. Union grieved when discovered ER also granting new hires various levels of vacation accrual without notice or agreement from Union. ER asserted it maintained discretion to negotiate with new hire candidates not yet in the bargaining unit and that the contract set a floor, not an upper limit for accruals and City is free to negotiate upwards from those levels.	Sustained	CBA requires those with 0 - 5 years service to earn 10 days of vacation. No more, no less. Inherent inequity exists because of ERs unilateral action. Though likely fixed moving forward, those harmed should be made whole. Remedy ordered to grant aggrieved EEs 15 days vacation from the first time ER granted new hire 15 days or from their date of hire, whichever is later, until the aggrieved EEs also reach 5 years of employment with the city.
23PA1682	Rice County Minnesota Pulic Employees Association		Altman, Robert	Termination	17 year EE terminated for theft of time, falsification of records and neglect of duties when evidence showed multiple incidents over a 5 month period of paid hours spent in break room without evidence of significant productive work performed.	Sustained in part	Grievant reinstated to position without backpay. Longterm EE with no previous disciplinary record should have been given opportunity to correct behavior via progressive discipline prior to termination.
23PA0109	Rice County Law Enforcement Labor Services, Inc		Osthus, Marlin O.	Leave Accrual	Grievant denied full vacation and sick accruals when receiving workers compensation payment for time missed after contracting COVID (injury on duty). Employer claimed past practice of not crediting employees in unpaid leave status or when receiving workers compensation. Contract and policy are silent to workers comp piece.	Sustained	Employer violated the collective bargaining agreement, as there is no reference giving ER right to pro-rate vacation and/or sick accruals when EEs are on workers compensation. Employer order to make grievant whole and moving forward to pay full accruals for any and all pay periods when EEs are paid for 80 hours of work, whatever the source of pay.
23PA0567	City of Medina Law Enforcement Labor Services, Inc.		Paulson, Kristi	Sick Leave Severance Payout	Grievant denied sick leave payout after timing of his written notice versus previous verbal and text notifications and discussions with his supervisor occurred about his intent to leave for other employment.	Sustained	Grievant fulfilled requirement under CBA by providing required notice and leaving in good standing. Is entitled to payout of 1/3 of accumulated sick leave hours.
22PA0901	Hennepin County Hennepin County Deputies Association		Osthus, Marlin O.	Hiring/Assignment	Parties submitted positions, evidence and briefs to arbitrator seeking an order on whether or not the ER violated the contract, despite having resolved the issue that led to the initial grievance being filed.	Sustained	The Employer violated Article 7, Section 6 of the parties' collective bargaining agreement when it hired two individuals who were not employed in the unit as deputies and when it did not perform the review and selection process set forth in Paragraph C of Section 6 of Article 7.
FMCS 2109 22-10265	MORRISON (COMPASS GROUP) SEIU Healthcare MN/IA		Toenges, Rolland C.	Premium Pay	Contract interpretation of when double time paid for shifts beyond the 6th consecutive day questioned. Grievant did not believe receiving double time (record shows she was), and was trying to include her normally scheduled days into the following week as double time.	Denied	The grievant was being paid double time for shifts picked up beyond the 6th consecutive work day that were not part of her normally scheduled days as outlined in the collective bargaining agreement.

23PA0856	Metro Transit Local 1005	ATW	Toenges, Rolland C.	Termination	Bus operator was discharged after 4th responsible accident in a rolling three-year period, a violation of the maximum accident policy.	Denied	Employer followed progressive discipline when enforcing long standing safety policies.
FMCS 21082	Mercy Hospital Minnesota Nurses Association		Befort, Stephen F. Wachtler, Christopher Zech, Paul J	Contract Grievance Implementation of Staffing Grids	Union grieved implementation of revised staffing grids. ER asserts it followed the CBA requirements to discuss and engage in mediation prior to implementation. Was shown the ER did consider and change positions prior to reaching impasse and implementation.	Denied	While parties must bargain in good faith to reach an agreement, the employer retains the ability to break an impasse by implementing its last, best, final offer. Same premise applies and was found to be followed in this instance.
FMCS 2211 30-01485 - International Paper Company	International Paper Company United Steel Workers Local 264		Befort, Stephen F.	Termination	Long-time EE terminated for violation of attendance policy and misconduct for failing to interactively participate in the process required under the American with Disabilities Act. Union challenged termination was without cause and in violation of CBA article allowing up to 18 months of non-work related illness or injury prior to termination.	Sustained in part.	Reinstated to position but not made whole (awarded backpay) for the year absent without authorization.

April, 2023

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
23VP0129	State of Minnesota Minnesota Mangement - Budget	Remington, John	Veterans Preference Termination	State Patrol officer discharged after failing to report a pursuit that ended in a crash to dispatch in a timely manner, failing to request a medical response or take an active role providing medical attention to the parties, failing to report factual information to responding officers about the pursuit, and failing to activate his body mic at the scene. Union argues lack of progressive discipline and the extreme delay in conducting the investigation and making the decision to terminate.	Denied	Employer had just cause to terminate after serious misconduct. The great authority vested in State Troopers comes with great responsibility.

March, 2023

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
23PA0201	ISD 115, Cass Lake-Bena Cass Lake -Bena Education Association	Jacobs, Jeffrey W.	Seniority	Teacher originally hired in 2011 left the District for a year in 2016, returning in 2017. Seniority list reflects adjusted date of service to 2017. Union argues contract states "initial date of service" should stand at 2011. District argued past practice of adjusting when staff have a break in service and return to the District.	Denied	Absent clear contract language to the contrary, when a teacher with continuing contract status leaves the District they do not carry seniority with them if they are re-hired by the District later. Would result in people achieving more seniority than those who had not had a break in service.

259598 City of Minneapolis
Laborers Local Union #363

Remington, John Termination

Public works EE with CDL license and prior record of testing positive for controlled substances was discharged after testing positive for alcohol via random drug and alcohol test during the work day. Union argued the result level was below the city standard cited in policy,

Denied

City had just cause to terminate the grievant for violating Federal regulations for CDL drivers and City work rules.