MINNESOTA BUREAU OF MEDIATION SERVICES

ARBITRATION AWARD

In the Matter of the Arbitration Between AFSCME COUNCIL #5 and COUNTY OF ST. LOUIS, MINNESOTA County Attorney Office	File 10-PN-1621 JOHN REMINGTON ARBITRATOR

THE PROCEEDINGS

The above captioned parties, having been unable to resolve an impasse arising out of the inability to agree upon the terms and conditions of a new collective bargaining agreement, selected the undersigned Arbitrator John Remington, pursuant to Section 179A.16 of the Public Employment Relations Act and through the procedures of the Minnesota Bureau of Mediation Services, to hear and decide the matter in a final and binding determination.

Accordingly, a hearing was held on September 21, 2011 in Duluth, Minnesota, at which time both parties were represented and fully heard. The parties presented oral testimony and

documentary evidence. No stenographic transcript of the proceedings was taken and the parties requested the opportunity to file post hearing briefs which they did subsequently file on October 29, 2011.

The following appearances were entered:

FOR THE EMPLOYER:

Steven C. Fecker	Attorney at Law Duluth, MN

FOR THE UNION:

Robert L. Buckingham	Field Representative

THE ISSUES

The parties presented the following two (2) issues for resolution at the hearing: (1) the employee contribution to the Employer's self-insured medical plan (Exhibit D of the current collective agreement); and (2) hours of work/floating holiday request (Article 6 of the current agreement). The Union contends that the first issue regarding the Employer's self-insured medical plan is really two related issues; (a) the level of employee contributions and (b) whether or not employee funding should be terminated at the end of the 2011 calendar year.

BACKGROUND

St. Louis County, Minnesota (hereinafter the "EMPLOYER" or "COUNTY") is geographically the largest county in the State encompassing over 6800 square miles with a population of over 200,000. The County is a public employer within the meaning of Minnesota Statutes §179A. The American Federation of State, County and Municipal Employees

(AFSCME) and its Council #5 (hereinafter the "UNION") is the duly certified exclusive collective bargaining representative for all Assistant County Attorneys who are directed and supervised by an elected County Attorney. There are currently twenty-seven (27) employees in this bargaining unit. The parties were unable to fully agree on the terms of a new collective agreement during negotiations in 2010-2011 and subsequently submitted the outstanding issues to the Bureau of Mediation Services for interest arbitration. These issues are properly before the Arbitrator for final and binding determination.

DISCUSSION, OPINION AND AWARD

ISSUE #1: Employee Contributions to the Employer's Self-Insured Medical Plan/ Termination of Contributions

Employee contributions to fund the County's self-insured medical plan are provided for in a memorandum of understanding set forth in Exhibit D of the collective agreement. The Union proposes to limit the amount of the employee contributions effective April 1, 2010 and delete the memorandum of understanding from the contract effective December 31, 2011. All other County bargaining units, with one exception[1], contribute to the plan based on a determination by the elected County Board. These other participating bargaining units are also represented by AFSCME Council #5 and all received an additional 2.5% wage increase in addition to restrictions on the County Board's discretion in setting the health insurance premium when Exhibit D was first included in the collective agreements.

The Union argues that plan contributions fall disproportionately on the County Attorney unit because of its small size. For example attorney unit members contribute 30 percent of the premium for dependent coverage while another unit pays only 20 percent of dependent coverage.

[1] The bargaining unit represented by the International Brotherhood of Teamsters

Indeed, the Union argues that dropping the small unit of County Attorneys from the plan will cause the Employer no significant economic harm. The Union further maintains that the contributions to the self insurance fund were initially designed to temporarily increase fund reserves and that further contributions from the small unit are no longer necessary. Finally, the Union notes that one other bargaining unit does not pay into the self insurance fund.

The Employer's argument on this issue relies primarily on internal comparisons noting that the Attorney unit, like other AFSMCE units, received a pay increment as an incentive to participate in the self insurance plan. Further the Employer notes that the financial condition of the fund does not support termination of employee contributions.

The Arbitrator is here persuaded by the strong internal comparison rationale advanced by the Employer. Neither does he find that the Union's argument that Exhibit D was intended to be temporary, nor that the fund balance does not require continued contributions from the County Attorney unit. He must therefore find that the premium contribution language common to the other AFSCME contracts is both appropriate and mandated by internal comparisons.

AWARD

> The monthly plan subscriber contribution for members of the County Attorney unit shall be $37.22 for 2010, the remainder of 2011, and thereafter until a new amount is negotiated by the parties. The Employer shall not be responsible for paying the balance of the monthly payment calculated pursuant to the formula.

