

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of	:	
WAUSHARA COUNTY	:	
	:	
To Initiate Arbitration Between	:	Case 67
Said Petitioner and	:	No. 57280
	:	INT/ARB 8684
PUBLIC HEALTH EMPLOYEE UNION	:	Decision No. 29660-A
DISTRICT 1199 W/UNITED PROFESSIONALS	:	
FOR QUALITY HEALTH CARE	:	
	:	

APPEARANCES:

Waushara County, by Ms. Debra Behringer,
Administrative Coordinator

Public Health Employee Union, District 1199
W/United Professionals for Quality Health Care,
SEIU, AFL-CIO, by Ms. LeNore Wilson,
Staff Representative

ARBITRATION AWARD

District 1199 W/United Professionals for Quality Health Care, SEIU, AFL-CIO, CLC (Union) is the exclusive collective bargaining agent for all regular full-time and regular part-time registered nurses employed by the Waushara County Health Department (County or Employer). The parties have negotiated an agreement of all of the issues relating to a successor to their 1997-98 labor agreement except for the level of wages for the 1999 and 2000 calendar years. Being unable to resolve that issue, the County filed a petition requesting the Wisconsin Employment Relations Commission (Commission) to initiate compulsory final and binding arbitration pursuant to Sec. 111.70(4)(cm)6 and 7 of the Municipal Employment Relations Act. The Commission assigned a member of its staff to investigate the matter. The

investigator certified that the parties were at an impasse and the parties selected the undersigned to act as arbitrator from the panel of arbitrators which was provided by the Commission. The undersigned was appointed to act as arbitrator by order of the Commission dated September 13, 1999.

After due notice was given to the public, the arbitration hearing was conducted at the Waushara County Courthouse on October 28, 1999. Both parties presented documentary evidence into the hearing record, which was closed at the conclusion of the hearing. The parties exchanged post-hearing briefs and reply briefs through the arbitrator on December 1 and December 13, 1999. On December 16, the Union filed objections to the Employer's Reply Brief and requested that data contained therein be ignored for the reason that the material was not properly in the record. The Employer replied to the Union's objections by letter dated December 18, 1999.

ISSUE IN DISPUTE

The substantive dispute is about the size of the wage increases the nurses will receive during 1999 and 2000. The Employer has offered 3% across the board wage increases for each year of the Contract. The Union proposal would result in across the board increases of approximately 1.95% in 1999 and 3.5% in 2000. However, the Union also proposes to add an additional step to the existing 4-step wage schedule which currently tops out after 24 months.

THE COUNTY'S POSITION

The Employer said that Waushara County's population in 1998 was 20,298. Its per capita income in 1996 was \$16,411 compared to \$23,980 statewide. Twelve percent of Waushara County's residents were employed in manufacturing positions compared to 28% statewide. Winnebago County had a population of 153,937 in 1998, with \$24,023 per capita income, 49% of which was from manufacturing. During the course of the hearing, the Employer argued that even though Winnebago County had previously been used as a comparable by Arbitrator Bellman, it is not a suitable comparable because of its large manufacturing base for employment. It argued that Wood County should be substituted for Winnebago County, and along with Waupaca, Portage, Marquette, Juneau, Adams and Green Lake Counties be considered comparable to Waushara County in this proceeding.

The Employer said that it had four bargaining units. "Over the past ten years, the Employer has strived to bargain in an attempt to standardize benefits and provide similar compensation for similar positions." It said that this unit is similar to the AFSCME Social Services/Department of Community Programs unit ("Social Workers"), because these two units "represent professional employees within the Employer." The County said that in 1990 an arbitrator awarded this unit a unique six-step salary schedule with the top step kicking in after 11 years of service. "During the very next round of negotiations (1991-1992) the Union voluntarily went back to the Employer's standard, start, 6 month, 15 month and 24 month schedule." The Employer said that during bargaining over their 1995-1996 contract, the Union sought and achieved an additional ten cents an hour to make the pay of Public Health Nurses the same as the pay received by Social Worker II. That wage parity was maintained

through 1998. “The Social Workers received a 3 % increase in 1999 and 2000.” The same was offered to the members of this unit.

