

**IN THE MATTER OF INTEREST ARBITRATION BETWEEN**

Hennepin County

and

**BMS Case No. 12 PN 0906**

Hennepin County Professional Social Work  
Supervisory Employees Association

---

**NAME OF ARBITRATOR:** George Latimer  
Assistant James St. Peter

**DATE AND PLACE OF HEARING:** November 28, 2012  
Minneapolis, MN

**BRIEFS RECEIVED:** January 11, 2013

**DATE OF AWARD:** February 11, 2013

**BRIEFS RECEIVED AND RECORD CLOSED:** January 11, 2013

**APPEARANCES**

**FOR THE COUNTY:** Jennifer Peterson, Management Representative  
Karin Wallin, Management Representative  
William Peters, Labor Relations Director  
Carmen Castaneda, Human Services Program Manager  
Mark Lee, Human Services Area Manager  
Todd Olness, Human Resources

**FOR THE UNION:** Richard Williams, Attorney for Association  
Joan Gabriel, HSPHD Supervisor  
Nancy Erickson, HSPHD Supervisor  
Mike Kalpiers, HSPHD Supervisor  
Kevin Mctigue, HSPHD Supervisor

## **INTRODUCTION**

This is an interest arbitration arising under Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. § 179A.01-30. Hennepin County Professional Social Work Supervisory Employees Association (Union) is the exclusive representative for the Human Services and Public Health Department (HSPHD) Social Work Unit Supervisors (SWUS) employed by Hennepin County (Employer or County).

Members of this bargaining unit are essential employees under PELRA and as such do not have the right to strike, but do have the right to submit unresolved bargaining issues to binding arbitration before a neutral arbitrator selected by the parties. (Minn. Stat. § 179A.16)

The parties are signators to a collective bargaining agreement, signed on May 3, 2010. This collective bargaining agreement between the parties expired on December 31, 2011. The parties negotiated for a successor agreement and agreed to some but not all provisions. Pursuant to Minn. Stat. § 179A.16, subd. 2, and Minn. R. 5510.2930, on May 2, 2012, the Bureau of Mediation Services certified the following issues for interest arbitration:

- 1. Wages 2012: Amount of General Increase, If Any? – Article 17, Section 1**
- 2. Wages 2013: Amount of General Increase, If Any? – Article 17, Section 1**
- 3. Steps 2012: Should There Be Step Movement for Eligible Employees? – Article 17, Section 2**
- 4. Steps 2013: Should There Be Step Movement for Eligible Employees? – Article 17, Section 2**
- 5. On Call Pay: Amount of Increase, If Any? – Article 9, Section 8**
- 6. License Allowance: Should There Be Reimbursement For Any Renewal Or Maintenance Fee For Professional Licenses? – NEW**
- 7. Retroactivity: Should Amounts Awarded, If Any, Be Retroactive to January 1, 2012?**

A hearing was held on November 28, 2012 at the Hennepin County Government Center in Minneapolis, Minnesota. Both parties had full opportunity to submit documents and arguments into the record. Written closing briefs were received by the Arbitrator on January 11, 2013 and the record was closed.

**UNION FINAL POSITION**

1. Wages 2012: Amount of General Increase, If Any? – Article 17, Section 1

There shall be a five percent (5%) general increase in 2012.

Effective January 1, 2012, the following rates shall apply:

<u>Class</u>	<u>Minimum Rate</u>	<u>Maximum Rate</u>
Social Work Unit Supervisor	\$4228	\$7368

2. Wages 2013: Amount of General Increase, If Any? – Article 17, Section 1

There shall be a five percent (5%) general increase in 2013.

Effective December 30, 2012, the following rates shall apply:

<u>Class</u>	<u>Minimum Rate</u>	<u>Maximum Rate</u>
Social Work Unit Supervisor	\$4440	\$7736

3. Steps 2012: Should There Be Step Movement for Eligible Employees? – Article 17, Section 2

Delete the following language from the existing contract: “No in-range merit increases shall be granted to employees between January 1, 2011, and December 31, 2011.”

4. Steps 2013: Should There Be Step Movement for Eligible Employees? – Article 17, Section 2

Delete the following language from the existing contract: “No in-range merit increases shall be granted to employees between January 1, 2011, and December 31, 2011.”

5. On Call Pay: Amount of Increase, If Any? – Article 9, Section 8

The first sentence of Article 9, Section 8 shall read: Supervisors so designated by their department to be in “On-Call – Off Premises” status shall receive \$7.50 per hour for each such status hour.

6. License Allowance: Should There Be Reimbursement For Any Renewal Or Maintenance Fee For Professional Licenses? – NEW

The employer shall provide an annual allowance for all bargaining unit members who hold a license in an amount equal to any renewal or maintenance fees.

7. Retroactivity: Should Amounts Awarded, If Any, Be Retroactive to January 1, 2012?

All provisions awarded shall be retroactive to January 1, 2012.

**EMPLOYER FINAL POSITION**

1. Wages 2012: Amount of General Increase, If Any? – Article 17, Section 1

There shall be no (0%) general increase in 2012.

Effective January 1, 2012, the following rates shall apply:

<u>Class</u>	<u>Minimum Rate</u>	<u>Maximum Rate</u>
Social Work Unit Supervisor	\$4027	\$7018

There shall be a \$500 cash lump sum paid to all benefit earning employees effective and payable the first full payroll after County Board approval. – New

2. Wages 2013: Amount of General Increase, If Any? – Article 17, Section 1

There shall either be a 1.5% or 2.5% general increase in 2013.

Effective December 30, 2012, if the Union has selected a 1.5% general increase, the following rates shall apply:

<u>Class</u>	<u>Minimum Rate</u>	<u>Maximum Rate</u>
Social Work Unit Supervisor	\$4087	\$7123

Effective December 30, 2012, if the Union has selected a 2.5% general increase, the following rates shall apply:

<u>Class</u>	<u>Minimum Rate</u>	<u>Maximum Rate</u>
Social Work Unit Supervisor	\$4128	\$7193

3. Steps 2012: Should There Be Step Movement for Eligible Employees? – Article 17, Section 2

There shall be no step movement for eligible employees in 2012.

4. Steps 2013: Should There Be Step Movement for Eligible Employees? – Article 17, Section 2

There shall be step movement for benefit earning employees in 2013 if the Union selects a 1.5% general increase for 2013.

There shall be no step movement for benefit earning employees in 2013 if the Union selects a 2.5% general increase in 2013.

5. On Call Pay: Amount of Increase, If Any? – Article 9, Section 8

There shall be no change in on call pay. Status Quo.

6. License Allowance: Should There Be Reimbursement For Any Renewal Or Maintenance Fee For Professional Licenses? – NEW

There should not be reimbursement for any renewal or maintenance fee for professional licenses.

7. Retroactivity: Should Amounts Awarded, If Any, Be Retroactive to January 1, 2012?

Amounts awarded, if any, should not be retroactive to January 1, 2012.

**RELEVANT MINNESOTA STATUTE**

**383B.29 DUTIES OF HUMAN RESOURCES BOARD.**

Subdivision 1. **Board proceedings.** When any member of the board is not present at the time a matter is submitted to the board such matter shall be deemed submitted to each member of the board with like effect as though each member of the board had been present at the time of submission of such matter. Whenever during the consideration of a matter which is before the board, there is a change in the personnel of the board, the matter shall be deemed submitted to

the new member, or members, as though said new member, or members, had been a member of the board at the time of the submission of the matter.

