

April 3, 2014

Final Investigative Report Concerning Complaint 2013-0063

COMPLAINT

An employee of the Municipality of Anchorage, Water & Wastewater Utility (AWWU) alleged that the Municipality of Anchorage did not adequately inform him regarding the eligibility criteria for the Performance Incentive Program (PIP). Based on the wording of an emailed invitation to an informational meeting, sent by AWWU/Employee Relations to AMEA employees on March 23, 2009, both C and his AWWU supervisor believed that he was not eligible to participate in the program. As a result, the complainant did not enroll in the program in the fall of 2010 when he first became eligible.

FINDINGS

This complaint against the Municipality of Anchorage, Water & Wastewater Utility is **JUSTIFIED**.

ANALYSIS AND CONCLUSIONS

On April 26, 2013 a municipal employee contacted the Ombudsman's office alleging that AWWU had not adequately informed him regarding the Performance Incentive Program (PIP) eligibility criteria, and as a result he did not enroll upon becoming eligible.

The complainant began working for AWWU on March 4, 2008. In 2008 AMEA was working "out of contract", therefore the complainant began employment under the 2007 AMEA contracted agreement, which did not include the PIP program. Consequently the complainant was not informed of the PIP program during new hire orientation and was enrolled in the Service Recognition Program. The complainant was given information regarding his bargaining unit, AMEA. The 2008-2012 AMEA contract, which included the PIP, was signed on March 2, 2009. The complainant reached "Step 6" and became eligible for the PIP program on August 20, 2010, and alleged that because he had not been adequately informed regarding his eligibility he did not enroll. The complainant believes he would be better off financially if he had enrolled in the PIP, rather than remaining in the Service Recognition Program.

On June 12, 2013, the Deputy Ombudsman spoke with the complainant's supervisor, Rob Gustafson. Mr. Gustafson stated that he had attended PIP supervisor training on March 17, 2009. However, he did not think the complainant was eligible for the PIP program and therefore never discussed the PIP program with him. Mr. Gustafson's confusion is understandable since the "Instructions for the Quarterly Tracking Form" published in March, 2009 states that "Employee must be at Step 6 in their pay range to participate in the PIP", rather than stating that *Employees will become eligible upon reaching Step 6*. In March, 2009, the complainant had been employed for only one year and had not reached Step 6. Mr. Gustafson affirmed that the complainant is an ideal candidate for the PIP incentive program, and that he is an excellent worker who has been recognized for his exemplary work and cost savings on behalf of AWWU and the Municipality.

C is a member of the Anchorage Municipal Employee Association (AMEA). Anchorage Water and Wastewater Utility attempted to inform AMEA members of the PIP program via informational meetings. An email from AWWU's Deitra Scott was sent to AMEA members on March 23, 2009 inviting members to PIP informational meetings. The invitation clearly states ***"Only AMEA employees who have reached Step 6 are eligible to participate in the program"***. The April 1, 2009 informational meeting was held at the Asplund facility, where the complainant works. However, the complainant was on leave the day of the meeting and did not attend, because the wording of the invitation led him to believe that he was not eligible to participate in the program. Had the invitation stated that *"AMEA employees will become eligible to participate in the program upon reaching Step 6"*, the employee would most likely have made arrangements to attend one of the other scheduled meetings.

Despite the potential financial ramifications of the PIP program for AMEA employees and tax payers, neither the AMEA contract nor the Letter of Agreement between MOA and AMEA (AMEA-003) assign responsibility to advise AMEA members of the PIP program. While both AMEA and AWWU made provisions to inform members/employees about the PIP program, neither is clearly responsible for the information reaching all employees. While not responsible for informing employees, supervisors are aware which employees are participating in the program. Once an employee has elected to participate in the PIP, it is a supervisor's responsibility to have a discussion with the employee regarding performance based criteria. The supervisor is also responsible for sending an email to AWWU's Employee Services Director indicating the employees who elect to participate in the PIP. While responsibility was not assigned to the Municipality of Anchorage to see that all potentially eligible employees were made aware of the PIP, the Ombudsman believes that this does not relieve the Municipality from its responsibility ensure they have the information needed to make an informed decision regarding the program.

Because the invitation to the PIP informational meeting from AWWU Employee Relations implied that the complainant was not eligible for the PIP program, both the complainant and his supervisor believed he was ineligible. Although the complainant was a member of AMEA and could have sought information from his union, he disregarded emails from AMEA related to the PIP enrollment because the wording of the earlier AWWU invitation had led him to believe that he was not eligible to enroll in the program. Because the PIP March 23, 2009 meeting invitation and instructions were imprecisely worded, the Ombudsman finds the complaint that AWWU did not adequately inform the complainant regarding eligibility requirements for the PIP program to be JUSTIFIED.

A preliminary report regarding this matter was provided to AWWU, and their initial response was received on July 26th, 2013. A revised preliminary report was provided to AWWU and a final response was received on October 22, 2013. Based on the investigation of this case, the Municipal Ombudsman recommends the following.

- (1) That AWWU allow the complainant to retroactively enroll in the PIP program as of August 20, 2010, which was when the complainant first became eligible for the**

program. In addition, that AWWU review the complainants' records and adjust his pay as necessary. *AWWU does not accept this recommendation: "While I appreciate the employee's plight, I cannot accept the Ombudsman's recommendation. I have been advised that if we were to (retroactively) enroll the complainant into the Performance Incentive Program, the Municipality would be circumventing the union in negotiating a solution for this employee, which would expose us to risk of breach of contract. The best approach would be for this employee to work through AMEA in accordance with the collective bargaining agreement."*

Labor Relations also offered a response: "The AMEA PIP is governed by the AMEA Collective Bargaining Agreement (CBA). AMEA is the representative of its members regarding PIP. The CBA has a PIP appeal process with specified timelines. Any issues concerning PIP are to be presented to AMEA by the member. IN this case, AMEA declined to pursue this matter. Any unilateral action on behalf of the Municipality in taking action as suggested by the report would result in not only a violation of the CBA, but subject the Municipality to an unfair labor practice (ULP) before the Employee Relations Board (ERB)."

The Ombudsman acknowledges that the terms of the current AMEA CBA prevents AWWU from retroactively enrolling the complainant into the Performance Incentive Program. However, the Ombudsman still believes that retroactively enrolling the complainant into the program is the fair and equitable resolution to this complaint. This is one of those moments in life when legalities and fairness don't necessarily mesh.

- (2) That if AWWU does not accept the above recommendation, the complainant seek redress through his bargaining unit, AMEA, and that AWWU work with AMEA to seek a mutually acceptable resolution to the issue.** AWWU and the Ombudsman concur that, given the constraints of the CBA, the best avenue for the complainant to seek redress of his complaint is through his bargaining unit, AMEA.

Based on this finding, and these recommendations, this case is closed.

If you object to the Ombudsman's decision to decline or discontinue this investigation or review, you may file a grievance with the Ombudsman as specified in A.M.C.R. 2.60.006.



**Elizabeth A. Eisses
Deputy Ombudsman**



**Darrel W. Hess
Municipal Ombudsman**