

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

ROCK COUNTY

and

THE ASSOCIATION OF MENTAL HEALTH SPECIALISTS

Case 352
No. 63146
MA-12505

(Wage Progression Grievance)

Appearances:

Eugene Dumas, Assistant Corporation Counsel, Rock County, Courthouse, 51 South Main Street, Janesville, Wisconsin 53545, appeared on behalf of the County.

John S. Williamson, Jr., Attorney at Law, 103 West College Avenue, Suite 1203, Appleton, Wisconsin 54911, appeared on behalf of the Association.

ARBITRATION AWARD

On December 26, 2003 Rock County and the Association of Mental Health Specialists filed a request with the Wisconsin Employment Relations Commission seeking to have William C. Houlihan, a member of the Commission staff, appointed to hear and decide a dispute pending between the parties. Following appointment, on July 22, 2004 a hearing was conducted in Janesville, Wisconsin. A transcript of the proceedings was taken, and distributed on August 17, 2004. Post-hearing briefs were submitted and exchanged by September 22, 2004.

This Award addresses the wage progression of bargaining unit members at the upper end of the pay schedule.

BACKGROUND AND FACTS

The County and Association are signatories to a collective bargaining agreement, the relevant portions of which are set forth below. The bargaining unit, which consists of a number of health care professionals, was formed through the merger of three previously

existing bargaining units which were combined following a unit clarification proceeding. The 1996–1997 collective bargaining agreement was the initial agreement between the parties covering the merged unit. The negotiations leading to the first agreement were protracted, and did not conclude until 1998.

The initial agreement (1996-97) between the parties contained three provisions regulating pay, and the transition from three compensation systems to one. The salary schedule compressed three schedules into one. The schedule has subsequently been modified only to reflect the negotiated wage adjustments. That is, the format remains the same, but the dollar amounts have changed. The second provision is titled the Wage Progression Provision, and has remained as originally negotiated, and as set forth below. The third provision titled Implementation Procedure, also remains as originally negotiated and as set forth below.

Under the terms of the Implementation Procedure, all employees received a 3% wage adjustment in 1996. It was in 1997 that the schedules were merged. Individuals were placed on the newly negotiated schedule so as to assure no less than a 3% wage increase. To achieve that end, employees were placed on the step that would provide for no less than a 3% wage increase. The steps are denoted by a reference to “years”. The year reference does not necessarily correspond to the placement. Some employees earned more than their “year” reference would produce as a wage, and were placed higher than their actual years service. Some employees earned less than their actual years reference would generate as a wage, and were placed lower than their actual year reference. This placement was true for those placed within the first 10 steps of the schedule. For those with 15 or more years service, the Implementation Procedure called for placement on the 15 or 20 year step, as was appropriate, and this placement was made.

In subsequent years, employees moved through the schedule on their anniversary dates. Employees were not allowed to move to step 15 (or 20) until they actually achieved 15 (or 20) years service. For employees who were placed on the schedule lower than their actual years service, the jump from step 9 to step 15 occurred in less than 6 years. For example, a member of the Associations bargaining team was initially placed at a step below his actual years seniority, for pay purposes, and went to step 15 after four years at step 9.

For purposes of contract administration, the employer has never treated the first 10 steps as tied literally to years service. The last two steps (15 and 20) have been so tied. Numerous employees have progressed in this fashion.

There is a sister local to the AMHS, which represents health care employees at the County Health Care Center. That Local has bargained a wage schedule with lower steps not necessarily tied to actual service time, and two steps higher on the schedule, which the record indicates are tied to actual time in service. Employer testimony also indicates that most other County bargaining units have wage schedules with similar administrations.

It was the testimony of the Association President that the Association was unaware of the administration of the agreement in this manner. It appears no one had had to wait more than 6 years to progress from step 9 to step 15. Once this aspect of the administration of the schedule became apparent, a grievance was filed. The grievance seeks to have the County continue to move employees placed higher than their actual years service such that they achieve step 15, 6 years from step 9. The County, relying upon its historic practice, denied the grievance.