No meetings of the board shall be held unless at least four members are present. A majority vote of all members present shall constitute the decision of the board. The board shall keep records and minutes of its business and official actions which shall be open to public inspection subject to such reasonable rules as to time and place of inspection as the board may establish.

Subd. 2. **Duties.** (a) The board shall establish rules for the classified service with the assistance of the human resources director. All rules and amendments proposed by the board shall be subject to public hearing upon prior notice to department heads, employees, affected labor organizations, and the public, as the board may, by rule prescribe. The rules as approved by the majority vote of the board shall be submitted to the county board for approval or rejection. When approved, by majority vote and in the form of a written resolution, the rules shall have the force and effect of law. The rules may be amended and repealed with the consent of the county board in the same manner as provided for original adoption.

(b) The rules shall provide for:

(1) selection methods and the establishment of lists to fill positions in the county service including promotion;

(2) the appointment of qualified candidates to vacant positions, if the vacancy is not filled by recall from the layoff list, demotion, reinstatement, reassignment, transfer from other employers or with county service. Whenever practicable, vacancies must be filled by promotion. The 20 persons having the highest qualifications that meet the requirements of the position to be filled, when available, must be referred to appointing authority when a vacancy occurs;

(3) a period of probation during which period the probationer may be discharged or demoted, without right of appeal. The period of probation, which is determined by the department director and the human resources director, must not exceed 12 months unless approved by the board;

(4) seasonal, provisional, temporary, and emergency appointments. The appointments, except seasonal, must not exceed six calendar months in any 12-month period. Seasonal appointments must not exceed nine calendar months in any 12-month period;

(5) voluntary demotion; reassignment; transfers from within county service or other employers; and reinstatement of persons who without fault or delinquency on their part are separated from the service or demoted;

(6) a compensation plan for classes and positions not represented by an exclusive bargaining representative to be presented to the county board for approval;

(7) a classification plan for positions in the county service to be presented to the county board for approval;

(8) leaves of absence with or without pay; layoffs; hours of employment; vacations and sick leave; severance pay, and other benefits and emoluments as may improve the public service;

(9) suspensions without pay for disciplinary purposes, discharges, or demotion of a permanent employee only when the person has been presented with written charges and has been allowed a hearing;

(10) establishment of reasonable fees, not to exceed the actual cost of service or material provided;

(11) establishment of rules of conduct that are conditions of employment in the county service;

(12) policies to deal with falsification of an application or record to improve prospects for employment or with interference with the selection process; and

(13) a panel of three department directors, randomly selected from outside the employee's department, to hear and decide nondisciplinary appeals within the jurisdiction of the rules, if there has been a preliminary showing to the county attorney that a rule violation has occurred, except appeals relating to layoffs shall be heard by the board.

Subd. 3. **Hearing officers.** The board, with the assistance of the human resources director, shall utilize and prescribe the duties of hearing officers, or contract with the Office of Administrative Hearings pursuant to section 14.55. When it is determined that a disciplinary or veteran's hearing be held which requires a hearing officer, the director will first ascertain the availability and timeliness of scheduling the hearing through the office of administrative hearings pursuant to section 14.55. If it is determined that a prompt hearing is not readily available through the office of administrative hearings, the board, with the assistance of the human resources director, may then utilize an impartial hearing officer. Decisions of the hearing officers are final and binding on the parties and the Human Resources Board, except as provided in section 197.46.

### **383B.30 DIRECTOR; SELECTION.**

The county administrator, with the approval of the county board, shall appoint a human resources director. The director shall be in the classified service and shall not be removed by the board except under written charges in accordance with sections 383B.26 to 383B.42 and after a public hearing by the board.

### **383B.31 DUTIES OF HUMAN RESOURCES DIRECTOR.**

(a) The director as administrator of the Human Resources Department shall cooperate with and assist department heads and elected officials in providing an effective human resources program. The director shall direct and supervise all of the Human Resources Department's administrative and technical activities in addition to the duties imposed on the director in sections 383B.26 to 383B.42.

(b) The director shall:

(1) attend the meetings of the board, act as its secretary and maintain its official records;

(2) appoint the employees of the Human Resources Department in accordance with and subject to the provisions of sections 383B.26 to 383B.42; and

(3) recommend rules and amendments to rules for the administration of sections 383B.26 to 383B.42.

(c) The director shall establish uniform procedures and standards to:

(1) prepare, recommend and maintain a classification plan which shall group all positions in the county into classes;

(2) prepare, recommend, and maintain a compensation plan for the county service;

(3) except as provided in clauses (4) and (5), develop and hold competitive examinations to determine the qualifications of persons seeking employment in any class and to establish lists of those passing such examinations;

(4) develop a procedure and define the criteria for the selection and referral of qualified applicants to fill positions in classifications involving unskilled tasks or in classifications which require state licensure or certification to engage in the activity;

(5) establish alternative selection procedures to measure the ability of persons whose disabilities are so severe that the usual selection process cannot adequately predict job performance;

- (6) when a vacancy is to be filled, to certify to the appointing authority upon requisition, the names of the persons highest on the appropriate layoff list, or if there is no such list, the appropriate eligible list for the class;
- (7) maintain records necessary for the proper administration of sections 383B.26 to 383B.42;
- (8) provide a system for checking payrolls and accounts for the payment of compensation to employees in the classified and unclassified service so as to enable the director, upon evidence thereof, to certify or cause to be certified the persons whose names appear thereon have been employed or on authorized leave before payment may be lawfully made to such employees;
- (9) make investigations concerning the administration of sections 383B.26 to 383B.42 and rules made thereunder, and take corrective actions as deemed reasonable and appropriate to the situation;
- (10) make investigations and reports required by the county board and report thereon; and
- (11) make an annual report to the county board and the Human Resources Board on the activities of the Human Resources Department.
- (d) The classification plan authorized in paragraph (c), clause (1), is effective on approval by the county board.
- (e) The compensation plan authorized in paragraph (c), clause (2), may include benefits and other emoluments to improve the public service as determined by the human resources director. The plan is effective on approval by the county board which may approve or reject all or part of it.
- (f) The examination process described in paragraph (c), clause (3), must provide for: (1) the rejection of otherwise eligible applicants or candidates who fail to comply with the reasonable requirements of the human resources director; and (2) examinations that may consist of any one or a combination of the following: written or oral tests of the subjective or objective type, physical tests, practical or demonstration tests, or evaluation of past training and experience. Oral tests, either of the question and answer type, or the interview type, may be used to test the candidates.
- (g) The classifications described in paragraph (c), clause (4), must be authorized by the county board. Applicants to fill vacancies in the classifications are exempt from ranking and certification provided for in section 383B.29, subdivision 2, paragraph (b), clause (2). The director shall refer all qualified applicants to the appointing authority having vacancies in the appropriate classifications.

## **RELEVANT HENNEPIN COUNTY HUMAN RESOURCES RULES**

### **Section 4: Classification Plan**

#### **4.1 Classification Plan**

A classification plan shall be developed and maintained so that all positions substantially similar with respect to the type, difficulty and responsibility of work, are included in the same class and that the same schedule of pay may be applied to all positions in a class.

#### **4.2 Allocation of Positions**

When a new position is to be established or a change in duties is proposed for an existing position which is to be filled, the appointing authority shall notify the Human Resources Director in writing, and he/she shall allocate the position to its appropriate class. After the Human

Resources Director has allocated a position, he/she shall notify the appointing authority affected, in writing, of that allocation. The allocation shall become effective immediately, but the appointing authority may within fifteen (15) working days file with the Human Resources Director a request for reconsideration in accordance with Section 4.5.

