

IN THE MATTER OF ARBITRATION BETWEEN

AFSCME COUNCIL 65)	AWARD
AND)	INTEREST ARBITRATION
CARVER COUNTY, MINNESOTA)	
(Assistant County Attorneys))	BMS 15-PN-0621

ARBITRATOR:	Charlotte Neigh
HEARING:	January 27, 2016
POSTHEARING BRIEFS RECEIVED:	February 11, 2016
AWARD:	February 22, 2016

REPRESENTATIVES

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JURISDICTION AND PROCEDURE

In accordance with the Minnesota Public Employment Labor Relations Act (PELRA), Charlotte Neigh was selected to arbitrate this matter and the Commissioner of the Minnesota Bureau of Mediation Services certified the issues to be arbitrated. A hearing was held in Chaska where both parties had a full opportunity to offer evidence and argument. By agreement of the parties, posthearing briefs were e-mailed on February 11th and the record was closed upon their receipt.

ISSUES CERTIFIED AT IMPASSE

- | | |
|--|------------------|
| 1. PTO Donations - Should a program be established | Art. 12 (new) |
| 2. Severance Compensation - Should language be updated | Art. 16 |
| 3. Health Insurance - Employer contribution for 2016 (<i>resolved</i>) | Art. 19.2.3 |
| 4. Wages 2015 - General scale increase, if any | Appendix A, B, C |
| 5. Wages 2016 - General scale increase, if any | Appendix A, B, C |
| 6. Wages - Eligibility for general increase | Appendix A, B, C |
| 7. Performance Increases 2015 - If any | Appendix |
| 8. Performance Increases 2016 - If any | Appendix |
| 9. Wages - Salary increase upon completion of probation | Appendix (new) |
| 10. Wages - Proration of merit increases | Appendix (new) |
| 11. Wages - Eligibility for performance increases | Appendix (new) |
| 12. Salary Rates - Should Section 8 pilot language be deleted | Art. 22.8 |

BACKGROUND

Carver County has about 644 employees, 23 non-union, and in eleven bargaining units (BU): AFSCME General-197 (not settled for 2016); AFSCME Social Services-163 (not settled for 2016); AFSCME Public Works-42; MNPEA Licensed Deputy-63; LELS Licensed Sergeant-11; Teamsters Detention Deputy/Dispatchers-48; Teamsters Detention Sergeant-5; Teamsters Non-Licensed Management-6; Teamsters Licensed Management-5; SMACC Supervisors and Managers-68.

The ACA BU consists of 13 non-supervisory assistant county attorneys in classifications I (1), II (3) and III (9), which are ranked for salary purposes as Grades 14, 15 and 17, respectively. The ACAs have been working under an extension of a collective bargaining agreement (CBA) that expired in December 2014 and so the issues relate to calendar years 2015 and 2016. Although the ACAs know what performance rating they received for 2014, they did not receive the salary increase that would have been effective in March 2015 because of a lack of an agreement regarding the method of calculating the increases.

The 2012-14 CBA provided for a switch in 2013 from a traditional salary schedule of steps based on years of service to a pay-for-performance (PFP) system being implemented by the County for its non-bargaining employees. The PFP system for determining the amount of a particular employee's compensation has three potential components: a salary range (Range) from minimum to maximum for the position; a "merit pay matrix" (Matrix) indicating the percentage of increase to be awarded annually based on a rating of the employee's performance during the previous year; and the possibility of a general adjustment.

The ACAs, along with the Supervisors and Managers, were the first BUs to agree to adopt the PFP system in 2013. By 2014, nine out of eleven BUs incorporated the PFP system into their CBAs, including the three others represented by AFSCME. During negotiations for the 2016 CBA the last Teamsters BU agreed to PFP, leaving only the MNPEA Licensed Deputies operating under a traditional salary step system.

The County's personnel policy and the CBAs state that the Board is to establish the salary ranges: in 2013 it adjusted the ranges by 2%; in 2014 by 2.25%; and in 2015 by 2.5%. The minimum, midpoint and maximum rates of pay are increased by these percentages. Based on an analysis of wage information from a group of employers deemed to be comparable in the market, for 2016 the Board approved a Range increase of 2.75% in addition to a "general increase" of 2%. This was the first general increase since the implementation of the PFP system. The Matrix for the 2016 PFP increase for non-bargaining employees and the settled BUs is: 0% for an employee rated as needing improvement; 2.25% for a "solid performer"; 3.50% for "exceeds expectations"; and 4.75% for "outstanding". To avoid distorting the salary ranges, any increase that would exceed the Range maximum is to be paid as a lump sum rather than as an increase to the base pay.

In the existing CBA, Section 8 of Article 22 - Salary Rates states: "For 2013 and 2014, there shall be a pilot pay-for-performance program in place. Salary increases during the pilot program shall be paid in accordance with Appendix B and C." The Employer is proposing to delete this language, arguing that the PFP program is established and no longer a "pilot" program. Although the Union opposes removal of this language, suggesting that it may be helpful at some future date when the PFP system is reconsidered, it is not seeking to abandon the PFP system in the next CBA. However, some of the Union's positions would substantially change fundamental aspects of the PFP system.

