

**IN RE ARBITRATION BETWEEN:**

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**TEAMSTERS LOCAL 320**

**and**

**BELTRAMI COUNTY**

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**DECISION AND AWARD OF ARBITRATOR**

**BMS CASE # 07-PN-0414**

**JEFFREY W. JACOBS**

**ARBITRATOR**

**December 10, 2007**

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Teamsters Local 320,

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DECISION AND AWARD OF ARBITRATOR  
BMS CASE # 07-PN-0414

Beltrami County, Minnesota

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**APPEARANCES:**

**FOR THE UNION:**

Paula Johnston, Teamsters Local 320

**FOR THE EMPLOYER:**

Pam Galanter, Frank Madden and Associates

**PRELIMINARY STATEMENT**

The parties were unable to resolve certain issues concerning the terms of the collective bargaining agreement and requested mediation from the Bureau of Mediation Services. Negotiation sessions were held and the parties negotiated in good faith but were ultimately unable to resolve certain issues with respect to the labor agreement. This is the parties' first labor agreement. The Bureau of Mediation Services certified 38 issues to binding interest arbitration pursuant to Minn. Stat. 179A.16, subd. 7 by letter dated May 18, 2007.

Prior to the hearing the parties were able to resolve the following issues: (these are numbered as they appear in the BMS certification letter):

2. Discipline language - Article 17.1
3. Removal of discipline - Article 7.3
4. Advance notice of right to Union representation at investigatory meeting – Article 7.4
6. Work schedules- Article 11.18.2007 8. Flex. Work schedules – Article 11.3
9. Meal and rest periods – Article 11.4
11. Work at home – Article 11.6
12. Compensation – effective date of salary and step increases – Article 12.2
13. Compensation – salary adjustment on reclassification – Article 12.3
15. Flex Benefits for part-time employees – Article 17.2
16. Flex Benefits for terminating employees – Article 17.3
18. Health Care Savings Plan – HCSP – Article 22.1
19. HCSP contribution schedule – Article 22.2
20. HCSP – severance contribution – Article 22.3
22. Complete agreement Article 24.1
24. Savings clause – Article 25.1
26. Duration and re-opener – Article 26.2

A hearing in the above matter was held on October 30, 2007 at the Beltrami County Administration Building in Bemidji, Minnesota. The parties presented oral and documentary evidence at that time. Post-hearing Briefs were mailed and received by the arbitrator on November 13, 2007 at which time the hearing was considered closed.

## ISSUES PRESENTED

The issues certified at impasse and in dispute at the time of the hearing are as follows: (these are also numbered in the order in which they appear in the BMS certification letter but not necessarily the order in which the parties presented them):

1. Managerial rights – Article 5.1
5. PTO Inclusion in comp time – Article 10.49.2
7. Work schedules – comp. time calculation if comp. time is awarded – Article 11.2
10. Work schedules - use of comp. time Article 11.5
14. Flex benefits employer contribution amount and effective date – Article 17.1
17. License and professional maintenance – Article 21.2
21. Drug and alcohol testing – 23.1
23. Complete and waiver – Article 24.2
25. Effective date of agreement and retroactivity – Article 26.1
27. Longevity pay eligibility, if awarded – Article 27.1
28. Longevity pay computation, if awarded – Article 27.2
29. Longevity pay schedule, if awarded – Article 27.3
30. Salary 2006 – salary schedule – Appendix A
31. Salary 2006 –placement on schedule – Appendix A
32. Salary 2006 – general adjustment – Appendix A
33. Salary 2007 – salary schedule – Appendix A
34. Salary 2007 – salary placement on schedule – Appendix A
35. Salary 2007 – general adjustment – Appendix A
36. Salary 2008 – salary schedule – Appendix A
37. Salary 2007 – salary placement on schedule – Appendix A
38. Salary 2008 – general adjustment – Appendix A

As noted, the parties presented the matter in a slightly different order from what appears in the BMS certification letter. They will be discussed here in the order in which the parties presented them.

### SALARY 2006, 2007 AND 2008 – ISSUES 30 THROUGH 38

#### UNION'S POSITION

The Union’s position was for step increases to occur on the employee’s anniversary date in each year of the contract. The Union attached an Appendix outlining the proposed salary increases, showing the hourly rates, for each of the 4 assistant County Attorneys (identified by last name) in the unit as follows:

	1-1-06	2006 anniversary	1-1-07	207 Anniversary	1-1-08	2008 Anniversary
Frank	32.47	33.83	34.84	34.84	35.89	35.89
Burg	31.12	32.47	33.44	34.84	35.89	35.89
Erickson	27.06	28.41	29.26	30.66	31.58	33.01
Nolting	N/A DOH 4-12-06	27.06	27.87	29.26	30.14	31.58

In support of this the Union made the following contentions:

1. The Union's proposal would essentially be a market adjustment for each year resulting in increases of approximately 7 to 13 percent in 2006 over 2005 rates and 7 to 8 percent for 2007 and 2008.

2. The Union pointed to a pay equity study done for Beltrami County in 2005, the Kelsey study. The results of that study were implemented for all other county employees except the County Attorneys.

3. Kelsey used 4 groups of comparable counties as follows:

- The Core Counties: Aitkin, Becker, Cass, Clay, Crow Wing, Hubbard and Itasca
- Counties Sized by the number of employees: Blue Earth, Chisago, Clay, Crow Wing, Goodhue Itasca, Kandiyohi, Otter Tail and Sherburne;
- Other Contiguous Counties: Clearwater, Koochiching, Lake of the Woods, Marshall and Pennington Counties.
- Reference Counties: Carver, Scott, Stearns, St. Louis, Olmstead and Wright Counties.

4. The Union did not agree that all of these groups show true comparables; the Union did argue that 3 of the 4 groups showed that the County Attorneys in Beltrami were underpaid. See Tab #30 of the Union's arbitration exhibits herein; on Core, Comparable sized Counties by # of Employees and Reference Counties.

5. The Union further pointed to information at Tab 30 of its arbitration booklet that showed the statewide pay schedules for County Attorneys and argued that this too shows that Beltrami County Attorneys were at the far lower end of the pay scale for comparable positions throughout the State.

6. The Union further compared the County Attorney pay to that of the deputy sheriffs. The Union first argued that there is a correlation between the two wage scales since the two groups work so closely together and since the Attorney's prosecute whatever the deputies write up for tickets or other types of crimes. As a percentage of deputy sheriff pay, the Union noted that the deputies in Beltrami are paid at 99% of comparable deputy sheriff wages in Cass County 92% of the wages in Itasca. In contrast the County Attorneys were paid only 83% of the wages for County Attorneys in Cass and 78.5% of the wages for attorneys in Itasca. The Union presented this as further evidence that the Attorneys were underpaid in comparison to comparable counties.

7. The Union further argued that type of work performed by Beltrami County Attorneys differed in type and scale from other Counties. Beltrami is 4<sup>th</sup> in population but 1<sup>st</sup> in adult arrests, 2<sup>nd</sup> in violent adult arrests and 1<sup>st</sup> in juvenile and juvenile violent arrests when compared to the Core Counties. The Union asserted that when looking at the nature and volume of the work these employees perform more pay is justified.

