

IN THE MATTER OF THE ARBITRATION BETWEEN

THE DAKOTA COUNTY	)	MINNESOTA BUREAU OF
ATTORNEY EMPLOYEES'	)	MEDIATION SERVICES
ASSOCIATION,	)	CASE NO. 13-PN-0590
	)	
	)	
Association,	)	
	)	
and	)	
	)	
THE COUNTY OF DAKOTA,	)	DECISION AND AWARD
	)	OF
Employer.	)	ARBITRATOR

APPEARANCES

For the Association:

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On August 2, 2013, in Hastings, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, who was selected by the parties under the provisions of the Minnesota Public Employment Labor Relations Act to resolve collective bargaining issues about which the parties are at impasse. Post-hearing written argument from each of the parties was received by the arbitrator

on August 19, 2013. By agreement, each of the parties sent with its written argument an affidavit in support of its position -- for the Association, the affidavit of James C. Backstrom, Dakota County Attorney, and for the Employer, the affidavit of Nancy Hohbach, Dakota County Director of Employee Relations.

#### BACKGROUND

The County of Dakota (the "Employer" or sometimes, the "County") is a largely suburban county just south of Minneapolis and St. Paul, Minnesota. Its population, measured in the census of 2010, was about 398,000. The Association is the collective bargaining representative of thirty Assistant County Attorneys employed in the offices of the Dakota County Attorney.

The Association and the Employer are parties to a labor agreement that establishes the terms and conditions of employment of these employees. The agreement has a three-year stated duration, from January 1, 2010, through December 31, 2012. Though the agreement, by its stated duration, has expired, the parties continue to operate under its provisions. Accordingly, I may sometimes refer to it as the "2010-2012 labor agreement" or as the "current labor agreement."

The parties have successfully negotiated some of the terms of a new agreement, which will succeed the 2010-2012 labor agreement. They have agreed that the duration of the new labor agreement will be for one year, calendar year 2013. They reached impasse in their bargaining, however, about several bargaining issues, described below, and, as noted above, they seek to resolve those issues in this proceeding.

On March 25, 2013, the Minnesota Bureau of Mediation Services (the "BMS") certified that the parties were at impasse with respect to seven collective bargaining issues, to be resolved by arbitration. I list those issues below, in the following order and by the following titles:

- Issue 1. Salary - Increase of Salary Ranges for 2013.
- Issue 2. Salary - General Wage Increase for 2013.
- Issue 3. Salary - Merit Pay Matrix for 2013.
- Issue 4. Health Insurance - Employer's Contribution for 2013.
- Issue 5. Clothing Allowance - Amount (New).
- Issue 6. Holidays - Additional Floating Holiday.
- Issue 7. Flex Leave - Establish New Accumulation Plan.

As the hearing began, the parties stated that four of the seven issues were no longer at impasse and were withdrawn from my consideration -- Issue 4, because the Association accepted the Employer's Health Insurance position, Issue 5, because the Association withdrew its proposal to establish a clothing allowance, Issue 6, because the Association withdrew its proposal to add a floating holiday to the holiday schedule, and Issue 7, because the Association accepted the Employer's Flex Leave position that there be no change in Section 11.1 of the current labor agreement. That section provides that eligible employees in the Association's bargaining unit are to have the same Flex Leave Plan that the County's non-union employees have.

Thus, three issues remain for resolution, all of which relate to the compensation that bargaining unit members receive as salaries.

Currently, the County employs about 1,770 employees, about 1,190 of whom have collective bargaining representation in one

of sixteen bargaining units that are represented by nine unions. Since about 1990, the County has set the wages and salaries of all of its employees through a three-part system, described in the Dakota County Merit Compensation Policy & Plan (hereafter, the "Compensation Plan" or merely the "Plan").

One component of that system establishes "Salary Ranges" in the following manner. In the late 1980s, the County retained Arthur Young & Company to conduct a job evaluation and compensation study (now administered by Fox Lawson & Associates). The job evaluation study uses what the Employer refers to as the Decision Band Method (the "DBM") to evaluate skill, difficulty and other factors that are appropriate to determining the compensation of each classification of the County's employees. The Plan establishes a hierarchy of thirty-one Pay Grades. Each classification is assigned to a Pay Grade, with the intention that job classifications with differing functions, but with similar total evaluation scores, be grouped in the same Pay Grade.