ISSUE NO. 3 - EMPLOYER CONTRIBUTION TO HEALTH INSURANCE 2016

This issue was resolved by the parties prior to the hearing and is not to be addressed by the Arbitrator.

ISSUE NO. 1 - PTO DONATIONS

UNION POSITION

“AFSCME seeks to add a provision in the CBA which would allow bargaining unit member to donate Paid Time Off to other bargaining unit members and other AFSCME members or county employees who have little or no PTO accrued yet have serious need of time off due to serious illness of themselves or a family member for whom they are a caretaker. Donation program would be similar to the sick leave donation program that used to be in place before the PTO system was implemented.”

COUNTY POSITION

The County is opposed to the inclusion of this new program.

UNION ARGUMENTS

- The CBA used to have a sick leave donation provision before the PTO system replaced the traditional paid sick/vacation time system.
- This is not something used often nor would it impose any kind of burden on the employer other than administering the program.

COUNTY ARGUMENTS

- There has never been a donation program provision in the CBA and there has been no program since 2010 when the County established the PTO benefit.
- Such a program raises a number of questions not addressed by the Union, such as: the definition of serious illness; who decides whether one exists; sharing confidential medical information; the amount of PTO that may be donated; the privacy of recipients and/or donors; and potential tax issues and consequences governed by IRS rules and guidelines.
- The Union is seeking a benefit that no other employee group has.

ANALYSIS AND DISCUSSION

The County persuasively argues that this proposal is not fully developed and leaves too many questions unanswered and details unaddressed. Considering that the previous program was pursuant to an Employer policy rather than such a provision in the CBA, this would be a new benefit and the Union has not demonstrated a need that would override the County's objections.

AWARD - ISSUE NO. 1

The Union's proposal shall not be added to the CBA.

ISSUE NO. 2 - SEVERANCE COMPENSATION: SHOULD LANGUAGE BE UPDATED

COUNTY POSITION

Update Article 16, Section 1 as follows:

Delete: *Prior to October 8, 2012, any employee who has been employed by the County for at least five (5) continuous years whose employment is terminated, upon such termination in good standing, shall be eligible for severance compensation of the value of one-half (1/2) of the employee's unused sick leave, excluding any sick leave banked for use in the case of catastrophic illness pursuant to Article XIII, Section 3, not to exceed eight thousand dollars (\$8,000).*

Add: *An employee separating employment in good standing shall be eligible for severance compensation.*

Retain: *The County reserves the right not to pay severance compensation if an employee is terminated for cause.*

Delete: *Effective for employee retirements or resignations after October 7, 2012.*

Retain: *PTO shall be paid out in accordance with the following schedule:*

(The schedule in the current CBA shows the percentage of unused PTO that may be paid out, which is graduated based on years of continuous service.)

UNION POSITION

The Union opposes any change in Article 16.

COUNTY ARGUMENTS

- Its proposal does not modify the benefit that has been in place since October 8, 2012, when PTO replaced traditional vacation and sick leave benefits.
- There has never been any dispute between the parties regarding the meaning of "in good standing".
- The language should be updated to reflect the current status of the benefit by deleting obsolete language. Preserving obsolete language can confuse those who read and administer the provisions; and contrary to the Union's argument, the change is needed.

UNION ARGUMENTS

- The change is unnecessary.

ANALYSIS AND DISCUSSION

Given that the proposal merely provides the cleaning up of potentially confusing, obsolete language without substantively modifying the benefit, the County's position should be adopted.

AWARD - ISSUE NO. 2

The language of Article 16, Section 1, shall be updated as proposed by the County.

WAGES GENERALLY

Various factors of the PFP system have been mixed up in the parties' positions in some of the issues certified for arbitration. Certified Issues No. 4 and 5 for 2015 and 2016 are labeled "Wages - General Scale Increase". Under these labels both parties refer to "salary schedule" or "pay scale/schedule", but the County then addresses "salary ranges as established by the County Board" and the Union seeks a "general increase" of 5% to be applied to the "rates/ranges" in both 2015 and 2016.

Certified Issue No. 6 is "Wages - Eligibility for General Increase". Under this label both parties address the issue of eligibility: the County wants to require a satisfactory performance rating for an employee to qualify for a "general increase" in 2016; the Union wants it to be made "without regard for performance ratings". In addition to addressing the question of eligibility, the County proposes a general increase of 2% effective the first full pay period in March 2016, although it is not clear whether that is to be applied to the base rate existing before or after it is increased based on performance. The Union refers back to its proposal under Issues No. 4 and 5 for a 5% general increase in each year. Additionally, the Union proposes that if the general increase puts an individual over the Range maximum, a new maximum rate will be established.

The County has acted to preserve the Ranges established by the Board from being distorted by individual increases for employees at or near the top of the Range, by specifying any increase that would result in a salary exceeding the established maximum is to be paid as a lump sum rather than enhancing the base, which would lead to extending the Range maximum and compounding of the individual's salary over subsequent years. The Union does not like this feature, arguing that it exacerbates the relatively poor position of the ACAs compared to their peers in the counties previously determined to be the appropriate comparison group (CG) for Carver County: Anoka, Dakota, Scott, Washington and Wright.

