
In Re the Arbitration between:

BMS File No. 14-PN-0683

Winona County, Minnesota,

Employer,

**INTEREST ARBITRATION
OPINION AND AWARD**

and

American Federation of State, County &
Municipal Employees, Greater Minnesota
Council 65, on behalf of Winona Assistant
County Attorneys,

Union.

Pursuant to **Minn. Stat. Section 179.16, Subd. 2**, and **Minn. Rules 5510.2930** the
Commissioner of Minnesota Bureau of Mediation Services on June 20, 2014 certified
the following issues at impasse in the above dispute.

The Issues certified at impasse are:

1. Duration—Settled – 3 Years, 2014-2016

2. Salary Schedule Steps – change time necessary to advance between
steps” **Withdrawn** by Union.

3. Grade Promotion Eligibility – Time required for Attorney II and III
grade/promotion? **Withdrawn** by Union.

4. Attorney III – Should two additional steps be added to the Attorney III
pay grade/salary schedule?

5. Wage Increase for 2014 -- Amount of general increase and effective
date?

6. Wage Increase for 2015. Settled; 1% January, 1% July 2015.

7. Wage Increase for 2016. Settled; 2% January, 1% July 2016.

8. 2014 Health Insurance, Employer's Contribution towards Single Premiums in 2014. **Settled** – Employer's position is to pay 100% of the single premium in 2014.

9. 2015 Health Insurance, Employer's Contribution.

- Employer's Position is for employees to contribute 5% toward the single premium in 2015.
- Union's position is no change.

10. 2016 Health Insurance, Employer's Contribution.

- Employer's Position is for employees to contribute 15% toward the single premium in 2016.
- Union's position is no change.

11. Grade Advancement/Promotion: Bar to unreasonable denial of advancement. (new language)

- Union proposes language, which would say "Grade/step advancement for eligible employees shall not be unreasonably denied.
- Employer position is no change.

12. Indemnification – Should the contract provide for legal protection/indemnification? (new language)

- The Union proposes language, which would protect any attorney who is the subject of a complaint or lawsuit.
- Employer position is no change.

13. Disciplinary Meetings – What rights should employees have for disciplinary meetings? (Article XIV, new section)

- Union proposes adding language to the contract that allows employees to secure Union representation or an attorney, at their own expense, if they are called in for an interview/investigation.
- Employer proposes no change.

APPEARANCES:

FOR THE EMPLOYER:

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ISSUE #4 – Should two additional steps be added to the Attorney III pay grade/salary schedule?

Union’s Position:

The Union proposes adding two (2) three percent (3%) steps to the nine (9) step salary schedule for the Assistant County Attorneys.

Internally, the Human Services Department has thirteen (13) steps to top pay, County Department heads have twelve (12) steps to top pay and the Supervisors Association has ten (10) steps to top of the salary range. Extending the salary schedule by two steps would not be inconsistent with the internal salary ranges.

At this time the top pay for Assistant County Attorneys in Winona is significantly less than the average within the agreed upon comparison group

consisting of Blue Earth County, Clay County, Crow Wing County, Itasca County and Ottertail County. External Comparisons support the addition of two steps to the salary schedule.

The pay equity points given to the Assistant County Attorney group also reflects lower pay for County Attorneys than other employee groups within the County. An upward adjustment in pay is appropriate based upon the County's own relative job evaluation study.

The Union has established that the County has the ability to pay and has also demonstrated that the proposed increase does not exceed cost of living increases in the region.

Employer's Position:

The Employer argues that there is no compelling reason to add new steps to the salary schedule. Attorney IIIs in Winona County receive compensation that is comparable and competitive with comparable counties. The top of salary ranges within the County is reached in eight (8) years by two bargaining units, nine (9) years by two bargaining units, ten (10) years by two bargaining units and twelve (12) years by one bargaining unit. The fact that there are inconsistencies in the number of steps to the top of the salary range does not call for additional steps to be added to the Attorney III salary schedule.

