

**STATE OF WISCONSIN
Before the Arbitrator**

IN THE MATTER OF INTEREST ARBITRATION

OPINION AND AWARD

between

MONROE COUNTY (Rolling Hills)

Case No. 170, No. 64441

INT/ARB-10377

and

Dec. No. 31381-B

**MONROE COUNTY ROLLING HILLS
EMPLOYEE - LOCAL 1947
AFSCME (AFL-CIO)**

Gil Vernon, Arbitrator

APPEARANCES:

On Behalf of the County: Ken Kittleson, Personnel Director - Monroe County

On Behalf of the Union: Daniel R. Pfeifer, Staff Representative - AFSCME
Council 40

I. BACKGROUND AND FACTS

The Union and Employer have been parties to a series of collective bargaining agreements, the last of which expired in 2004. The bargaining unit consists of those employees hired and retained by the Employer at its Rolling Hills Health Care Facility. The positions in the bargaining unit include positions such as certified nursing assistants, license practical nurses, and food service workers.

On January 31, 2005, the Union filed a petition with the Wisconsin Employment Relations Commission wherein it alleged that an impasse existed between it and Monroe County in their collective bargaining for a successor to the 2004 Collective Bargaining Agreement. Thereafter, the Commission initiated an investigation. On June 16, 2005, the parties submitted to the Commission final offers concerning outstanding issues. Thereafter, on June 28, 2005, the Commission declared an impasse and ordered the parties to select an arbitrator. On July 12, 2005, the selection of the undersigned was confirmed and an order appointing him was issued.

A hearing was scheduled and held on August 17, 2005. Post-hearing briefs and reply briefs were filed (the last of which was received October 5, 2005) and the record was closed.

II. FINAL OFFERS AND ISSUES

The Union's final offer read as follows:

1. Article 26 - Duration - 1/1/05-12/31/06.
2. Wages - An increase of 2% ATB effective January 1 of each year of the agreement.
3. Addendums - Attach and carry forward the following memorandums:
 1. APRIL 12, 2001 - SUPPLY AIDE HOURS
 2. APRIL 11, 2001 - 3 6-2:30 CNA ON C UNIT

3. MARCH 13, 2001 - ONCE THE 6-2:30 FILL-INS HAVE THEIR GUARANTEED FOUR DAY PER PAY PERIOD THE OPEN SHIFTS WILL BE FILLED BY SENIORITY.
 4. MARCH 9, 2000 - .26/HOUR WAGE PASS THROUGH.
 5. JANUARY 13, 2000 - EMPLOYEE TEMPORARILY ASSIGNED TO A DIFFERENT POSITION DUE TO MANAGEMENTS REQUEST SHALL BE GIVEN THE RATE OF PAY WHICH EVER IS GREATER.
 6. NOVEMBER 15, 1999 - ACTIVITY THERAPHY (*sic*) AIDE FLEXIBLE STARTING TIMES.
 7. FEBRUARY 13, 2004 - WEEKEND HOURS ANYONE WANTING HAS TO SIGN BEFORE 3:30 ON WEDNESDAY.
 8. FEBRUARY 13, 2004 - TRANSPORTATION DUTY ASSISTANTS.
 9. JUNE 7, 2004 - CNA VOLUNTEERING TO WORK OT CANNOT BUMP A REGULAR OFF THERE (*sic*) UNIT.
 10. JULY 5, 2004 - NUMBER 2 COOK COMING IN AT 5:45.
 11. SEPTEMBER 14, 2004 - TRADING SHIFTS OF 1 DAY LPN AND 1 PM LPN.
 12. JANUARY 13, 2005, FLEXIBLE WORK HOURS FOR COOK LEADWORKER 1.
 13. APRIL 12, 2002 - REPLACE SECTION 5, ARTICLE 6 - MANAGEMENT WILL ATTEMPT CALLING SEVERAL SENIOR EMPLOYEES PRIOR TO GIVING OT TO ONES ON DUTY.
 14. NOVEMBER 15, 2002 - NO BENEFIT CNA'S.
 15. 1/13/2005 - ALLOWING GLORIA MANTZKE BACK INTO THE UNION.
4. Provisions retroactive to 1/1/05, including Fair Share/Dues Deduction.
 5. All provisions not addressed in the Union's Final Offer to remain as in the 2003-2004 collective bargaining agreement between the parties.

