

IN THE MATTER OF ARBITRATION

OPINION & AWARD

-between-

Interest Arbitration

A.F.S.C.M.E COUNCIL NO. 65

B.M.S. Case No. 10-PN-423

-and-

**THE COUNTY OF CARVER
CHASKA, MINNESOTA**

**Before: Jay C. Fogelberg
Neutral Arbitrator**

Representation-

For the Union: Teresa L. Joppa, Staff Attorney

For the County: Pamela R. Galanter, Attorney

Statement of Jurisdiction-

In accordance with the Minnesota Public Employment Relations Act ("Act"), the Commissioner of the Bureau of Mediation Services for the State of Minnesota ("Bureau"), certified four (4) issues at impasse in connection with the parties' (new) 2010-11 Collective Bargaining Agreement, on November 30, 2010. The certification followed a declaration of impasse, and an agreement by the parties to submit the outstanding issues to binding arbitration pursuant to the provisions of M.S. 179A.16, subd. 2. Subsequently, the undersigned was notified by the Commissioner that he had been selected as the Impartial Arbitrator to hear evidence and

arguments concerning the outstanding issues, and to thereafter render an award. A hearing was convened on June 28, 2011, in Chaska. Following receipt of position statements, testimony and supportive documentation, the parties indicated a preference for the submission of written post-hearing arguments which were received on July 21, 2011. At that time, the hearing was deemed closed.

Preliminary Statement-

This matter arises from an impasse that has been certified by the Bureau earlier this year between A.F.S.C.M.E. Council 65 (hereafter "Union," or "Local") which represents approximately ten Assistant County Attorneys for Carver County ("County," "Employer," or "Administration") located in the southwest portion of the seven county metropolitan area. There are currently three classifications for these employees: Assistant County Attorney I, Assistant County Attorney II and Assistant County Attorney III. They provide a wide variety of legal services to the County, divided between three divisions: criminal, juvenile and civil.

Essentially, this bargaining unit works independent of the general county structure, and serve at the behest of the County Attorney who is an elected official. As employees of the County Attorney's Office, these

professionals perform an oversight function when they are called upon to insure that the Employer's decision makers are in compliance with various, rules, regulation and laws.

The Issues at Impasse-

1. County contributions toward health insurance.
2. Salaries 2010 (including range or step movement).
3. Salaries 2011 (including range or step movement).
4. Salary Language – sunset provision for application in successor agreement.

**Issue Nos. 2 & 3
Salaries: 2010 & 2011**

Union's Position: For the first year of the new Agreement, the Assistant County Attorneys are seeking a within range (step) movement as set forth in their salary schedule on their respective anniversary dates as they have done in the past. According to the Local, eight of the ten bargaining unit members are below the top pay on the schedule, and are either awaiting step adjustments or have otherwise received them based upon their anniversary date. The other two are at the top pay for their job classification (Attorney III) and will receive no pay increase for

2010 regardless of the outcome of this dispute. For 2011, the Union seeks step movement on a bargaining unit member's anniversary date again, along with a 1% increase on the top pay for all job classifications – Attorney I, II and III. In effect their proposed 1% adjustment would apply to only the two members (Assistant Attorney IIIs) at the top of the schedule. Such an adjustment would be retroactive to January 1 of this year. The balance of the bargaining unit would once more receive their steps on their anniversary dates just as proposed for 2010.

County's Position: The Employer's counter also contains no increase to the salary schedule itself for the first year of the parties' new contract. However, unlike the Union's proposal, the Administration does not offer any step advancement on the schedule for 2010. With regard to 2011, the Employer has proposed to increase the maximum step on the schedule by 0.5% as well as a range step progression of 2.5% for those employees not yet at the top of the schedule.

Analysis of the Evidence: In arriving at what is believed to be a fair and reasoned decision concerning this and the other issues that have been certified at impasse, I have given careful consideration to the applicable provisions of PELRA which requires the reviewing neutral to examine such factors as the obligations of public employers in

this state to efficiently manage and conduct their operations within the legal limitations specified, the interest and welfare of the public they serve, the ability of the County to fund any wage increase, the effect of the respective proposals on the standard of services provided, the ramifications any award might have in connection with other classifications of employees, as well as the power of the County to levy taxes and appropriate funds for the conduct of its operation. In addition internal equity and external market conditions are normally made a part of any such review and have been taken into consideration here.