OPINION:

The County clearly has the ability to pay for the proposed increase and the increase is not inconsistent with current economic conditions.

The Union has demonstrated that the top salary paid to Assistant County Attorney IIIs is somewhat less than the average top salary paid within the comparison group. They have also demonstrated that the wages for Assistant County Attorneys are internally depressed, when pay equity points and compensation are compared to other positions within the County. Since both internal and external comparisons reflect that top wages being paid to this bargaining are depress, the financial condition of the County healthy and the overall economic outlook is positive, the addition of two (2) three percent (3%) steps to the nine (9) step salary schedule for the Assistant County Attorney III s should be awarded.

AWARD:

Two (2) three percent (3%) steps shall be added to the Assistant County Attorney III salary schedule.

ISSUE #5 - Wage Increase for 2014

Union's Position:

The Union submitted starting pay and top salary comparisons from Blue Earth County, Chisago County, Clay County, Crow Wing County, Goodhue County, Itasca County, Kandiyohi County, Ottertail County and Rice County, which demonstrate that Winona Assistant County Attorneys are significantly underpaid in both categories. While the addition of two (2) three percent (3%) steps to the Attorney III wage schedule will narrow the gap in top wages, the overall salary schedule is lower than salaries paid in comparable communities. External wage

comparisons support the Union's proposed overall wage increase of 1.25% for 2014.

Internally, the County has settled for a 1% overall wage increase with most bargaining units. However, LELS received a 1.25 % wage increase. Moreover, there are a significant number of County employees receiving greater compensation than the Assistant County Attorneys, despite having much lower pay equity rankings based upon the County's pay equity report. Internal comparisons support the Union's proposed wage increase of 1.25%.

The Union's argument on ability to pay and the positive economic conditions within the County and the State of Minnesota is the same argument it made in support of the proposed step additions to the Attorney III salary schedule.

Employer's Position:

The Employer argues that the wages for Assistance County Attorneys should be increased by 1% across the board in order to be internally consistent. At the time of this arbitration, all bargaining units with the exception of the Assistant County Attorneys and the Supervisors had settled their contracts. All but two (2) groups received a 1.0% wage increase in January 2014. Two groups received a 1.25% wage increase but those groups gave up other benefits in exchange. All of the other bargaining units agreed to pay 15% toward the cost of the single employee health care insurance premium.

The Employer argues that Winona County's most recent Pay Equity Report should be rejected as a basis for the Assistant County Attorney's wage increase. First, it is contrary to internal consistency, which is the most important factor in

determining what should be done in this arbitration. Second, Winona County has recently experienced difficult financial times and the proposed increase would make it difficult for the County to manage its operations. Third, the Pay Equity Report compares wages plus the dollar value of benefits for employees. No other Winona County employee group has their compensation based on combined wage and benefit calculations.

OPINION:

The Union demonstrated that starting wages and top wages for the Assistant County Attorneys in Winona County are significantly lower than wages within the comparison group.

The Union also demonstrated that Assistant County Attorneys have significantly higher Pay Equity Ratings than many jobs that receive higher combined wage and benefit compensation from the County. In this arbitration, the fact that the Assistant County Attorneys do not contribute to Health Care Insurance premiums is at issue. It is clear that the dollar value of benefits (including Health Care) received by the Assistant County Attorneys is greater than the value of benefits received by other employees. Hence, the wage benefit comparisons found in the Pay Equity Report understate the internal wage disparity. The internal wage disparity is greater than the combined compensation disparity that appears in the Pay Equity Report.

Economic reports from Winona County and throughout the State of Minnesota are positive and it is clear that the Employer has the ability to pay for the moderate wage increase sought by the Assistant County Attorneys. The external

wage comparisons and internal wage comparisons demonstrate that wages for this bargaining unit are low and give additional support for the Union's wage proposal.

AWARD:

A general wage increase of 1.25% for 2014 is awarded to the Assistant County Attorneys.