The County's final offer read as follows:

1. WAGES AND HEALTH INSURANCE:

2005: 2% across-the-board wage increase effective 10/1/05, status quo on health insurance

2006: 2% across-the-board wage increase effective 1/1/06, add a \$250 single/\$500 family deductible to the current health insurance coverage effective 1/1/06

2. DURATION:

January 1, 2005, through December 31, 2006

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. The Union

The Union views the open issues as follows:

- (1) The Nursing-Assistant-Wage-Pass-Through Memorandum which the Union wants to keep and about which the Employer took the position that any Memorandums that do not have a sunset date should be carried forward.
- (2) Retroactivity which is addressed in the Union offer but not in the Employer offer, which according to the Employer at the hearing, means that dues deduction/fair share and the grievance procedure are not retroactive. Moreover, the County's final offer does not address retroactivity for the remaining provisions of the collective bargaining agreements.
- (3) Wages are increased by the same percentage under each agreement but the timing is different. The Union has proposed a wage increase of 2% effective 1/1/05. The County has proposed a wage increase of 2% effective 10/1/05. Both parties have proposed wage increases of 2% effective 1/1/06.

- (4) Concerning Health Insurance, the Union proposed no change while the County has proposed that the health insurance include a deductible of \$250 single and \$500 family, effective 1/1/06.

The Union addresses these issues in turn. Concerning wages, the Union notes that the wages for the Monroe County Rolling Hills employees are generally within the average of the comparables. This won't change much with both parties proposing 2% increases--only the timing is disputed. The timing is the more significant issue since all of the comparables are receiving wage increases effective January 1, 2005, if settled. And, since the Employer's offer (if awarded) would leave Monroe County employees as the only jurisdiction not receiving a wage increase effective January 1, 2005. The Union also argues that its offer is supported by the fact the County granted elected officials a wage increase of 3% for both 2005 and 2006.

Regarding Health Insurance, the Union's position is that this is not the time to implement the deductibles because the County is offering a substandard wage increase and absolutely no "quid pro quo" for the proposed change in health insurance. The Union notes, too, that in assessing the comparables on the issue of deductibles one must look at the entire health insurance package including premium sharing and co-pays. Monroe County pays a lesser percentage (87%) toward the premium than all but one other comparable employer. Moreover, Monroe County employees have a \$30 office co-pay which many comparables (Jackson, LaCrosse,

Richland, Trempealeau, Vernon and Wood) do not. Office co-pays can add up to exceed deductibles in many plans. It is noted three comparables have no deductible or co-pays. In addition, if the County's final offer is selected, Monroe County employees would be the only employees, in all of the comparables, to pay both deductibles and office visit co-pays. Thus, the Union contends that Monroe County is not out-of-line with the comparables with regard to deductibles and office visit co-pays and, therefore, the \$250/\$500 deductible, as proposed by the County, should not be instituted. Also, if instituted, the deductible could end up meaning a pay cut for some employees.

The Union describes the differences between the parties on wage-pass through as a major issue since it affects the majority of the employees at Rolling Hills. The County stated, at the hearing, that if the County's final offer is selected, the wage pass through would be discontinued upon receipt of the award. The Union would continue the \$.26 per hour Wage-Pass-Through Memorandum of Agreement. By not continuing the Wage-Pass-Through, the Employer's offer is a net pay cut. While the Employer's offer would increase wage rates in 2005 from .19 to .22 per hour, the net pay would go down when the .26 wage pass through add-on is eliminated. The Union notes this pay cut would make already difficult recruiting harder still.

The Union recognizes that employers are not required to maintain dues

deduction/fair share during the contract hiatus. However, on a practical level Monroe County is one of the few public employers in Wisconsin to refuse to deduct dues/fair share during the hiatus period. Thus, the Union suggests that the County's actions, in this regard, certainly has negatively affected the morale of the employees and cannot be good public policy nor in the "interests and welfare of the public".