8. The Union countered the County's argument that it implemented a consistent pay scale across the board for all employees in the County. In fact, the County implemented a 2.5% increase for most other groups in 2006 and a 3.0% increase in both 2007 and 2008. Here however, the County proposes a 2.5% increase in each of the 3 years; thus making the County's proposal for these employees quite inconsistent with what it offered and settled for with other employee groups.

9. Moreover, implementing the County's proposal would in fact create two separate wage scales for pay grade 16 within the County: one for the Attorneys and one for everyone else. Thus, the County is being duplicitous in its argument regarding County-wide wage consistency here.

10. Finally, the Union argued most strenuously that their wage proposal is not a reaction to the Kelsey study nor is it any sort of attempt to essentially appeal that through interest arbitration. It is rather based on the arguments on external market from the various county groups and the internal comparisons all of which showed that the attorneys are underpaid when compared to other counties and are not even being offered the same thing as the County offered to internal groups.

The Union seeks an award adding the language cited above in the contract.

## **COUNTY'S POSITION**

The County's position is for a 2.5% increase in each of the 3 years of this contract, i.e. 2006, 2007 and 2008. The County also seeks an award to adjust the wage schedules to reflect the implementation of the County's job evaluation study including step placements and annual steps as recommended by the Kelsey Study. In support of this position the County made the following contentions:

1. The County argued initially that there is a long history of internal consistency among employee groups, both Union and non-union, for wages and salaries. This was further strengthened by the Kelsey study done in 2005. The County also noted that its position includes a 6 step salary schedule whereas the Union does not. The Union rather seeks individual wage adjustments for each of the 4 assistant County Attorneys.

2. The County argued that its final position is consistent with the internal pattern of wage adjustments both for the size of the adjustment and the salary schedule. The County noted that the wage adjustment for the non-Union employees and the other 6 bargaining unit employee groups was 2.5% for 2006 effective December 22, 2005, and 3.0% in both 2007 and 2008. The County argued that the Union's wage proposals were far out of line with this resulting in general adjustments that varied from 7.6% to 13.2%.

3. The County noted that what the Union is essentially doing is using the interest arbitration process to challenge the Kelsey findings. There was an approved appeal process that the attorneys could have used for this purpose but they did not. Had they wished to challenge the placement on the schedule or their pay grade as determined by Kelsey, they could have done so but chose to waive their rights to appeal the study and do it here. The County asserted most strenuously that this is not the proper forum to do this and the Union's position must be rejected.

4. The County also noted that granting its proposed salary increases will still result in significant increases in wages for the attorneys. As Employer exhibit 71 shows, the County's proposed increase will result in increases of 12.0% to almost 29% over the life of this contract.

5. Granting the Union's proposal would result in unreasonably high increases and would make the salary compression between the assistant County Attorneys, covered by the agreement, and the Chief Assistant County Attorney, their supervisor. In fact, if the Union's proposal were to be awarded, some of the assistant County Attorneys would actually be paid more than their supervisor.

6. Externally, the County noted that its proposal is a very competitive offer and would result in parity in terms of where the County Attorneys' pay has traditionally been in comparison to the other Counties in the area. Beltrami has a very low personal income and by far the highest poverty rate among its residents. Its net tax capacity is thus far lower than most of the comparable counties.

7. The County asserts that Beltrami County Attorneys have traditionally been paid lower than many of their counterparts in comparable counties. The County pointed to its exhibits 82 through 88 and noted that Beltrami County Attorneys have been at approximately 90% of the average pay for the Core Counties, as noted above. The County's wage proposal would maintain that status.

8. Moreover, when compared to the Other Contiguous Counties and Sized Counties, also as noted above, the County's wage proposal would maintain that relative position. The essence of the County's argument externally is that Beltrami has never been the leader in wages and there was no compelling reason to change that relative position now.

9. Further, most of the other counties in any of the comparison groups have more than 6 salary steps. The County argued that it is therefore a shorter term to get to the top salary step which is certainly to be considered. Moreover, when comparing salary step 6 in Beltrami to other step 6 pay grades in other counties, Beltrami actually generally ranks higher.

10. Finally, the County asserted that the Union presented no compelling data or evidence that warrants a deviation from the relative norm in terms of how these attorneys compare to comparable positions in other counties. Their work load is comparable and the Union presented no truly compelling evidence to justify such a large increase in salaries here.

The County seeks an award for a 2.5% increase in each of the 3 years of this contract.

### **MEMORANDUM AND DISCUSSION OF SALARY**

**PLACEMENT ON SALARY SCHEDULE:** Initially it was noted that there was some merit to the County's argument with regard to the external comparison groups. Beltrami has generally not been compared to Metro area counties and have been compared to the Core Counties and Other Contiguous Counties. These two groups appear to be the most comparable in terms of size, population, and activity. In addition, Beltrami is generally at the bottom of those groups in terms of tax capacity and personal income figures. While this fact alone is generally not determinative of wage and salary issues in interest arbitration, it does provide some historical and statistical backdrop for the appropriate wage award here. See County exhibits 82 through 85 and 89 through 102.

Before deciding the wage adjustment it should be noted that the Union's proposal does not include a set schedule but rather provides wage increases to individual attorneys. This is entirely inconsistent with the way salaries are paid in the County generally and with the way in which they have apparently been paid in the past. Initially, the Union's position on that part of their wage proposal must be rejected. The County's position with regard to the step schedule is more in line with internal and external comparables and will be awarded. The Kelsey Study provided compelling evidence that this was the appropriate way to adjust salaries in this instance. Moreover, the step system proposed by the County is consistent with internal groups and fits within the County's current pay grade system. There was insufficient evidence to warrant the deviation from this in this instance. Accordingly, the County's 6-step salary schedule will be awarded for 2006, 2007 and 2008.

**SALARY AND GENERAL ADJUSTMENT OF SALARY:** With regard to the wage adjustments to be awarded for 2006, 2007 and 2008, the evidence showed that Beltrami has generally not been a wage leader when compared to many of the comparable counties within the Core Group or the Sized Counties and Other Contiguous Counties. In reviewing the Union's information at Tab 30, it was apparent that the Union's figures were not strictly a comparison of apples to apples. In the 2006 Core County wage comparison for example, the Beltrami figures for 2005 were shown as below average when compared to the Core County 2006 wages. This is to be expected but when the wage proposals were then plugged in from each respective party, the figures change significantly.

A comparison of the 2006 County proposal for wages for the minimum and maximum salaries as proposed shows as follows: For 2006 \$25.23 @ 2080 hours per year = 52,478.40. \$31.53 @ 2080 hours per year = 65,582.40. The County's position maintains where these employees have been with respect to the Core, Sized Counties and Other Contiguous Counties far closer than would the Union proposal. Externally, there is thus more evidence in support of the County's position than the Union's.

