

IN THE MATTER OF GRIEVANCE ARBITRATION BETWEEN

COUNTY OF WRIGHT)	BMS CASE NO. 13-PA-0699
)	
“COUNTY”)	
)	DECISION AND AWARD
And)	
)	
WRIGHT COUNTY ASSISTANT ATTORNEY’S ASSOCIATION)	RICHARD R. ANDERSON ARBITRATOR
)	
“ASSOCIATION”)	AUGUST 27, 2013

JURISDICTION

The hearing in the above matter was conducted before Arbitrator Richard R. Anderson in Buffalo, Minnesota on July 17, 2013. Both parties were afforded a full and fair opportunity to present their case. Witness testimony was sworn and subject to cross-examination. Exhibits were introduced into evidence by both parties and received into the record. The hearing closed on July 17, 2013. Timely briefs were mailed by the parties and received on August 21, 2013, at which time the record was closed and the matter was then taken under advisement.

This matter is submitted to the undersigned Arbitrator pursuant to the terms of the parties’ January 1, 2012 through December 31, 2014 collective bargaining agreement, hereinafter the Agreement. (*Joint Exhibit 1*). The relevant language in Article 7 [*EMPLOYEE RIGHTS- GRIEVANCE PROCEDURE*] provides for the procedure to resolve grievance issues. The parties stipulated that the instant grievance is properly before the undersigned Arbitrator for a final and binding decision. The parties further stipulated that this matter does not involve contract arbitrability or any other substantive or procedural issue; however, the County contends that assuming arguendo the grievance is found meritorious, back pay dating back to January 1, 2012 is not warranted. This will be discussed further herein.

For the County

Susan K. Hansen, Attorney
Frank J. Madden, Attorney and Chief County Negotiator

For the Association

Elizabeth Larson, Assistant County Attorney
Scott M. Sandberg, Assistant County Attorney and Association President
Greg T. Kryzer, Assistant County Attorney
Kari Willis, Assistant County Attorney
Aaron Duis, Assistant County Attorney
Shane Simonds, Assistant County Attorney
Carla Nelson, Account Technician

THE ISSUE

The County of Wright, hereinafter the County or Employer, described the issue as:

Whether the County violated Article 20, Compensation, or Appendix A of the collective bargaining agreement when the reclassification adjustments were implemented July 1, 2012; July 1, 2013; and July 1, 2014. If so, what is the appropriate remedy?

The Wright County Assistant Attorney’s Association, hereinafter the Association, described the issue as:

1. What is the contractually required implementation date of the 2012 portion of the reclassification adjustment?
2. What is the contractually required implementation date of the 2013 portion of the reclassification adjustment?
3. What is the contractually required implementation date of the 2014 portion of the reclassification adjustment?

BACKGROUND

The County is located in central Minnesota. The Association is the collective bargaining representative of approximately 12 Assistant County Attorneys, hereinafter Attorney(s). The Association has represented this unit since March 2012. American Federation of State, County and Municipal Employees union, hereinafter AFSCME, had represented the Attorneys from 1998 until 2012. There are six additional bargaining units at the County. Wright County Deputies Association represents licensed non-supervisory deputy sheriff employees, Operating

Engineers Local 49 represents public works employees, AFSCME represents human service employees and Teamsters Local 320 represents three units—court house employees, sheriff supervisor employees and non-licensed essential sheriff employees.