#### **4.3 Reallocation of Positions**

Whenever a position appears to be improperly allocated, the Human Resources Director, upon his/her own initiative or at the request of a regular employee or the appointing authority, shall investigate the duties of the affected position. In the event of a request by a regular employee, the employee's request shall be submitted to the Department Director for review prior to submission to the Human Resources Director. The Department Director or his/her designee shall have twenty-one (21) calendar days following the receipt of the submission to review and submit the employee's request to the Human Resources Director. Based on the results of the investigation, the Human Resources Director shall advise the appointing authority of the appropriateness of the position's current classification. The appointing authority may then have the option of accepting the classification decision of the Human Resources Director or modifying the duties, tasks and responsibilities so that they conform to the existing class allocation of the position.

In determining the class to which any position shall be allocated, the definition of each class shall be considered as a whole. Consideration shall be given to the general duties, specific tasks, responsibilities, qualification requirements and relationships to other classes, which in total affords a picture of employment that the class is intended to encompass. To be reallocated, the preponderance of the higher order/most significant tasks of the new class must be encompassed in the work being performed and the tasks must be at similar levels of difficulty and complexity; and the percentage of time spent performing the higher order/most significant tasks must be reflective of the time spent on these tasks by the typical incumbent of the new class.

In making a request for a review of a position, the regular employee or the appointing authority shall set forth the changes that have occurred in the particular position since the last review or other factors which in his/her opinion warrant reallocation. When the Human Resources Director allocates a position or denies an application for reallocation, he/she shall notify the appointing authority, the employee and the exclusive representative affected by his/her action.

#### **4.4 Effect of Reallocation of Positions**

A reallocated position shall be considered the same as a vacant position and the appointing authority shall submit a request to fill the position as reallocated in accordance with the section governing appointment or transfer within sixty (60) calendar days following the date of the notice of reallocation of the position. An employee whose position is reallocated shall continue in his/her status in the former class, but he/she shall be ineligible to continue in the position in the new class, unless he/she is appointed to that position in accordance with the section governing appointment. Any employee in a position which is reallocated shall, subject to qualifying in the examination, be considered for appointment in accordance with Section 8.3g.

#### **4.5 Appeal of Allocation or Reallocation of Positions**

A regular employee or appointing authority affected by an allocation, reallocation, or denial of request for reallocation shall have the right to make a request for reconsideration to the Human

Resources Director. The request for reconsideration to the Human Resources Director (in accordance with Section 4.2) must be filed within fifteen (15) working days together with written evidence by way of affidavits, statements or exhibits which the appointing authority or regular employee may desire to be considered by the Human Resources Director. The Human Resources Director shall act upon that request within thirty (30) working days for a single incumbent classification decision appeal or within a reasonable period for a multiple incumbent classification decision appeal after receiving it and shall notify the appointing authority or regular employee of the Human Resources Director's determination. Any appealed allocation or reallocation granted by the Human Resources Director shall be effective on the first pay period following the date of the original notice of determination by the Human Resources Director.

Subsequent to the Human Resources Director's decision on the request for reconsideration, should a regular employee or appointing authority disagree with the Human Resources Director on classification assignment of the position, the action may be appealed to the Board.

The appeal shall be made by written notice served on the Human Resources Director within fifteen (15) working days from receipt of the Human Resources Director's decision in response to the reconsideration request of the classification assignment. The request for appeal of the Human Resources Director's allocation must be on the basis:

- a. That the action of the Human Resources Director was unreasonable, arbitrary, capricious or lacked proper factual basis.
- b. That the action of the Human Resources Director was procured by fraud, coercion or the improper conduct of any party in interest.

The Human Resources Director shall submit the record upon which he/she acted for the Board's consideration which shall include, but not be limited to:

1. A copy of the employee's position description questionnaire,
2. A copy of the request for reconsideration submitted by the employee(s) or appointing authority,
3. A copy of the class specification for the class to which the employee's position was assigned,
4. A succinct written statement from the Human Resources Director and appointing authority or permanent employee setting forth the reasons and necessity for the classification assignment of the position.

The employee or appointing authority shall submit in writing, at least ten (10) working days before the date scheduled for hearing, a succinct written statement stating the reasons for disagreement with the proposed classification assignment of the position.

Thereafter, the Board shall review the information submitted and may request further evidence from the parties. The Board may sustain the action of the Human Resources Director or determine that the action of the Human Resources Director was unreasonable, arbitrary or capricious or lacked proper factual basis. Where the Board does not sustain the action of the Human Resources Director, the Board shall give the Human Resources Director the opportunity to review the classification assignment and the Human Resources Director thereupon shall conduct an investigation into the facts and circumstances relating to the classification assignment of the position and report the findings to the Board within thirty (30) working days or a

reasonable period as determined by the Board. Following the presentation of the results of the Human Resources Director's investigation, the Board shall then either sustain, reverse or modify the Human Resources Director's action. The Board's decision shall become effective on the date of the Human Resources Director's original decision and shall be implemented in accordance with Section 4.4.

The Department Director, subject to County Board approval, or any employee may petition the District Court for review and determination of any alleged, arbitrary or capricious action on the part of the Human Resources Board involving allocation.

#### **4.6 Class Specifications**

The Human Resources Director shall provide and may amend written specifications for each class in the classification plan. Each of the class specifications shall include the class title, a description of the duties and responsibilities of the work and a statement of qualifications (minimum requirements) a person shall possess to enable him/her to enter upon the duties of a position of the class with reasonable prospect of success.

The specifications of classes of positions in the classification plan and their various parts are hereby declared to have the following force and effect:

- a. The definitions are descriptive and not restrictive. They are intended to indicate the kinds of positions that are allocated to the several classes as determined by their duties and responsibilities and shall not be construed as declaring to any extent or in any way what the duties or responsibilities of any position shall be, or limiting, or in any way modifying the power of any appointing authority to assign, direct and control the work of employees under his/her supervision. The use of a particular expression or illustration as to duties shall not be held to exclude others not mentioned that are of similar kind or quality.
- b. The specification for any class shall constitute the basis and source of authority for the examinations or standards by which employees are considered qualified for appointment to a specific class.

#### **4.7 Use of Class Title**

The title of a class shall be the official title of every position assigned to the class for all purposes having to do with the position and shall be used on all payrolls, budget estimates, with official records and reports relating to the position. Any abbreviations or code symbols approved by the Human Resources Director may be used in lieu of the title to designate the class of position in any such connection. Any other titles desired by the appointing authority may be used to designate any position for the purposes of internal administration and any other connection not involving Human Resources processes covered by this plan.

#### **4.8 Amendment to the Classification Plan**

Whenever any change in organization, creation of a new position or change in duties or responsibilities of any individual position makes the revision of the classification plan necessary, the Human Resources Director shall recommend the necessary revision to the County Board. The proposed changes shall become effective after adoption by the County Board.

The Human Resources Director may determine there is urgent need for establishing a new class in the classification plan to eliminate delay in the announcement, examination and appointment to a position. In such instances he/she may anticipate formal action by the County Board by tentatively adding the new class to the classification plan. He/she may then announce and hold an examination for the class or authorize appointment.

### **UNION ARGUMENT: WAGE INCREASES**

This case does not present the typical situation where parties are at interest arbitration for a determination as to what the appropriate contract provisions, including pay, should be with respect to a job that has remained unchanged from the prior contract. Rather, the duties, responsibilities and conditions of employment of the Social Work Unit Supervisors' position have changed significantly from what they were when the prior contract was negotiated. Responsibilities previously performed by Managers have been assumed by, and incorporated into, the Social Work Supervisors' position.