Internally, the County's argument is somewhat curious. It argues that consistency is paramount yet its wage position with respect to the County Attorneys is actually less than was negotiated by the other bargaining units and granted to the non-Union employees. The evidence shows that for these other groups internally, the wage adjustments were 2.5% for 2006 and a 3.0% increase in both 2007 and 2008. Here the Union's argument had greater merit. Implementing the County's proposal would in effect be to create two separate pay grade 16 steps and be inconsistent internally for the Union and on-Union groups. While internal consistency is not the only factor to be considered in making wage determinations in interest arbitration, here where the external comparables do not dictate a deviation from that pattern it would be unusual to award something less than the non-Union and the rest of the Unionized groups. Accordingly, the appropriate wage adjusts based on the evidence here is for a 2.5% increase in general wages adjustments in 2006 and a 3.0% general increase in 2007 and in 2008.

#### **AWARD ON PLACEMENT ON SALARY SCHEDULE**

The County's position is awarded. 6-step salary schedule is awarded as noted above.

#### **AWARD ON SALARY AND GENERAL ADJUSTMENT OF SALARY**

2.5% general increase is awarded for 2006, 3.0% awarded in 2007 and 3.0% awarded in 2008.

#### **COMPENSATORY TIME- ISSUES 5, 7 AND 10**

#### **UNION'S POSITION**

The Union's position is that the County Attorneys should receive compensatory time at time and one half for all hours worked over 40 in a work week. The Union's position with regard to PTO, Issue #5, was as follows: "PTO hours shall count toward the calculation of overtime."

The Union's position was also to add language as follows: "The nature of the work, however dictates that professional staff work hours be whatever is needed to properly represent the County. Upon approval of the County Attorney, a full-time Employee shall earn one and one half (1½) hours of compensatory time for each hour exceeding the standard forty (40) hour work week. Paid vacation time, paid holidays paid sick leave, compensatory time off and paid leave of absence shall be considered as time worked for purposes of this article. To the extent that a given professional's hours consistently and meaningfully exceed forty (40) hours per week, that person is encouraged to discuss the issue with the County attorney."

At the hearing, the Union dropped the last sentence of its final position which had read as follows: "The County Attorney may establish other daily or weekly work schedules, including four ten (10) hour days and shall give affected Employees fourteen, (14) days notice of schedule changes."

Finally, the Union sought language as follows: "Employees shall be permitted to use compensatory time off upon request." In support of these positions the Union made the following contentions:

1. The Union argued that it is not uncommon for comparable attorneys to have this sort of benefit. The Union pointed to six of the counties in the various comparison groups, namely, Carver, Chisago, Clay, Clearwater, Pennington and Scott that have such a benefit for their county attorneys. The Union thus argued, contrary to the County's assertion that this is a highly unusual benefit. The County further asserted that others have it and in fact these employees once had it as a part of their compensation package.

2. Even though the FLSA categorizes these employees as exempt for purposes of overtime, there is nothing in the law that prevents an employer from granting or employees to collectively bargain a greater benefit than that provided by statute. There is thus nothing that prevents this from being granted.

3. The Union introduced testimony that they are not at all given much flexibility in their schedules. They are required to fill out time sheets and account carefully for their time. Even if they are required to work late, as is typical for these employees given their duties and the need to meet trial schedules and deadlines for filing of documents and Briefs, they are not allowed to come late the following day. Thus they are frequently required to work considerably more than 40 hours per week for which they are not truly compensated.

4. The Union argued that these employees are professionals and there is absolutely no reason to assume they would abuse this time. Moreover, the County Attorney retains the right under the Union's proposed language to approve the hours. The Union argued that the County Attorneys could simply deny the time to any Employee who had accumulated a significant number of hours. Thus even though the Union's proposal does not include a maximum number of hours that can be accumulated, the County Attorney retains control over this since the language contains the clause "upon approval of the County Attorney."

5. The final element of the scheme proposed by the Union is the PTO hours. Here the Union pointed to internal consistency and argued that virtually every other organized group in the County with the exception of the Sergeants, include PTO hours as hours worked for purposes of computing compensatory time. The Union argued that there is no rational basis to exclude the County Attorneys from this benefit. Employers frequently cite to internal consistency for purposes of interest arbitrations and argue that for fringe benefits, such as compensatory time, internal consistency must be maintained. Here would be a perfect time to apply this rule and grant this benefit to the County Attorneys in order to maintain the very internal consistency so frequently sought by Minnesota public employers.

## **COUNTY'S POSITION**

The County is opposed to the inclusion of any language at all regarding compensatory time in the agreement. The County simply seeks language as follows: Attorneys are exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) as professional employees and shall not be entitled to accrue overtime or compensatory time for hours worked in excess of forty (40) hours per week. In support of this the County made the following contentions:

1. The County argued that there should simply be no provision for compensatory time since these are professional employees, If the arbitrator were to award the County's language on that issue; the rest of the bulk of the Union's claimed language would be moot.

2. The first argument raised by the County was that while the County Attorneys did at one point actually have compensatory time, it was discontinued in July of 2000 in exchange for an additional 55 job evaluation points that were added to the County Attorneys job. This resulted in an upgrade in pay grade from what was then grade 21 to grade 22 and an additional 4.0% in pay for these employees.

3. The County countered the Union's argument that the FLSA allows parties to agree to something more than the law requires. Simply because you can does not mean that it you should or that it would be appropriate to award such a benefit, especially under these circumstances, as the County argued below.

4. The County asserted most strenuously that the Union is now simply seeking to get an economic benefit without any quid pro quo for it. In addition, at least two of the four current unit employees took their jobs after the July 2000 change in their compensatory time benefit. They knew this when they were hired. Moreover, the two others were a part of the quid pro quo and got an additional benefit after July 2000. They have thus stayed on with the office knowing full well that they were no longer eligible for this benefit.

5. Internally comparisons to hourly employees are inapt according to the County. There is only one other exempt group, the social workers, who are granted compensatory time. There is an historical reason for this and related largely to the fact that the supervisor for the Social Worker can limit the hours. This cannot be said of the County Attorneys, whose schedules are many times dictated by Court schedules and Briefing requirements that could and often do require them to work more than 40 hours per week.

6. The County pointed to at least one provision of the contract on which there is agreement, article 11.1, which states in part that “it is expected that employees will provide the service necessary to carry out the responsibilities of their position”

7. The County also noted that there is some risk that the clause in the Union’s proposed language may not provide the protection the Union claims it does for the County Attorney. The County argued that with this language, someone could argue later that the County Attorney “allowed” the overtime, this giving rise for accrual of compensatory time, when he allows work in excess of 40 in a work week. This happens often and could well result in the unwarranted accrual of compensatory time. This also is unwarranted under these circumstances.