Pared to its essentials, the Union argues that the County can readily fund what they deem to be a quite reasonable request, while the Administration maintains that current economic conditions coupled with the internal settlements negotiated with the other bargaining units in the County, require a step freeze for the year 2010, and only a modest wage adjustment in 2011.

The current national economic condition of the country has received a great deal of attention from American public for the past three years. Its effect is of course far-reaching, and most recently has been the cause of increased concern after a brief period of what

appeared to be signs of a recovery. It has been examined and re-examined *ad nauseam*, and need not be addressed at length here. Suffice it to say, it has had a significant impact on employment relations within both the public and private sector in terms of negotiated contract settlements and interest disputes as well. More particularly, in connection with public sector matters within this state, budgetary deficits have led to reductions in financial aid to cities, counties and schools. As I have previously noted in *Teamsters Union, Local 320 and the Metropolitan Council Transit Police Department*, BMS Case No. 09-PN-833, the existing recessionary climate that has been experienced both nationally and world-wide over the past few years, heightens consideration of the statutory mandate in this state for public employers to "...efficiently manage and conduct their operations within the legal limitations surrounding the financing of (their) operations." *Minn. Stat 179A.16, Subd. 17.*

The argument proffered here by the County is one heard throughout Minnesota from public employers who have continuously been faced with a declining revenue stream through shirking state aids, property values, and the concomitant erosion of the tax base. The Employer presented a number of exhibits which they believe mandates

a fiscally prudent approach to the issues that have led to this impasse. This includes their experience with unallotments, the overall loss in state aid the past few years, and declining home values in the County to name a few (Employer Exs. 6B, 27, & 34). To counter-act this adversity, the County, like so many other divisions of government in this and other states, has undertaken efforts to stay within their budgetary constraints. Programs have been reduced or eliminated altogether, positions eliminated through attrition and early retirement incentives, along with other cost-cutting measures (County Exs. 18, 21, 24, & 30-33).

Notwithstanding their austere efforts to otherwise retain sound financial health, the Administration asserts that the combined effects of the State's budget cuts, the unallotments, and levy limits puts them in the unpopular position of needing to freeze wages and step movement in 2010 for these employees (just as they have with the balance of the County's workforce) and offer only a modest adjustment in the second year of the agreement.

The Union counters that the continuation of step movement for the members of this bargaining unit is reserved, and would have little effect on the County's overall budget. The Local contends that Carver County is a prosperous and rapidly growing part of the Greater Twin Cities. The

population of the County has increased nearly 30% in the last ten years, along with the median household income which has improved by more than 23% since the turn of the century (Union's Ex. 54). In addition, they maintain that the residents have enjoyed comparatively low property taxes over the same period of time due in no small part to increases in business and residential construction. And while the County has had its state aid curtailed in recent years, it has nevertheless been able to continue providing services to its residents without increasing taxes. Indeed, they point out that the County Board has decided that state aid is too unreliable as a funding source given the more current trends, and consequently any financial assistance they receive from the state going forward will be earmarked for capital improvements alone (Local's Ex. 114). This, in their opinion is most certainly not the sign of a government entity experiencing financial difficulties similar to other metro and out state counties.

Further, the Local points to October 2009, when the County's bond rating increased by two steps from "Aa2" to "AAA" (Union's Ex. 88). In the press release announcing the new rating, the County Board's Chair made the following observation:

"Degler said this new assessment of credit worthiness reflects

Carver County's strong financial standing in what have been difficult economic times. He said the excellent bond rating is based on the County's close proximity to the Twin Cities metropolitan area, *its strong income and wealth indicators, consistently strong financial profile with high reserves, and moderate overall debt levels*" (*id.* emphasis added).

The Union also points to the cost savings realized through the Employer's attrition program which they estimate has saved the County over \$2.3 million in the two years covering this contract (Union's Exs. 94, 103, 219). Overall, they conclude, this is not the sign of a governmental body that is suffering financially like so many others. This evidence, the Local maintains, indicates that the Employer can well-afford to pay their proposals for 2010 and 2011 which it estimates would cost an additional \$23,422 for the first year, and \$28, 329 in the second.