ISSUE #9 and ISSUE #10 – Health Insurance Premium Contribution for 2015 and 2016

Union's Position:

The Union proposes no change in the premium contribution made by single individuals to health insurance coverage. In the most recent Arbitration over the same issue, Arbitrator David Paull determined that the Assistant County Attorney's bargaining unit would not have to pay any of the cost for single coverage. The Arbitrator reasoned that none of the attorneys chose dependent or family health insurance coverage, unlike most other County employees. Hence, they could be treated differently than other bargaining units. He also found that the additional cost for health coverage would cause compensation of this bargaining unit to fall farther behind attorney units in comparable counties.

The Union focuses on the fact many Minnesota counties continue to pay 100% of premium for single coverage and the Assistant County Attorneys in Winona County are already under compensated. Hence, the proposed 5% of premium in 2015 and 15% of premium in 2016 will cause the bargaining units wages to fall farther out of step with comparable bargaining units.

Employer's Position:

The County argues that the bargaining unit has been receiving more than other employees, since it did not have to contribute to single health insurance premiums for 2011, 2012 and 2013.

Internal consistency calls for this bargaining unit to be treated exactly like other bargaining units within Winona County. Other bargaining units have phased into paying 15% of premium for single coverage by paying 5% of single coverage premium for one year and then moving to 15% of single coverage premium. This bargaining unit should move to the same format. Many Winona County employees in other groups do not take dependent coverage but have agreed to contribute toward the cost of health insurance premiums.

The County argues that many counties across the State have agreements wherein employees contribute to the cost of health care premiums. The County contends that contribution to health care premiums is a trend and that the trend should be followed with this bargaining unit. The Assistant County Attorneys have had three years of special treatment and there is no reason for the special treatment to continue.

OPINION:

Internal comparison is not simply a question of whether all bargaining units receive the same wage increase and pay the same health care premiums. In the case of the Assistant County Attorney bargaining unit, the pay equity study clearly demonstrates that the wage and benefits paid to the group do not reflect the relative value of the job. Many lower rated positions are being compensated within Winona

County at a higher rate than the Assistant County Attorneys. Internal job comparisons do not support the proposed increases to health insurance premiums for this bargaining unit.

External wage comparisons also support the Union's position. The wages of Winona Assistant County Attorneys are lower than wages in comparable counties and adding higher premium costs for single health care coverage will cause the overall compensation of the bargaining unit to lag farther behind comparable units in other counties.

The premium costs for single health care coverage should continue to be paid by the County.

AWARD:

The County shall pay 100% of single coverage health care premium costs for the Assistant County Attorney bargaining unit for 2015 and 2016.

ISSUE #11 - Grade Advancement/Promotion - Whether New Language should be added barring unreasonable denial of advancement or promotion.

Union's Position:

The Union's proposed language, would add a contract provision addressing step or grade movement from Attorney I to Attorney II and from Attorney II to Attorney III. The provision would say: "Grade/step advancement for eligible employees shall not be unreasonably denied."

Management could claim any number of reasons for denying step movement. Disciplinary reasons could be cited or budgetary concerns and bargaining unit members would have little recourse for challenging the Employer's decision not to

advance one attorney or another. The County's lack of consistency in the area of pay equity/pay schedules is cited as a central reason for the bargaining unit's desire for a basic standard of fairness. Adding the language would at a minimum give an attorney denied a promotion, the right to grieve the denial.

Employer's Position:

The Union did not present any compelling evidence of the need for the proposed language. It did not produce a single example of an unreasonable denial of advancement or promotion that would justify the new language. There is no evidence that the Assistant County Attorneys are different than any other bargaining unit and require contract language that is inconsistent with that of other bargaining units. In fact, no evidence was submitted that there is even a perception of inconsistent treatment in grade advancement or promotion within the bargaining unit. Winona County has policies and procedures in place to address grade advancement/promotion and there is no reason to add language to the collective bargaining agreement.

OPINION:

There is no evidence of specific problems created by the current advancement/promotion policies and procedures. In this case the "need" for change has not been established. Under current circumstances any addition of advancement/promotion language should be arrived at through bargaining.