The Plan establishes a Salary Range for each Pay Grade. For 2013, the Plan shows a Grid of annual salaries. The thirty-one Pay Grades are listed down the vertical axis of the grid, and, across its horizontal axis, five<sup>1</sup> amounts of annual salary are shown, thus stating a separate five-part Salary Range for each Pay Grade. The first amount in each Salary Range is

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1. I note that the Plan sometimes states that Salary Ranges have only four components -- four "quartiles," and, as I note below, the parties' current labor agreement and the final position of the Association show only four components in the Salary Ranges they list.

referred to as the "Range Minimum," and the next four amounts are designated "quartiles" -- "Q-1," "Q-2" (sometimes referred to as the "Midpoint"), "Q-3" (also referred to as the "Control Point") and "Q-4" (also referred to as the "Range Maximum").

The second component of the Compensation Plan establishes a system of Merit Pay, based upon a "Merit Matrix." The Merit Matrix defines four levels of job performance -- "Role Model" (highest), "Achiever" (second highest), "Contributor" (third highest) and "Learner/Corrective" (lowest). An employee performing at the lowest level receives no Merit Pay. For the three highest levels of performance, the Plan for each year sets the amounts of Merit Pay for each level<sup>2</sup> -- usually, as a percentage of the Q-3 Control Point for the Salary Range in the Pay Grade of each employee. The Plan defines the process for determining Merit Pay based on job performance.

In some recent years, the parties' labor agreement, in conformity with the Compensation Plan for those years, has not provided an increase in one or more of the three components of compensation (including its third component, the "General Increase," described below). In years when Merit Pay is authorized by the salary provisions of the labor agreement, the agreement has provided that the County Attorney has discretion

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2. I note, though, that because the Plan is a policy of the Employer, each labor agreement, could, by agreement of the parties to that agreement (or by arbitration, as the Association seeks to do in the present proceeding) depart from the amounts specified in the components of the annual Compensation Plan.

to determine at what level on the Merit Matrix an employee will receive Merit Pay (a determination, not grievable, but subject to limited review).

The parties refer to the third component of the Plan's compensation system as the "General Increase." As I have noted above, in some recent years, the Plan has not provided an increase in one or more of its components. Typically, a General Increase raises an employee's "base salary" -- a term used, but not fully defined in the Plan, which I interpret by inference as meaning the actual amount of salary an employee receives, except for amounts that may be designated as "lump sum" payments. Some parts of Merit Pay may also raise the base salary, and some parts of Merit Pay may be paid only as a lump sum. If any part of a General Increase or of a Merit Pay increase would raise an employee's base salary above the Range Maximum, that part is payable only as a lump sum.

The Assistant County Attorneys in the bargaining unit have four classifications -- Attorney I, Attorney II, Attorney III and Attorney IV. Since the Compensation Plan was first adopted by the Employer in about 1990, the Association has argued that the original DBM evaluation established for the top three of these classifications was too low, placing them in a Pay Grade with Salary Ranges lower than they should have been, as measured by required knowledge and skills and by compensation in the external market (salaries paid to Assistant County Attorneys by comparable Minnesota counties). In the early 1990s, the Employer adjusted the original DBM placement and, thereby, the

Pay Grade, assigned to the top three classifications, raising them as shown in the chart below:

<u>Class</u>	<u>Original DBM Placement</u>	<u>Adjusted DBM Placement</u>	<u>Increase In Pay Grade</u>
Attorney II	C44	C52	15th to 17th
Attorney III	C52	D63	17th to 21st
Attorney IV	D63	D71	21st to 22nd

When an attorney is newly hired, he or she is usually hired in the Attorney I or the Attorney II classification, with the original base salary set at the discretion of the County Attorney within the Salary Range for that classification. In subsequent years, the base salary of the attorney will rise by the amount of any General Increases and by any Merit Pay increases that are awarded as base salary increases. Upon promotion, which occurs at the discretion of the County Attorney, the promoted attorney advances into the higher Salary Range for the new classification, with an additional 5% increase in base salary, consistent with Sections 15.12, 15.13 and 15.14 of the labor agreement. As noted above, if an attorney is being paid at the Range Maximum for his or her classification, any General Increase or Merit Pay increase is paid as a lump sum.