### **MEMORANDUM AND DISCUSSION OF COMPENSATORY TIME**

The County’s arguments on this question were more persuasive. While it is true that in most instances an internal review of fringe benefits such as compensatory time is appropriate, in this case some review of the external comparisons was made. Externally, while some of the comparable counties grant compensatory time, the vast majority of them do not. In the Core Counties only Itasca grants compensatory time. The other 6 do not. In the Other Contiguous Counties, 2 of the 6 counties, Clearwater and Pennington, grant compensatory time and both have limits on the number of hours that may be accrued. In the Sized Counties 3 of the 9 grant some compensatory time and one actually grants it on an unlimited basis.

While there was some support for the inclusion of compensatory time, on balance the vast majority of the external comparable counties do not have provision for compensatory time.

Here though the most compelling evidence came internally. The Union argued that many of the internal groups do have compensatory time. There is however a significant distinction to be made here in that with the one exception of the social worker, these units are non-exempt under the FLSA. The County Attorneys are thus quite different from these other units.

Moreover, and perhaps most significantly of all, the evidence showed that the County Attorneys gave up compensatory time in July of 2000 in exchange for an increase in job evaluation points and an increase in salary at that time. This fact compels the conclusion that no compensatory time should be granted here without a showing of either strong and compelling need or a quid pro quo in negotiations for this benefits.

It is clear that the attorneys are professionals and there was no evidence whatsoever that they would abuse the benefit. Neither was there any evidence that the dire prediction posited by the County whenever the attorneys were “allowed” to work more than 40 hours in a work week would occur to that this would result in a loss of control of the hours worked or in some sort of rampant abuse of compensatory time.

Thus taking the issues in order, the County’s proposed language for inclusion at Article 11.2, Issue 7, is awarded. This effectively renders moot the question of whether the Union’s language proposed at new Article 10.49.2, Issue #5, for inclusion of PTO in compensatory time should be awarded since no compensatory time is awarded herein. Likewise, the question of whether the Union’s proposed language at Article 11.5 is rendered moot as well.

## **AWARD ON COMPENSATORY TIME- ISSUES 5, 7 AND 10**

The County's proposed language for inclusion at Article 11.2, Issue 7, is awarded. This effectively renders moot the question of whether the Union's language proposed at new Article 10.49.2, Issue #5, for inclusion of PTO in compensatory time should be awarded since no compensatory time is awarded herein. Likewise, the question of whether the Union's proposed language at Article 11.5 is rendered moot as well.

### **LONGEVITY – ISSUES 27, 28& 29**

#### **UNION'S POSITION**

The Union seeks language at Article 27.1 as follows: Regular full time and part-time Employees are eligible for longevity pay upon completion of the required number of years of continuous employment.

The Union also seeks language at Article 27.2 as follows: Upon completion of the required length of service, an Employee will receive the designated amount of longevity pay in addition to the established wage rate for the Employee's classification. Longevity pay increases will become effective on the first payroll period following the date of when the Employee becomes eligible.

The Union also seeks language at Article 27.3 as follows: All regular full time and part time Employees covered by this Agreement shall receive longevity pay at the following biweekly rate

	After 5 years	After 10 Years	After 15 years
Assistant County Attorney	\$25.00	\$50.00	\$100.00

The Union provided an example of how this would work that essentially showed that upon the completion of the designated number of years of service, the affected Employee would receive a bi-weekly amount corresponding to the number of years of service commencing on the first day of payroll following the date when the proper number of years of service has been attained.

In support of the inclusion of longevity pay the Union made the following contention:

1. The Union argued that internally every other organized unit in the County receives longevity pay. The County Attorneys would be the only unit that does not receive it if the County's position is awarded. As far as the amount of the payment is concerned, the Union noted that while the amount is somewhat higher than for other units within the County, the attorneys are the highest paid employees in the County as well.

2. Externally, the Union argued that longevity is a common benefit among the comparable counties. Moreover, as an attorney's experience grows so too does his or her ability and skills. This payment would provide incentive for the attorneys to stay with the county versus leaving for private practice, which is almost always more lucrative.

3. The Union noted that there has been considerable turnover within the unit over the past several years and that longevity will help to stop this problem and again provide some incentive for the employees to stay.

4. The Union countered the County's argument regarding the personnel policy by asserting that the personnel policy applies only to non-Union employees. Obviously such a policy cannot subvert or circumvent the provisions of a labor agreement. The Assistant County Attorneys should be treated differently from other employee groups because they *are* different from other employee groups. Thus the fact that the attorneys are regarded as higher level positions is irrelevant. They are members of a bargaining unit whose wages and terms and condition of employment are set by negotiation, not by employer policy. To do that would be to completely subvert the collective bargaining process.

5. The Union also countered the County's argument that these employees have not historically had longevity in the past by noting that these employees were not represented by a labor Union in the past. They therefore had little if any real power to negotiate their wages or benefits and simply had to accept what the County offered.

6. The Union countered the County's argument that personnel over pay grade 16 do not receive longevity by pointing out that most of these employees, if not all, are management employees. The vast bulk of the unionize employees do receive longevity pay. To be internally consistent, as argued by the County on many other issues, longevity pay should be granted to these employees too.

## **COUNTY'S POSITION**

The County is opposed to longevity pay and in support of this made the following contentions:

1. The County argued that these employees have never had longevity and are simply seeking a new economic benefit without a quid pro quo. The County further argued that the Union has provided no compelling need for longevity. It is simply seeking something for nothing here and has offered no evidence of what the parties would have given up in exchange for this benefit.

2. The County also noted that the amount sought by the Union is much greater than anything any of the other employee groups receive for longevity. Moreover, the attorneys are exempt employees under the FLSA and are paid at grade 16. The County argued most strenuously that there are no other employees at pay grade 16 who are granted longevity. See County exhibit 128. If the Union's proposal is granted it would give some employees as much as \$100.00 bi-weekly, or \$2,600.00 per year. This is simply a wage increase in disguise.

3. The County pointed to its personnel rules and the provisions within it that indicates that only non-Union employees at grade 13 and lower are eligible for longevity. In fact, there are only 3 groups at grade 13 or 14 in the Unionized groups who are paid longevity. Of those the Sergeants and Investigators in the sheriff's department are not exempt employees. Further, longevity has long been regarded as a benefit that law enforcement personnel receive and that has been true here as well. There is no such historical rationale for paying county attorneys longevity pay.

4. With regard to the Human Services employees who are exempt and who also get longevity, the County argued that there is an historical reason for them to get longevity. With one exception of the Lead Social Worker, every other Human Services employee is paid at grade 12 or lower. The County simply did not carve out an exception for one employee in the entire Human Services Department and chose to pay the Lead Social Worker Longevity since all the other employees in that department receive that benefit. Again, no such argument can be made in the County Attorneys Office.

5. Externally, the County noted that only 6 of the 25 comparable counties have this benefit while 19 of them do not. Even the Union's evidence shows how few other counties have a benefit like this for their attorneys. Moreover, this shows that even in those counties that do grant longevity, the amounts are far less than the Union's proposal here.

6. Finally, the County argued that there has been no problem with retention or recruitment in this department. Some attorneys have left but have been elevated to judgeships or other positions outside the County but none have left due to compensation issues.