It is noted that throughout the record components of the PFP system are referred to by differing terminology. The exhibits and the County's consistent historical explanations establish the following components for determining the amount of a particular employee's compensation. These are the terms and definitions that will be used in discussing the items at issue: "Range" - a salary range from minimum to maximum for the position; "Matrix" - "merit pay matrix" indicating the percentage of increase to be awarded annually based on a rating of the employee's performance during the previous year; and "General Increase" - a market adjustment applied to each individual's actual base rate.

A conflict exists regarding the timing of the potential increases: January or March. The existing language states that salary ranges for a calendar year, "as established by the County Board", are to be "implemented" "effective January 1" of the designated year, and to remain the same as the previous year until "revised" by the Board. The County is now proposing to specify that any such revision would be an "increase" and to make it effective during the first full pay period in March rather than the last one. This timing allows for performance during the previous calendar year to be evaluated in February. The percentages for the Merit increases have been negotiated for each year and incorporated into the CBA, which specifies that merit raises are effective in March.

The Union's basic argument is that the ACAs are underpaid in comparison to those in the CG and the salaries in Carver County should more closely approach the average in the CG.

Wages - Generally (continued)

The County's basic argument is that: the ACA salaries are appropriately competitive in the CG; the components and provisions of the PFP system adopted by 10 of 11 BUs are uniform and consistent; and the County is seeking to maintain the internal consistency that has existed since the PFP system was implemented, and the uniformity of wage adjustments that were negotiated under the prior system for many years. If the ACA BU is awarded amounts that deviate from the salary ranges, merit pay matrix, or general increases for the other BUs, the uniformity will be disrupted and the PFP system will be distorted.

ISSUES NO. 4, 5 and 6 - WAGES 2015 & 2016

EXISTING LANGUAGE

Appendix C - 2014 Salary Ranges and Increase Matrix (Effective 1/1/14 through 12/31/14)

2014 Salary Ranges: Effective January 1, 2014, implement salary ranges as established by the County Board. Salary ranges remain at the 2013 rates until revised by the County Board.

General Adjustment: 0.0% general increase.

Performance-based Increases

<i>Performance Rating</i>	<i>Rating</i>	<i>Rating</i>	<i>Rating</i>	<i>Rating</i>
	<i>Unacceptable or Needs improvement; Learner</i>	<i>Meets Expectations Contributor</i>	<i>Exceeds Expectations; Achiever</i>	<i>Outstanding; Role Model</i>
<i>*Base Adjustment</i>	<i>0%</i>	<i>2.0%</i>	<i>3.0%</i>	<i>4.25%</i>

** If the merit increase exceeds the salary range maximum the remainder shall be paid as a lump sum.*

Implementation of 2014 Merit Increases

- Calculation of Merit Increase: Salary increases for employees whose salary is at or below the Midpoint of the appropriate grade will be calculated based on the Midpoint. Salary increases for employees whose salary is above the Midpoint of the appropriate grade will be calculated based upon the employee's base salary.*
- Employees who terminate employment prior to the date of the County Board approval of this Agreement shall not be eligible for retroactive salary adjustments.*
- All merit raises shall be effective the last full pay period in March, or if due to a leave of absence, delaying the performance evaluation, the first full pay period following the evaluation.*
- Performance evaluations are not subject to the grievance procedure.*
- Performance Evaluations shall be reviewed and approved by the County Attorney.*

UNION POSITION

Effective January 1, 2015, AFSCME seeks a general increase to the pay scale/schedule of five percent (5%); this percentage is to be applied to the minimum and maximum and midpoint rates/ranges in the Appendix.

Effective January 1, 2016, AFSCME seeks a general increase to the pay scale/schedule of five percent (5%); this percentage is to be applied to the minimum and maximum and midpoint rates/ranges in the Appendix.

Add language which states: All members of the bargaining unit will be eligible for the general pay increase in 2015 and 2016; the general increase adjustments will be made without regard for performance ratings. If the general increase puts any individual employee over the scale maximum then the provision regarding lump sum payout above the maximum shall not apply and the new maximum rate will be established for the scale and implemented.

The amount of the general increase, if any, is to be determined by the Arbitrator in Issue 4 and 5.

COUNTY POSITION

The County proposes to include the following language regarding the increase in the salary schedules for 2015:

2015 Salary Ranges: Effective the first full pay period in March of 2015, implement salary ranges as established by the County Board. Salary ranges remain at the 2015 rates until increased by the County Board.

The County proposes to include the following language regarding the increase in the salary schedules for 2016:

2016 Salary Ranges: Effective the first full pay period in March of 2016, implement salary ranges as established by the County Board. Salary ranges remain at their 2016 rates until increased by the County Board.

The County is opposed to a general adjustment for 2015.

For 2016, the County proposes the following:

General Adjustment: Regular employees who receive an overall rating of Solid Performer or higher on the performance evaluation for the previous calendar year under review and probationary employees shall receive a 2% general increase effective the first full pay period in March 2016.