The current labor agreement also provides for several extraordinary payments to attorneys -- for example, a one-time lump sum payment of up to 2% of "an employee's pay rate" "for accomplishment of a specific identifiable result."

Appendix B of the current labor agreement, which is set out below, establishes the three compensation components for calendar year 2012:

APPENDIX B  
2012 SALARY RANGES

<u>Job Class</u>	<u>Range</u> <u>Minimum</u>	<u>Midpoint</u>	<u>Q-3</u> <u>Control</u> <u>Point</u>	<u>Range</u> <u>Maximum</u>
Attorney I	54,200	64,900	70,300	75,600
Attorney II	62,200	75,800	82,600	89,400
Attorney III	72,700	90,900	100,000	109,100
Attorney IV	75,500	95,000	104,800	114,500

2012 MERIT MATRIX

Role Model rating	1.5%
Achiever rating	1.5%
Contributor rating	1.5%
Learner/Corrective rating	0%

Applies to all employees regardless of range placement.

All merit increases shall be calculated as a percentage of the Q-3 control point of the employee's salary range. In no event shall an employee's base salary be increased on the salary range above the salary range maximum. If the merit increase exceeds the salary range maximum the remainder shall be paid as a lump sum.

In 2012, there is no general increase. . . .

The Employer's Position.

For 2013, the Employer proposes that the Salary Ranges of bargaining unit classifications be increased to the following amounts (2% of the Midpoint, with other range amounts increased by a similar percentage according to a Plan formula):

<u>Class</u>	<u>Minimum</u>	<u>Q-1</u>	<u>Q-2</u>	<u>Q-3</u> <u>Control</u> <u>Point</u>	<u>Maximum</u>
Attorney I	55,300	60,800	66,200	71,700	77,100
Attorney II	63,500	70,500	77,400	84,400	91,300
Attorney III	74,200	83,500	92,800	102,100	111,400
Attorney IV	77,100	87,100	97,000	107,000	116,900

The Employer also proposes the following text relating to a General Increase and a Merit Matrix increase for 2013:

General Increase

Employees employed as of January 1, 2013 shall receive a 2.0% general increase calculated on the employee's base salary, or an increase to the salary range minimum, whichever is greater. The general increase is effective the first day of the pay period in which January 1 falls. In no event shall an employee's salary be increased on the salary range above the salary range maximum. If the general increase provided results in an increase above the salary range maximum, the employee's base salary will be adjusted to the range maximum and the balance of the general increase shall be paid to the employee in a lump sum.

2013 Merit Matrix

Role Model rating	1% plus 1% lump sum plus \$500 lump sum
Achiever rating	1% plus 1% lump sum
Contributor rating	0.5% plus 1% lump sum
Learner/Corrective rating	0%

All merit increases shall be calculated as a percentage of the Q-3 control point of the employee's salary range. In no event shall an employee's base salary be increased on the salary range above the salary range maximum. If the merit increase exceeds that salary range maximum the remainder shall be paid in a lump sum.

The Association's Position.

The Association would amend Section 15.1 and Appendix A of the labor agreement. In my reproduction of the Association's Position, below, I have added, at the margin, bracketed Paragraph numbers to enable easy reference to them in my later discussion:

15.1. Effective January 1, 2013, employees covered by this Agreement shall be compensated in accordance with Appendix A attached hereto and the provisions set forth below.

- [1] Annual salary range increases will be granted in 1% increments (or at the rate the County adjusts its County Pay Equity Compensation structure, whichever is higher).
- [2] Annual wage increases will be granted in 2% increments (or at the rate the County increases the general wage, whichever is higher).

Appendix A - 2013 Salary Ranges

<u>Job Class</u>	<u>Range Minimum</u>	<u>Midpoint</u>	<u>Q-3 Control Point</u>	<u>Range Maximum</u>
Attorney I	55,300	66,200	71,700	77,100
Attorney II	67,310	82,044	89,464	96,778
Attorney III	83,104	103,936	114,352	124,768
Attorney IV	86,352	108,640	119,840	130,928

- [3] These salary ranges constitute a separate salary range from the County Pay Equity Compensation structure. Annual salary range increases will be granted in 1% increments (or at the rate the County adjusts its County Pay Equity Compensation structure, whichever is higher).

