



**Request for City Council Committee Action
From the City Attorney's Office**

Date: November 4, 2004
To: Ways & Means/Budget Committee
Referral to: None

Subject: Brener v. City of Minneapolis, OAH Docket No. 15-1901-15755-2, MN OSHA Complaint No. 02-1274
Keith Anderson v. City of Minneapolis, Hennepin County District Court

Recommendation: That the City Council approve settlement of all claims in the above matters related to the employment of Keith Anderson with the City of Minneapolis in the amount of \$58,000.00, payable to Keith Anderson and reinstatement of temporary employment and the payment of \$8,000.00 to the State of Minnesota and authorize the City Attorney to execute any documents necessary to effectuate the settlement and release of claims, payable from Fund/Org. 6900 150 1500 6500.

Previous Directives: None.

Prepared by: Timothy S. Skarda, Assistant City Attorney, 673-2553

Approved by: _____
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain): Payment from Fund/Org. 6900 150 1500 6500
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact: Build Community

Background/Supporting Information

These cases arise from the same course of conduct by the City of Minneapolis toward Keith Anderson. Mr. Anderson was employed from January 1, 1998, through February 8, 2002, as a temporary electrician. He was an 'at will' employee serving at the pleasure of the employer. Temporary employees may be released from employment at the discretion of the employer without regard to seniority or just cause. However, a temporary

employee cannot be released for an illegal or discriminatory reason. Mr. Anderson's work permit had been renewed in January, 2002.

Mr. Anderson worked in the Transportation and Parking Services Division of the Department of Public Works. The Division has approximately 33 electricians with 20 or 21 electricians being permit electricians employed under the provisions of the *Letter of Agreement*. In January 2002, the Transportation and Parking Services Division was required to reduce its budget by 15% or \$500,000. As a result of the budget decisions, three temporary electricians, including Mr. Anderson, were laid off. Prior to being laid off, Mr. Anderson had raised some safety concerns with the City, including issues of asbestos abatement, overweight vehicles and hazardous vehicles. Management felt he raised safety issues in a disruptive fashion and without following the chain of command. Mr. Anderson was deemed less productive than those retained and released from employment.

Mr. Anderson filed a complaint with the Minnesota Occupational Safety and Health Administration ("OSHA"), alleging that he was terminated because he had made safety complaints. Several months after the OSHA complaint, he filed a civil lawsuit under provisions of the Minnesota 'Whistleblower' statute, alleging termination for raising safety issues. The civil lawsuit was not actively litigated, pending resolution of the OSHA complaint.

Probable cause was found on the OSHA complaint and the case referred to the Office of the Attorney General for prosecution by Scott Brener, the Commission of the Department of Labor and Industry. A hearing was held on July 23 and 26, 2004, before Administrative Law Judge Beverly Heydinger. The Judge issued Findings of Fact, Conclusions, Order and Memorandum on April 25, 2004. The court found that the City discriminated against Mr. Anderson by discharging him for raising safety concerns. The court ordered that he be compensated for back pay and benefits with interest from February 8, 2002, through August 25, 2004; that the City pay the costs and attorneys' fees incurred by Mr. Anderson and the State of Minnesota; and that the parties brief the issue of reinstatement in light of the existing Labor Agreement. The court found Mr. Anderson's wage claim to be \$242,033.20, minus income earned during periods of employment.

Mr. Anderson demanded \$56,000.00 in lost wages and \$14,000.00 in attorney's fees to settle all his claims. He supplied a letter of authorization from the union supporting his reinstatement as a temporary electrician. A tentative settlement was reached in the amount of \$58,000.00, including all claims for back pay and attorney's fees. Mr. Anderson will return to work in his former position as a temporary electrician. The civil lawsuit will also be dismissed as part of the settlement.

The State of Minnesota is entitled to recover costs of prosecuting the case, including depositions, attorney's fees and the cost of the hearing. The attorney general indicted that the claim was approximately \$13,000.00. A tentative settlement was reached in the amount of \$8,000.00.

The cases have been discussed in detail with representatives of the Department of Public Works, including Director Klara Fabry and Jon Wertjes, Director of Traffic & Parking Services. Mr. Anderson's calculation of back pay is reasonable, according to the departmental calculations. The attorney's fees and costs are similar to the hours expended by the city in defending the case. A successful appeal of the administrative decision would be unlikely given that the appellate court is limited to evaluating whether the decision was 'arbitrary and capricious.' Mr. Anderson's raised safety concerns only need to have been a factor in the decision to terminate his employment in order to support the administrative decision.

Given the factors outlined herein, we believe that the proposed settlement is in the best interests of the City of Minneapolis and recommend its approval.