UNION ARGUMENTS

RE: 2015 GENERAL INCREASE

- Carver County ACAs are underpaid by \$10,000 to \$15,000/year compared to the CG and the County's proposal of 0% general wage increase in 2015 does nothing to gain ground toward the average salary paid in the CG. When the ACAs in the CG receive their 2016 wage increases, this BU will be further behind.
- The top pay in 2014 for an Attorney III in Carver County is \$101,213 compared to the 2015 average of \$115,723 in the CG.
- An across-the-board general pay increase of five percent (5%) effective 1/1/15 is appropriate given the internal, external and market comparisons.
- There is no doubt that Carver County has the financial ability to pay the proposed increase, having budgeted for substantial market adjustments in both 2015 and 2016.
- The County has awarded substantial pay increases to the elected County Attorney every year he has been in office, with an increase of 5.9% in 2015.
- The effective date for the increase should be January 1 rather than the "first full pay period" in March, as proposed by the County. The general increase should not be tied in any way to the PFP rating system.

RE: 2016 GENERAL INCREASE

- For all the reasons stated above, there should be a second five percent (5%) general pay increase effective January 1, 2016.
- The County Attorney received a pay increase of 6.3% general pay increase for 2016.
- Recognizing the need to make market adjustments and to add staff, the Board budgeted \$2.4 million additional for pay increases in 2016.
- Without this kind of increase in 2015 and 2016 the ACAs will continue to be far behind their peers in the CG.
- The Employer's proposals of 0% in 2015 and 2% in 2016 are not consistent with the market or with the \$2.4 million increase in the budget for wages in 2016.
- The general increase should be awarded regardless of PFP ratings and so there is no need to delay the general increase until March 2016 when the PFP increases go into effect. The effective date of the 2016 general increase should be January 1, 2016.

RE: ELIGIBILITY FOR GENERAL INCREASE

- The general increase is meant to adjust the pay for all jobs to stay in line with the market; it is inconsistent with the concept of a market adjustment to deny some employees a general increase.
- The County has budgeted significant additional dollars for "market adjustments", which should not be tied to the merit pay system that subjects employees to the whims of supervisors to determine whether they get any increase at all.
- Denying any ACA a general increase makes it harder to catch up to the average pay in the CG and to pay the debt many are carrying because of student loans.
- The general pay increase of whatever amount should not be tied to anything but the market and the economy of Carver County.

COUNTY ARGUMENTS

- Eight of the 10 other BUs have negotiated settlements with the County, including the Public Works unit represented by AFSCME Council 65. The ACA BU is seeking to modify the uniform PFP system and also seeks significantly greater wage increases than any other employee group. The ACA BU has proceeded to arbitration with the view that they have nothing to lose and everything to gain in an effort to convince the Arbitrator to grant something it could not have reasonably achieved in negotiations. This essential unit should not be encouraged to proceed to interest arbitration in the future and negatively impact employee morale and labor relations stability.
- The County has maintained uniformity in wage adjustments and the compensation systems for many years, which has continued with the negotiated PFP system; its positions maintain internal consistency and uniformity regarding the components and provisions of the PFP system for all ten of the BUs that have incorporated it into their CBAs.
- The fundamental objective of interest arbitration is to formulate an award that represents the agreement the parties would have eventually reached had they been able to negotiate to a successful conclusion, which can be measured by looking at what the other groups negotiated voluntarily.
- General adjustments were not included in the PFP system for any BU until 2016.
- Since the PFP system was established, the salary ranges have been established by the County Board, as expressly provided in the CBAs. The Board has established Range increases annually: 2013-2%; 2014-2.25%; 2015-2.5%; 2016-2.75%. The amount of increases has been consistent for all BUs.
- The Union's position of a 5% increase to the salary ranges in each year is a significant departure from the internally uniform PFP system, where the adjustment to the Range does not directly result in an increase to an individual's salary, but affects the calculation of PFP increase and provides greater opportunity for earnings.
- Under the Union's position, the ACAs would see a far greater increase than any other County employee in the PFP system: a 10% increase in the Ranges over two years vs. the 5.25% proposed by the County. In addition, the Union proposes that the increase to the Range would directly give each employee a 5% increase, which would significantly modify the PFP system.
- There is no justification for a BU of 13 employees, representing only 2% of the total workforce, to receive greater increases than all other employees who have reached voluntarily negotiated provisions of the PFP system.

RE: GENERAL INCREASE

- No legitimate argument exists to depart from the County's strong internal pattern of consistency for all BUs: no general increase for 2015; 2% proposal for 2016 for an employee being rated as "solid performer" or higher.
- The Union proposes a general increase of 5% in each year even for employees rated as "unacceptable" or "needs improvement"; further it would be applied so as to create a floating range maximum, which could result in different maximum rates of pay for the same position.
- Attraction and retention statistics show that in 2013-2015 there have been plenty of applicants for the minimal number of job postings at the Attorney I level; the County has received an average of 100 applications per position hired.
- Pay Equity Report information indicates that Attorney IIs are less than 1% below predicted pay (\$65/month), and Attorney IIIs are above predicted pay by 8%.