7. The essence of the County's argument is thus that there is no justification externally for this benefit. Internally, literally none of the exempt employees have this benefit with the one exception of the Lead Social Workers in the Human Services Department. Those at pay grade 16 do not have it and never have. Without compelling evidence of a need for this or some trade-off the benefits should not be granted.

## MEMORANDUM AND DISCUSSION OF LONGEVITY

Externally, the evidence did not support the Union's claim. Only 6 of the 25 counties in the comparison groups have longevity. See Tab 27 of the Union's arbitration book. Becker, Cass, Clearwater, Hubbard, Marshall and Stearns Counties have longevity in varying amounts but there is little consistency among these counties. This is likely due to the historical reasons for differences in fringe benefits from employer to employer.

This is however a distinction between quid pro quo for new benefit versus one that a party seeks to place into a collective bargaining agreement where there exists a long standing bargaining relationship between a public employer and a labor Union. In the latter there is a sense that there should be more of a quid pro quo since the parties have already established a set of wages and terms and conditions of employment which have been negotiated and this put through the crucible of bargaining. In the former, the relationship has been essentially set by the employer. The question of what the employees would have negotiated has by definition never arisen since this is a first contract. While not in and of itself controlling, this is a factor to consider in a case such as this.

The evidence showed that the employees in this unit have not had longevity in the past. On the one hand this supports the employer's claim that such a benefit must entail a trade off of some sort. On the other, there was no evidence, similar to the question of compensatory time, where the employees had it once upon a time and gave it up for something else.

These factors counterbalance each other leaving internal consistency as the most significant here. The County argued that the attorneys have never been granted longevity since they are at pay grade 16 and that nobody over that grade has ever gotten longevity. For several reason this argument did not hold sway here.

First, there was insufficient evidence to support why pay grade 16 employees should be treated differently other than that they have. There was no clear reason as to why they have not been granted longevity whereas many other employees have. Second, the evidence was quite clear that most of the other employee groups do in fact have longevity pay, including the sheriffs and investigators with whom the attorneys work very closely, although certainly not exclusively. Third, there was some merit to the Union's claim that fringe benefits should be compared internally among employee groups. On balance the Union's claim was supported by these facts and the fact that like any other employee group they are on a pay grade scale and should be treated like any group for wage purposes. The County sought to have the attorneys compared to all the non-Unionized administrative employees. However, the appropriate comparison must be to the Unionized groups now that these employees are represented. A comparison to those employees reveals that virtually all of the union employees get longevity pay.

Having said that it was also clear that the amounts claimed by the Union for longevity pay is not supported by the evidence. External comparisons were of little value and were not considered for purposes of this determination. The counties that grant this benefit were all over the map and no clear trend or standard could be gleaned from this. The best comparison was thus the internal comparisons.

Highway personnel get \$10.00/month after 10 years of service, \$20.00/month after 15 years and \$30.00/month after 20 years. Investigators receive \$10.70 biweekly after 5 years; 42.80 after 15 years and \$64.19 after 15 years. Boat and water safety personnel get \$8.65 after 5 years; \$40.73 after 10 years and \$61.09 after 15 years. Deputies get \$10.19 biweekly after 5 years; \$34.58 after 10 years and \$51.87 after 15 years. Jailer/dispatchers get varying amounts that are similar in nature and size to the deputies/investigators and boat and water safety personnel. Sergeants receive \$11.46 biweekly after 5 years; 45.80 after 10 years and 68.69 after 15 years. Courthouse and nursing employees get \$10.00/month after 10 years \$20.00/month after 15 years and \$30.00/month after 20 years. Human Services employees get the same longevity pay as the nursing/courthouse employees. See County exhibit 128 and Union Tab 27.

As is obvious from these figures, there is little consistency within the County as well and this too is likely the result of historical bargaining that has taken place within these units for which there was no evidence presented here. Certainly too, these employees are paid differently from the attorneys and from each other. As noted above though, one thing is clear and that is that every organized group gets longevity pay. There is no distinction nor clear evidence that they get it because they are paid at a certain pay grade.

The question now becomes what to pay the attorneys for longevity. As noted above, the Union seeks a longevity schedule for them at bi-weekly rates of \$25.00 after 5 years \$50.00 after 10 years and \$100.00 after 15 years. This would be a large increase to be sure and there was insufficient justification presented on this record for the amounts sought. The evidence showed that the personnel with whom the attorneys work the closest and the most frequently were the Sherriff's department employees. County exhibit 127 shows the pay grades for the relevant employees here. Sergeants are at grade 14, Investigators at Grade 13 and deputies are paid at Grade 12.

On balance the most appropriate longevity award should reflect consistency with the Investigators in the Sherriff's Department. Thus the award on longevity for the employees in this bargaining unit shall be the same as for the Investigators as set forth in Article 19 of the contract between the County and the Union representing the Investigators. This is as follows: All regular full time employees covered by this agreement shall receive longevity pay at the following bi-weekly rate: Investigators receive \$10.70 biweekly after 5 years; \$42.80 after 10 years and \$64.19 after 15 years.

**AWARD ON LONGEVITY – ISSUES 27, 28 & 29**

All regular full time and part time Employees covered by this Agreement shall receive longevity pay at the following biweekly rate:

	After 5 years	After 10 Years	After 15 years
Assistant County Attorney	\$10.70	\$42.80	\$64.19

**MANAGERIAL RIGHTS – ARTICLE 5.1 - ISSUE # 1**

**UNION'S POSITION**

The Union proposed language as follows: “It is recognized and agreed that, except as expressly modified by this Agreement, the employer retains all inherent managerial rights necessary to operate and direct the affairs of the Employer in all its various aspects.” In support of this position the Union made the following contentions.

1. The Union argued that this was a simple straightforward statement of the management rights and that anything more specific would be unnecessary.
2. The Union noted that the language proposed by the Employer contains the language “to hire, promote, demote, suspend, discipline, discharge or relieve employees due to lack of work or other legitimate reasons.” The parties have already stipulated that the attorneys will only be disciplined for just cause. Thus including any language that is inconsistent with that may allow the County Attorney to discipline a bargaining unit employee for reasons which are in conflict with the just cause provision of the Agreement.
3. The Union acknowledged that some of the other bargaining units have language that more closely resembles the County’s proposal here but notes that they are not identical to what the County has proposed here. Moreover, in the Human Services contract for example, the Management Rights Article contains specific language that makes any power to discipline or demote “in accordance with this Agreement.” This alleviates any possible confusion as to the power of the Employer.

## **COUNTY'S POSITION**

The County proposes language as follows: It is recognized that, except as expressly stated herein, the Employer shall retain whatever rights and authority are necessary for it to operate and direct the affairs of the Employer in all its various aspects, including but not limited to, the right to direct the work forces; to plan, direct and control all the operations and services of the Employer; to determine the methods, means, organization and number of personnel by which such operations; to schedule working hours; to determine whether goods or services should be made or purchased; to hire promote, demote, suspend, discipline, discharge or relieve employees due to lack of work or other legitimate reasons; to make and enforce rules and regulations; to change or eliminate existing methods, equipment of facilities. In support of this position the County made the following contentions:

1. This language is identical to the language contained in the two other units represented by Teamsters local 320 in this County. It is also identical to LELS contact with the sergeants, Courthouse and Nursing services contracts and is virtually identical to the language as the IUOE #49 contract. It is similar to the AFSCME #65 contract for Human Services.