The Union has accurately observed that market conditions are one of the critical factors that arbitrators routinely consider when called upon to resolve an interest dispute such as this. Comparisons are made – both internal and external – which often influence the outcome. Here, the County argues that the within range (step) movement for members of this bargaining unit lies at the very center of the impasse that has been reached by the parties. The Local has not truly challenged this assertion.

In support of their position, the Union has submitted wage data using two distinct sets of externals. One is the Greater Twin Cities Metropolitan Area which consists of seven counties, including the states two largest: Ramsey and Hennepin. They have also included a second set of comparables comprised of the counties of Scott, Sherburne, Stearns, Wright, Olmsted and St. Louis (Union Exs. 165, 165B and 166). However, neither of these groupings have been utilized by the parties in the past with any desired amount of consistency. Neither, have they been relied upon by other neutrals in cases involving Carver County bargaining units. Rather, arbitrators on at least two other occasions have utilized a separate grouping which appears to more closely resemble Carver county in terms of proximity to the Twin Cities, size, and other relevant socio-economic factors (Employer's Ex. 83). They are: Anoka, Dakota, Scott, Washington, and Wright Counties. While Carver is the smallest of these, in terms of its population, it nevertheless shares a number of other similarities which make it a fair comparator.

The Union's data suggests that the majority of the bargaining unit members are below average for salaries when compared against wages paid in the seven county metro area, as well as their second grouping which includes St. Louis, Stearns and Olmsted counties, for

calendar year 2010 (Local Exs. 166 & 232). However, the Employer's documentation reflects a far more competitive compensation for the same time period when viewed along side the salaries paid within the aforementioned five counties utilized in the past. Further, it is noted that the salaries paid to these employees fall between the salaries paid in Scott and Wright Counties which is most consistent with the historical comparison of the relationship between Carver County's Attorney and Chief Deputy and their counterparts in Scott and Wright counties (Administration Exs. 91-92; and 100-101).

Another factor that has been given careful consideration here is the pattern of internal settlements. The evidence demonstrates that there are currently nine other bargaining units in addition to the Assistant County Attorneys grouping in Carver County, seven of which are designated essential units. They are: Deputies, Licensed Sergeants, Detention Deputies/911 Dispatchers, Non-Licensed supervisors, Licensed Management, Non-Licensed Management, and Supervisors and Managers. In all, there are approximately 620 represented employees (County Exs. 44 & 46). Significantly, all of these certified units have reached voluntary settlements with the Administration for 2010 and 2011 contracts (County Exs. 43-46). And each of the new agreements calls for

a wage freeze and no step increase in the first year (*id.*).

For 2011, the County has proposed a within range (step) movement of 2.5%, while the Union's final position seeks step movement at the existing (4.5%) rate for those who are not yet at the top of the schedule. Again, however, the record demonstrates that each of the other bargaining units in the County negotiated settlements which provides a within range adjustment of 2.75% (Employer Exs. 44-46). In addition, effective 2011, step structures in the other collective bargaining agreements have been replaced with "open ranges," with minimum and maximum salary ranges (Employer Exs. 49-58).

I remain unconvinced by the argument that a pattern of internal settlements alone should dictate the outcome of any interest arbitration involving another bargaining unit. To do so would have a chilling effect on negotiations as well as the impasse resolution process itself. PELRA does not allow an employer to unilaterally determine whether there will or will not be additional monies paid to members of a bargaining unit simply by setting a budget in advance of negotiations and thereafter remaining completely inflexible at the table. At the same time however, if a consistent voluntary settlement pattern is demonstrated, it cannot be ignored. Here, the record shows that the employees in this

bargaining unit, who comprise approximately 1½% of the County's work force, are the only group seeking to maintain the higher range movement. Clearly there is an established internal pattern which was negotiated with the other essential and non-essential units alike, all of whom agreed to the 2.75% figure in 2011. Many of the represented employees who have already settled, work in close proximity to the Assistant County Attorneys. To allow them to receive the 4.5% step movement - and be the only bargaining unit in the County to obtain it through arbitration - would quite possibly have an adverse effect on morale. Moreover, it is significant to note that three of the other nine units who have reached a voluntary settlement with the Employer, are also represented by Council 65. Further, there is evidence in the record pointing to an historical trend where settlement between this bargaining unit and the Employer has been strongly influenced by the pattern within the County.