County Arguments (continued)

- The only reason suggested by the Union for varying from the internal pattern was the student debt load of some BU members; employees in other classifications within the County also have student loans but the County does not make compensation decisions based on personal financial decisions and obligations of its employees. This is not a relevant consideration.
- The fact that a county attorney has the statutory right to appeal a budget set by the board does not affect the standards to be applied in an interest arbitration, and so does not justify a departure from an internal pattern as suggested by the Union.
- Regarding the ACAs' position relative to others in the CG, Carver County is the smallest by far, with a population only 38% of the average and considerably lower than three of them. Similarly, its tax capacity is only 43% of the average; and the net tax levy, total revenues and total expenditures are also only approximately 50% of the average. It cannot be expected that Carver County wages will match the CG average. Nevertheless the ACA salaries are extremely competitive and the County's position for 2015 brings the maximum rate of pay within 90% to 97% of the average maximum pay for comparable positions in the five comparison counties.
- Where the County has identified a need for a market-based adjustment, it has not modified the PFP system. The Licensed Management BU of Lieutenants and Commanders represented by Teamsters Local No. 320 received a 1% market adjustment to the salary of each individual without modifying the three components of the PFP system; the negotiated agreement provides for salary ranges established by the County Board, a merit matrix consistent with all other BUs, and a 2% general adjustment for employees with a satisfactory rating.
- The County's final positions result in competitive salaries for the ACAs and should be awarded.
- Any award greater than the County's positions should not be greater than the market adjustment negotiated with the Licensed Management BU.

ANALYSIS AND DISCUSSION

The Union agreed in the CBA negotiated for 2012-14 that for 2013 and 2014 there would be a "pilot pay-for-performance program in place" and that "salary increases shall be paid in accordance with Appendix B and C". Although the Union is not expressly seeking to change this language or to end the PFP system, its proposal for general increases in both years that could extend the maximum salary in the Range and serve as a basis for computing future adjustments would substantially modify the system. In addition to its burden of showing that the uniform increases offered by the County are inadequate, the Union has the burden of demonstrating that such a modification to the system is justified.

The County correctly points out that Carver County is significantly smaller in terms of population and tax capacity than the other counties in the CG, arguing that there is no reason for the ACAs to expect to earn as much as the average in the CG. The Union needs to demonstrate why it should have this expectation; the other question is whether this BU is falling further behind its peers in the CG.

The Union argues that its ACAs are substantially underpaid in comparison to the ACAs in the CG. For 2012 the Union negotiated an annual salary schedule for the first half of 2012 for Grades 14, 15 and 17 (Attorneys I, II and III) ranging from: minimum-\$49,192 to maximum-\$97,281. Effective 7/1/12 the rates increased to: minimum-\$49,691; and maximum-\$97,760. The record does not reveal how these rates related to the 2012 rates in CG.

Analysis and Discussion (continued)

For 2013, pursuant to the CBA provision regarding PFP, the County established a 2% increase to the Ranges; it also implemented the negotiated merit increase matrix. The record does not show the Ranges for 2013 either in Carver County or in the CG, so no relative position can be determined. Union Exhibit page 157 shows the top salary for Attorney III in the various counties in 2013, 2014 and 2015, but the numbers apparently reflect actual salaries as reported to the Minnesota County Attorneys Association rather than providing a comparison of salary ranges. These numbers show Carver County ranging from 88% to 90.3% of the CG average and actually gaining ground.

For 2014 the Ranges were increased by 2.25% and the negotiated PFP increases ranged from 0% to 4.25%. The amounts established for annual ACA pay rates in 2014 were: minimum-\$51,833; and maximum-\$101,961. The ACAs have continued being paid at the rates contained in the 2014 Ranges while negotiations for a new CBA have been ongoing. Therefore they are yet to realize the 2015 increased Range, and the 3/15 PFP raise.

For 2015, for the non-bargaining employees classifications and the settled BUs the Board established a Range increase of 2.5% and implemented PFP increases ranging from 0% to 4.25%. This constitutes the County's position in this arbitration, and, according to County Exhibit 17, would result in: minimum-\$53,123; and maximum-\$104,520. According to County Exhibits 48, 49 and 50, an Attorney I at the minimum would get 93.2% of the CG average and at the maximum 97%; an Attorney II at the minimum would get 87.4% and at the maximum 89.2; an Attorney III at the minimum would get 80.8% and at the maximum 90.1%.

The Board's Resolution Defining 2016 Employee Pay-for-Performance (Er. Exhibit 25) was based on recommendations of its Employee Relations (ER) department, based on its review of information from: Minnesota suburban cities with a population over 25,000; Anoka, Dakota, Scott and Washington counties; and private sector general data. The data revealed that the cities (a majority with tenure-based step increases) generally reported a pattern of a 2% to 3% general adjustment for 2016. The counties in the CG included three with a PFP system and one that negotiates the within-range movement; the data for counties showed a 2016 general adjustment ranging from 1% to 2.5%.