2013 MERIT MATRIX

Role Model rating	2% + \$500 lump sum
Achiever rating	2%
Contributor rating	1.5%
Learner/Corrective rating	0%

Applies to all employees regardless of range placement.

- [4] All merit increases shall be calculated as a percentage of the Q-3 control point of the employee's salary range. The salary ranges set forth above shall be adjusted prior to the merit increase. In no event shall an employee's base salary be increased on the salary range above the salary range maximum. If the merit increase exceeds the salary range maximum the remainder shall be paid in a lump sum.

In 2013 there is a 2% general wage increase.

- [5] Annual wage increases will be granted in 2% increments (or at the rate the County increases the general wage, whichever is higher).

- [6] The salary ranges set forth above shall be adjusted prior to the general wage increase. If the general increase exceeds the salary range maximum the remainder shall be paid to the employee in a lump sum.

At the time of the hearing, there were thirty employees in the bargaining unit -- seven men and twenty-three women. Of these employees, one was classified as Attorney I, three as Attorney II, five as Attorney III and twenty-one as Attorney IV.

Decision.

In recent years, the Employer has offered the sixteen bargaining units it bargains with two health insurance plans, one of which has a lower cost to the Employer by the equivalent of about 1% in salary. In 2011 and 2012, the Employer offered Merit Matrix payments, as an incentive to bargaining units that accepted the lower cost health insurance plan. The Association accepted the lower cost insurance plan in 2012, and accordingly, Appendix B of the current labor agreement provides for Merit Matrix payments, whereas bargaining units that did not accept the lower cost insurance plan had no Merit Matrix payments for 2012. No bargaining unit received a General Increase for 2012.

For 2013, the Plan provides a two-tiered General Increase -- 1% to bargaining units that have not accepted the lower cost insurance plan and 2% to bargaining units that have accepted it. Accordingly, the Employer proposes a General Increase of 2% for the 2013 labor agreement with the Association, which has accepted the lower cost health insurance plan. The Employer proposes to the Association the same Merit Matrix for 2013 that it has provided to all other bargaining units.

The General Increase proposed by the Association for 2013 is also 2%. At the hearing, the parties discussed the parts of the Association's Position that seek an award requiring Salary Range increases and other wage increases in years after 2013 (identified above as Paragraphs 1, 2, 3 and 5 of my reproduction of the Association's Position). I suggested that I did not have

jurisdiction in this proceeding (in which the BMS has certified issues for arbitration that affect salaries for 2013) to decide what salaries will be in years after 2013. The parties then agreed that determinations of wage increases after 2013 were not within my jurisdiction. Accordingly, I do not award labor agreement provisions that determine salary in future years.

With this exclusion of the future-year increases that were originally sought by the Association, it appears that the parties agree that the General Increase for 2013 is to be 2% of the base salary of each employee. The Association has also proposed in Paragraphs 4 and 6 of its Position that "the salary ranges set forth above shall be adjusted prior to the merit increase" (Paragraph 4) and "prior to the general wage increase" (Paragraph 6).

The evidence does not show clearly whether in previous administration of the Plan, Merit Pay increases and General Increases have been calculated after or before any adjustment in the Salary Ranges. My award should be interpreted as making no change in the way that calculation has been made in previous practice.

The Employer notes that in recent years it has suffered from loss of state funding, a reduction in the tax capacity borne by real estate within the County, increased unemployment and other factors that have accompanied the economic recession that began in 2008. Though some growth has returned, the Employer still anticipates budget difficulties in 2013 and 2014. One of the effects of the poor economic conditions and of the Employer's budget shortfalls has been the elimination of

Salary Range increases and General Increases for the years 2010, 2011 and 2012. Accordingly, the Association and the other fifteen bargaining units of County employees have had no increases in these components of the Compensation Plan. As noted above, Merit Matrix increases were provided in 2011 and 2012 to bargaining units that accepted the lower cost health insurance plan.

The Employer's primary argument, though, is that the salary issues raised in this proceeding should be determined by internal consistency, i.e., by making no departure from the internal pattern that all other bargaining units have been offered and have accepted (a pattern that, as explained above, was two-tiered in 2012 and 2013 with the advent of the low cost health insurance plan). The Employer argues that a departure in this proceeding from the past general acceptance of the Plan over many years would be disruptive to the morale of employees in other bargaining units, risking strikes and inciting future impasse arbitration invoked by bargaining units unable to strike because their members are deemed essential employees.