The Employer said that it has been attempting to negotiate changes in the health insurance benefits that the members of this unit receive since 1993. It noted the highlights of their bi-annual negotiations in which the County wanted to stop providing full health benefits to part-time employees and increase the employees’ share of health insurance premium cost. The Union agreed to increase new employees’ share of premium contributions from 10% to 15% during 1993-94 negotiations. During 1995-96, there were extensive discussions about health insurance benefits. The County wanted to discontinue health coverage for part-time employees. “The Union countered that they (sic) wanted the same settlement as the Highway Union which was 3.5% ATB and some minor modifications to the health insurance benefit structure.” Minor changes were agreed to. During negotiations over the parties’ 1997-98 and present contracts, the County attempted to get the Union to accept some changes in health insurance benefits which were agreed to by the County law enforcement unit, the WPPA, and were imposed upon non-union employees back in 1994. The Union has refused to accept these changes.

The Employer noted that during the hearing the Union argued that the Employer had not worked very hard to negotiate changes in health insurance during these negotiations, “because we only met for one hour at the first session is disheartening.” It said that though the union has been represented by different bargaining representatives during negotiations for each contract since 1993-94, the members of the bargaining team have not changed, they are well aware of the Employer’s position. The Employer said that the Union’s assertion that the health insurance changes that the Employer is proposing would “eat up” the proposed wage increases

is not correct. “The proposed changes to the benefit structure ... do not include changing the maximum out of pockets.” It argued that the Employer could have accomplished its goal of not providing insurance for the three part-time employees by making their positions full time. “For employee morale purposes, we would make these changes only if we have no other way of correcting this situation.”

The County said that its wage offer for 3% across the board increases for both 1999 and 2000 is most reasonable when compared to both internal and external comparables. It argued that it is necessary to include the cost of the entire compensation and benefit package received by these employees when making the comparisons required by § 111.70(7r)(h), Wis. Stats. The Employer said that its position that the cost of the entire compensation package “and not just the maximum hourly rate on the salary schedule” should be compared, was supported by Arbitrator Bellman. “The Arbitrator agrees with the Employer that the Union’s comparison of highest wage levels distorts the analysis.” The County said that it had “requested surrounding counties to provide actual 1998 accounting of Certified Public Health Nurses wages, benefits and actual hours worked. Benefits included social security, Medicare, health insurance, retirement, life insurance, longevity, employee assistance programs or anything else that might be unique to the County.”

Adams and Green Lake Counties did not provide information. Data from the counties that did respond shows that the cost of the total compensation paid to nurses in Waushara County is higher than the cost in any comparable county. Waushara’s average hourly cost was \$26.70 compared to \$26.44 in Waupaca, \$24.11 in Portage, \$24.04 in Wood, \$23.50 in Marquette and \$22.14 in Juneau County.

The Employer said that 3% pay increases have been “fairly common settlement numbers recently.” That is the amount it settled with the Social Workers’ unit for 1999-2000. It said in the recent past the Nurses have considered Social Worker II as comparable. Waushara County’s Highway unit also settled for 3% in 1999. External comparable settlements in evidence show that Winnebago County Nurses received 2.7% in 1999, Portage County Nurses 4% in 1999, Green Lake Nurses 3% in 1999, and Marquette County Nurses received a negligible raise of 3¢ in 1999.

The Employer concluded its argument saying that, if the Union wanted to receive its wage offer for a \$1.35 per hour wage increase, it should have given the Employer the health insurance changes that it had required. It said that the Employer had been willing to provide those part-time nurses who would have lost their health coverage additional hours so that their benefits would not have been lost as part-time employees. The Union was unwilling to make any concessions. It said that the Union had failed to show that the nurses “are far behind in their total compensation.” It argued that the Arbitrator should consider the total cost of the nurses’ compensation package and “provide some guidance in our negotiation process as to whether or not the Employer can ever reasonably expect to modify health insurance coverage to control costs.”