Association President Scott M. Sandberg filed a Step 1 grievance on January 10, 2013 after he learned in late December 2012 that the County had implemented the reclassification wage adjustment¹ on July 1, 2012, and was going to implement the 2013 and 2014 adjustments on July 1, 2013 and July 1, 2014, rather than the contractually mandated date of January 1 for the aforementioned years. (*Joint Exhibit 2*) On January 14, 2013, County Attorney Thomas N. Kelly accepted the Association’s Step 1 grievance. In this writing action, Kelly stated, “*All issues presented in the grievance have been timely submitted under Article 7 and all claims have been properly submitted to me pursuant to the terms of the Contract. After reviewing all of the information and exhibits contained in the grievance, I find the grievance is well taken and should proceed to step two.*” (*Joint Exhibit 3*)

A Step 2 grievance was filed on January 15, 2013. (*Joint Exhibit 4*) A Step 2 grievance meeting was conducted on February 7, 2013. Thereafter on February 14, 2013, County Coordinator Richard W. Norman denied the grievance stating, “*The Association contends its bargaining unit members are entitled to reclassification wage increases effective January 1 of each year. We have reviewed the file and the information the Association provided at the Step 2 meeting. The parties’ Tentative Agreement, dated May 31, 2012, clearly identifies that the reclassification adjustments will be implemented effective July 1, 2012, July 1, 2013 and July 1, 2014.*” (*Joint Exhibit 5*) Thereafter (exact date unknown), the Association moved the grievance to Step 3. (*Joint Exhibit 6*)

There is no record of any Step 3 answer or when the Association filed for arbitration.² The undersigned Arbitrator was notified in writing on March 8, 2013 by Attorney Frank J. Madden that I had been selected as the neutral arbitrator in this matter. (*Joint Exhibit 7*)

RELEVANT CONTRACT PROVISIONS

ARTICLE 7—EMPLOYEE RIGHTS-GRIEVANCE PROCEDURE

7.1 Definition of Grievance. A grievance is defined as a dispute or disagreement as to the interpretation or application of a specific provision of this Agreement.

¹ Hereinafter any reference to the reclassification wage adjustment will be termed wage adjustment.

² If the County does not answer a grievance within the time limits it can be appealed to the next level. (Article 7-6 WAIVER)

7.4 Procedure

Step 1. *An employee claiming a violation concerning the interpretation or application of this Agreement shall, within twenty-one (21) calendar days after such alleged violation has occurred, present such grievance to the County Attorney. The County Attorney will discuss and give an answer to such Step.*

7.5 Arbitrator's Authority

A. *The Arbitrator shall have no right to amend, modify, nullify, ignore, add to or subtract from the terms and conditions of this Agreement. The Arbitrator shall consider and decide only the specific issue(s) submitted in writing by the Employer and the Association and shall have no authority to make a decision on any other issue not so submitted.*

B. *The Arbitrator shall be without power to make decisions contrary to or inconsistent with or modifying or varying in any way the application of law, rules or regulations that have the force and effect of law. The Arbitrator's decision shall be submitted in writing within thirty (30) days following close of the hearing or the submission of briefs by the parties, whichever be later, unless the parties agree to an extension. The decision shall be binding on both the Employer and the Association and shall be based solely on the Arbitrator's interpretation or application of the express terms of this Agreement and to the facts of the grievance presented.*

ARTICLE 20—COMPENSATION

20.1 Salary Schedule. *Employees shall be compensated in accordance with the salary schedules attached hereto as Appendix A.*

ARTICLE 21—WAIVER

21.1 *Any and all prior agreements, resolutions, practices, policies, rules and regulations regarding terms and conditions of employment to the extent inconsistent with the provisions of this Agreement are hereby superseded.*

21.2 *The parties mutually acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any term or condition of employment not removed by law from bargaining. All agreements and understandings arrived at by the parties are set forth in writing in this Agreement for the stipulated duration of this Agreement. The Employer and Association each voluntarily and unqualifiedly waive the right to meet and negotiate regarding any and all terms and conditions of employment referred to or covered in this Agreement or with respect to any term or condition of employment not specifically referred to or covered by this Agreement, even though such terms or conditions may not have been within the knowledge or contemplation of either or both of the parties at the time this contract was negotiated or executed.*

ARTICLE 22—DURATION

22.1 *This Agreement shall be effective as of January 1, 2012 and shall remain in full force and effect until December 31, 2014.*