2. The County acknowledged that the very first line of the proposed language made everything in the Managerial Rights article "except as expressly stated herein." There is thus no reason for the Union to be concerned; the Management Rights clause does not conflict with the just cause provisions of the labor agreement and would not grant carte blanche to the County Attorney to discipline discharge or suspend any covered employee outside of the just cause provisions. The Union's concern is thus covered in the language the County proposes.

### **MEMORANDUM AND DISCUSSION OF MANAGERIAL RIGHTS – ARTICLE 5.1 - ISSUE # 1**

The evidence showed that the vast bulk of the units in the County have the identical language proposed by the County here, including significantly, the 2 other units represented by this Union. While the esoteric subtleties of a clause like this are something only attorneys could love and their concern may be understandable in the abstract, the language proposed by the County in fact is expressly subject to the specific provisions of the labor agreement.

The Tentative Agreement already contains language at Article 7.1 that specifically provides that "the Employer will discipline employees who have completed their probationary period for just cause only." Moreover, the County acknowledged at the hearing that the County Attorney's rights to discipline employees are absolutely subject to the provisions of the labor agreement. This would apply to any other provision of the labor agreement that limits or modifies the Employer's inherent rights under law. Where the language of the labor agreement conflicts with the general managerial rights clause, generally speaking, the provisions of the labor agreement will take precedence. Obviously, no opinion can be rendered about future disputes or grievances that may arise under this contract, the Union's concerns here were more than adequately addressed by the proposed language in Article 15.1 and 71. Accordingly, the Employer's proposed language will be awarded.

### **AWARD ON MANAGERIAL RIGHTS – ARTICLE 5.1 - ISSUE # 1**

The County's position is awarded.

### **COMPLETE AGREEMENT AND WAIVER – ARTICLE 24.2 – ISSUE #23**

## **UNION'S POSITION**

The Union opposes any inclosing of Complete Agreement and Waiver language in the contract. In support of this position the Union made the flowing contentions:

1. There is no uniformity in the bargaining units regarding this language. While the Courthouse and Nursing Services Unit and the Human Services department have the language the County proposes, the Highway Department has no such language at all. The law enforcement units have similar language but each has language in their contracts that upon mutual consent the parties can bargain and amend the contract prior to its expiration. The Union contends that this is all the employees really want here.

## **COUNTY'S POSITION**

The County seeks language as follows: "The Parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make requests and proposals with respect to any subject matter not removed by law from the area of collective bargaining, and that the complete understandings and agreement arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right and each agrees with each other shall not be obligated to bargain collectively with respect to any subject or matter not specifically referred to or covered by this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement, unless they mutually agree to do so." In support of this position the County made the following contentions:

1. This language is already in 2 AFSCME units' agreements. These two units account for more than half of the total number of County employees. So far there have been no issues or problems with this language in either of those agreements.

2. In addition, both law enforcement units have similar language in each of their contracts See Union Tab 23. Both of these clauses are similar in effect and simply allow for the parties to meet from time to time upon mutual consent for the purpose of amending the contract.

3. The County simply seeks to have closure on contracts and the language applies equally to both parties. Certainly there is some risk in adding a clause like this in that something may arise that becomes a problem but that is a risk borne by both parties. Moreover, even the proposed language allows for both parties to consent to negotiate if they so choose.

4. Thus for both internal consistency with the vast majority of the units in the County and since the County's proposed language already addresses the only concern the Union has about this language the County argued that the language should be inserted into the contract.

## **MEMORANDUM AND DISCUSSION OF COMPLETE AGREEMENT AND WAIVER – ARTICLE 24.2 – ISSUE # 23**

The evidence showed that there is not consistency with regard to this language. As noted above, the AFSCME units have the County's proposed language in their respective contracts. The law enforcement agreements have something similar and both allow for both parties to meet addressing concerns that may arise during the life of the contract.

The Union raised a concern about this language and claimed that the employees only want the ability to meet with management upon mutual consent of the Union and the County Attorney to bargain and amend the contract prior to its expiration. Curiously, the County's language would allow for this since it provides that the parties mutually agree to waive the right to bargain and shall not be obligated to bargain over the terms of the agreement prior to its expiration :unless they mutually agree to do so." It was not clear what difference this language would make since both the AFSCME and the law enforcement contracts would allow for this to occur albeit with somewhat different language.

While the Union's official position is for no such language in the contract in its Brief it argues that what it really wants is the ability to bargain over issues that may arise during the life of the contract. Since the parties have also already agreed as a part of the tentative agreement here that the agreement is the complete agreement between the parties. See Article 24.1, Issue 22, it is clear that neither party could compel the other to negotiate unless there was mutual agreement about it.

It seems clear on this record that some form of the County's language can be included in the contract and give effect to what both desire. Here it seems most reasonable to include the same language that appears in the law enforcement contracts. That language is found at Article 3.2 of the contract between the County and Teamsters Local 320 for the non-licensed essential employees and at Article 3.2 of the agreement between the County and Teamsters Local 320 for the licensed employees. See Tab 23 of the Union's Arbitration booklet with some minor changes to delete references to successor contracts found in those two provisions. While much of this discussion is academic since once the contract is signed, it's signed and it is generally only by mutual consent that anything can be changed, added or deleted from a collective bargaining agreement during its life but the parties were quite apart on this issue and a decision must be rendered pursuant to PELRA. The language awarded below is done in the context of that reality and the fact that there is already agreement on a complete agreement clause in Article 24.1 as noted herein.

#### **AWARD ON COMPLETE AGREEMENT WAIVER CLAUSE – ARTICLE 24.2, ISSUE #23**

Accordingly, the language awarded is as follows: "Article 24.2: The parties may meet from time to time upon mutual consent of the County and the Union for purposes of amending this contract. Should such amendment be adopted by the representatives of the Union and the County, said amendment shall be ratified by the general membership of both parties in the same manner and by the same procedure as required for the Contract in chief."

#### **DRUG AND ALCOHOL TESTING ARTICLE 23.1 - ISSUE # 21**

##### **COUNTY'S POSITION**

The County seeks language as follows: "Article 23.1 All Employees shall be subject to the County's Drug and Alcohol Testing Policy." That policy is found in Article 28 of Beltrami County's Personnel Rules and essentially requires reasonable suspicion testing, since these employees are not considered safety sensitive, if there is reasonable suspicion to believe the employee is under the influence of drugs or alcohol. It would also require testing if the employee has been referred by the County for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program. In support of this position the County made the following contentions:

1. All County non-union employees are subject to this policy. It was passed by action of the County Board on May 15, 2007. It does not require random testing since these employees are not safety sensitive but would simply give effect to the County's desire to maintain a drug free workplace.
2. The County noted that these attorneys are quite often called upon to prosecute drug and alcohol offenses and the Union's opposition to this request is in stark contrast to that very role.
3. The County noted that no other collective bargaining agreement contains this language because those contracts went into effect January 1, 2006 whereas the policy was passed May 15, 2007.
4. This policy does nothing more than give effect to the drug free work place policy, already covering the attorneys. The County expects that the County Attorneys office should be a model of a drug and alcohol free work place given their role and obligation to enforce the laws pertaining to this issue.