The Social Work Supervisors completed an informal survey, and a summary of the responses to that survey describes the changes in their job as a result of assuming shared duties with the Managers. A number of Social Work Supervisors previously sat on committees on a voluntary and time available basis, but are now being required to do so. This has created time pressures and taken away from their ability to supervise the Social Workers who are providing services to clients. In addition, this has resulted in the unit members putting in extra hours for which they are essentially uncompensated.

The fact that the job description of the bargaining unit has changed, which correspondingly has resulted in time relief to Managers who were previously performing these duties, should be incorporated into the Social Work Supervisors' compensation. This change does not follow a "pattern" anywhere else in Hennepin County.

The County has implemented new initiatives that change how Social Work Supervisors perform their jobs. The County has adopted a Results Oriented Work Environment (“ROWE”). This permits employees to perform their work on their own schedule rather than having to adhere to a pre-existent schedule. However, the County implemented this without establishing any metrics or criteria as to how to measure results. In addition to adopting ROWE, the County established initiatives that resulted in decentralization of services. As a result, Social Work Supervisors no longer have an office. Rather, they travel to various locations to perform their job duties.

The decentralization initiatives mean that the Social Work Supervisors essentially have their offices in the trunk of their car. Such a situation has created significant burdens on the bargaining unit for supervision purposes. The advent of ROWE and the decentralization has made it difficult to arrange face-to-face meetings with those they supervise. Furthermore, because the Social Work Supervisors no longer have an established office and since the supervisees are working a results only, flexible schedule, there is substantially more travel involved. Any travel time spent by the Supervisors is empty time, in that it is difficult and/or unsafe to do any productive work.

The Union also argues that the number of clients to be served is increasing, while the number of Social Work Supervisors is decreasing. Between 2002 and 2011 the number of Social Work Supervisors has decreased 32% from 106 to 72. (Union P. 209). During this same time frame, the number of clients served has increased and are more critical. (Union P. 43, 57). These phenomena have significantly changed the character of the job. With the number of Social Work Unit Supervisors decreasing, the span of supervision of each of the Supervisors is, by necessity, increasing. (Union P. 209).

Equally important is that this situation created greater license risk to Supervisors. There are at least 18 Social Work Supervisors who are required to have licenses. These Supervisors, by virtue of their licenses, are responsible for the performance and conduct of the Social Workers they supervise. The greater span of supervision, decentralization of the process, and more difficulty in meeting on a face-to-face basis creates a greater risk for the Supervisors' license.

There have been changes in the County's demographic which have made the Social Work Supervisors' job more challenging and created greater responsibilities. The portion of Social Security's Supplemental Income recipients is much greater than that of any other Metro county. Furthermore, the number of homeless children is over half of the total in the Metro area. Out of the total number of people under the age of 18 receiving Social Security's Old-Age, Survivors, and Disability Insurance benefits (12,974), 3,696 reside in Hennepin County. In addition, a language other than English being spoken at home is up 15% in Hennepin County as opposed to 10% statewide. Significant cultural differences among foreign-born clientele make the provision of services and the supervision and delivery of services more difficult. As the diversity in demographics of the County change further, these issues the Social Work Unit Supervisors are faced with will become more pronounced.

Using an internal wage settlement pattern to analyze the Social Work Supervisors' pay proposal is not appropriate. Rather it is necessary to examine both external and internal comparisons.

Hennepin County Social Worker Supervisors are the lowest paid in the Metropolitan Area, notwithstanding the fact that they have the largest span of supervision, the most difficult population, and the most diverse and highest need population. (Union P. 59).

The Public Employee Labor Relations Act (“PELRA”) creates an obligation on the part of the Employer to meet and negotiate in good faith with the employees’ certified representative regarding the terms and conditions of employment. In this case, it is undisputed in the record that the Union has from the very beginning of the negotiations contended that not only were the Social Work Supervisors’ wages not following the pattern of wage increases that had been accorded other comparable Counties, but also that changes in the job had created internal lack of parity with earnings of other employees.

Issues involving wage parity are legitimate items for collective bargaining. The County Human Resources’ Rules addresses reclassification of positions so that those of substantially the same type, difficulty, and responsibility are included in the same class. The change in the job duties and responsibilities, which have occurred over the term of the previous contract, created pay disparities in the eyes of the Union, which it was attempting to remedy in negotiations. In addition, the reassignment of duties previously performed only by a higher paid classification as well as the supervision of employees who are being paid more than the Supervisors were issues of significant concern and importance to the bargaining unit. These are terms and conditions of employment over which the Employer is clearly obligated to meet and negotiate.

The Union is not requesting a job reclassification in this case. Rather, the Union requests that internal equity requires that there be recognition in negotiations that changes in the terms and conditions of employment. The obligations of the employees who are represented by the bargaining unit requires an approach to establishing pay and compensation commensurate with the position. Minnesota Statute §383B29 makes clear that the duties of any human resources board does not extend to any compensation plan for classes that are represented by an exclusive

bargaining representative. Since in this case the class is represented, the statute would have no application in the instant negotiations.

As previously mentioned, since the last contract was negotiated, the job duties and responsibilities that the Social Work Unit Supervisors have assumed were not previously performed by them, but by Managers. Some managerial duties that had been performed on a voluntary basis in the past by Social Work Unit Supervisors has now become mandatory. Under such circumstances, it is necessary to look to the difference between Managers' pay and the Social Work Supervisors' pay to make an equitable adjustment to the Social Work Supervisors' pay because they have now assumed responsibilities previously performed by a higher paid classification.

In addition to reviewing Managers' pay, the Social Work Supervisors supervise a classification of Nurses who are being paid more than they are. 17 staff nurses report directly to Social Work Supervisors and are paid over \$4,000 more per year. Additionally, Program Managers who also report to Area Managers receive over \$4,500 per year more for supervising less staff than the Social Work Supervisors. The span of supervision is also substantially less (4-8 employees as opposed to 8-16) than the Social Work Supervisors. Program Managers require only a Bachelors Degree whereas the unit members must have a graduate degree. Most notable is that a Nursing Supervisor Community Based received \$4,800 per year more in pay than a Social Work Supervisor, and the scope of their supervision is identical.

The two 5% increases requested by the Social Work Supervisors would bring them above the staff nurses they supervise and create approximate parity with the Nursing Supervisors assuming that the latter each receive a 1% increase in the two years of their contract.

Because such a large percentage of the Social Work Supervisors are at the top of the pay scale, failure to provide increases essentially freezes their pay. It also has an adverse impact on those employees who have not yet reached the top of the scale. Elimination of the freeze is important to ensure that the Social Work Supervisors who are promoted and only receive a 5% increase over their Social Worker pay have steps available to equitably increase their pay.

The absence of pay increases presents a long term and significant impact on retirement benefits for Union members. There are a relatively large number of senior Social Work Supervisors who are approaching retirement age. Without any increases, there is an adverse impact on their high 5 years for purposes of calculating pension under the Public Employees Retirement Act (“PERA”). The requested increases would also help ameliorate this adverse impact.

Hennepin County has the financial ability to award an equitable pay increase to the bargaining unit in this case. The County acknowledged there is no financial impediment to an increase for the unit beyond the purported pattern increase awarded to other units given the size of its budget and the small size of the bargaining unit. The County has 30% of uncommitted reserves available to pay the marginal increase requested by the unit over and above the pattern increase provided to other employees. (Union Ex. Pages 207-208).