In its reply brief, the Employer denied that the members of this unit had bargained for better insurance coverage than other employees receive. It said that all of the employee units agreed to the “85/15” split for new employees. As of this time, none of the existing employees are affected by this change. The County reviewed the co-payments and deductible health care costs that the employees could be subjected to and argued that “the non/union plan, granted, may satisfy the deductible faster, but the caps remain the same.” It noted that the

employees can minimize negative tax impacts by making co-payments through an employer provided Section 125 Flex Plan.

The Employer noted that these nurses have been represented by the same union in bargaining for the past ten years. It should not ask for “economic justice” in this proceeding. It said the nurses previously asked for the same wage scale as Social Worker II, claiming internal comparability. It asked that that comparability be maintained during this contract period.

The County said that if the Union had accepted its wage offer and agreed to the health insurance changes, these nurses could have had higher wages than any comparable by the year 2000. It argued that when the entire wage and benefit package is considered, the Employer’s offer is the most reasonable.

THE UNION’S POSITION

The Union said that Portage, Waupaca, Winnebago, Marquette, Green Lake and Adams Counties should be considered as comparable to Waushara County in this proceeding. It said that group was established by Arbitrator Bellman in 1990, “at that time, the parties agreed on all contiguous counties except Winnebago.” The Union criticized the Employer for attempting to substitute Wood County for Winnebago County in this proceeding. It said that there is no evidence to support either that change or including Juneau County in the comparable group. The Union noted that neither Wood nor Juneau Counties are contiguous to Waushara and questioned why the Employer had selected these as comparables. It argued that the County had failed to meet its burden of proof to require changing the composition of the comparable group.

The Union argued that Employer contributions toward health insurance costs should not be a determining factor in this proceeding. It reviewed evidence that all comparable counties pay from 90% to 100% of the health insurance premiums. As a result of negotiations between these parties in 1993, the Union agreed to reduce the Employer contributions for new hires to 85% of the premium cost “in return for keeping better insurance coverage.” It noted that Portage, Waupaca and Wood Counties all made higher maximum contributions for health care than Waushara County, “it seems obvious that the premiums in Waushara County are well within the norm.” The Union argued that the health insurance plan that the Employer provides its law enforcement unit and unrepresented employees “requires a deductible and/or co-pay on everything.” It said that if the Union had agreed to accept the County’s offer of \$1.35 wage increases in return for changing the employees’ insurance benefits, “An employee would have to work 963 hours before he/she would see any net increase and that does not take into effect [income tax considerations].”

The Union argued that the Employer had raised the health insurance issue because it “needed to find some way, however absurd, to justify its position.” It urged the Arbitrator to ignore evidence that no Juneau County nurse receives health insurance benefits, because there is no explanation as to why Juneau County was included as a comparable. The Union argued that the appropriate means to evaluate the parties’ wage offers is through the application of benchmark standards.

The Union said that its wage request is for 2% on each step, in addition to adding a new 36-month step which is 2% above the 24-month step, for 1999. It would add 3½% to all steps in 2000. “Six current employees would be placed at the 36 month step effective January 1, 1999. One employee would move to the 36-month step effective January 13, 2000.” The

Union said that after the Bellman award, these employees' wages ranked fifth among the seven comparables. By 1998, they had dropped to "dead last. This decline needs to end. The Union's request will not rectify this situation. It is only a start."