The ER recommendation was for a 2.75% range adjustment, explaining that:

The range adjustment itself does not have a direct immediate impact on actual employee wages or salaries. Rather, it affects employees' earning potential and defines the portion of an employee's earned increase that can be applied to their base wages in the case of those at or near the top of their range. Since pay increases at Carver County are performance based, the recommended range adjustment would allow solid performers and above who are at the top of the 2015 pay range to recognize both the general adjustment percentage and a small portion of the merit pay increase as a base pay adjustment. It would also increase the range midpoint and thereby allow solid performer and above employees who are paid below the midpoint, to have their increase calculated on a slightly higher midpoint. Finally, it allows for greater flexibility in the hiring process as competition for talent continues to mount. While we have used other organizations' general adjustments to gauge reasonable options for our range adjustment, the impact of the range adjustment is distinct from that of a general adjustment wage increase.

Analysis and Discussion (continued)

For 2016, for the non-bargaining employees classifications the Board established a Range increase of 2.75%, effective March 7, 2016, and PFP increases ranging from 0% to 4.75%, the same as negotiated with the BUs. For the ACA BU, according to County Exhibit 18, this would result in: minimum-\$54,579; and maximum-\$107,390. It is noted that the chart attached as the last page to County Exhibit 25 shows different numbers for Grades 14, 15 and 17 but this award is relying on the numbers in County Exhibit 18, which the County is seeking to have added verbatim to the CBA.

For 2016 The Board also voted, in keeping with BU settlement patterns, to pay non-bargaining employees with a satisfactory performance rating a 2% general increase, not to exceed the new range maximum, effective the first full pay period of March 2016. This does not affect the Range maximum, as noted above in the quotation from the ER recommendation at the time of the Board's vote on the range adjustment.

CONCLUSIONS RE: WAGE RATES & ELIGIBILITY FOR GENERAL INCREASE

The County has consistently provided for reasonable wage increases under the PFP system, building on the traditional salary schedule negotiated for 2012. The Union has not shown either that the ACAs have historically ranked higher within the CG or that there is any basis for an expectation that their pay rates would equal the average in the CG. It also appears that they have not been falling further behind in their CG since the inception of the PFP system in 2013. The Union has not shown why the wage increases for 2015 and 2016 should deviate from those established for the settled BUs in conformance to the PFP system.

The County wants to tie the first general increase under the PFP system to the PFP rating matrix, and deny it to an employee whose performance in 2015 is not rated as satisfactory. The Union persuasively argues that the purpose of a general increase is to adjust the pay for all jobs to stay in line with the market, and it is inconsistent with this concept to deny some employees the general increase. The 2% increase is not intended to be a reward for good performance in the preceding calendar year; it is a recognition that the job is worth 2% more in the marketplace and that employees should be compensated accordingly for their subsequent work time. Performance that is generally and continuously unacceptable needs to be addressed as an individual disciplinary matter unrelated to the rate of pay established for the job.

AWARD - ISSUES 4, 5 & 6 - Wages 2015 & 2016; General Increase & Eligibility

Appendix A shall include the chart for salary ranges as shown in County Exhibit 17, a general adjustment of 0.0% for 2015, and this language: *2015 Salary Ranges: Effective the first full pay period in March of 2015, implement salary ranges as established by the County Board. Salary ranges remain at the 2015 rates until increased by the County Board.*

Appendix B shall include the chart for salary ranges as shown in County Exhibit 18, a general increase of 2% for regular and probationary employees effective the first full pay period in March 2016, and this language: *2016 Salary Ranges: Effective the first full pay period in March of 2016, implement salary ranges as established by the County Board. Salary ranges remain at their 2016 rates until increased by the County Board.*

ISSUES NO. 7 and 8 - PERFORMANCE INCREASES - 2015 and 2016

PARTIES' POSITIONS

Rating:	Unacceptable; Needs Improvement	Solid Performer	Exceeds Expectations	Outstanding
Union 2015 & 2016	0%	3%	5%	7%
Base Adjustment: Based on job grade maximum				
County 2015	0%	2.0%	3.25%	4.25%
County 2016	0%	2.25%	3.5%	4.75%

Base Adjustment:

If salary at or below midpoint - based on midpoint.

If salary above midpoint, based upon employee's base salary.

If the merit increase exceeds the salary range maximum the remainder shall be paid as a lump sum.

UNION ARGUMENTS

- Although the PFP system is not going to be changed in this contract term, placing stringent caps on the maximum amount of base pay and calculating pay off the midpoint results in a slowdown or drag on pay increases to the detriment of the employees.
- Until the PFP system is replaced, the cure must be larger than normal increases in PFP rates.
- The Union's proposals are justified by the external comparables.
- The County can afford this and has budgeted for it.

COUNTY ARGUMENTS

- Percentage increases in the merit matrix are negotiated with the BUs and they have been consistent for all BUs in the PFP system.
- The County's proposed matrices for 2015 and 2016 are the same as for all the BUs.
- This demonstrates the absolute consistency with which the PFP system has been developed, negotiated and administered.
- The Union's proposed increases are significantly greater than those negotiated with the other BUs.
- The Union has provided no justification for the significant departure from the uniform PFP system.

ANALYSIS AND DISCUSSION

As concluded above in the analysis of Issues 4 and 5, the Union has not shown why the percentages of the merit raises should deviate from those uniformly negotiated for the settled BUs in conformance to the PFP system.