Another factor regarding the County’s ability to pay the requested increase is that it has been utilizing Social Work Supervisors licenses to bill work performed to third party vendors. Between 2007 and 2011 Hennepin County has billed a total of \$1,686,648 on licenses held by Social Work Supervisors. (Emp. Ex. 49). During the same time period it collected a total of \$1,063,375. Therefore, Social Work Unit Supervisors are able to collect funds needed through billable work with third parties.

## **UNION'S ARGUMENT: LICENSE ALLOWANCE**

The Union argues that the County should reimburse unit members for the cost associated with obtaining and maintaining their professional licenses. The County's position has been that it does not pay for professional licenses. However, that policy is one that applies to positions where licensing is required in order to meet minimum professional qualifications (i.e. medical personnel and attorneys).

When the Social Work Supervisor position was established, licensure was not a requirement. However, that has now changed. As the record shows, the number of positions that require a license has increased. (Union P. 177, Emp. Ex. 46). Those individuals in positions that are now requiring a license for supervision purposes, regardless of whether billing is done on the licenses or not, face greater risks of having their licenses impacted by the change in job duties. Because of these circumstances, provisions should be made in the contract for the County to pay for Social Work Supervisors acquiring licenses, and in the event they already have licenses, for the maintenance and renewal of such licenses.

## **UNION'S ARGUMENT: ON-CALL PAY**

In regards to on-call pay, the Union requests an increase based upon the change in the job duties and the job conditions. The number of child protection calls has increased significantly in the past two years. (Union P. 59). Child protection calls that most frequently generate after hours calls that would go to an on-call individual. The Social Work Supervisors are ultimately responsible for making sure that when emergencies arise involving these particularly vulnerable clients, that they be taken care of promptly and efficiently. The nature of these calls make the people who are on call more akin to being on call for purposes of public safety and law enforcement (i.e. fire and police) or public utilities (i.e. snow plowing) than other purely

administrative on-call positions. The fact that the nature, character, and importance of the calls have changed demonstrate that it would be appropriate to provide an increase in the on-call pay. Given the fact that it has not been increased for years, doubling (15%) the on-call rate is appropriate. (Union page 209).

### **UNION'S ARGUMENT: RETROACTIVITY**

Lastly, the Union contends that any increases should be retroactive to the expiration date of the prior agreement. Failure to provide retroactivity would be in effect giving the right hand increases which should have been made in the first instance, while taking away one year of the increases with the left hand. Furthermore, failure to grant retroactivity would reward the County for its actions, which would create a disincentive to them to reach an agreement in that there would be financial benefit for not doing so.

From a legal perspective, the principles to be applied by interest arbitrators are well established and generally accepted. The criteria and standards to be applied by interest arbitrators are five-fold:

1. The ability to pay: The Employer has acknowledged that payment, given the size of the unit, would not be a hardship. The Social Work Unit Supervisors position is actually an income generator for the County. The County is billing third parties for services utilizing the licenses of unit members. These billings created an additional ability on the part of the Employer to pay for additional costs directly from revenues generated by the unit.
2. Statutory considerations: There are no requests being made that are subject to any statutory limitations.
3. Internal comparisons: In the instant case, there were changes in the job duties which involved the unit sharing responsibilities that had previously been solely handled by

another group of higher paid employees. The unit is also supervising individuals who are paid more than and have less stringent educational requirements than the Social Work Supervisors. Additionally, other supervisors supervising the same employees in another context are paid substantially more than the unit members (i.e. Nurses).

4. External comparisons: The Social Work Supervisors are paid less than the supervisors in the other, comparable counties. Even supervisors in counties that are far less urbanized and do not have the same kind of challenging clients that the Hennepin County Social Work Supervisors are paid more.
5. Other economic and market forces: Over the past few years there has been a general decline in governmental units, and counties in particular have faced tighter budgets because of the lack of state aid and a general economic malaise that the country has experienced. However, the Minnesota unemployment level is down to 5%, three percent lower than the national level.

For the reasons mentioned above, the Union respectfully requests that the Arbitrator award the its position on each and every issue.

## **EMPLOYER'S ARGUMENTS**

Hennepin County is the largest of the 87 counties in Minnesota, employing over 7,300 organized and non-organized employees. The Union represents 79 Social Work Unit Supervisors or roughly 1% of the total County workforce.

The Employer asserts that the Arbitrator's assessment of the potential collective bargaining outcome between these two parties must really begin prior to the SWUS negotiations when the Employer first approached its AFSCME union employees to negotiate in the fall of 2011. The County's bargaining position with all of its unions has been to seek to preserve the

status quo until the economy improves by asking each union to continue to bear its share of the burden. The AFSCME employees reached the conclusion that the County's pattern offer was, while not the desired outcome, at least acceptable during tough financial circumstances. The contract terms reached in these negotiation sessions, along with the voluntary settlements with several other larger unions, ultimately established Hennepin County's 2012-2013 internal settlement pattern.

Despite a downward economic trend and restricted funding, the Employer continues to successfully recruit and retain qualified Social Work Unit Supervisors. The Employer argues that above all other facts in this case, this point undermines any argument the Union may assert to support the threshold issues of external market competition and the Employer's ability to pay.

The current economic pressures have shaped the Employer's funding decisions. Hennepin County does not have a sunny financial position in this post-recessionary period. The Employer argues that any Union assertions about economic recovery are simply not borne out by economic experts. The current glimmer of recovery has taken longer than most economists expected. Economists are increasingly pessimistic about the near term future of the nation's economy.

The government sector of the Minnesota economy continues to show a real decline in Gross Domestic Product since the recession began in 2008. Between 2008 and 2011 the total number of employees in local government in Minnesota declined by nearly 6,000 jobs. And during that same period Hennepin County cut its workforce by 6% or nearly 500 full time equivalent positions.

The particularly difficult economic conditions that Hennepin County faces right now and in the near future are the loss of the State of Minnesota as a stable and reliable financial partner,

decreased taxable market values and flat tax revenue. Hennepin County's 2012 and 2013 budgets reflect the County Administrator's attempts to strike a balance between a conservative fiscal course that can maintain and develop the necessary programs its residents demand and providing its employees with a suitable wage/benefit package.

The State of Minnesota is no longer a stable and reliable financial partner to the County. Since 2007, Minnesota has cut nearly \$28 million from Hennepin County's Program Aid and Market Value Credit Aid programs. This is a 60% decline in funding from these sources. The State of Minnesota's budget forecast for the next 2014-15 biennium beginning July 1, 2013, shows a structural deficit of \$1.103 billion. This sends a clear message that Hennepin County is not likely to see a return to State pre-recession funding levels for quite some time, if ever.

Employer faces decreased taxable market values and flat tax revenues. The taxable market value of property in Hennepin County has declined 20% since 2009, nearly \$28.5 billion. Declining property values combined with recessionary economic pressures faced by Hennepin County's homeowners and residents creates a climate in which the County's Board of elected Commissioners is understandably reluctant to raise property taxes. The County Board recently certified a very modest 1% increase in the County's 2013 tax levy. This increase will raise slightly more than \$6 million in new property tax revenue.

Employer's 2012 and 2013 budgets reflect funding pressures. The approved 2012 County budget would maintain services while at the same time ensure that the County remains in sound financial condition. The 2012 Hennepin County budget totaled \$1.65 billion and was partially funded by a net property tax levy of \$668.4 million, which is \$1 million lower than the 2011 level. The 2012 Human Services budget, which is \$445.4 million, decreased by 1.2%, or \$5.4 million.