Union Exhibit 8 reported the maximum wage rate for public health nurses and the number of years of employment required to achieve those rates in comparable counties is as follows: Winnebago \$18.69 (6½ years), Green Lake \$18.12 (12 years), Adams \$17.97 (5 years), Marquette \$17.40 (8 years), Waupaca \$17.28 (3 years), Portage \$16.88 (3 years). The maximum rate in Waushara County in 1998 was \$16.71 an hour after two years of employment. The Union said that there were 1999-2000 settlements totaling \$1.10 an hour in Adams County, \$1.20 an hour in Green Lake County, \$1.21 in Portage County and \$1.04 in Waupaca County compared to the Employer's offer for \$1.02 and the Union's request for \$1.28 in this proceeding. Marquette and Winnebago are not settled for 2000, their 1999 settlements were for 3¢ and 51¢ respectively. The Union said that the Employer had not offered any evidence that it cannot afford to pay competitive wages. "Would it not be in the public interest to offer competitive wages in order to attract and maintain quality employees?"

The Union said that the only justification that the Employer gave for its wage offer was "that's what the other units in the County settled for". It said that Arbitrator Bellman previously rejected that argument. It cited Bellman's comments that: "Comparing percentage increases ignores the fact that various categories of employees are already at various wage levels"; uniformity ignores the difference among labor markets for different employee classifications and the essence of separate bargaining units is allowing different groups of employees to negotiate wages and benefits which reflect the employees' distinct circumstances. The Union said that it had carefully crafted its wage request to reflect what is going on in

today's labor market. "All contiguous counties have wage schedules extending as minimum of three years. Most have even more extended grids." It said that the wages the Waushara County nurses earn will not equal what most other nurses in the area earn, but, it is a start in the right direction.

The Union dedicated a substantial portion of its reply brief to arguing that certain data and comments contained in the Employer's brief constitute an effort to enter new evidence and inadmissible evidence into the hearing record after the record was closed. It was particularly critical of references to the parties' positions during the mediation session which preceded referral of this dispute to the undersigned.

The Union said that the Employer failed to consider the potential out of pocket expense that nurses would be exposed to if the Union had agreed to the Employer's health insurance proposal. It estimated that an employee working 1400 hours a year would have received an additional \$1,890 in wages from the \$1.35 an hour wage increase. It calculated this employee would have been required to pay \$1,188 in premium cost, and would have been subject to additional charges up to the \$500 deductible.

The Union noted that the Employer asked that "the Arbitrator provide some guidance in our negotiation process as to whether or not the employer can ever reasonably expect to modify health insurance coverage to control costs." It said there is nothing in the record to show that health care costs in Waushara County are different than elsewhere. It questioned why the Employer did not include a health care proposal in its final offer. The Union said that the only issue before the arbitrator is wages. It concluded by arguing that the Union's wage offer is the more reasonable offer, and asked that the Union offer be adopted.

DISCUSSION

The first matter that needs to be addressed is the Union's objection to the data and arguments in the Employer's Brief and Reply Brief. While some of the County's comments (particularly observations by the mediator) are not appropriate, there is no reason to exclude such comments from the record. The undersigned is capable of distinguishing argument from facts in evidence. Either party could have made arrangements to have a certified transcript of the hearing record prepared. Neither party chose to do so. Absent a certified transcript of the hearing record, argument about its content devolves into speculation about who said what, why and when. There is no need or purpose to engage in that kind of speculation in this instance.

The reason that these parties were unable to settle their differences is because the Employer has been unable to convince the Union to agree to accept changes in the health insurance benefits that four of the seven members of the bargaining unit have historically enjoyed. One nurse who has been with the County since 1981, and worked 1019 hours in 1998, apparently has not elected to receive health insurance benefits. The two nurses who were hired in 1995 and 1997 were not covered by health insurance during 1998. There is no inkling in the record why these three nurses do not receive health insurance benefits. The four members who received family health coverage during 1998 began working for Waushara County in 1974, 1978 and two began in 1984. In 1998 they worked 1468, 1164, 1078 and 1292 hours respectively. When the Union made it clear that it would not agree to changes in health insurance benefits, the Employer requested arbitration. The foregoing recitation is important, because, while differences of opinion about the health insurance benefit that these employees receive is apparently the reason that the parties could not come to terms, neither final offer proposes to change existing health insurance benefits. If the Employer had included

a proposal to modify the nurses health insurance benefits in its final offer, that proposal would have become an issue in this proceeding. Health insurance benefits are not an issue in this proceeding, because neither final offer contains anything other than a wage proposal. The reasonableness of the parties' respective wage offers is the only issue that will be discussed further herein.