FACTS

The County retained Trusight, Inc., an employer association headquartered in Plymouth, Minnesota, to conduct a job description/classification study which began in 2011 and ended in May 2012. This was the first county-wide job study conducted in over 20 years. There had been other classification studies done during this period, but never to the scope of the Trusight study. In fact, the Attorney 2 positions were reclassified in 2006 resulting in a wage adjustment for certain Attorneys.³

Based upon Trusight's analysis of the job description study, job descriptions were developed and updated and jobs were evaluated using a point system. Points were then combined with pay rates to form a payline. (*Association Exhibit 15, p. 6*) Certain jobs falling more than 5% below the predicted pay line would receive a wage adjustment. Many job classifications would not receive a wage adjustment; however, Attorney 1 & 2 classifications would receive in excess of 10% while the Attorney 3 position would receive 3%. Since the cost of this wage adjustment would be approximately \$600,000, it was to be phased in over a three-year period.⁴

The parties had their final negotiation session which began at approximately 4 pm on May 31, 2012. Outside County Counsel Frank J. Madden was the chief negotiator for the County while Assistant County Attorney Scott M. Sandberg was the chief negotiator for the Association. Earlier in the day Madden had negotiation sessions with the Local 49 unit, the two Teamster 320 units and the AFSCME unit. During the Association session, the County imposed a "take it or leave it" final proposal and indicated that it wanted to implement the wage adjustment on July 1, 2012. The Association, after initially rejecting this proposal, finally accepted it when the County reaffirmed there would be no more to its offer.

During this session, the County presented to the Association a salary grid schedule that listed the yearly and hourly wage schedules for the Attorneys covering the period 2011 to 2014

³ There were two Attorney 2 classification categories which were combined. As a result of this reclassification, existing Attorney 2's wages remained the same while new Attorney 2's wages were lowered and existing Attorney 3's wages were raised.

⁴ Not all wage adjustments required the three-year period. In some cases the 5% pay line target could be reached in one or two years.

that included the wage adjustments for the period 2012 through 2014.⁵ The salary grid did not indicate when the wage adjustments or the 2014 1% salary increase would become effective.

On June 4, 2012, Sandberg informed Madden by email that the Association had accepted the County's contract offer and listed what the Association's understanding of that offer was. This included the following reference to the wage adjustment, "*There shall be a phase in of Tru-Sight recommendations according to the chart supplied in negotiations, with the exception that the amounts for 2014 shall be increased by 1 %.*" (Association Tab 6)

At 4:12 p.m. On June 6, 2012 Madden emailed Sandberg a three page tentative agreement that included the following language regarding the wage adjustment, which is set forth as it appeared on this document.

2. WAGES:

Implement reclassification adjustments effective July 1, 2012, July 1, 2013 and July 1, 2014 as indicated.

2012. No general increase, but eligible employees shall receive step increases.

2013. No general increase, but eligible employees shall receive step increases.

2014. 1.0% general wage increase and eligible employees shall receive step increases."

(County Exhibit 6 p.3 and County Exhibit 5)

Sandberg responded to Madden by email seven minutes later and indicated, "*This looks fine, but it is also important to our group that the side letter that we have had in all of our contracts regarding license fees, CLE expenses and informal comp time arrangement be continued for this contract. That is an important part of our acceptance of this agreement.*" (Id)

Madden responded to Sandberg by email on June 7, 2012 stating, "*It is my understanding that we will continue the side letter regarding license fees, CLE expenses and informal comp time arrangement for this contract.*" (County Exhibit 5) Sandberg acknowledged agreement by return email on June 7, 2012 wherein he stated, "*Sounds great, let us know when you have a final contract ready, and we will sign and get it back to you.*" (Id)

Thereafter, The Association and the County signed the Agreement, which was effective from January 1, 2012 through December 31, 2014, respectfully on June 10, 2012 and June 17,

⁵ There was a 0% wage increase for 2012 and 2013. Although the parties finally agreed to a 1% wage increase for 2014, the salary grid did not reflect this agreement.