The 2013 Hennepin County budget submitted to the County Board for adoption reflects a modest 0.93% increase in the net property tax levy. County Administrator Johnson stated, “A continuing theme in establishing the county’s budget the last several years has been that these are difficult times for government funding.” (Emp. Ex. 16Q at 1). In sum, the County’s operating budgets for 2012 and 2013 are basically flat with very little revenue growth. All County departments must cope with declining budgets or very modest increases from one year to the next.

The County is unable to meet the Minnesota State Auditor’s recommended amount of back-up funding to adequately operate this huge machine in a revenue crisis. According to the State Auditor, Hennepin County’s undesignated fund balance, which is at 16% of its total budget, is well below the recommended 35-50% level. Except for Blue Earth County, all other counties suggested by the Union for external wage comparisons in various Union exhibits currently maintain higher percentage fund balances than Hennepin. Furthermore, the undesignated fund balance is not “extra” money that is to be used to fund wage increases for essential employees, but rather is the layer of funding that lies between a fiscally solvent county and one that is bankrupt.

All of these economic pressures and situations have led the Employer to ask its unions for continued help to reach a voluntary settlement that would both preserve County jobs and programs, while at the same time allow the County to stabilize its operations.

As Hennepin County struggles through the slow recessionary recovery in which it finds itself at the end of 2012 and beginning of 2013, the taxpayers demand that the County continue to try and find ways to provide more services with less money. Both government sector employers and employees get caught between this proverbial rock and a hard place.

For the last 10 years there has been virtually no deviation between the overall internal county wage settlement pattern and what this bargaining unit has received. To date, the compensation of 98% of the Employer's total workforce is set for 2012-2013. The contracts of 97.3% of the County's unionized workforce are finalized with the same terms being offered to this bargaining unit. Stated alternatively, 14 of the Employer's total 16 bargaining units, representing 5,078 unionized employees, are completed consistent with the internal pattern. As of now, only 141 union employees remain without a completed 2012-2013 collective bargaining agreement. Roughly half of those remaining employees (79) are Social Work Unit Supervisors who are still holding fast to their assertions that they deserve significantly larger increases than every other Union employee who has settled for less.

The County argues that in this case, had the parties successfully bargained an agreement, the final resolution of the wage question would be the Employer's internal wage pattern. This is emphasized by the fact that two other arbitrators assessing this Employer's same internal pattern during the same period of time reached the same outcome: an outcome that awards the Employer's position in full.

The Employer argues that the Union's evidence does not offer a compelling reason to award a deviation from the internal pattern. Rather than offering substantial evidence to demonstrate what the SWUS should have obtained in collective bargaining had the parties not reached impasse, the Union's evidence is largely an anecdotal appeal to the Arbitrator's sympathy regarding the difficulty of their work. While the SWUS Union attempts to portray the Employer as uncaring, it is actually the SWUS Union who appears unconcerned about the fairness of their demands, particularly where their subordinates and co-workers are concerned. All County employees have endured wage freezes in 5 out of the last 9 years. All County work

is changing, becoming more complex. All County employees handle more than ever before, with less co-worker assistance. And, the retirement earnings that all senior County employees will receive are negatively impacted by recent salary freezes.

At the hearing the Union made many comparisons to supervisors in Ramsey County. One of these comparisons was how Ramsey County would not allow supervisors to supervise employees who are paid more than the supervisor, which is the case with some RN's in Hennepin County. However, the Union witnesses did not testify about the fact that if the Arbitrator were to award the Union's wage request that SWUS would actually earn a higher hourly wage than that of the Program Managers to whom they report.

The Union offered no compelling information or data that could possibly justify treating its members more preferentially than other County employees. That is not, in any way, an effort to minimize or devalue the work performed by employees of this bargaining unit. The Employer simply asserts that the Union must bear the significant burden of demonstrating why it, and it alone, deserve such a tremendous raise. The Employer respects all of its workers. And none of these employees will be receiving a general wage adjustment or merit wage step increase in 2012.

The Employer also argues that it is unfair to allow SWUS to benefit from the health benefits portion of the internal pattern agreement without offering their own quid pro quo. While the SWUS union argues that the internal pattern negotiated by the Employer with its larger unions lacks the kind of wages and step increases that it now seeks in this interest arbitration, the Union had no problem accepting the health benefit package negotiated by the Employer with its larger unions. Note the inconsistency of the SWUS Union's position here: they accept a huge item in the internal pattern (health benefits), negotiated earlier with the larger unions, while at

the same time rejecting the wage and step terms negotiated by the same parties. This Union has not offered the Employer any quid pro quo for the significant increase requests that is has brought to arbitration. Rather, the Union has asked this Arbitrator to award two years of 5% wage increases and steps without any counterbalancing requisite quid pro quo.

A Union should not be able to accept without negotiation one significant portion of the Employer's internal pattern agreement but appeal to 3<sup>rd</sup> party arbitration to secure the other half of the internal pattern agreement. The SWUS would like to get their cake and eat it too. It is extremely unfair to those employees that have agreed to help out the Employer through these tough financial times by sacrificing their wage and benefit improvements if this Arbitrator now awards much larger wage and step improvements to the SWUS unit alone.

Any variation from the internal settlement pattern negatively impacts the Employer's other collective bargaining relationships. An internal pattern that is uniformly maintained for almost 100% of the Employer's union employees is the strongest evidence presented that the terms of the pattern are appropriate under the existing conditions. In these difficult financial times, maintaining internal consistency is fundamentally fair and equitable. These notions of fairness and equity dictate that the SWUS employees receive the same wage settlement terms already applied to nearly all of their coworkers and particularly to the other first-line supervisors working in the HSPHD and the social worker employees that SWUS directly supervise who have already settled their contracts.

In order to remain responsible to all the County's unionized employees and their unions, the settlement pattern must be preserved so that the bargaining units that are among the first to settle will not serve as the floor from which the other units would ratchet-up improved wages and benefits. Internal pattern bargaining is simply the only logical and rational way for a large

Employer to conduct negotiations with multiple bargaining units represented by many different unions.

The Employer's ability to attract and retain SWUS renders the external salary comparison issue the Union leans on irrelevant. The Union attempts to justify its wage position by arguing that they are underpaid with respect to what other social work supervisors earn in counties located in the metropolitan area and even elsewhere in Minnesota. Resorting to an external market analysis is totally irrelevant when there is such a strong and overwhelming internal wage pattern. External market analysis is irrelevant when the Employer continues to successfully recruit and retain qualified social work unit supervisors at their current compensation level.

When Employer seeks to hire SWUS, it receives significant interest both from within and outside of Hennepin County. Most recently, there were 90 applications submitted for only 15 positions. The market from which the County draws SWUS is its own employees. SWUS employees, with rare exception, promote through the ranks of Hennepin County. Also, turnover for the job class is also extremely low and is well below the countywide turnover rate.

Given the fact that the Employer is able to maintain a stable number of SWUS at the current rate of compensation within the current economic situation, it would not be fiscally responsible for the Employer to offer more compensation to any particular employee group than the market demands. Furthermore, Hennepin County's maximum wage for social work supervisors sits comfortably within the range of that paid by other metro counties. And when the actual average rate paid is considered, Hennepin County leads the market.