I have also taken into consideration the Union's argument regarding increased workload for its members and their inclination to look elsewhere for employment should the current compensatory trends continue in the County. Other employees however, no doubt have experienced the same increase in work as the total number of personnel

continues to shrink. While the higher work volume is certainly less than desirable, the Assistant County Attorneys are not alone in this regard. Moreover, there is little evidence indicating that more work for smaller (or even no) pay adjustment has caused an increase in turnover within the County. To the contrary, the documentation and testimony demonstrates that the Employer has had little difficulty filling applications for vacancies in this bargaining unit as there appears to be no shortage of attorneys in the State of Minnesota.

Award: It is often said that the arbitrator, in an interest arbitration setting such as this, should be committed to producing a contract which the parties themselves might well have negotiated in the absence of the circumstances which led to the exhaustion of their traditional remedies. Based on the foregoing analysis, I conclude that for the first year of their new agreement, the County's position is most consistent with this standard, is supported by the weight of the evidence, and is therefore to be implemented. For 2011, there shall be a 1% increase for all classifications at the top of the schedule, and a range (step) movement of 2.75%.¹

¹ Those in the bargaining unit who have already received a 4.5% step movement on their anniversary date are to have them rescinded in order to comply with the award made here.

Issue No. 1
County's Contribution Toward Health Insurance

County's Position: The Employer proposes to maintain the level of contribution already agreed to by the parties for calendar year 2010 as set forth in the 2009 Memorandum of Agreement (Employer's Ex. 77A) in 2011.

Union's Position: The Local seeks to increase the dollar amount of the Employer's contribution in the second year of the agreement to \$650 per month for single coverage and \$1150 per month for family coverage.

Analysis of the Evidence: As the Union has accurately observed, if there is a single economic issue that routinely follows internal comparisons within the interest dispute resolution process, it is health insurance benefits and the employer's contribution toward them. Here the evidence plainly demonstrates that the Administration's contribution toward the cafeteria plan of elective benefits for all of the other bargaining units is precisely what the Assistant County Attorneys are seeking here (Union's Exs. 251-263). Indeed, the Employer has acknowledged that if the award for wages is consistent with the internal pattern of settlements with all other employees, then the award on

health insurance should likewise be consistent with that pattern.

Award: No sound reason has been advanced to support treating members of this bargaining unit differently than the balance of the work force in the County as regards this benefit. Accordingly, the Union's final position is awarded.

Issue No. 4
Salary Language: Sunset Provision

County's Position: The Administration is proposing new language to be added to the 2010-11 Agreement to read as follows: "Employees shall remain at their 12/31/2011 rate until a successor Agreement is ratified by both parties."

Union's Position: That no new language as sought by the County be included in the new contract.

Analysis of the Evidence: According to the Administration, their proposal would allow the parties to maintain their existing relationship as of the expiration date of the collective bargaining agreement, which they assert would enable both sides to negotiate on an equal footing over what the next within range (step) movement should be.

The Union counters that an award of the Employer's proposal would contravene the current language contained in Article XXII of the

current contract, and would effectively prohibit any employee from receiving a step increase that they are otherwise entitled to on their anniversary date.

There is no evidence of a strong internal pattern relative to this issue. The documentation shows that AFSCME has negotiated similar language for the other three units they represent in the County (Employer's Exs. 69-72), and that two other bargaining units (the Non-Licensed Management unit, and the Managers and Supervisors unit) have agreed to similar new language. However, four other units currently do not have such a provision.

It is a commonly accepted axiom of the interest arbitration process, that the party proposing to change an existing provision or provisions in their collective bargaining agreement, or to otherwise add new language to the contract, sustains the burden of proof to demonstrate through clear and convincing evidence, first the need for such change and then the reasonableness of their proposal. See: *LELS and Crow Wing County*, BMS Case No. 94-PN-1687. While the County has attempted to meet that obligation here via the foregoing arguments, I find that the preponderant evidence does not justify the alteration they have proposed at this time. Rather, as the Local has

observed, it is far more appropriate for the parties to reach a mutual agreement on a significant change such as being proposed here by management, through the give and take of the traditional negotiation process.

Award: Accordingly, the Union's position is awarded.

Respectfully submitted this 17th day of August, 2011

Jay C. Fogelberg, Arbitrator