AWARD - ISSUES 7 & 8 - Performance Increases - 2015 and 2016

The percentages for merit increases in 2015 and 2016 shall be as set forth in Employer Exhibits 17 and 18, which shall be included as part of Appendices A and B to the CBA.

ISSUE NO. 9 - SALARY INCREASE UPON COMPLETION OF PROBATION

UNION POSITION

Employees who successfully complete probation should receive a pay increase of three (3%) effective the first day of the seventh (7th) month of their employment with the County. This would apply to any new hire, whether as an Attorney I, II or III; it would not apply to trial periods for attorneys who are promoted or transferred.

COUNTY POSITION

The County is opposed to the inclusion of this new item.

UNION ARGUMENTS

- ACAs serve a 6-month probation that can be extended by 3 months.
- Only one employee in the BU, an Attorney I, is on probation; he is on the starting step of the pay schedule and ought to receive additional compensation upon completing probation.
- The starting pay for Attorney I compares unfavorably in the CG; a probationary increase would help.

COUNTY ARGUMENTS

- This is a new provision that should not be awarded unless all provisions of the PFP system are consistent with other BUs.
- Other BUs have language providing for a salary increase upon successful completion of probation: some provide an increase equivalent to the “solid performer” increase in the Matrix; others have an increase that correlates to the overall performance rating the employee receives.
- In all these BUs merit increases are prorated: employees receive performance-based increases only for the months they are actively employed by the County, and they do not receive more than one increase for the same period of time.
- Only if the County’s position regarding proration of merit increases in Issue No. 10 is awarded, should this increase be awarded.
- If an after-probation increase is awarded, it should equate to the “solid performer” increase in the Matrix, as is done in the other BUs with a 6-month probationary period.

ANALYSIS AND DISCUSSION

Because a post-probationary increase has been widely established among the County’s other BUs, it should be included in the CBA for the ACA BU, subject to the same terms as have been negotiated with the other BUs having a 6-month probationary period.

AWARD - ISSUE NO. 9 - Salary Increase Upon Completion of Probation

Upon successful completion of probation an employee shall receive a salary increase based on the percentage provided in the up-to-date Matrix for a solid performer; however this percentage shall be prorated so as to be based on only the number of months the employee was actually working for the County and the employee shall not receive more than one increase based on that same period of time.

ISSUE NO. 10 - PRORATION OF MERIT INCREASES

UNION POSITION

The Union opposes the proration of any merit or PFP increases.

COUNTY POSITION

The County proposes the following language for inclusion in both the 2015 and the 2016 Appendices:

Annual Performance-Based Increases: Each Employee's salary increase shall be based on their performance evaluation overall rating for the previous calendar year's performance, based on the table below. There shall be no compounding of pay-for-performance increases. Employee shall only receive pay-for-performance increases based on the months they are actively employed in the bargaining unit.

UNION ARGUMENTS

- Accounting for employee rates of pay should be less complicated, not more complicated, which makes it harder for an employee to know that there have not been errors.
- The proposed addition is unnecessary and confusing; the intent is not clear.
- What does it mean regarding “months they are actively employed in the bargaining unit”?
- Employees should not be penalized for using time away from work, whether pursuant to PTO in the CBA or provided by law, including parenting leave, leave due to illness or disability, well-earned vacations and the like.

COUNTY ARGUMENTS

- Because this is a merit-based compensation system, there can only be performance based increases when employees have been actively employed.
- In addition, employees should not receive performance based increases more than once for the same period of time.
- Consistent with the provisions of other CBAs the County has proposed language stating that employees shall only receive PFP increases based on the months they are actively employed.
- The PFP increases effective in March are based on the previous calendar year; an employee hired in September has worked only four months in the calendar year and so the PFP increase would be prorated at 4/12.
- To assure only one PFP increase for a given period of time, the CBA should prohibit compounding; therefore no employee shall be awarded both a partial period evaluation performance increase and probationary increase based on an evaluation of the same calendar month.

ANALYSIS AND DISCUSSION

Employer Exhibit 37 shows a variety of provisions in the other CBAs regarding this issue, most of which are different from the language proposed here, and some of which expressly include being on an “eligible leave of absence” as counting the same as “actively employed”. The language as proposed is confusing and how it would be applied is not clear.

Analysis and Discussion (continued)

Furthermore, the County seems to be losing sight of the purpose of PFP, which is to reward an employee going forward commensurately with the quality of performance in the past. If an employee gives an outstanding performance during six months of a calendar year but is not “actively employed in the bargaining unit” (whatever that means) during six months of the year, and if the employee is on the job the following February when performance appraisals are conducted and in March when the PFP increases are effective, there is no apparent reason to deny that employee the full reward for the outstanding performance in the preceding calendar year. Situations may arise where an insufficient basis was created during the previous calendar year for a normal performance evaluation but that situation should be addressed in some other manner.

AWARD - ISSUE NO. 10 - PRORATION OF MERIT INCREASES

The language proposed by the County shall not be added to the Appendices.