The Union did not offer any evidence demonstrating that other comparable counties are actually receiving the high level of percentage increases (5% in 2012 and 2013) that the SWUS requested in the current round of collective bargaining. That said, the Employer points out that

the low percentages offered in published interest arbitration awards in 2012 and 2013 is between 0 and 2%. None of the local counties who have reached settlement through negotiations of their 2012-2013 contracts achieved percentages anywhere near the 5%/5% requested by the SWUS.

The Union also makes the argument that the Employer has the ability to pay the requested wage increases. The County maintains a large operating budget of \$1.75 billion in 2013. The HSPHD, where 78 of the 79 SWUS are employed, accounts for 27% of the total County budget with an annual budget totaling \$476 million in 2013.

The Employer does not contest the Union's assertion that it has the ability to fund the Union's proposal. However, whether or not the Employer has the ability to fund the proposal is the wrong question. The proper question is whether the County should do so.

The County's Compensation unit has estimated that the first year of the Union's proposal (2012) would cost the Employer \$421,977 in wage increases and steps, \$382,477 more than the one time \$500 lump sum being proposed by the Employer. The Union's proposal is a 1000% increase over the Employer's proposal. In the second year of the Union's proposal (2013), the total payroll increase for the Employer would start at \$875,169, which is \$689,654 more than the Employer's proposal for the same year. This amounts to a 472% increase over the Employer's proposal. These costs are significant to the County. However, the potential costs associated with the Union's proposal are staggering if applied to all County employees. If the County applied the Union's proposal equally to all County union contracts, the estimated cost to Hennepin County is over \$87 million. The Employer could not realistically offer this kind of money to its employees in light of the current budget and political constraints, as discussed above.

In addition to the arguments presented above, the Employer argues that the Arbitrator does not have the power to alter a SWUS job classification. At the hearing, the Union

encouraged this Arbitrator to circumvent a Minnesota Statute and the Hennepin County Human Resources Rules to obtain a position re-classification from the Arbitrator that they could never have achieved in collective bargaining. On cross-examination, Joan Gabriel was asked, “Do you think your job classification (SWUS) accurately describes your duties?” Gabriel’s answer was, “No.” She had not sought resolution of her job classification concerns through the Human Resources process despite its availability.

The Hennepin County Human Resources Rules and Minnesota Statutes 383B.29-31 provide for the establishment of a classification plan for positions in the County services. As these Rules and Statutes point out, it is beyond the scope of these proceedings for employees to seek a new or different job class. Job class determination is reserved for the Hennepin County Human Resources Board and Human Resources Director, with an appeal right to Board. The Arbitrator in this case does not have the authority to change a job class or establish a new job class for any employee in this bargaining unit.

**EMPLOYER’S ARGUMENT: ON-CALL PAY**

Regarding on-call pay, the Employer pays these SWUS designated to be on-call \$2.50 per hour for each hour so assigned whether the supervisor actually needs to respond to a call or not. The Union’s proposal that the 2012-2013 contracts should provide \$7.50 per hour for on-call pay is an increase of 300% over their current rate.

The Employer argues that in an interest arbitration, the party who proposes a change to existing contract language must demonstrate that the proposed language change will cure an existing problem or conflict. Additionally, the proposal is a necessary and reasonable cure for the existing problem or conflict. The only evidence presented by the Union at the hearing was

witness testimony describing how being on-call can be a burden because it interferes with a supervisor's personal life.

The Employer recognizes that on-call duty can be a burden and adequately compensates its employees for working on-call shifts. The County paid on-call pay to 183 County employees in 2011 and 128 employees in 2012. All of these employees received \$2.50 per hour, except for the 6 employees in the Public Works Department who received \$3.00 for market reasons. The County also pays some employees doing on-call work with lump sums. When these lump sum amounts are broken down into an hourly, the outcome is on-call rates of \$0.27, \$0.80, and \$0.85 per hour, far less than the \$2.50 per hour that the SWUS currently receives. Lastly, in researching what other metro countries provide for employee on-call pay, Employer found that no other county pays on-call pay to their Social Work Supervisors.

#### **EMPLOYER'S ARGUMENT: LICENSE ALLOWANCE**

Hennepin County does not reimburse annual Minnesota professional license fees for any professional employee, organized or not, no matter what the cost. The Employer is not obligated to finance an applicant's minimum qualifications. It is up to the job candidate, not the potential employer, to ensure that the individual has the appropriate license required for the job. Even in job classifications where the employee is required to have and maintain a license to do their job (unlike most SWUS), the County does not reimburse annual license fees.

Minnesota Statute § 148E065, subd. 4(b) currently exempts counties from requiring that their social workers be licensed. Some County HSPHD service areas, generally mental health clinic services, require that a professional providing clinical services working in that service area be a Mental Health Professional (MHP). A SWUS with a Licensed Independent Clinical Social Worker (LICSW) is considered a MHP. Therefore, it is the practice area (mental health) and

state law that dictate that some SWUS maintain a LICSW license, just as it is the practice of law and MN State Law governing that practice that require attorneys to maintain a current Minnesota license.

If the Arbitrator compels the County to reimburse professional license fees for the SWUS, even in service areas where licenses are not required, the Arbitrator has opened the floodgates and professional employees with unreimbursed licenses will clamor for their share too. The County calculates that to offer this same benefit to all of the other County's organized professional employees would cost it \$177,549 annually. Even in stable economic conditions the County would never agree to such expend this amount of money to reimburse license fees.

The Employer strongly asserts that the link, if any, between an employee's professional license and the Employer's reimbursement is irrelevant. The Employer asks why would any financially responsible county, particularly the state's largest county, operating with a bare bones budget and a lower-than-recommended undesignated reserve balance, deliberately neglect any potential funding source? There are too few SWUS that have any kind of tangential relationship between their SW license and County reimbursement revenue. All U.S. licensed health care providers must obtain a National Provider Identifier (NPI) number if they wish to bill for their services. And it is true that the County currently used the NPI numbers of five Social Work Supervisors when it requests reimbursement for services from certain payers. However, how the Employer obtains revenue and how the Employer funds its departments are management rights, subject to budget approval by the Hennepin County Board. Thus, the Employer argues, this is merely a back door attempt to seek a significant cost-of-living wage increase, and a fringe benefit not afforded to any other County employee.

## **EMPLOYER'S ARGUMENT: RETROACTIVITY**

The issue of retroactivity is moot if the Arbitrator awards the County's economic position noted above for 2012. If the Arbitrator awards the County's position with an opportunity for the bargaining unit to vote on which option they prefer (1.5% and steps or 2.5% and no steps), the County agrees to pay wages and eligible steps retroactively to January 1, 2013, calculated backwards from the date of the Arbitrator's award and based on the option selected by the Union.

For the reasons mentioned above, the Employer respectfully requests that the Arbitrator award the its position on each and every issue. The Union did not offer any compelling evidence to support its argument that the Employer should offer more favorable compensation and benefits to its Social Work Unit Supervisors than the Employer offers to every other County employee.

## **ARBITRATOR'S ANALYSIS AND AWARD**

The standard applied to interest arbitrations and adopted by this Arbitrator is to examine (a) internal comparisons between the Employer's bargaining units, (b) external or market comparisons with other employers, (c) the Employer's ability to pay for proposed terms and (d) the context of other general economic conditions. This Arbitrator adheres to the principle that his task is to resolve the disputed issues as the parties would have through the bargaining process had there been no impasse.