In terms of statutory criteria, the Union addressed several. First, the cost of living favors the Union's offer because the County's proposed wage increase for 2005 generates only an increase in yearly income of 0.5% (2% times 3 months divided by 12 months).

Concerning the greatest and greater weight factors, the Union notes that the County has claimed that it has had financial problems. The Union acknowledges that while this may have been true for 2004 and the County addressed these through lay-offs, attrition, reductions of hours and budget reductions, the Union takes the position that the financial problems were of the County's own doing by depletion of the general fund and a low levy rates. The County has only taxed at 87.49% of the allowable levy. All of the comparable counties except Richland, Trempealeau and Wood had higher levy rates with Jackson and LaCrosse at almost the maximum. This left Monroe with a lower levy (on a percentage of the maximum) than Buffalo,

Crawford, Jackson, Juneau, LaCrosse, Sauk and Vernon.

The County is now in better shape (for 2005) because it increased its levy to 96.39%--generating \$2.7 million more money. Also, the County has other things going for it too: (1) Fort McCoy generated a \$779.4 million impact to the area for 2004; (2) Monroe County had one of the highest rates of new construction (3.84%) which allows it to generate more revenues than any of the other comparable counties (in % terms), and; (3) Monroe County ranked third of the eight counties compared in the percentage increase in County sales tax revenue for 2004.

B. The Employer

The County believes one of the issues, in this case, is the State's limitations on expenditures. This is the greatest weight criteria and, in this case, comes into play because the Governor, in July of 2005, signed a budget that froze property taxes. While the County had a 3.84% new construction increase creating some additional revenue, this is still a severe restriction. For this reason alone the arbitrator should find in favor of the County's final offer. Even though the County levy increased 15 percent in 2005 resulting in tax bill increases of 12 percent, the County faces challenges such as replacing a jail and higher fuel costs in 2006. Even though the County's 2006 budget process was not completed at the time of arbitration, it is clear that reductions will be required to remain within the tax freeze

parameters. With a countywide health insurance bill of \$3,696,813, the estimated additional 4.5 percent to keep the status quo in health insurance would cost the taxpayers an additional \$166,357 for 2006. This alone gobbles up over 35 percent of the limited amount the County can increase its levy in 2006.

Another issue, in the County's view, is the ability of the County to meet its financial obligations. In this regard, they note Monroe County spent much of 2004 in financial turmoil--at one point considering borrowing money just to meet operating expenses. In fact, in order to make it through the year, the highway department laid off 26 employees for the month of October and all departments were required to cut their budgets to reach an additional \$200,000 in budget reductions to make it through the end of the year. By the end of 2004, the Monroe County Treasurer had one lonely \$500,000 certificate of deposit left in the general fund while the County's auditor recommends an absolute minimum of \$2.4 million in the general fund. While the County isn't making a technical inability to pay argument, they note at least one arbitrator has recognized a difficulty to pay argument. In this case, the total cost of the Employer's final offer is \$8,656,364 and for the Union it is \$8,798,301 (a \$141,937 difference). It is asserted County taxpayers should not be required to pay an additional \$141,937 for back pay and first-dollar hospitalization insurance coverage of this group. This is especially true

since the nursing home is operating at a loss and the comparable county to the north, Jackson County, is in the process of selling its county nursing home.

The County's financial difficulties should also be accounted for under the "interest and welfare" of the public criteria. For 2005, the County Board approved a \$12.2 million levy for property taxes payable in 2005, up 15 percent from this year. The County tax rate will rise from \$6.37 to \$6.88 per \$1,000 of property value. The County's part of the tax bill will be about 12 percent higher. Additional increases are described by the Employer as "inevitable". The burden on the public should not be increased further by accepting the Union's offer. Also, concerning 74(d-h) of the statute, the County contends that the employees of this unit are well paid and have general benefits, as compared to the employees of Monroe and its comparable counties, and especially in comparison to private sector employees of the West Central Wisconsin region.