## **UNION'S POSITION**

The Union opposed the inclusion of this language and made the following contentions:

1. No other Union has the County's proposed drug and alcohol testing language in it. The Union asserted in the strongest possible way that this language is offensive to the members and wholly unnecessary. There is not now nor has there ever been an issue regarding drug and alcohol in this unit and no reason to believe there will be in the future.

2. Moreover, the Union noted that the attorneys are not safety sensitive employees and there is no reason to test them. The Union noted that even the contract covering personnel in the Sheriff's department does not have this language and they are the people who typically confiscate illegal drugs and alcohol in the first place.

3. The Union argued there was neither a showing of compelling need nor any trade-off for the inclusion of this language in their agreement,

### **MEMORANDUM AND DISCUSSION OF DRUG AND ALCOHOL TESTING ARTICLE 23.1 – ISSUE # 21**

While the County's desire to include this language is understandable given the nature of these employees' jobs, the Union's argument was more persuasive on this issue. There was no showing of a problem that needed to be addressed. The Drug and Alcohol Testing policy already covers these employees, as noted by the Union in its Brief. Further, these employees are not safety sensitive employees and no showing of a compelling need for this. Moreover, no other unit has this provision in their labor agreements. Granted, the labor agreements for the other units were signed before the effective date of the County's drug and alcohol testing policy; however the County and its Unions could have placed a provision like this in their respective agreements using the ability to meet and re-negotiate the contract. There was no evidence of any effort made to place it there using the mutual consent provisions of the Complete Agreement and Waiver language discussed at Article 24.2 above.

Finally and significantly, there was no evidence that the County has offered any sort of concession to include this language in the agreement and no showing of a compelling need to place it there, especially given the acknowledgment that the employees are already covered by it.

### **AWARD ON DRUG AND ALCOHOL TESTING - ARTICLE 23.1 – ISSUE # 21**

The Union's position is awarded.

### **LICENSE AND PROFESSIONAL MAINTENANCE – ARTICLE 21.2 ISSUE #17.**

## **UNION'S POSITION**

The Union amended its final position as submitted to BMS at the hearing. The Union proposed the following language for inclusion at Article 21.2: "The County shall pay for a minimum of fifteen (15) hours of department head approved continuing legal education per year for a minimum of forty five (45) hours in a three (3) year period to cover continuing legal education requirements. The County shall also pay the State Bar Association fee and Attorney license fees. Each Assistant County attorney shall receive \$500.00 per year payable the first period in January as a professional maintenance allowance." The Union also dropped the proposed professional maintenance fee from \$2,000.00 per year to \$500.00. In support of this the Union made the following contentions:

1. There appears to be no dispute about the 15 hours per year up to 45 in a three year period for the continuing legal education, CLE, requirement.

2. Regarding the State Bar Association fee, the Union argued that most attorneys belong to this professional organization and that membership brings great benefit to the County by allowing the Assistant County Attorneys to attend various functions and meeting of other attorneys where they can discuss pending legal matters and gain valuable insights and knowledge in their daily work duties. The Union also noted that there should be no confusion about how many “fees” are being requested since the language used clearly says “fee” when referencing the State Bar Association. Thus there should be no misunderstanding about what is being requested: it is one fee only for the State Bar Association. This clarification should protect the County and address any concerns it may have about whether multiple fees are being requested.

3. Finally, the Union argued that the professional maintenance fee of \$500.00 is granted in Cass and St. Louis Counties. This is hardly new or groundbreaking and is also not excessive, at least as amended. Such a fee allows the attorneys to go beyond the minimum requirement of CLE or other professional development classes or seminars and again brings considerable benefit to the County.

### **COUNTY’S POSITION**

The County is in agreement on the 15 hours of CLE up to the 45 in a three year period and is in agreement regarding the payment of attorney license fee. The County opposes the payment of the State Bar Association fee and the so-called professional maintenance fee. In support of this the County made the following contentions:

1. As noted the County was in agreement with the payment of the 15 per year/45 per 3 years CLE requirement and of the annual attorney license fee paid to the State of Minnesota.

2. The County was not in agreement with the request to pay for the State Bar Association fee. The County argued that this is a voluntary organization and while it may be of some benefit for the individual attorneys to belong, anything beyond the minimum requirement for CLE’s is excessive and unnecessary. If the attorneys wish to join they certainly can but the County has traditionally not paid for this and all of the attorneys who are currently working knew that when they came to work for the County. There is no evidence of how membership would be of any benefit to the County and without such a showing the request should be rejected.

3. The County argues that the “professional maintenance fee” is nothing more than a request for a salary increase. There are no limitations on how this would be used or what it would in fact be for. Calling it professional maintenance is simply not accurate; it literally could be used for anything under the Union’s proposed language. This too is something the County has never paid for and should not be required to pay for now.

4. Externally, there is virtually no support for this. Only 2 of the 25 comparison counties have any sort of fee like this. The remaining 23 do not. This likewise should be rejected summarily.

5. Finally, the County also tied this matter to the issue of retroactivity as well, as will be discussed immediately below. If the arbitrator were to award this fee and make the effective date of the contract January 1, 2006, it would be in fact to give additional salary to the attorneys without any sort of benefit to the County. For this reason as well, this request should be rejected.

### **MEMORANDUM AND DISCUSSION OF LICENSE AND PROFESSIONAL MAINTENANCE – ARTICLE 21.2 ISSUE #17**

As noted there is agreement on the annual attorney license fee and the CLE requirement of 15 hours per year up to 45 hours in a three-year period. The issues are the State Bar Association fee and the professional maintenance fee.

Dealing first with the professional maintenance fee, first it was clear that the County's arguments were by far more persuasive here. The Union presented no evidence as to how this fee would benefit the County or be anything other than a simple increase in pay for the attorneys. There was further no compelling evidence that this fee would be limited to professional development. Without the compelling sort of evidence of how this would benefit the County this cannot be awarded.

A bit more difficult was the State Bar Association fee. The State Bar Association is a voluntary professional organization of attorneys throughout the State of Minnesota and is divided into various practice sections and divided by geographic area. Area 5, which encompasses Beltrami County, has various meetings of attorneys and the employees could possibly benefit from attendance at these meetings where they would presumably create relationships with other attorneys practicing in their areas and gain valuable knowledge and insight in their practice. Having said that, the issue is whether this is benefit should be mandated in interest arbitration.