The Union candidly states that its case does not represent the typical situation where parties seek a determination on specific contract provisions, including pay, but rather rests on its claim that the work required of the Social Work Unit Supervisors has changed during the period of the previous contract. Members of this unit have assumed duties and tasks that in the past had

been performed by their Managers. The parties agree that this is a novel issue to be presented in an interest arbitration. For reasons which follow this Arbitrator finds the Union position unpersuasive. The Arbitrator agrees with the Employer's argument that an essential reclassification of the SWUS unit would not have been achieved through collective bargaining. The Union argues that the Employer has waived its objection that the bargaining process was not the proper forum for reclassification. The Arbitrator finds no evidence to support the claim of waiver, and moreover, the Union proposed changes would de facto constitute a reclassification.

#### **WAGE INCREASE AND STEPS:**

In regards to the internal comparisons between the Employer's bargaining units, there are threshold determinations necessary to frame a fair judgment. On the one hand, you want each represented bargaining unit to have its own voice at the bargaining table, requesting what is important to its members. Employees are in different bargaining units for legitimate reasons. The principles of internal comparisons, however, require that there be some consistency in the comparative changes between the units. Employers commonly argue that awarding a more generous settlement to a unit through arbitration will encourage 'whip saw' bargaining. However, to entirely adopt this view potentially leads to a situation where the first bargaining unit to settle its contract, determines terms and conditions for all other units. This would effectively strip exclusive representatives of their right to bargain.

The facts here lead this Arbitrator to adopt the County's claim that internal comparisons should carry significant weight. The contract terms reached in the negotiation sessions between the County and the AFSCME employees, along with the voluntary settlements with several other larger unions, established Hennepin County's 2012 and 2013 internal pattern. While the outcome of these negotiations and settlements were not the ideal outcome of the respective

union's members, it was at least acceptable and reasonable to share the burden until a full economic recovery.

In regards to external or market comparisons with other employers, the Union argues that the Social Work Unit Supervisors are paid less than the supervisors in the other, comparable counties (i.e. Ramsey and Pipestone County). Supervisors in counties that are far less urbanized and do not have the same kind of challenging clients that the Hennepin County Social Work Supervisors are paid more. However, the fact that the County has such a successful track record of recruiting and retaining qualified Social Work Unit Supervisors at the current compensation level is telling. If, for some reason, the County were unable to attract applicants for this position, an external wage comparison would bear more weight.

As to ability to pay, both parties in this case agree that the County has the ability to pay. That finding, however, to this Arbitrator does not resolve the issue since the ability to pay does not carry with it the requirement that it *should* be paid. Affordability is not the controlling factor in this case.

At the hearing the Union offered testimony that the job description for a Social Work Unit Supervisor no longer accurately describes their duties. Individual supervisors testified about how their job duties have been expanded to include committee membership, budget responsibilities, and other tasks which they contend were previously performed by Program Managers. There is evidentiary support for this testimony, but not sufficient to award the Union's position of a 5% wage increase with steps for both 2012 and 2013.

An employer should not be expected to include an exhaustive list of each and every job duty that might be performed by an employee over time. Duties in almost any job will fluctuate over time.

In the present case, the record is clear that SWUS members have taken on additional responsibilities and duties in the performance of their jobs. However, simply because one's duties have expanded to include tasks that are not listed in the current job description does not warrant a 5% wage increase for 2012 and 2013. The County has a responsibility to all of its 7,300 employees, and all of the residents that rely on the services and support from them.

This Arbitrator agrees that the job class determinations in this case are bound by statutory, not arbitral, law. Minn. Stat. § 383B.26-42 (2012) empowers Hennepin County Human Resources to handle job class determinations. According to the statute, The Human Resources Rules provide for the establishment of a classification plan for positions in the County service. As §383B.31, subd. (c) (1) states, the tasks associated with preparing, recommending, and maintaining a classification plan which shall group all positions in the county into classes are reserved for the Human Resources Director. The Employer correctly argues that the Human Resource Rules offer a definitive method of reclassifying one's job based on changes to duties associated with it. As the Rules provide:

“Whenever a position appears to be improperly allocated, the Human Resources Director, upon his/her own initiative or at the request of a regular employee or the appointing authority, shall investigate the duties of the affected position...based on the results of the investigation, the Human Resources Director shall advise the appointing authority of the appropriateness of the positions current classification. In making a request for a review of a position, the regular employee or the appointing authority shall set forth the changes that occurred in the particular position since the last review or other factors which in /his/her opinion warrant reallocation. When the Human Resources Director allocates a position or denies an application for reallocation, he/she shall notify the appointing authority, the employee and the exclusive representative affected by his/her action.” (Human Resources Rule 4.3).

The Statute and the Human Resource Rules make it clear that if any member of the Social Work Unit Supervisors bargaining unit believes his or her job is misclassified, the path is open to petition the Human Resources Director to investigate and address their classification concerns.

Therefore, should Social Work Unit Supervisors wish to seek a job classification, the means to do so are at their disposal. It is beyond this Arbitrator's jurisdiction to grant such a request, even if masked as a general wage increase. The fact that the requested wage increase is prompted by additional job duties and tasks, leads this Arbitrator to rule in favor of the County's position on wages for the 2012 and 2013 contracts.

### **LICENSE ALLOWANCE**

Both parties have presented strong arguments to support their respective positions. The Union contends the County is generating revenue based on Social Work Unit Supervisors having their licenses. In addition, those in a position that now requires a license for supervision purposes face greater risks of having their licenses impacted by the change in job duties. The Union argues that because of these circumstances the County should pay for Social Work Supervisors to acquire, maintain and renew their licenses. The history and pattern set by the Employer in this case of never reimbursing license fees for its employees is controlling.

### **ON-CALL PAY**

The Union's request for an increase in on-call pay is based on two premises. First, the increase should be granted because of the change in job duties and conditions faced by the Social Work Unit Supervisors. Second, the number of child protection calls has significantly increased over the past two years, and it is these calls that trigger an individual to be "on call." The evidence of more frequent calls does not constitute persuasive evidence to increase the pay for such calls.

In 2012 the County paid 128 employees on-call pay. 95% of these employees received the standard on-call rate of \$2.50. The remaining 5% received only a slightly higher on-call rate of \$3.00. This history and pattern set by the Employer is controlling.

## FINAL AWARD

1. **Wages 2012:** There will be no general wage increase for 2012; however, a \$500 cash lump sum shall be paid to all benefit earning employees of record on the execution date of the Agreement. The \$500.00 cash lump sum will be payable the first full payroll period that follows the execution date of the Agreement.
2. **Wages 2013:** The member of the SWUS bargaining unit will vote on which option they elect (either a 1.5% increase and steps or 2.5% increase and no steps). The elected option will go into effect on January 1, 2013.
3. **Steps 2012:** The County's proposal is awarded. There shall be no step movement for eligible employees in 2012.
4. **Steps 2013:** Steps awarded depending on the bargaining unit's decision on its vote.
5. **On Call Pay:** The County's proposal is awarded. There shall be no change in on call pay. Status Quo.
6. **License Allowance:** The County's proposal is awarded. There should not be reimbursement for any renewal or maintenance fee for professional licenses.
7. **Retroactivity:** For the 2012 contract, the County will pay a one time \$500 lump sum to each member of the SWUS Union. For the 2013 contract, the bargaining unit will vote on which option they prefer (either a 1.5% increase and steps or 2.5% increase and no steps). The County will pay wages and eligible steps retroactively to January 1, 2013, calculated backwards from the date of this award and based on the option selected by the Union.

---

George Latimer, Arbitrator

---

Date