

# 2020 Arbitration Awards - Minnesota B.M.S.

September 18, 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.

## September, 2020

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
20PA1167	<a href="#">Hennepin County</a> International Union of Operating Engineers, Local 49	Jacobs, Jefferey	Workers Comp.	Union seeking to use vacation rather than sick leave to supplement workers comp.	Sustained	Workers comp language is more specific and trumps vacation language.
20PA2475	<a href="#">ISD 690, Warroad</a> MN School Employees Association	Daly, Joseph	Union work	Booster club paid charter bus company to transport H.S. teams to events. Union bus drivers claim it was their work.	Denied	No requirement for District to provide transportation to sporting events - not subcontracting when boosters pay.
20PA1020	<a href="#">Metropolitan Council - Transit</a> Amalgamated Transit Union, Local	Befort, Stephen	Termination	Driver caused train door to close on hand of customer & failed to report incident.	20 day susp.	ER maintained act was intentional & drive lied. Misconduct but intent & lie not prove
FMCS	<a href="#">3M Cottage Grove</a> United Steel Workers, Local 418	Befort, Stephen	Termination	Factory worker fell asleep while tending a tape machine - a level 3 violation.	Denied	5 year employee with 2 priors. Policy calls for termination on 3rd violation in 3 years.

## August, 2020

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
19VP0589	<a href="#">Hennepin County</a> Antoine Coleman - Veteran	Dunn, Richard	Termination - VP	Corrections supervisor accused officer of alcohol on breath but didn't report it for 4 hours. Untruthful in making the report.	Denied	28 yr. ee, 2-5 day suspensions. Waiting 4 hrs. to report is a serious safety violation, and incident didn't occur as reported.
20PA1353	<a href="#">Hennepin Healthcare System, Inc.</a> AFSCME Council 5	Befort, Stephen	Termination	Protection officer called to eject man from hospital who had taken off his clothes and resisted. Unnecessary force & lack of truthfulness in report.	13 mo. susp.	Chaotic security environment, lack of significant prior discipline & there were omissions rather than untruthfulness in his report.
20PA1207	<a href="#">Lino Lakes, City of</a> Law Enforcement Labor Services, Inc.	Remington, John	Termination	Officer cross trained as firefighter, stated he wouldn't be using F-Tac radio after resigning as firefighter.	Written reprimand	Officer sought clarification of Dept's expectations but Dept failed to provide direction or policy regarding F-Tac use.
None listed	<a href="#">Minneapolis, City of</a> Police Officers Federation of Minneapolis	Fogelberg, Jay C.	Termination	2 officers decorated PD's 4th district's xmas tree using items considered racially derogatory contrary to Dept's core values. Pictures of tree appeared on social media.	320 hr. susp.	20 yrs., no discipline, good service ratings no demonstrated bias. Call for termination occurred before investigation. Similar incidents received less punishment.
None listed	<a href="#">MN State Colleges &amp; Universities</a> <a href="#">MN State Comm. &amp; Technical College</a> <a href="#">Minnesota Management &amp; Budget</a> MN Assoc. of Professional Employees	Jacobs, Jefferey	Work Schedule	Schedules were temporarily flexed to avoid OT for night meetings or events. Contract requires 14 day notice for permanent schedule change.	Denied	Management right to schedule. Flexing was temporary - U tried to obtain 14 day notice for temporary changes but was unsuccessful in negotiations.
19PA0402	<a href="#">St. Paul, City of</a> Teamsters Local 320	Carne, Danielle	Timeliness 1 day susp.	U took 57 days vs 7 days to file step 2. Street Service Worker threatened co-worker, "snitches get stitches".	Arbitrable Denied	Lax with deadlines & ees medical situation 12 yr. ee, prior written reprimand. Policy prohibits threats.

20VP1419	<a href="#">Wyoming, City of</a> Anthony Zerwas -Veteran (LELS)	McCoy, A. Ray	Termination - VP	Officer did a forceful rear takedown of a handcuffed prisoner in the jail sally port, due to prisoner "jerking away" but video only showed a slight turn.	Denied	4 yrs., received discipline 3 mos earlier for a chase where he violated policy. Used U.S. Supreme Court Graham vs Connor for appropriate use of force determination
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### July, 2020