Here the evidence showed that the County has not provided this benefit in the past and that the employees knew that when they were hired. Several of these employees have been with the County for many years and of course know that membership to the State Bar Association has not been paid for by the County. On balance, the Union fell just short of providing the compelling sort of evidence necessary to justify inclusion of this benefit in the language of Article 21.2. Accordingly, the County's position on the question of the State Bar Association and the professional maintenance fee is awarded.

**AWARD ON LICENSE AND PROFESSIONAL MAINTENANCE – ARTICLE 21.2  
ISSUE #17**

The County's position is awarded.

**RETROACTIVITY AND FLEX BENEFITS – ARTICLE 26.1 – ISSUES #14 & 25**

**UNION'S POSITION**

The Union seeks an award making the effective date of the contract January 1, 2006. The issue here also applies to flexible benefit only insofar as it relates to when those benefits go into effect. The Union again seeks an award that would make them retroactive to January 1, 2006. In support of this the Union made the following contentions:

1. The Union noted that the County has already agreed to make any wage increase retroactive to January 1, 2006 so there is no compelling reason to provide a different date for the effective date for payment of the flex benefits.

2. Contrary to the County's assertion, to make the effective date different would be to treat these employees differently since they all received their flex benefit payments on January 1, 2006. To do otherwise would be to chill bargaining by creating in effect a penalty for the exercise of statutorily mandated collective bargaining and interest arbitration rights.

3. Further, the cost to the County is quite minimal here. There are 4 employees in the unit and the retroactive contributions would be approximately \$5,800.00. The County's claim that it will result in higher payment for taxes and PERA contributions was without merit or evidentiary support.

4. The Union argued finally that it is customary to make any increases in wages and benefits retroactive to the effective date of the contract since, contrary to the private sector, public sector contracts continue even after they expire. In the meantime, the public employer continues to collect taxes and accrue additional payments. This again makes it all the more reasonable to make the payments for all benefits, including flex benefits, retroactive to January 1, 2006.

## **COUNTY'S POSITION**

The County proposes that all terms of the agreement with the exception of the wage increases be effective on the date of execution of the contract and not January 1, 2006. The County noted that if the Union's claim for payment of the State Bar Association and professional maintenance fees are rejected the only impact of this issue would be on the contribution toward flex benefits. In support of this position the County made the following contentions:

1. As noted above, the County raised the issue of retroactivity of the State Bar Association and professional maintenance fee and argued that to make these retroactive would simply be to give a gift to the employees.
2. The County noted that the sole issue for determination with respect to flex benefits is the contribution for 2006 and 2007 prior to the execution of the contract. This is in effect a discussion of the effective date of these benefits and whether they should be made retroactively.
3. Granting the Union's request is to treat these employees differently. The other units settled prior to January 1, 2006 so there were no issues of retroactivity. Further, if these payments are made now they will not be pre-tax thus exposing the County to greater expenditures due to higher payments for taxes and PERA without any corresponding benefit to the County.

### **MEMORANDUM AND DISCUSSION OF RETROACTIVITY AND FLEX BENEFITS – ARTICLE 26.1 – ISSUES #14 & 25**

The sole issue here was the effective date of the contract and how that might impact the flex benefit payment. The Union seeks an award making all payments and benefits retroactive to the effective date of the contract, January 1, 2006. The County seeks an award making the benefits effective on the execution of the contract, with the exception of the wage increases.

The Union's arguments prevail here. The County was unable to provide a compelling reason to essentially penalize these employees for exercising their statutory rights to negotiate to impasse and seek interest arbitration. It could at the very least have a chilling effect on the rights of unions and employees to exercise statutorily guaranteed bargaining rights to seek interest arbitration. Moreover, to treat the benefits differently from wages would in effect be to treat these employees somewhat differently from the other employees. They would get certain benefits effective January 1, 2006 while these employees would have to wait to get those simply because of the process in going to arbitration.

Finally, while there may be some additional payments for taxes and PERA contributions, this is a cost to the County of doing business so to speak. In this regard there is some merit to the Union's arguments that public sector employers are different from their private sector counterparts in that the operation does not shut down as can sometimes happen in the private sector upon the expiration of a labor agreement. Quite the opposite, after the expiration of a public sector contract, the terms of that contract typically stay in place until a new one is negotiated or awarded depending on the unit. In that time, the public employer continues to accrue or receive tax payments and must make retroactivity payments when the new contract is signed. This is neither unusual nor unreasonable. While different facts may make for a different result, making the contract's benefits effective upon execution under these circumstances would be inappropriate. The Union's position is awarded.

### **AWARD ON RETROACTIVITY AND FLEX BENEFITS – ARTICLE 26.1 – ISSUES #14 & 25**

The Union's position is awarded. All benefits and wage increase to be effective January 1, 2006.

## **SUMMARY OF AWARD**

### **PLACEMENT ON SALARY SCHEDULE - ISSUES 30-38**

The County's position is awarded. 6-step salary schedule is awarded as noted above.

### **SALARY AND GENERAL ADJUSTMENT OF SALARY- ISSUES 30-38**

2.5% general increase is awarded for 2006, 3.0% awarded in 2007 and 3.0% awarded in 2008.

### **COMPENSATORY TIME- ISSUES 5, 7 AND 10**

The County's proposed language for inclusion at Article 11.2, Issue 7, is awarded. This effectively renders moot the question of whether the Union's language proposed at new Article 10.49.2, Issue #5, for inclusion of PTO in compensatory time should be awarded since no compensatory time is awarded herein. Likewise, the question of whether the Union's proposed language at Article 11.5 is rendered moot as well.

### **AWARD ON LONGEVITY – ARTICLE 27 - ISSUES 27, 28 & 29**

All regular full time and part time Employees covered by this Agreement shall receive longevity pay at the following biweekly rate:

	After 5 years	After 10 Years	After 15 years
Assistant County Attorney	\$10.70	\$42.80	\$64.19

### **AWARD ON MANAGERIAL RIGHTS – ARTICLE 5.1 - ISSUE # 1**

The County's position is awarded.

### **AWARD ON COMPLETE AGREEMENT WAIVER CLAUSE – ARTICLE 24.2 - ISSUE #23**

The language awarded is as follows: "Article 24.2: The parties may meet from time to time upon mutual consent of the County and the Union for purposes of amending this contract. Should such amendment be adopted by the representatives of the Union and the County, said amendment shall be ratified by the general membership of both parties in the same manner and by the same procedure as required for the Contract in chief."

### **AWARD ON DRUG AND ALCOHOL TESTING - ARTICLE 23.1 – ISSUE # 21**

The Union's position is awarded.

### **AWARD ON LICENSE AND PROFESSIONAL MAINTENANCE – ARTICLE 21.2 ISSUE #17**

The County's position is awarded.

### **AWARD ON RETROACTIVITY AND FLEX BENEFITS – ARTICLE 26.1 – ISSUES #14 & 25**

The Union's position is awarded. All benefits and wage increases awarded herein are to be paid retroactively to January 1, 2006.

Dated: December 10, 2007

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Jeffrey W. Jacobs, arbitrator