2012. The salary grid attached and a part of the Agreement reflected the wage adjustments for the period 2012-2014 as well as a 0% overall wage increase for both 2012 and 2013 as well as the agreed upon 1% wage increase for 2014. The salary grid did not list an effective date for either the wage adjustments or the 2014 1% salary increase. (*Joint Exhibit 1*)

The Local 49 Public Works unit and the County also reached agreement on a new contract on May 31, 2012 also effective from January 1, 2012 through December 31, 2014, which was executed respectively by the parties on June 10, 2012 and June 17, 2012. The salary grid attached and a part of this contract lists the effective date for 2012 wage adjustments as July 1, 2012. (*County Exhibit 2*) There is no effective date listed for the wage adjustments for 2013 or 2014, or for the effective date of the 1% salary increase for 2014. However, Madden testified that Local 49 agreed during negotiations to effective dates of July 1 for the three-year contract period. There were no grievance(s) filed regarding any failure of the County to implement the wage adjustments on either January 1, 2012 or January 1, 2013.

The Teamster Local 320 court house unit agreed to a contract in April 2013 which was executed by the parties on April 16, 2013 effective from January 1, 2012 through December 31, 2014. The salary grid reflects wage adjustments on November 1, 2012, July 1, 2013 and July 1, 2014 and a general salary increase effective January 1, 2014. (*County Exhibit 1*) According to the testimony of Madden, the effective date of the 2012 wage adjustment was in November because of the late contract settlement date. He further testified that the AFSCME Human Services unit also did not receive a July 1, 2012 wage adjustment due to the late contract settlement date. Madden also testified that the reason specific effective dates for the wage adjustments and 1% 2014 salary increase were contained on the salary grid schedules was because the County did not want to have the same contract interpretation issue that is involved herein.

Madden testified that he did not prepare the final contract document that the parties executed; rather, it was prepared by the County Coordinator's office. Madden further testified that he specifically apprised the Association bargaining committee during the May 31, 2012 negotiation session that the wage adjustments were to be effective on July 1 of each year of the contract. Sandberg did acknowledge that Madden informed the bargaining committee that the County wanted a signed contract in time to implement a July 1, 2012 wage adjustment. Association bargaining committee members Aaron Duis and Shane Simmonds testified that

while Madden never specifically stated that all wage adjustment dates would be effective on July 1 of each contract year, he proposed an implementation/effective date of July 1 for the 2012 wage adjustment.

Madden further testified that the County Board of Commissioners reviewed and acted upon the Tentative Agreement for both the Local 49 and the Attorney units when they approved the contract at its June 19, 2012 meeting. He added that the Board would never have approved a contract with wage adjustment dates of January 1.

Sandberg testified that he completely overlooked the Tentative Agreement references to wage adjustment effective dates of July 1. According to Sandberg, he assumed that the effective dates for the wage adjustments were January 1 of each contract year since this had been the parties' past practice. Further, he never specifically discussed any effective dates with other bargaining committee members when he apprised them of the contents of the Tentative Agreement or during the ratification vote.

Account Technician Carla Nelson, who has 37 years of payroll administration experience, testified that she has been involved in payroll administration with the County since 1989. Her job function includes being responsible for implementing salary and wage increases for both union and non-union employees. As a part of that function, she is very familiar with the County's collective bargaining agreements. She testified that all contract year increases have been implemented on January 1 unless the contract specifically states otherwise. For example, she referred to the salary grid for the Local 49 public works employees which states the implementation date for 2012 wage increases was July 1, 2012.⁶ (*Association Exhibit 17*) There were no specific wage increase effective dates for 2013 and 2014 on the salary grid, thus according to past practice, the effective dates should have been January 1 according to Nelson.

The Association introduced Exhibit 21, pgs. 1-19 through Nelson which covers various wage increases for Attorneys since 2009, other selected union groups as well as non-union employees, which supported her testimony. Nelson also testified that there have been various jobs that were reclassified during her tenure resulting in wage increases all of which were effective on January 1 unless otherwise specified. She did acknowledge, however, that there had never been a County-wide reclassification during her employment.