ISSUE

The parties stipulated to the following:

Did the County violate the Collective Bargaining Agreement by interpreting the 15 years and 20 year steps on the wage schedule as requiring that an employee have 15 years service with Rock County or 20 years service with Rock County, respectively?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

APPENDIX A AMHS – HUMAN SERVICES

January 1, 2003 WAGE SCHEDULE

RANGE I

Case Manager
Probation Officer – Not Certified

<u>Start</u>	<u>Six Months</u>	<u>2 Years</u>	<u>3 Years</u>	<u>4 Years</u>	<u>5 Years</u>
\$13.63	15.40	14.94	15.57	16.21	16.84
<u>6 Years</u>	<u>7 Years</u>	<u>8 Years</u>	<u>9 Years</u>	<u>15 Years</u>	<u>20 Years</u>
\$17.48	18.13	18.75	19.41	19.80	20.19

RANGE II

Probation Officer – Certified as Social Worker Case Manager II
Recreational Therapist
Registered Records Administrator
Social Worker – Certified

<u>Start</u>	<u>Six Months</u>	<u>2 Years</u>	<u>3 Years</u>	<u>4 Years</u>	<u>5 Years</u>
\$15.04	15.40	15.66	16.37	17.10	17.82
<u>6 Years</u>	<u>7 Years</u>	<u>8 Years</u>	<u>9 Years</u>	<u>15 Years</u>	<u>20 Years</u>
\$18.55	19.27	19.99	20.72	21.13	21.55

RANGE III

Occupational Therapist – Registered
 Social Worker – MA, MS, MSSW with Certification
 Therapists, Counselors, Family Therapists – MA, MS, MSW, MSSW with certification
 Vocational Educator

<u>Start</u>	<u>Six Months</u>	<u>2 Years</u>	<u>3 Years</u>	<u>4 Years</u>	<u>5 Years</u>
\$17.63	18.29	18.96	19.62	20.32	20.98
<u>6 Years</u>	<u>7 Years</u>	<u>8 Years</u>	<u>9 Years</u>	<u>15 Years</u>	<u>20 Years</u>
\$21.64	22.31	23.01	23.67	24.14	24.61

RANGE IV

Registered Nurse

<u>Start</u>	<u>Six Months</u>	<u>2 Years</u>	<u>3 Years</u>	<u>4 Years</u>	<u>5 Years</u>
\$20.40	21.06	21.74	22.38	23.06	23.72
<u>6 Years</u>	<u>7 Years</u>	<u>8 Years</u>	<u>9 Years</u>	<u>15 Years</u>	<u>20 Years</u>
\$24.38	25.03	25.69	26.36	26.88	27.42

WAGE PROGRESSION PROCEDURES

1. Progression from Range I to Range II for Case Managers and Probation Officers will be automatic upon the employee's State certification as a Social Worker. The effective date of the increase will be the pay period immediately following notification with documentation of certification to management. The employee's wage rate will be increased to the step in Range II that provides an increase of at least three percent (3%) and the employee will be eligible for subsequent step increases each anniversary date of the promotion thereafter.
2. For progression to Range III, employees will be required to have the specified education for the position which will allow them to compete for vacant positions when they are posted.
3. For Registered Nurses in Range IV, newly hired nurses with no experience and possessing a bachelor's Degree will be hired at the 2-year step of the range. Nurses with no experience and without a Bachelor's Degree will be hired at the start step.

4. Employees with relevant experience may be hired above the minimum hire rate based upon years of experience, but no employee will be hired above the 4-year step.
5. An employee who meets the educational requirements for a Range III position may be placed and paid in a Range II position.

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Implementation Procedure

1996

All employees will receive a 3% wage increase on their 1995 wages and will receive any scheduled step increases included in the employee's previous bargaining unit contract. The 1995 wage schedules in the 3 previous contracts will be adjusted by 3% for the purpose of determining the proper step amount.