Sec. 111.70(4)(cm)7 and 7g., Wis. Stats. Require interest arbitrators to give great weight to certain factors when arriving at a decision. The record in this proceeding is bereft of any evidence relating to either the "greatest weight or the greater weight factors." There is relevant evidence to permit the offers to be weighted under criteria set forth in § 111.70(4)(cm) 7r, d, e, and h.

The employer presented information in its initial brief which indicates that Waushara County has a small number of residents employed in manufacturing and has low per capita income, compared to Winnebago County and the State of Wisconsin as a whole. Presumably, this information is some of the data which the Union has objected to as untimely. Without regard to the objection, which has been noted, the data is insufficient to suggest that Waushara County does not have the financial ability to meet the costs of either offer. The total difference in the wage only cost of the two offers appears to be \$3,227 over the two-years of the contract.

The Employer's presentation relied primarily on comparisons of the overall compensation received by these nurses with the wages and benefits received by Public Health Nurses in Juneau, Portage, Waupaca, Marquette and Wood Counties during calendar year 1998. It said that data for two comparables, Adams and Green Lake Counties, was unavailable or unreliable. Arbitrator Bellman decided in 1990 that Winnebago County, and Green Lake, Marquette, Adams, Portage and Waupaca, all of which are contiguous to Waushara County

constitute an appropriate group of comparables. There is no basis in the present record to change that group. The Employer provided total cost data for only three comparables, and for Juneau and Wood Counties which are not comparable. It did not explain why data for Juneau is relevant. It did not say why data for Winnebago County was not presented or, why data from Green Lake County was unreliable or why data from Adams County was unavailable. Based upon the data that it did present, the average total package cost for wages and benefits in Waushara County was \$26.70 an hour in 1998, compared to \$26.44 in Waupaca, \$24.11 in Portage and \$23.50 in Green Lake Counties. While it is clear that the average package cost for wages and benefits for nurses in Waushara County is higher than it is for nurses in three of six comparable counties, there is no evidence that the package costs for wages and benefits received by nurses in Waushara County are excessive.

Five of Waushara County's nurses have been employed between 15 and 25 years. The wages and benefits these employees receive cost an average of \$29.71 an hour and have been established through the bargaining process over the years, except for 1989 and 1990. Those years the parties' contract was established through arbitration. Arbitrator Bellman noted at that time that wage rates for senior members of this unit "are admittedly less than standard." The package costs for the nurses hired in 1995 and 1997 are currently \$22.11 and \$21.90 respectively. There is no information regarding the duration of employment of the "average comparable employee" in the three comparable counties. From the limited information that the Employer presented, it does appear that Public Health Nurses in Waushara County receive one benefit that their counterparts in Marquette and Portage Counties do not receive, the Employer picks up the employees' share of retirement fund contribution. It also appears that a higher percentage of nurses in Waushara County receive health insurance benefits than nurses in

Marquette and Portage Counties. However, both Portage and Waupaca Counties contribute more toward the cost of health insurance for those employees who receive the maximum benefit than Waushara County contributes. Based upon the evidence in the record, it does not appear that the overall compensation that the Employer provided to this group of primarily long-term employees in 1998 should influence the level of the employees' 1999-2000 wage increase.