The Association argues that the original DBM job evaluation of the classifications of non-supervisory Assistant County Attorneys placed them in much lower Pay Grades than was indicated by a proper consideration of the external market, i.e., what comparable Minnesota counties pay Assistant County Attorneys in similar classifications. The Association also argues that the DBM and Pay Grade adjustment made in the early 1990s was not sufficient to remedy the original deficiency.

The Association argues that in recent years the distortion caused by low DBM evaluation has become worse, as Salary Ranges for its classifications have been frozen, while the salary ranges for Assistant County Attorneys in comparable counties have increased.

In its post-hearing brief, the Association argues that four counties should be used for a market comparison -- three of them, Hennepin, Ramsey and Anoka Counties, in the Twin City metropolitan area -- and a fourth, Stearns County, where the City of St. Cloud is located.

As I have noted above, the Employer argues that external comparison should not be used to determine the salaries it pays if that use would destroy the Plan's longstanding relationship of the Pay Grades resulting from DBM evaluations. Nevertheless, the Employer argues, that if external comparison is used, the most similar counties for that comparison are the counties once grouped in Stanton Group IV -- Anoka, Carver, Olmsted, St. Louis, Scott and Washington -- plus Hennepin and Ramsey Counties.

The following table shows the population and Minnesota rank in population, by 2011 census estimates, of Dakota County and the counties both parties suggest for comparison:

<u>County</u>	<u>Population</u>	<u>Population Rank</u>
Hennepin	1,163,000	1st
Ramsey	510,800	2nd
<u>Dakota</u>	<u>401,200</u>	<u>3rd</u>
Anoka	334,100	4th
Washington	240,600	5th
St. Louis	200,100	6th
Stearns (2012 Data)	151,000	7th
Olmsted	145,400	8th
Scott	131,600	9th
Carver	92,100	11th

The only county in this list that has four classifications of non-supervisory Assistant County Attorneys is Dakota County. For this reason, salary comparisons should be made at the highest paid non-supervisory classification, i.e., comparison of the pay for the Attorney IV classification in Dakota County with what is paid in other counties to the highest paid non-supervisory classification of Assistant County Attorney, even if that classification has a title that seems nominally lower.

I have constructed the table below, using the evidence provided by the parties, but I note that, at some data points, the salary amount shown in the evidence provided by one party may be different from the amount shown in the evidence provided by the other party. Where the evidence is thus conflicting, I have made a reasonable estimate of the correct amount. The following table shows the range minimum and range maximum in 2013 for the highest level of non-supervisory Assistant County Attorney in the counties the parties suggest for comparison:

2013 Salary Range For  
Highest Level of Non-Supervisory  
Assistant County Attorney

<u>County</u>	<u>Range Minimum</u>	<u>Range Maximum</u>
Hennepin	79,428	125,772
Ramsey	88,214	131,335
Anoka	82,898	120,581
Washington	80,267	109,845
St. Louis	84,220	108,118
Stearns	84,614	127,768
Olmsted	82,160	100,692
Scott	Unknown	110,909
Carver	63,024	102,482
<u>Average</u>	80,603	115,278

Both parties argue that, for various reasons, one or more of the counties selected by the other party should be excluded from any market comparison as not comparable. The Association argues that Olmsted and St. Louis Counties are too distant and, in other ways, dissimilar to Dakota County. The Association also argues that Carver County, though contiguous to Hennepin County, is, nevertheless, small and less urban than Dakota County.

The Employer argues that Stearns County is too distant from Dakota County and the Twin City metropolitan area to be considered as part of a comparable market. The parties have provided evidence concerning other attributes of the counties suggested for comparison.

I agree with the argument made by both parties that geographically distant counties, Olmsted, Stearns and St. Louis do not present good market comparisons. Though the boundaries of each of them include a significant city, those cities do not present the substantial complexity of urban life in the Twin City metropolitan area. I also find that Carver County is not well suited for inclusion in the relevant market -- because it is small and much of it is not yet experiencing substantial urban growth.