1997

The new wage schedule will be implemented as of January 1. Each employee's December 31, 1996 wage rate will be adjusted by 3% and if that wage rate is between steps on the new schedule, the employee's wage rate will be adjusted to the next highest step in the new schedule. Employees will then be eligible for progression to the next step of the new schedule at the employee's anniversary date in 1997.

As of January 1, 1997, any employee with length of service of at least 15 years or 20 years, will be placed at the respective 15 year or 20 year step, as appropriate.

POSITIONS OF THE PARTIES

The Association points to an Arbitration Award, issued by Arbitrator Mawhinney which it contends stands for the proposition that employees in the bargaining unit move from one step to another based upon the individuals anniversary date. The Association goes on to argue that there is nothing in the collective bargaining agreement that treats steps 1-10 any differently than steps 15 and 20. It is the view of the Association that the language which makes employees eligible for progression to the next step of the new schedule is as applicable to an employee moving to step 15 as it is to someone moving to step 8.

The County contends that the language of the agreement, as well as the historic administration of the agreement supports its interpretation. The employer points to the examples of administration of this agreement as well as the administration of other County

negotiated collective bargaining agreements as bolstering its position. The County questions how the Association could be ignorant of its administration of the agreement, allowing some employees to collect step 15 money early, and only belatedly raising questions when others were required to wait.

DISCUSSION

A facial examination of the wage schedule creates the impression that the wage of any particular class of employee is directly tied to the length of service with the County. Paragraphs 3 and 4 of the Wage Progression Procedures modify the purity of that direct connection, at the lower end of the wage range. Placement of the merged bargaining unit employees, described in the 1997 year reference, found in the Implementation Procedure section of the agreement, goes on to largely de-couple the direct link between wages and years service. The language, and supporting testimony, indicates that employees were placed on the newly created schedule in a way that would afford at least a 3% raise in 1997. This placement was regardless of years service.

The treatment of employees "...with length of service of at least 15 years or 20 years,..." is different from that of their colleagues, mentioned above. The senior staff is assured placement at their actual length of service steps. This is irrespective of what step might be closest to their salary.

Read as a whole, the salary schedule appears to tie salary to years service, but the subsequent Wage Progression Procedures and Implementation Procedures provisions significantly modify that link. The Implementation Procedure provision ties 1997 salary to previous salary. It goes on to tie pay at the top (15 or 20 years) to length of service. Employees in steps 1-10 are treated differently from employees with 15 + years service.

There is a practice in administering the wage provision. That practice has been uniform within the bargaining unit. It has been uniform throughout the County with respect to those bargaining units with similar salary schedules. There have been no exceptions, including the favorable application of the plan to a member of the Associations bargaining team. It is noteworthy, if less compelling, that the same system operates County wide.

I do not believe the Mawhinney award is on point. The circumstances of that case were that the County modified the date upon which certain employees were given step progression adjustments. For example, an employee who was promoted had his/her step date modified to the date of his/her promotion. Arbitrator Mawhinney found that practice to violate the agreement. She found the contractual reference to anniversary date to be clear and unambiguous. The employer was not free to modify that date. I do not find that helpful here. There is no dispute that employees move on their individual anniversary date.

Here, the collective bargaining agreement says that 15 and 20 year employees are to be paid at a certain rate. The employer is applying those years benchmarks literally. It is the

Association that contends that these references are mobile ties to prior placements on steps below.

I believe that the parties have agreed that under certain circumstances employees may be placed on the salary schedule in a manner that does not have a one to one correlation with years service. They have further agreed that employees thereafter progress on their respective anniversary dates. They have not agreed to the same de - linking of experience and salary at step 15, and beyond. The contract treats step 15 and beyond differently as does the long standing practice.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 1st day of March, 2005.

William C. Houlihan /s/

William C. Houlihan, Arbitrator