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
20PA1018	<a href="#">Metropolitan Council, Transit</a> Amalgamated Transit Union, Local	Gallagher, Sharon	Termination	Bus driver's 4th accident in 3 year period called for termination under the contract.	Denied	Know problem with bus access panel flyer open was not mitigating.
20VP2354	<a href="#">Metropolitan Council, Transit</a> Jeanette Patrin - Veteran	Altman, Robert	Termination - VP	Bus driver had 3 accidents, a red light violation, was disrespectful to a supervisor & 2 cell phone violations.	Denied	Totaled 4 debits under the discipline system which calls for termination.
20PA1017	<a href="#">Metropolitan Council, Transit</a> Amalgamated Transit Union, Local	Roberts, Andrew	Termination	Passenger got on bus w/o paying, acting weird, saying creeping things to female driver resulting in driver attaching passenger.	Denied	Fighting with customer, leaving seat of bus w/o authorization, abusive or obscene language are each grounds for discharge

### June, 2020

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
20PA0311	<a href="#">Hennepin County</a> AFSCME Council 5	Befort, Stephen	Back pay	Position reallocated with back pay to Dec 2018. U seeking back pay to 2014.	Denied	U seeking remedy going back 5 years. Continuing violation allows grievance but remedy limited to 21 days.
			Timeliness	ER- untimely barred by 21 day timeline.	Arbitrable	
20VP1572	<a href="#">Metropolitan Council, Transit</a> Michael Anderson - Veteran	Daly, Joseph	Termination - VP	Head stock keeper spent extensive time on internet, long lunches & lied during investigation.	30 hours	26 years service. No similar infractions. Mitigating health issues. Ordered to make hourly work record for 1 year.
None listed	<a href="#">St. Paul, City of</a> St. Paul Police Federation	Bognanno, Mario	Termination	One of 5 officers fired due to actions at a bar disturbance. Failed to act to stop assaults, assist injured parties or investigate.	Denied	Several false statements to IA& repeated failing to act while laughing & making disrespectful comments about patrons.

### May, 2020

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
FMCS	<a href="#">Dairy Farmers of America</a> Teamsters Local 471	O'Toole, Carol Berg	Termination	Ee overheard a comment he considered racist. Supervisor didn't consider it racist. Ee yelled Filipinos weren't held accountable.	Denied	3 prior disciplines, including a final warning re code of conduct violations for using ethnic, derogatory or racist language.
20PA0441	<a href="#">Wright County</a> Minnesota Public Employees Assoc.	Beens, Richard	Termination	5 bags of marijuana recovered only 4 turned in; no suprv. present while counting money, as required - \$200 missing.	2 mo. susp.	Violated policies & procedures re property. Insufficient investigation re missing money. No one from cleaning crew questioned.

## April, 2020

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
20PA0938	<a href="#">Brooklyn Park, City of</a> Brooklyn Park Police Federation	Yaeger, Thomas	Continuing Contract Insurance	CBA not settled. U moved to PIEP insur. seeking contribution from continuing CBA Agreement that splits savings 60/40 unless reduction is due to level of benefits or plan design. U seeking full amount of 2019 contribution.	City violated Agreement	Essential employees not exempt from Contract in Effect Statute. There was a change in plan design. Arbitrator retained jurisdiction for purpose of remedy which is to be based on a negotiated settlement
20PA0252	<a href="#">Ramsey County</a> Law Enforcement Labor Services, Inc.	Kapsch, Frank	Assigning Temp. Deputies	Temporary deputy hired to fill a 6 month summer traffic assignment.	Denied	30 year past practice of using temporary deputies to supplement staffing in summer