I conclude, then, that any market comparison should be made using data from five counties in the Twin City metropolitan area -- Hennepin, Ramsey, Anoka, Washington and Scott. I take notice that, at least to some extent, Hennepin and Ramsey Counties, which include the Cities of Minneapolis and St. Paul,

present more complex criminal and civil legal work incident to urban life -- much of that work litigated and resolved by Assistant County Attorneys. Presumably, less complex legal work is presented by the growing but less urban populations of Scott and Washington Counties. Of these five counties, the most like Dakota County is Anoka County. It has population of similar size and is growing quickly just to the north of Minneapolis and St. Paul -- just as Dakota County is growing quickly just to the south of those principal metropolitan cities.

The following table presents 2013 salary range information from these five counties for the highest level of non-supervisory Assistant County Attorney:

2013 Salary Range For  
Highest Level of Non-Supervisory  
Assistant County Attorney In  
Counties Most Similar to Dakota County

<u>County</u>	<u>Range Minimum</u>	<u>Range Maximum</u>
Hennepin	79,428	125,772
Ramsey	88,214	131,335
Anoka	82,898	120,581
Washington	80,267	109,845
Scott	Unknown	110,909
<u>Average</u>	<u>82,702</u>	<u>119,688</u>
<u>Employer's Position</u>	77,100	116,900
<u>Association's Position</u>	86,352	130,928

The Association presented information showing that from about 2003 through about 2007, the Salary Ranges for its members were ranked the highest or near the highest for Assistant County Attorneys employed by four counties in the Twin City metropolitan

area. It presented tables showing those rankings for several classifications, including a table that shows changes in the maximum of the salary range at the highest non-supervisory level of Assistant County Attorney from 2003 through 2013. In the following depiction of that table, as presented by the Association, I note 1) that the salary amount shown for Anoka County in 2013 is about \$3,600 higher than the amount shown above, 2) that the salary amount shown for Ramsey County in 2013 is about \$6,100 lower than the amount shown above, 3) that the salary amount shown for Scott County in 2013 is about \$9,400 higher than the amount shown above, 4) that the salary amounts for years previous to 2013 for Scott County were not provided and 5) that similar information from Washington County was not provided:

	<u>Anoka</u>	<u>Hennepin</u>	<u>Ramsey</u>	<u>Dakota</u>	<u>Scott</u>
2003	98,518	100,884	98,652	99,800	
2004	101,366	100,884	103,648	108,000	
2005	104,299	102,996	107,835	108,000	
2006	107,320	108,216	107,835	111,400	
2007	110,432	113,628	112,192	112,400	
2008	113,948	113,628	113,875	113,400	
2009	117,259	122,700	110,051	114,500	
2010	120,668	122,700	121,432	114,500	
2011	124,180	122,700	123,848	114,500	
2012	124,180	122,700	123,848	114,500	
2013	124,180	125,767	125,087		120,768
Employer's Position				116,900	
Association's Position				130,928	

The Association points out that for many years the number of Assistant County Attorneys in Dakota County has been the lowest per capita, as compared to other counties in the metropolitan area -- thus implying a higher workload for

bargaining unit members. Based on 2013 population estimates, the Association's table shows that in Dakota County there is one Assistant County Attorney for every 12,538 residents in the county, whereas in Hennepin County, there is one Assistant County Attorney for every 8,489 residents, in Anoka County, one for every 8,565 residents, in Ramsey County, one for every 7,859 residents, and in Scott County, one for every 9,397 residents.

There is little difference in immediate cost (for expenditures made during 2013 only) between the parties' positions. The Employer presented estimates (using the distribution of performance ratings during 2011 and 2012 in estimating Merit Matrix cost increases) as follows:

Increase in Cost, Employer's Position:

2% General Increase	\$ 60,505
Merit Matrix Increase	59,517
FICA and PERA	<u>17,884</u>
	137,906

Increase in Cost, Association's Position:

2% General Increase	\$ 60,505
Merit Matrix Increase	66,411
FICA and PERA	<u>18,910</u>
	145,826

Difference in Cost Increase	7,920
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Because these calculations were made by the Employer, I assume, they are based on the premise that the 2013 Salary Ranges will conform to the Employer's Position.

The Association points out that the retirement or departure of four attorneys from the bargaining unit has saved \$223,060 in salaries and that, for three of them, replacements

by less experienced attorneys at a lower salary should result in substantial cost savings.