Concerning the final offers on wage increases, the County notes they are nearly identical in this case, with both parties proposing a two percent lift in each of the two calendar years of the contract. The difference relates to timing. The County's basis for the October 1 effective date is because there were no health insurance changes in 2005. Therefore, the additional costs of remaining with the health insurance status quo were partially deducted from the wage increase for the

year, delaying the effective date of the 2005 pay increase to October 1. Consistent with that position, the two percent increase in 2006 is effective January 1, 2006, coinciding with the addition of a health insurance deductible in the County's final offer. This points to a more important issue and that is the Union remained recalcitrant regarding health insurance changes and proposed the status quo for health insurance again in 2006 in their final offer.

It is the position of the County on health insurance that health insurance plan design changes are necessary to moderate the premium increases due to the County's financial situation. The County is not asking for an increase in the employee contribution that has remained constant at 13 percent for the past 16 years, and was at 15-19 percent prior to that. However, the total premium cost has increased by 276 percent in the past 10 years and by 1.289 percent in the past 25 years. These increases occurred in spite of efforts to contain costs. The plan has first dollar hospitalization coverage that is non-existent in the private sector. Selecting the County's final offer would be a small step toward leveling the health insurance playing field between the private and public sectors in Monroe County.

IV. OPINION AND DISCUSSION

The Employer relies heavily on the "greatest weight" criteria. This factor is

in play here because of the Governor's action in the summer of 2005. However, the Employer cannot simply rely on the existence of such limitations. The Arbitrator is not convinced that the legislature intended that the presence of revenue or expenditures limits necessarily meant all employers are automatically entitled to have their final offers accepted. The Employer, if it is to rely on this factor, must produce meaningful evidence as to its relevancy on the economic and non-economic aspects of the final offers. Certainly an employer must account for revenue limits in budgeting but it should also show in arbitration how these limits affect the reasonableness of the offers in all relevant senses including, but not limited to, affordability, economic prudence and the budgetary choices the adoption of the Union's offer would force. In this case, the Employer has not produced evidence persuasive enough to convince the Arbitrator that, as a matter of fact, this criteria should be the controlling factor in this instance.

The Employer also relies on the "greater weight" criteria relating to the economic conditions of the jurisdiction. There is much evidence on this factor presented by both sides. Indeed, the County faced a fiscal crisis in 2004 which required dramatic cuts to preserve cash. The evidence suggests that this crisis was not the result of employee costs but one where the County's timing in raising funds was out-of-sync with spending. For instance, the county treasurer was quoted as

saying the tax levy wasn't increased for special projects and as other situations arose, which cut into the County's cash. This is consistent with evidence that shows the County's levy was, in 2003 (which generated 2004 numbers), far below its allowable levy limit compared to most neighboring counties. Now, with a levy more in line with comparable counties, the County is in a better cash position (one more consistent with auditor recommendations).

The relatively better financial condition of the County during this bargaining period is demonstrated in some of the actions of the County. As the adage goes, actions speak louder than words. While the County offer proposed a two percent lift in 2005, which is a half percent out-of-County's-pocket-into-employees-wallet cost/increase for 2005 for this bargaining unit, it gave certain high ranking elected/administrative positions three percent increases in 2005 and 2006.

According to the costing data, the Employer presented in its brief (not at the hearing subject to cross examination) the total cost of the Employer's offer over two years is \$8,656,364 and the Union's offer is \$8,798,301. If the Employer's data is accurate, this difference isn't particularly dramatic at \$141,937 or 1.6% of the total cost.

As to this difference, it is noted the Union's offer of two percent each year is less than other comparable counties (to the extent there have been settlements). An even lesser relative increase isn't justified based on Monroe County wage levels for

bargaining unit positions. Monroe County wages are not out-of-line.

Under either offer, employees will not get as big of a wage increase as employees in comparable counties. The even more modest increase, under the Employer offer, is not justified on the basis of health insurance costs. Moreover, in this connection, the Employer's proposal for a deductible is not particularly justified when looking at Monroe County's health insurance cost.