## March, 2020

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
20RA0804	<a href="#">Azcon Inc.d/b/a Azcon Metals</a> Teamsters Local 346	Daly, Joseph	Timeliness Subcontracting	Union filed grievance after deadline. Subcontractor hired to cut heavy steel. U seeking to be paid OT for all OT hrs. worked by subcontractor.	Timely Denied	Continuing violation while subs working. No bar to subcontracting in contract. No adverse impact on Union.
19PA0530	<a href="#">Eden Prairie, City of</a> Law Enforcement Labor Services, Inc.	Daly, Joseph	Termination	Officer accused of altering search warrant making him Brady/Giglio impaired and unable to perform tasks of a police officer. Given written reprimand by Dept.	17 months	Co Attorney said he can't testify so ER terminated due to inability to perform essential duties. Brady/Giglio doesn't take away just cause rights. Mistake due error vs deliberate lie. Retrd no backpay
19PA0530	<a href="#">Eden Prairie, City of</a> Law Enforcement Labor Services, Inc.	Daly, Joseph	Just Cause	Group newly organized, no contract in place. Agreed to grievance procedure but no "just cause standard" listed.	Just Cause	Treatment as an "at will" employee w no just cause standard renders arbitration language absurd or nonsensical.
19PA0530	<a href="#">Eden Prairie, City of</a> Law Enforcement Labor Services, Inc.	Daly, Joseph	Timeliness	Union cancelled mediation because ER refused to produce forensic evidence. U waited & filed for arbitration past deadline.	Arbitrable	Cancelling mediation was not a waiver. No final answer given after cancellation. cancellation so start of timeline unclear.
20PA1178	<a href="#">Hennepin County</a> AFSCME Council 5	Befort, Stephen	Health Care Premium Holiday	Holiday on premiums declared for 3 pay periods by drawing from reserves, Union asked ER to replace reserves.	Denied	ER has full discretion to determine use of plan reserves. Insurance coverage not reduced.
19PA0857	<a href="#">Hennepin County</a> Teamsters, Local 320	Beens, Richard	Overtime	12 hr. shifts have 48hr and 36hr weeks. Long week results in 8 hour OT. EE tried to use vac time to still qualify for OT, but ER gave unpaid leave to save OT cost.	Denied	Management right to deny vacation. No specific contract language.
19RA0934	<a href="#">Human Development Center</a> AFSCME Council 5	Jacobs, Jeffrey	Termination	Case worker on Corrective Action Plan terminated for substandard performance.	Denied	Arbitrator limited to ruling if plan met contract's requirements.
20PA1307 20PA1308	<a href="#">LeSueur County</a> Teamsters, Local 320	Jacobs, Jeffrey	Tentative Agreement	Summary Judgement. TA from reopener on Health Insurance not ratified by County. Union seeking implementation of TA.	Denied	Without ratification - no agreement. AFSCME v City of St Paul, 533 N.W. 2nd 623 (Minn App 1995).

FMCS	<a href="#">St. Francis Regional Medical Center</a> SEIU Healthcare	Hoffmeyer, Steven	Termination	Surgery scheduler w performance issues regarding accuracy in filling out forms.	Denied	Given counseling & progressive discipline for over 3 years w/o improvement.
None listed	<a href="#">St. Paul, City of</a> St. Paul Police Federation	Befort, Stephen	Termination	16 acts of misconduct while answering a fight call at a bar. Failure to act to stop assaults, assist injured parties or investigate.	Denied	6 yr. officer w good record. But 13 of 16 allegations proven. Misconduct appears to encompass deep seated beliefs.
20PA0274	<a href="#">Sauk Centre, City of</a> Teamsters, Local 320	Lundberg, James	Insurance Deductible	MOU moved to PIEP & increased HSA amount 1/1/19. Due to coverage gap PIEP agreed to cover Dec '18.	Denied	U claims City promised no cost as result of change so City should cover Dec '18. deductible. No contract basis for claim.

## February, 2020

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
19PN0888	<a href="#">Hennepin County (Interest)</a> Henn. Co. Sheriff's Deputies Assoc.	Bauman, Susan	Interest	Deputies. Agreed to wage pattern 2.5%, 2.5%,2%. Pager pay-n-e; PTO-optional-u;Mkt adjst '19-4%-u,'20-0%-e,'21-0%-e (u '20-3.5%,'21-3%); Retroactivity-y-u; Reduce steps from 5% to 3%-e.	2019 - 6.5% 2020 - 2.5% 2021 - 2.0%	2019-2.5%+4%mkt, based on Oct '19 & Apr '18 awards. PTO optional-based on Befort's 7/10/19 award. Pager pay-lack of comparables. Retro-likely result if neg. Steps-extensive internal pattern.
20PA0864	<a href="#">ISD 879, Delano</a> SEIU Local 284	Daly, Joseph	Arbitrability  15 min. Breaks	Is Arbitration barred by bringing complaint to MN Attorney General? Is a Past Practice being violated by restricting breaks based on duties?	Arbitrable  Denied	AG was proposing to mediate a wage theft complaint was not a barred action. Breaks not being denied, required to be flexible using professional judgement.
20VP0239	<a href="#">Metropolitan Council, Transit</a> Amalgamated Transit Union, Local	Remington, John	Termination - VP	Bus driver stopped when pedestrians yelled. No one claimed being hit, but complaint filed later. Victim didn't testify.	Written Warning	Video didn't show bus hitting anyone. Driver made an accident report, but failed to notify Control Center as required.
19PN0861	<a href="#">Sherburne County (Interest)</a> Minnesota Public Employees Assoc.	Hoffmeyer, Steven	Interest	Transport/Court. Wages-parties agreed. Market adjusmnt-n-e; Pay for perfrmnce -no-u; Retroactivity-y-u; increase notice required for termination to receive benefits-n-u: Floating Holiday-n, but Xmas eve Holiday-y.	2019 - 2.5% 2020 - 2.5% 2021 - 2.5%	Wages-agreed to pattern. Market - ER determines classification system. PFP, longer Termination notice & FL Holiday lack quid pro quo. Xmas eve Holiday - internal pattern.
19PA0841	<a href="#">Stearns County</a> Law Enforcement Labor Services, Inc.	Roberts, Andrew	Arbitrability Timeliness	Dispatcher received 30 day suspension. U petitioned BMS for arbitration, but did not notify ER thus failing to meet timeline.	Denied	Contract requires U to notify ER. BMS is not a party to the contract.
19PN0975	<a href="#">Steele County (Interest)</a> Teamsters, Local 320	Laumeyer, James	Interest	Corrections Sgts. Step increases based on satisfactory performance-y-e	2019 - 2.75% 2020 - 3.0%	Wages quid pro quo for change. All other groups accepted change. Overwhelming acceptance & inherent managemnt rights