AWARD:

No new language shall be added to the collective bargaining agreement regarding Grade Advancement/Promotion.

ISSUE #12 -- Indemnification – Should the contract provide for legal protection/indemnification? (new language)

Union’s Position:

The Union is asking for new contract language that will protect Assistant County Attorneys from the cost of defending against complaints and lawsuits. Bargaining Unit members perform legal work in both civil and criminal areas, which often angers or annoys people. The anger and annoyance occasionally results in complaints to the Professional Responsibility Board or in lawsuits. While the County has provided indemnification in the past, the collective bargaining agreement does not specifically provide for indemnification. The bargaining unit would like the same indemnification language incorporated into their contract that currently exists in the County Administrator’s contract. The proposal is supported by both internal consistency and necessity.

Employer’s position:

The Union did not present any evidence of a compelling need to change the existing contract language. There is no need to extend a special provision that does not appear in any other Winona County collective bargaining agreements. At hearing no evidence of was presented of any situation where indemnification was needed or denied.

State law entitles Assistant County Attorneys to the protection they are seeking under the collective bargaining agreement. **Minn. Stat. Section 466.07** requires counties to defend and indemnify their employees for actions that arise out of the performance of their duties. Assistant County Attorneys are further entitled to

absolute prosecutorial immunity for their official actions. *Erickson v. County of Clay*, 451 N.W. 2d 666 (Minn. Ct. App. 1990). The protection of Assistant County Attorneys extends far beyond that to which other Winona County employees are entitled. No evidence was submitted of similar language being incorporated into the contracts of Assistant County Attorneys in other counties.

OPINION:

There is no evidence that the proposed contract provision is needed. There are no examples of situations where indemnification has not been provided. The Employer cites statutory protections that protect Assistant County Attorneys for actions that arise out of the performance of their duties and case law regarding prosecutorial immunity. There is insufficient evidence of a “need” to add the proposed provision.

AWARD:

No new language will be added to the contract indemnifying bargaining unit members who are the subject of a complaint or a lawsuit.

ISSUE #13 -- Disciplinary Meetings – What rights should employees have for disciplinary meetings? (Article XIV, new section)

Union’s Position:

The Union proposes new language to the contract that would allow employees to secure Union representation or an attorney, at their own expense, if they are called in for an interview/investigation. The proposed language is very common in public sector collective bargaining agreements in Minnesota. Within Winona County the following collective bargaining agreements have some language

providing the right to a Union representative at any meeting or investigation that could lead to discipline: Human Services, LELS and the Operating Engineers. The type of provision requested is also found in the Assistant County Attorney contracts in both Blue Earth County and Carver County.

Employer's Position:

The Union did not establish a compelling need to add the proposed contract language. There is no evidence of any situation where such broad representational language was needed nor has there been any instance where any Assistant County Attorney was ever denied the right to at least have Union representation. There are no other contracts with other bargaining units that provide representational language that is as broad as that proposed by the Assistant County Attorneys nor is the proposal supported by external comparisons. The proposed language is so broad that attorney representation could be requested any time a supervisor wants to have a discussion with an employee regarding job performance. There is no "need" for the proposed language and the request should be denied.

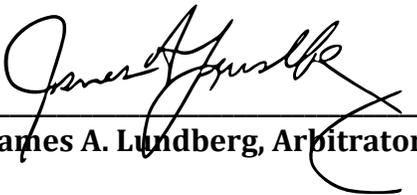
OPINION:

While Union representation provisions are common in collective bargaining agreements in Minnesota, the proposal being made by the Union is very broad. No evidence that Assistant County Attorneys in Winona County have been denied Union representation was submitted at hearing. Hence, a very broad cure is proposed for a problem that may arise at some time. At this time new contract language regarding employee rights to representation should be the product of negotiations.

AWARD:

No new language providing for Union representation or an attorney, at their own expense, if called into an interview/investigation will be added to the collective bargaining agreement.

Dated: January 19, 2015


James A. Lundberg, Arbitrator