⁶ This refers to the wage adjustment because there was no general wage increase on January 1, 2012.

In the later part of December 2012, Nelson stated that Assistant Attorney Kryzer asked her if she was getting ready for the new wage adjustments to be effective January 1, 2013. According to Nelson, she told him that she had checked with the personnel office and was informed that only the non-union employees were getting a new salary grid effective January 1, 2013.⁷ Further, the salary grids for the Attorneys and Local 49 represented employees, the only union groups that had settled as of that time period, would be effective July 1, 2013. According to Nelson, she was surprised by this since she assumed the effective date would be January 1 since, according to past practice, there was no specific effective wage adjustment date for 2013.

Nelson also testified that the salary adjustment increases for both the Attorneys and the Local 49 unit were effective July 1, 2012 with no retroactivity back to January 1. The wage adjustments were reflected in the first payroll checks received after that date.

On December 28, 2012, Mr. Sandberg emailed former County Coordinator Richard Norman and asked for "*information about [the] employer's understanding of the implementation dates of portions of our contract.*" On January 3, 2013, Mr. Norman replied to Mr. Sandberg's email and stated, "*...reclassification adjustments are effective July 1st of each year. The 1% general adjustment in 2014 is effective on January 1st.*" (Association Exhibit 12) Thereafter, the Association filed its grievance.

ASSOCIATION POSITION

The Association's position is that the County breached the Agreement by not implementing effective dates of January 1 for wage adjustments during each year of the contract. In support of this the Association argues:

- The salary grid attached to and a part of the contract clearly states what wages the Attorneys are to receive for each year of the Agreement. There is no indication on the grid that wage adjustments will be effective on July 1.
- The County by seeking to add July 1 wage adjustment effective dates to the contract is asking the Arbitrator to exceed his authority which is expressly limited by Article 7.5 (A) of the Agreement which states, "*The Arbitrator shall have no right to amend, modify, nullify, ignore, add to or subtract from the terms and conditions of this Agreement.*"

⁷ Madden testified that this was a mistake on the County's part.

- The County’s request to use the Tentative Agreement proposed by Madden requires the Arbitrator to nullify and ignore the waiver clause in the Agreement. Article 21.1 states, “*Any and all prior agreements, resolutions, practices, policies, rules and regulations regarding terms and conditions of employment to the extent inconsistent with the provisions of this Agreement are hereby superseded.*”
 - Any award by the Arbitrator in this matter that adds into the Contract a July 1 implementation date for the wage adjustments would render the salary grid attached to the contract meaningless. The contract, through the clear and unambiguous salary grid, makes it clear what the salary is for an Attorney 1, II or III at any step. To decipher the plain terms of the contract you simply look at the dollar amount in the corresponding box for the specific year and job classification. A six-month delay in the salary increase shown on the grid has a real cost to the Attorneys as it represents half of a members salary increase for that year. The six month delay would have the effect that all the Association members were not going to receive their pay as shown on the salary grid referenced in the contract.
- The County is attempting to create ambiguity regarding the meaning of the year shown on the salary grid. It is not reasonable, given the plain terms of the contract, to believe that the County structured the grid to show the pay for the years 2012, 2013 and 2014 as only applying to the last six months of the year.
- The parties past practices also demonstrate there is no ambiguity in this contract. When the contract states a year it means the calendar year starting on January 1. The record in this case shows that when the County means a time frame other than January 1, it amends the grid accordingly to show the exact date of implementation. (*See Nelson's exhibits 8, 9, 10, 11, 16, 17 and 18*) Nelson also testified that it was the past practice of the County that all contract year increases have been implemented on January 1 unless the contract specifically states otherwise. Sandberg testified that in his experience of being involved in six prior collective bargaining contracts with the County the year has always started on January 1. Now for the first time ever the County is attempting to change the calendar year to a date that neither corresponds with the calendar year, the County's budget, or the parties' contract.
- There was not a mutual intention of the County and the Association to have 2013 start on July 1, 2013 or 2014 start on July 1, 2014. Where there is no showing that the parties