## January, 2020

BMS #	Employer/Union	Arbitrator	Issue	Details	Award*	Basis/Argument
FMCS	<a href="#">Cargill Meat Solutions</a> United Food & Commercial Workers	Kapsch, Frank	Absences	43 of 230 ees received absence point for failing to come to work due to major snow storm. U seeing removal of point.	Denied	No fault attendance policy. Point system eliminates potential for bias or favoritism. 75% of employees came to work.

19PA0318	<a href="#">Crystal, City of</a> Law Enforcement Labor Services, Inc.	Finkelstein, Phillip	1 day suspension	Officer assisting another Dept. cuffed suspect, swore at him, failed to write a report & misfiled body camera footage.	Denied	Union challenged investigation. Neither suspect nor other officers questioned. Camera footage, lack of report sufficient.
19PN0919	<a href="#">Eden Prairie, City of (Interest)</a> Law Enforcement Labor Services, Inc.	Abelsen, James	Interest	Officer's 1st contract. Union activity-u; ER rights-u: Class action Grievances-u; OT assignment-u; Shift bidding-u;PTO in contract vs policy-u; PTO rates-e; Retro-u.	Pattern	Wages negotiated. Items awarded to Union were either in the IUOE 49 CBA or current practice. PTO rates in excess of IUOE 49 were denied.
20PA0131	<a href="#">Golden Valley, City of</a> Law Enforcement Labor Services, Inc.	Bauman, Susan	4 day suspension	Detective didn't know how to access lab reports; failed to follow-up CODIS matches. Failed to perform follow-up & untimely reports in 40% of cases.	2 day susp.	City failed to prove ee put on notice re policy of 10 day follow-up since signature wasn't on page in Dept. manual. 2 of 3 charges proven. Supervision lacking.
19VP1104	<a href="#">Minnesota Department of Corrections</a> Daniel Boegeman - Veteran	Befort, Stephen	Termination - VP	Corr. Sgt. accused of bribing offender to assault another, discussing investigation w offender, giving the finger to staff member & failing to dispose of contraband rings.	5 day susp.	Assault allegation not proven. Other violation do not rise to level of serious misconduct.
FMCS	<a href="#">Quality Pork Processors, Inc.</a> U.F.C.W. Local 9	Befort, Stephen	Arbitrability  Paid rest period	Grievances must be brought within 3 days but was pay practice for 17 years. Union claims conflict with 2 Articles over breaks for ees who don & doff protective equipment for their jobs.	Arbitrable  Denied	Union unaware of issue until receiving paperwork from ER. Filed 3 days later. Article with more specific language governs.
19PN0733	<a href="#">Sherburne County (Interest)</a> Minnesota Public Employees Association	Lundberg, James	Interest	Corrections.'19-2.5%,'20-2.5%,'21-2.5% -both; retro '19-u;Adjustments to correct leapfrogging-n-e; Change anniv date to Jan 1-n-e; Pay for performance-n-u; 30day notice when terminating-n-u; xmas eve-y-u.	2019 - 2.5% 2020 - 2.5% 2021 - 2.5%	Wages-pattern, retro for '19 in dispute - will not sanction U for hard bargaining. Leapfrogging, anniversary date & pay for performance should be negotiated. Xmas eve holiday - internal pattern.