While it is true that all the other counties have plans, usually the State Standard Plan, with deductibles, most of these same employers offer multiple plans to employees with no deductible. It wouldn't be surprising, given the cost, that no employees select the State plan. More importantly, deductibles are only one of many cost containment strategies. Co-payment for office visits is another and many counties do not have this form of cost sharing.

The most important aspect of evaluating whether the employee's share of health insurance costs should go up are not the individual cost containment features in the plan but the net effect of those features including premium sharing. In other words, the bottom line costs should be the determining factor. Monroe County offers the choice of two family plans which, respectively, cost \$955.26 and \$1,176.37 per month. The Employer cost for comparable counties range from \$765 to \$1,349 per month for family coverage. The average Employer cost of all the

plans offered by comparable counties is \$1,087.78. So Monroe has one plan with above average costs and one below. Monroe County is not, in relative terms, facing any more of a crisis than any other comparable county. Moreover, Monroe County employees are shouldering their fair share compared to other counties. The Employee premium share in the Monroe County's family plans is \$142.74 and \$175.78 per month, respectively. This is in addition to the office visit co-pay. Employee costs for family premiums in comparable counties range from \$0 to \$299.99 per month not including the exorbitantly expensive State plan. The average employee premium is \$145.12.

The staggering cost of health care is a grim reality. It is also generally accepted that employees must help shoulder the burden of this benefit through various means (premium sharing, co-pays, deductibles, etc.). However, in this case the Employer has not made its case that changes are currently necessary.

The other principle issue relates to the "Memorandums of Agreement". This is not an insignificant issue. Their final offer is silent on the issue of memorandums. The Employer states these memorandums should be dealt with "outside the arbitration process". The Employer's position is rather bothersome. Indeed, it could be argued to be a fatal flaw. Assuming that all the memorandums address mandatory subjects of bargaining--and there is no indication in this record

they are not--these issues must expressly be dealt with in the final offer interest arbitration process. Either party is free to include, in its final offer, mandatory issues and once those matters are certified by WERC to be at impasse, the parties have a right to have those issues resolved in interest arbitration. Indeed, the Arbitrator is obligated to resolve those issues. To “remove” these issues from the arbitration process would negate the Union’s legal right to have its certified impasse issues resolved by arbitration.

Thus, the Employer’s rationale that the subjects of the memorandums are better dealt with outside arbitration is not persuasive. Moreover, the Employer’s proposed solution isn’t as clear as it might seem. They propose those “Memorandums of Agreement” with sunset provisions will expire and that those that don’t have sunset provisions will continue. However, while some memorandums clearly have expiration dates and others clearly don’t have expiration dates, arguments might arise about whether others have or don’t have “sunset provisions” as applied over several years by the parties. So, the parties might end up in grievance arbitration arguing over a term (i.e. what constitutes a “sunset” provision) and arguing about intent that isn’t even expressed, in ambiguous terms, in the Employer’s offer. The Employer should have, at least, stated, explicitly, in its final offer what it intended to have happen with the

memorandums.

While it could be said categorically that the Employer failed--distinguished from a technical refusal--to bargain over these memorandums by not addressing them at all in their final offer, it could also be said the Union failed to bargain by blindly proposing the specifically mentioned memorandum be retained. However, at least the Union's offer preserves mutually negotiated solutions to mutual problems rather than requiring the parties to start over from scratch and, worse, without recourse to interest arbitration during the contract term. Also, carrying "forward" the memorandum as the Union requests does not necessarily preclude either party from arguing, in grievance arbitration, that any particular memorandum is no longer operative based on the stated terms of that particular memorandum. Although this Arbitrator does not, could not, and should not take any implied or express position on any potential disputes that, by its terms, a memorandum is no longer in effect or that, by its terms, the Employer has a right to no longer apply it.

In summary, considering the evidence and the statutory criteria, the Arbitrator selects the Union's final offer.

AWARD

The Union's Final Offer is Selected.

Gil Vernon, Arbitrator

Dated this 1st day of December, 2005.