intended a special meaning for a term, the party whose understanding is in accord with the ordinary meaning of the language is entitled to prevail. Here, the Association assumed the term of a year like 2012, 2013 and 2014, means the entire corresponding calendar year beginning on January 1. There has not been any evidence showing that the parties mutually intended that the term “year” to mean anything less than the full year or starting on any date other than January 1.

- Contract law holds that if a contract is found to be ambiguous, the contract must be construed against the drafter. In this case, the County drafted the contract and any interpretation of the contract must be construed against the County.
- Contrary to the County’s assertions, the back pay to January 1, 2012 is warranted. The issues surrounding the grievance were not discovered until December 28, 2012 and the grievance was timely filed on January 11, 2013, well within the 21-day contractual filing period. Moreover, the issue of timeliness was resolved in the County Attorney Kelly’s Step 1 Answer to the grievance wherein he stated, *“All issues presented in the grievance have been timely submitted under Article 7 and all claims have been properly submitted to me pursuant to the terms of the Contract.”*

COUNTY POSITION

- It is the County’s position that it did not violate the Agreement when it implemented effective dates for all wage adjustments on July 1 of each contract year. In support of this position, the County argues that:
 - There is no language in Article 20 or the salary grid that specifies that the wage adjustments would be effective on January 1.
 - The Agreement does not provide in clear and unambiguous language for the implementation of wage adjustments on January 1. The use of the years 2012, 2013 and 2014 in the salary grid versus specific dates is open to more than one interpretation thus creating ambiguity.
 - The Association never proposed that the wage adjustment to be implemented on July 1, 2012 should be retroactive to January 1, 2012. Moreover, the Association never proposed wage adjustment dates of January 1 at any time during the May 31, 2012 negotiations.
 - During negotiations Madden proposed a three-year phase in for the wage adjustments and July 1 implementation dates. Association bargaining team members Sandberg, Duis

and Simmonds acknowledged that the County proposed a three-year phase in period for the wage adjustments with an implementation date of July 1, 2012. The minutes of the Association's ratification vote include notes from the unit's discussion of the settlement offer. The minutes specifically reflect a "3 year phase in to get 'out of the oval', effective July 1." There is no mention that the July 1 date is limited to 2012 nor do the minutes reflect "effective January 1, 2013 and January 1, 2014."

- Similar to the minutes of the Association's ratification vote, when Association President Sandberg emailed the County on June 4, 2012 regarding the Association's ratification vote, Mr. Sandberg stated, "[t]here shall be a phase in of Tru-Sight recommendations according to the chart supplied in negotiations." Mr. Sandberg did not state the reclassification adjustments would be effective January 1, 2012, January 1, 2013 or January 1, 2014. Based on Mr. Sandberg's reference to a "phase in of Tru-Sight recommendations", Mr. Madden believed Mr. Sandberg recognized the three-year phase in of the reclassification adjustments effective July 12, 2012, July 1, 2013 and July 1, 2014.
- Arbitrators look to the parties' communicated intent to give meaning to ambiguous language. The Tentative Agreement is clear that the parties agreed to July 1 implementation dates for all wage adjustments. The Tentative Agreement document forward to Mr. Sandberg on June 6, 2012 clearly and unambiguously states, "[i]mplement reclassification adjustments effective July 1, 2012, July 1, 2013 and July 1, 2014 as indicated." The phrase "as indicated" refers to the parties' discussions in negotiations. Sandberg reviewed the Tentative Agreement and never questioned the July 1 implementation dates.
- It is a fundamental principle of labor arbitration that one party to a collective bargaining agreement must not be allowed to obtain through grievance arbitration a change that it did not seek or achieve at the bargaining table.
- The Association cites the Waiver Article and argues that it precludes consideration of the Tentative Agreement. The Waiver Article references prior agreements regarding terms and conditions of employment which are "inconsistent" with the provisions of the collective bargaining agreement. The Tentative Agreement is not inconsistent with the provisions of the collective bargaining agreement. There is nothing in the collective bargaining agreement regarding the effective date of the reclassification adjustments. The Tentative

Agreement is not inconsistent with the contract; rather, it memorializes the parties' intent to "Implement reclassification adjustments effective July 1, 2012, July 1, 2013 and July 1, 2014 as indicated."