The Employer points out that the Association's proposed Merit Matrix increases would be provided almost entirely as base salary increases and would, therefore, have a continuing effect into the future. I have calculated the part of each party's Merit Matrix proposal that would affect the base salary, as follows. Of the Merit Matrix cost increase that would result from the Employer's Position, \$27,221 would be a percentage increase in continuing base salary and \$32,296 would be paid only in 2013 as a lump sum. Of the Merit Matrix cost increase that would result from the Association's Position, \$55,623 would be a percentage increase in continuing base salary and \$10,780 would be paid only in 2013 as a lump sum.

The Employer argues that the Association's proposal to increase the Salary Ranges would cause substantial continuing increases in future cost and that such Salary Range increases would cause future disruption of the the Plan's internal pattern that employees have accepted for many years. As described above, the Employer rejects the use of external market comparisons as a basis for departing from the longstanding internal relationship of the compensation of all of its employees, as established by DBM evaluations. The Employer urges that a primary reason for the adoption of the Plan was to provide pay equity among classifications that may be "female-dominated" or "male-dominated." The Employer is in compliance with the requirements of the Local Government Pay

Equity Act, but it fears that a change in the Salary Ranges of the classifications represented by the Association will trigger demands from other bargaining units that will cause it to become out of compliance.

The Association responds that the classifications it represents are clearly populated mostly by women and, therefore, that an increase in the Salary Range of those classifications will not affect the County's compliance with the Pay Equity Act.

The following provision from page 6 of the Plan's 2013 text describes the goal of job evaluation:

The classification and evaluation of positions occurs through the application of the Decision Band Method of job evaluation. This system measures the scope of a job's decision making in the context of the overall organization hierarchy. There are six distinct decision making levels and 31 sub-levels, which cover all jobs within the County. . . . Through the County's job evaluation and classification policy, the County ensures that appropriate relationships between classifications and jobs are established and maintained over time through application of a periodic classification review process and reorganization studies when appropriate.

Nancy Hohbach, Director of Employee Relations, testified and, in addition, presented a supplementary affidavit. Her testimony and her affidavit state that the County has used a Triennial Review Process every three to four years primarily "to determine whether changes in job duties and responsibilities had changed significantly enough to warrant a change in job classification level" based on DBM job evaluation. Hohbach indicated that that review process "did not include taking market salary data into account." She stated, though, that the County has suspended use of that review process since the onset of the economic recession.

Hohbach's affidavit, however, describes a current comprehensive job evaluation study, thus:

8. The [Plan] provides for adjustments when market analysis indicates deviation from the applicable market rate; however, the County has not conducted a County-wide market analysis in many years which is the reason for the compensation study that is currently underway. . . .
9. The County has hired a compensation expert to conduct a comprehensive market analysis of all County classifications. Recommendations will be presented to the County Board within the next few weeks so appropriate funds may be included in the 2014 budget. Results of the study will be incorporated into the 2014 compensation structure.
10. At the hearing I testified that the job reclassifications which have been conducted have been based upon changing duties and responsibilities. Consideration of external market comparisons is not a factor in the routine job evaluation process.

The Association argues that the Compensation Plan itself recognizes that market comparison is a necessary part of job evaluation and the setting of salaries, citing the following provisions of the Plan:

Salary ranges are analyzed and may be adjusted each year based on a number of factors including relative changes in the labor market, inflationary measures, budgetary impact and most importantly, the realization that jobs expand and change over time. These changes may encompass technological innovation and improvement, as well as fluctuation in the prevalence of certain job skills in the marketplace. [From page 2 of the 2013 Plan.]

Market Adjustment. When a market analysis for a specific job class indicates the assigned salary range mid-point deviates, positively or negatively, from the market by more than 10%, the job class may be placed at an established salary range that most closely corresponds to the applicable market rate. The job class is administered in the context of the adjusted range. All market adjustments will be re-evaluated on a regular basis. [From page 8 of the 2013 Plan.]

Plan Exceptions. The County Administrator may approve exceptions to the Plan. These will generally involve internal and labor market equity considerations or unusual circumstances and will occur only upon the recommendation of the Employee Relations Director. [From page 9 of the 2013 Plan.]

The Association points out that during past administration of the Plan, the County found that it had difficulty hiring employees with needed skills in information technology ("IT") at the salary levels being offered and that, to obtain employees with the needed skills, the Plan was amended to provide a separate Salary Range schedule for "IT" employees.