The Union based its wage request upon the argument that the wages paid to nurses in Waushara County have eroded in comparison to wages paid to Public Health nurses in comparable counties during the ten years since Arbitrator Bellman observed that wages for "senior unit members at or near the top rate ... are admittedly less than standard." Evidence shows that the wage rates paid to Waushara County nurses over the past ten years have eroded at the top of the wage scale. In 1989, Waushara County nurses at the top wage received \$11.68 an hour compared to the average top wage of \$12.07 received by the average comparable. At that time, the top wage in Waushara County ranked fifth among the seven comparables. By 1998, top wages of \$16.71 in Waushara County ranked last among comparables. It had fallen from being 39¢ below the average 1989 top wage to \$1.01 below the 1998 average top wage of \$17.72 for comparables.

All of the comparables are settled for 1999. The members of this unit will receive a lower hourly rate than the senior nurses in all six comparables no matter which offer is accepted. Top wage rates in comparable counties in 1999 ranged from \$17.43 in Marquette County to \$19.20 in Winnebago County. They averaged \$18.18 an hour compared to the Employer's offer of \$17.21 and the Union's offer of \$17.38 an hour. Marquette and Green

Lake County are not settled for 2000. Minimum and maximum 2000 rates in the settled comparables and under the two offers in the proceeding are:

EMPLOYER	MIN. RATE	MAX. RATE
GREEN LAKE	\$16.13	\$19.32
ADAMS	\$15.83	\$19.07
WAUPACA	\$14.65	\$18.33
PORTAGE	\$16.28	\$18.09
WAUSHARA		
EMPLOYER	\$15.57	\$17.73
UNION	\$15.49	\$17.99

In the event that the Union's offer is accepted, Waushara County's senior nurses will receive 71¢ an hour less than the average comparable compared to the 97¢ an hour less that they would receive under the Employer's offer. The placement of beginning wage rates in Waushara County among comparables does not change under either offer. In 1989 the beginning rate of \$10.10 an hour in Waushara was 2¢ below the \$10.12 average starting wage and ranked five out of seven. Under the Union's offer the starting wage would be 4¢ above the average \$14.93 an hour compared to being 19¢ above average under the Employer's offer. In either instance, the average starting wage in 1999 will rank four out of seven. Comparison of the two offers with comparable external settlements provides strong support for the Union's offer.

The Employer's argument that internal settlements with other units supports its offer is not convincing. Arbitrators are inclined to favor settlements which continue parity with other bargaining units or maintain longstanding patterns of internal settlements. The fact that these nurses sought and received an additional 10¢ an hour to bring their wages up to the level of Social Worker II in 1995-96, and received the same hourly rate as Social Workers during 1997-98, does not mean that long-term wage parity between the two units has been established. Nor does the fact that the Social Workers have settled for 3% increases in 1999 and 2000, and highway workers settled for 3% in 1999, show that the Employer has established the practice of maintaining a pattern of equal internal settlements. From the description of the Employer's negotiations with its three bargaining units since 1993, it appears that the Employer has approached each bargaining unit pragmatically in order to obtain voluntary settlements. To the Employer's credit, it demonstrated some flexibility during those previous negotiations in order to achieve at least some of its objectives. From the evidence, the Employer's objective during past negotiations has not been equal settlements, it has been to obtain concessions in health care benefits.

Therein lies the problem. The dispute between these parties is rooted in the Union's refusal to agree to changes in health insurance benefits. That position may or may not have merit. Since the Employer did not choose to include modifications in health insurance in its final offer, it is not an issue in this proceeding. When the Employer learned that the Union would not agree to bargain over health insurance benefits, the Employer refused to consider the Union's wage request. Had it done so, the Employer would have recognized that the Union's wage offer is reasonable. It is supported by the weight of relevant evidence. For that reason the offer of Waushara County Public Health Department Nurses Union District 1199

W/United Professionals for Quality Health Care SEIU, AFL-CIO shall be incorporated into the parties 1999-2000 collective bargaining agreement.

Dated this 29th day of December at Madison, Wisconsin.

John C. Oestreicher, Arbitrator