- The Association has argued the ambiguity in the contract should be construed against the County as the party that drafted the contract. While this principle may apply in commercial contract interpretation, it does not apply in labor arbitrations. Therefore, it is only applied as a last resort or where one of the parties has misled the other.
- The Association argues that the Attorneys should be treated the same way as the non-union employees who had the 2013 wage adjustments implemented on January 1, 2013. This was a mistake as Madden testified at the hearing.
- Contrary to the Association argument there is no past practice encompassing County-wide wage adjustments that are involved herein. These are not general wage increases that have historically been implemented on January 1. When the County has done reclassifications on an individualized basis in the past, any wage increases as a result of those reclassifications were effective prospectively following County Board approval. They were not effective January 1.
- The County negotiated with the Attorneys' Association and Local 49 on May 31, 2012, and a Tentative Agreement was reached on the same date. The Local 49 reclassification adjustments are effective July 1, 2012, July 1, 2013 and July 1, 2014. Similar to the Tentative Agreement with the Attorneys' Association, the Local 49 Tentative Agreement document stated: "*Implement reclassification adjustments effective July 1, 2012, July 1, 2013 and July 1, 2014 as indicated.*" The Compensation Article and Salary Schedule in the Local 49 contract are silent on the timing of the 2013 and 2014 reclassification adjustments. The Local 49 reclassification adjustments were implemented effective July 1, 2012, July 1, 2013 and July 1, 2014 consistent with the parties' Tentative Agreement. No grievances have been filed by Local 49.
- The Association submitted into evidence collective bargaining agreements the County negotiated with other exclusive representatives for the 2012-2014 round of bargaining. The Association highlighted that those contracts include reference in the salary schedules to specific mid-year implementation dates for the reclassification adjustments. Those contracts were ratified in 2013 after the instant grievance was filed. The County included

the specific mid-year implementation dates in those contracts so as to avoid other grievances.

- Assuming arguendo that the Association prevails on its grievance any back pay should be limited to the date of the filing of the grievance consistent with arbitral precedent.

OPINION

The parties were unable to agree on the precise issues. It is apparent that the Association is protesting the right of the County to implement wage adjustments on July 1 of each contract year rather than January 1.

The Association bears the burden of proof in this contract interpretation dispute. The Association is correct that my authority as an arbitrator is limited by specific language in Article 7 (A) of the Agreement. If the language in issue is “clear and unambiguous” there is no need to consider extrinsic evidence to resolve the issue.⁸ This language does not, however, preclude me from going outside the literal language of the Agreement and considering other factors such as past practice and bargaining history to resolve this contract interpretation issue. There are, however, limitations to the role that past practice and bargaining history play in contract interpretation. It is common for arbitrators to consider past practice along with bargaining history only where the contract provision in dispute is “unclear and ambiguous”.⁹ The Courts have also sanctioned the arbitrator’s reliance on past practice and bargaining history to interpret “ambiguous” contract provisions.¹⁰

The Association argues that the contract is “clear and unambiguous “with respect to when the wage adjustments should be implemented. I disagree. It is clear that neither Article 20 (Compensation) nor Article 22 (Duration) nor the salary grid or schedule list specific implementation dates for the wage adjustments. Thus, as the County argues, the implementation dates are subject to one or more interpretations. Therefore, since the Agreement is ambiguous with respect to specific wage implementation dates it is appropriate to look to extrinsic evidence to resolve this issue.