The Employer presented evidence that for many years the County has had a large number of applicants for vacancies in Assistant County Attorney classifications, arguing that the large number of applicants indicates that compensation levels are competitive. The testimony and affidavit of County Attorney James C. Backstrom rejected that conclusion, arguing that the position of Assistant County Attorney is a highly skilled position that requires compensation at least at the level available in the relevant market -- the metropolitan counties that hire attorneys with similar abilities.

I reach the following conclusions. The evidence shows that the Plan has produced longstanding stability of internal compensation relationships, an attribute that provides benefits to the Employer and to employees as well. The evidence from the relevant external market -- five other similar counties in the Twin City metropolitan area -- shows that the 2013 salary ranges for Assistant County Attorney classifications in those counties are about 2.5% above the Employer's Position on 2013 Salary

Ranges (as measured at the range maximum for the highest level of non-supervisory Assistant County Attorneys).

For many years, the compensation of Dakota County Attorneys was at or near the top in the relevant market. That ranking has reversed -- a reversal caused, it appears, by increases in the salary ranges of Assistant County Attorneys employed by counties in the relevant market during recent years when Plan Salary Ranges for all Dakota County classifications were frozen.

As Hohbach's evidence shows the County has undertaken a comprehensive review of compensation paid to its employees -- to be completed shortly and for use during 2014. Because that review is not yet finished, it is not known whether the 2014 Plan will set Salary Ranges for the classifications of Assistant County Attorneys at a level that will approximate salary ranges in the relevant market. If there is no change in the DBM evaluations of Assistant County Attorney classifications, any change in their Salary Ranges will presumably be consistent with Salary Range changes for all Pay Grades, and such change may not resolve the market disparity the Association would remedy in this proceeding. It is possible, however, that the forthcoming review will recognize the market disparity that I have described here and then relieve that disparity.

From the testimony of Hohbach and from the arguments made by the Employer in this proceeding, it seems unlikely that a new DBM evaluation for Assistant County Attorney classifications will be forthcoming. I do not know what factors were used to

determine past DBM evaluations of Assistant County Attorney classifications -- whether those evaluations recognized 1) that there is a variation in the skills of licensed attorneys, 2) that, as Backstrom testified, Assistant County Attorneys should have -- and he wants those employed in his office to have -- more than mediocre skills, and 3) that he must compete for such skills in the relevant market with compensation that pays for them.

Awards.

I make the following awards. The parties agree that I have jurisdiction only to determine salary issues for 2013. With that agreement, I consider as withdrawn the Association's several proposals that I award General Increases and Merit Matrix increases in future years.

I award a General Increase of 2% in accord with the parties' agreement. The following language should be included in the Appendix that describes compensation for 2013:

Employees employed as of January 1, 2013 shall receive a 2.0% general increase calculated on the employee's base salary, or an increase to the salary range minimum, whichever is greater. The general increase is effective the first day of the pay period in which January 1 falls. In no event shall an employee's salary be increased on the salary range above the salary range maximum. If the general increase provided results in an increase above the salary range maximum, the employee's base salary will be adjusted to the range maximum and the balance of the general increase shall be paid to the employee in a lump sum.

I award the Employer's Position on the Merit Matrix rather than the Association's Position, in order to preserve the Plan's internal pattern of providing uniform Merit Matrix

increases (and uniform General Increases) to all County employees. The Merit Matrix for 2013 shall be as follow:

2013 Merit Matrix

Role Model rating	1% plus 1% lump sum plus \$500 lump sum
Achiever rating	1% plus 1% lump sum
Contributor rating	0.5% plus 1% lump sum
Learner/Corrective rating	0%

All merit increases shall be calculated as a percentage of the Q-3 control point of the employee's salary range. In no event shall an employee's base salary be increased on the salary range above the salary range maximum. If the merit increase exceeds that salary range maximum the remainder shall be paid in a lump sum.

I award Salary Ranges for 2013, described as follows.

The Salary Ranges for each classification of Assistant County Attorney shall be increased by raising the Midpoint of each Salary Range by 4.5% over the Salary Range Midpoint for that classification as established in 2012 -- using the Plan formula alluded to but not fully described in Hohbach's testimony, in order to establish about a 4.5% increase at other points in each Salary Range.

September 18, 2013

  
Thomas P. Gallagher, Arbitrator