ISSUE NO. 11 - ELIGIBILITY FOR PERFORMANCE INCREASES

UNION POSITION

AFSCME opposes adding the Employer’s language to the contract. If any language regarding eligibility for performance increases is added to the Appendix, it should say:

All employees shall be eligible for performance increases regardless of the hours of work, grade level, or probationary status, or leave status. No employee shall be monetarily penalized for being on leave and unable to complete their portion of the performance evaluation.

COUNTY POSITION

The County proposes the following language for inclusion in both the 2015 and 2016 Appendices:

A regular employee on an eligible leave of absence during the calendar year under review, who is budgeted to work 40 hours per week or 80 hours per pay period who works fewer than 866 hours during the calendar year under review will not be eligible for a pay-for-performance increase based on that calendar year. Employees budgeted to work less than 40 hours per week will be pro-rated based on their budgeted FTE. Employees who are on an authorized leave of absence and meet the hours worked requirement will be eligible for the full negotiated increase.

UNION ARGUMENTS

- This Employer proposal would claw back pay increases from employees who take leaves of absence.
- The Union is not convinced that this is legal under the Family Medical Leave Act or other federal leave laws or state laws, such as Minnesota’s 2015 Women’s Economic Security Act.
- The proposal as written is ambiguous and contradictory; what is the difference between an “eligible” leave of absence and “authorized” leave of absence?

COUNTY ARGUMENTS

- The County is seeking to clarify eligibility for a performance-based increase when an employee is on a leave of absence, and has proposed language to provide uniformity in administering PFP increases.
- The proposal provides that a full-time employee who works at least five months (866 hours) during the calendar year under review will be eligible for a pay for performance increase for that calendar year.
- This impacts very few employees but is consistent with PFP principles.
- It is also consistent with the language included in the other settled CBAs.
- The Union's opposition diminishes the performance-based nature of the system.
- Whether a new employee works only four months at the end of the calendar year, or an employee is on an extended leave of absence, if they receive a performance-based increase it is undue enrichment inconsistent with the nature and principles of the PFP system.

ANALYSIS AND DISCUSSION

Employer Exhibit 40 shows that the language referencing 866 hours appears in only four of the CBAs, which undermines the County's arguments regarding consistency. The language as proposed is confusing: its application to part-time employees is unclear; the meaning of the final sentence is not apparent; and the use of both "eligible" leave and "authorized" leave creates further ambiguity. Furthermore, as noted above regarding Issue No. 10, this provision loses sight of the purpose of PFP: rewarding an employee going forward commensurately with the quality of performance in the past. An employee who works 865 hours in a calendar year may perform in an outstanding fashion that can be readily ascertained in a regular performance review; there is no apparent reason to deny that employee the full benefit of the reward due for outstanding performance during the previous calendar year.

AWARD - ISSUE NO. 11 - Eligibility for Performance Increases

Neither the language proposed by the County or the language proposed by the Union shall be added to the Appendices.

ISSUE NO. 12 - SHOULD SECTION 8 PILOT LANGUAGE BE DELETED FROM ARTICLE 22

CURRENT LANGUAGE

For 2013 and 2014, there shall be a pilot pay for performance program in place. Salary increase during the pilot program shall be paid in accordance with Appendix B and C.

UNION POSITION

AFSCME opposes deletion of the language.

COUNTY POSITION

The County proposes to delete Article 22, Section 8 as obsolete language.

UNION ARGUMENTS

- There should be a record in the contract which shows the PFP program was, and still is, a “pilot” program.
- It records how and when PFP came to be applied to members of this BU; it memorializes its status as a “pilot program”, a trial or test period, and helps a future reader of the contract know that fact.
- Not all County BUs have adopted the PFP system and the possibility exists for this BU or others to return to a traditional step system at some future point in time, as has happened with many public employers in Minnesota who have learned that it is too complicated and expensive to administer and too difficult for employees to understand.

COUNTY ARGUMENTS

- Because the PFP system was new for the 2013-2014 contract years, the parties agreed it would be a pilot program for those two years, giving an opportunity for a trial to determine whether the parties wished to continue the system in successor contracts.
- The language is specific to years 2013 and 2014.
- Both parties have submitted final positions that include PFP as the system, making it clear that both parties wish to continue the system; this renders the language as unnecessary.
- The Union did not propose to adjust the language to state that the system remains a pilot project.
- Because the system will continue for the 2015-2016 CBA, it is no longer a pilot program, and section 8 should be deleted.

ANALYSIS AND DISCUSSION

The language is obsolete because it pertains specifically to 2013-2014. If it ever becomes necessary to review how and when the PFP system came to be applied to this BU, it can be readily ascertained by looking at the 2012-2014 CBA. The evidence did not address what constitutes a “pilot” program and this award makes no determination regarding whether it continues to be a “pilot” program.

AWARD - ISSUE NO. 12 - Article 22.8 “Pilot” Language

The language in Section 8 of Article 22 of the CBA shall be deleted.

THIS AWARD IS IN FULL SETTLEMENT OF ALL ISSUES SUBMITTED TO THIS ARBITRATION.

February 22, 2016

Charlotte Neigh, Arbitrator