⁸ Elkouri & Elkouri, *How Arbitration Works*, 5th Ed. pgs. 470-515 (1997). See also Elkouri & Elkouri, *How Arbitration Works*, 6th Ed. pgs. 434-435 (2003)

⁹ *Id.*, at 472, 630, and 648-651

¹⁰ Fairview Southdale Hospital v. Minnesota Nurses Association, 943 F.2d 1809 (1991)

The Association also argues that the Waiver Article precludes my consideration of the Tentative Agreement to resolve this contract interpretation issue. The Waiver Article references prior agreements regarding terms and conditions of employment which are “inconsistent” with the provisions of the collective bargaining agreement.¹¹ The Tentative Agreement is not inconsistent with the provisions of the collective bargaining agreement since there is nothing in the collective bargaining agreement regarding the specific effective dates of the reclassification wage adjustments.

The Association contends that past practice dictates that the effective dates of the wage adjustments be January 1 since the parties have historically utilized that date whenever wage increases are a part of a new contract. This is especially true herein where the only dates listed in the salary grid are years. The evidence supports and the County agrees that general wage increases have historically been implemented on January 1 of each contract year unless otherwise noted in the contract. Thus, the County acknowledges that the 1% general wage increase for 2014 will be effective on January 1, 2014; and if there was a general wage increase during the first two years of the contract, they would also be effective on January 1 of that particular year.

While historically general wage increases have been effective at the beginning of the contract year, the same cannot be said for reclassification wage adjustments. The County contends, and there is no evidence to refute this contention, that reclassification wage adjustments are effective after the County Board approves them. Even assuming *arguendo* that some wage adjustments were effective on January 1 of a particular year, the County has never initiated such wide-spread reclassification wage adjustments in recent times. In view of this, it can hardly be established that all wage adjustments were automatically effective on January 1 during the year they were implemented.

The history of bargaining, especially the Tentative Agreement, supports the County’s position that the Association agreed to the July 1 implementation date for all wage adjustments. The Association acknowledged that the wage adjustments were going to be phased in over the three-year term of the Agreement. It also acknowledged that at least the first wage adjustment would be implemented on July 1, 2012. While the Association denies that Madden ever informed it during negotiations that all wage adjustments would be effective on July 1, the

¹¹ Elkouri & Elkouri, *How Arbitration Works*, 6th Ed. pgs. 620-621 (2003)

Tentative Agreement presented to Sandberg, who was the chief negotiator for the Association, clearly and unambiguously sets these implementation dates. While Sandberg vehemently denies he ever noticed this language, he nevertheless agreed to these terms.

There is no question that the salary grid was inartfully drafted. Obviously, it followed the same framework used in prior contracts where there was never any reclassification wage adjustments implemented. This in and of itself does not nullify the agreement that the parties reached at the bargaining table. Further, because the County revised the salary grids in other contracts to specifically list general wage increases and wage adjustment effective dates does not give credence to the Association's position, since these actions occurred after the grievance in this matter was filed in order to prevent further grievances, as the County states.

Both Madden and the County Board relied on Sandberg's agreement that the Tentative Agreement finalized the negotiation process. The evidence adduced at the hearing clearly establish the County would never have approved the contract with implementation dates of anything other than July 1. It would be negligence on the part of this Arbitrator to allow the Association to obtain through the arbitral process that which it clearly did not achieve during bargaining. By doing so, I would be punishing the County for the Association's error.

In view of the foregoing, I conclude that the Association failed to establish its burden of proof that the County violated the Agreement when it implemented reclassification wage adjustments on July 1 of each contract year. I will, therefore, dismiss the grievance in its entirety.¹²

AWARD

It is hereby ordered that the grievance be and hereby is dismissed in its entirety.

Dated: August 27, 2013

Richard R. Anderson, Arbitrator

¹² In so ruling, it is not necessary to resolve whether back pay is retroactive to January 1, 2012.