As both parties concede, this is essentially the same award as made by this Arbitrator in BMS Case No. 10-PN-1622 and appears to be the result that the parties would likely have reached through collective bargaining.

ISSUE #2: Hours of Work/ Floating Holiday Request

The Union here requests that the current language of Article 6 be deleted and replaced by an additional section in Article 8- Holidays. Essentially the Union asks that members of the County Attorney unit be granted two (2) floating holidays (Article 8) during each payroll year in place of the current language in Article 6. The current Article 6 language recognizes the unique status of the Assistant County Attorneys in comparison to the terms and conditions of employment of employees in other County bargaining units and grants Assistant County Attorneys the possibility of up to two additional days of leave each year at the discretion of the County Attorney.

The Employer takes the position that the current language in Article 6 is adequate and that although there were some problems in the granting of extra time off for the extraordinary work hours performed by Assistant County Attorneys during the administration of the prior County Attorney, there have been no such problems under the current County Attorney.

The Arbitrator deems it unproductive to fully recount the problems in the administration of Article 6 which arose under the prior County Attorney. He finds it sufficient to note that unrebutted testimony presented by the Union at the hearing established that the language of Article 6 is problematic. While Article 6 does recognize that Assistant County Attorneys work an extraordinary number of hours due to workload demands, and it is undisputed that Assistant County Attorneys cannot be compensated for this extra work through overtime payments or compensatory time off, the current language still allows broad discretion in the granting of extra paid leave. There appears to be no dispute between the parties that the two leave days are justified and that most, if not all, Assistant County Attorneys work sufficient hours to qualify for

this “extraordinary” workload benefit. It is readily apparent that the only difference between the parties is the extent of the County Attorney’s discretion in granting the leave.

The Arbitrator is fully cognizant of the need of a County Attorney to schedule this leave time in the interest of efficiency and to accommodate the casework demands on the office. He is also aware that County Attorneys, particularly elected ones, hold an uncertain tenure in office. It is therefore not unreasonable for those who serve at the County Attorney’s pleasure to seek to obtain consistency in the administration of bargained for benefits irrespective of the holder of the County Attorney’s position. In the Arbitrator’s view such consistency can be readily accommodated through a minor revision to Article 6 rather than elimination of that section together with an addition to Article 8 as the Union here proposes. However, should the parties mutually agree to eliminate Article 6 in exchange for an addition to Article 8 they are free to do so.

It is therefore the finding of the Arbitrator that Article 6 shall be amended by altering the second paragraph of Article 6 to grant two additional leave days per payroll year to all Assistant County Attorneys. However, this leave shall be subject to the scheduling discretion of the County Attorney and a timely request by the bargaining unit member to utilize such leave. The County Attorney shall have broad discretion to approve the scheduling of this leave including the ability to schedule the leave day or days in the subsequent payroll year. The entitlement to this leave shall also be limited as proposed by the Union.

AWARD

The second paragraph of Article 6 shall now read:

> Members of the bargaining unit who work an extraordinary number of hours due to unique workload demands shall be granted,

> subject to scheduling approval of the Department Head, a period of time off, not to be deducted from accumulated paid leave time, not to exceed two (2) days per year, in recognition of having devoted an extraordinary number of hours to the performance of work duties.
>
> New employees beginning employment after July 1 shall be entitled to one (1) day of leave. Employees who have worked less than six (6) months at the time of termination of their employment will not be paid for any accrued leave days.

The Arbitrator has made a detailed review and analysis of the testimony and documentary evidence offered by the parties in support of their respective positions, and he has carefully read and considered the arguments advanced by the parties in their post-hearing briefs. Having considered the above review and analysis, together with the findings and observations hereinabove made, the Arbitrator has determined, and so he finds and concludes, that the above findings, observations and awards are sufficient to resolve the impasse between the parties. Further, he has determined that certain other matters which arose in these proceedings must be deemed immaterial, irrelevant, or side issues at the very most, and therefore have not been afforded any significant mention, if at all, for example: whether or not the current fund balance in the Self-Insured Medical Plan accurately reflects the true condition of the plan; whether or not the cost of the plan will increase in future years; the assertion that the provisions of Exhibit D were intended to be temporary; whether or not the Teamster bargaining unit contributes to the Self-Insured Medical Plan; and so forth.

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John Remington,
Arbitrator

November 11, 2011

Minneapolis, MN