

STATE OF WISCONSIN  
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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JACKSON COUNTY HUMAN SERVICES  
PROFESSIONAL EMPLOYEES  
AFSCME, LOCAL 2717-A  
AFL-CIO

And

Case 175  
No. 65431  
INT/ARB 10603  
Dec. No. 31730-A

JACKSON COUNTY  
(Health and Human Services Employees)

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Appearances:

For the Union: Daniel R. Pfeifer  
Staff Representative

For the Employer: John J. Prentice, Esq.  
Petrie & Stocking

DECISION AND AWARD

The undersigned was selected by the parties through the procedures of the Wisconsin Employment Relations Commission. A hearing was held on January 18, 2007 in Black River Falls, Wisconsin. The parties were given the full opportunity to present evidence and testimony. At the close of the hearing, the parties elected to file Briefs and Reply Briefs. The Arbitrator has reviewed the testimony of the witnesses at the hearing, the exhibits and the briefs of the parties in reaching his decision.

## BACKGROUND

Jackson County is located in Northwest Wisconsin. One of the Bargaining Units in the County consists of the employees that work in the Health and Human Services Department. The employees in that Department are represented by AFSCME, Local 2717-A.

The parties' collective bargaining agreement expired on December 31, 2005. They entered into negotiations for a successor agreement. They agreed upon all issues except one. They then signed the Agreement covering the years 2006 and 2007 despite leaving one issue open for resolution. That issue has been submitted to this Interest Arbitration. The County proposes amending Article 21, Section 2. It wishes to change the language in sub-section 1 and then delete sub-sections 4 and 5 of that Section. The Union wants to maintain the status quo. The County Proposal provides:

### Section 2. Stand-by or On-Call

1. Child and Family Social Workers shall be on stand-by or on-call. Stand-by or on-call shall be paid at the rate of \$2.00 per hour. Said rate shall be adjusted annually according to the percent annual wage adjustments as bargained between the parties rounded to the nearest cent. Child and Family social workers shall advance to pay grade Level III classification after three years as a Child and Family social worker upon completion of the following requirements.
  - a. Pass one year probation as level I certified social worker
  - b. In addition, completion of two additional years as Level II social worker status with satisfactory or better work performance.

Currently, the four most junior employees in the Human Services Department are on-call, and the two next junior employees in the Department are assigned "back-up duties." Those requirements are set forth in subparagraphs 4 and 5 of the current agreement. The Children and Family

Services Division is one Division within the Department. On-call is not limited to the Children's Division, but instead the four most junior employees overall are the four on-call. As new employees are hired, the most senior of the four is then removed from the on-call list. Employees currently receive \$1.49 per hour for being on-call. Under the County proposal, the eight Child and Family Social Workers would be the only employees required to be on-call. Employees in the other Divisions of the Department would no longer be required to be on-call, regardless of their seniority. Seniority would play no part in the selection of the person to be on-call. It would simply rotate among the eight.

There is a second aspect to the County's proposal. Social Workers are hired at Level I. They then move to Level II and eventually to Level III. Presently, it takes roughly ten years to move to Level III. The proposal would shorten that time to three years.

#### POSITION OF THE COUNTY

The County as the proponent of the change must show that a problem exists, that the proposal reasonably addresses the problem and that a sufficient quid pro quo has been offered. The County has met all three requirements. The Union's contention that the County has failed to demonstrate that a need exists is in error. The County has shown that the need does exist.

The County was audited by the State. The auditors used a Federal Protocol for the audit. One of the safety concerns raised by the Audit was the provision in the collective bargaining agreement that required the least senior employees

in the bargaining unit be on-call. An employee who is on-call may be required to do intake and based on what they hear may have to make decisions on what to do. They are the first line of contact between the family, child and the County. Using new employees for this task is of concern because the individuals with the least training are making decisions that can affect the safety of children. That is certainly not in the best interest of the public.

The Employer has had serious difficulty retaining Social Workers. Several employees have left. They left for better opportunity for advancement or better pay. The offer of the County addresses advancement and pay. Higher pay has been shown to increase the ability of an employer to retain employees. The Union argues that the proposal will have the opposite effect because of the on-call requirement for all the employees in the Division, however, the increase in wages and advancement opportunity should outweigh any negative effect.

Including the more senior social workers for on-call work will make the entire process better. It will mean that the Department's practices from beginning to end will be more consistent. Consistency is essential in this line of work. The current system's requirement that junior employees do the in-take causes consistency to suffer.

The current language puts the four least senior employees in the Department on-call. This means that employees not assigned to the Children and Families Division are required to be on-call. To do that, they must be trained. The County incurs substantial training expense to train employees who do not do this type of work as a regular part of their duties. Changing this requirement will enable the Department to save funds and use those funds in

other areas within the Division. The Union in its argument does not address this factor. It also fails to consider that even under the current language though all are trained, it is the Social Workers in the Family and Children's Services Division that are best equipped to handle in-take. That is a regular part of their job.

The County has shown that a problem exists and its proposal reasonably addresses that problem. The eight Social Workers within the Division would all be on-call on a rotation basis. This is a reasonable solution. The County offered to pay those on-call \$2 per hour. That is more than any of the communities in the area pay employees to be on-call. It also has shortened the time it takes to reach Social Worker III. These increases provide a sufficient quid pro quo to support the County's proposal.

#### POSITION OF THE UNION

The County is seeking to change the current language. In order to succeed, it must show that there is a need for the change. It has failed to establish that such a need exists. Social Workers work in conjunction with law enforcement and the Courts. Neither of those agencies has indicated that there is any problem with the current system.

The list of comparable communities has been established in prior arbitrations. Those communities that make up the comparables all support the Union position. A review of their contract language and practices shows that the County proposal is not in line with what the other communities are doing.

There are no legal requirements that mandate a change in the current manner of handling on-call. The audit referenced by the County that it argues justifies the change was the result of an investigation concerning the actions of an employee working in the Child and Family Services Division. It was not caused by a deficiency in the overall functioning of the Division. The County proposal would have no impact on the situation that generated the audit.

All employees in the Department are trained on how to do in-take. The four junior employees receive training and are thus qualified to do in-take. The training is no different for employees who work in the Division from that received by employees who work outside the Division. The Argument of the County that it needs Social Workers more experienced in handling the in-take is thus unfounded.

The proposal of the County will not lessen the amount of turnover, but increase it. Employees do not generally like to be on-call as it interferes with their off-duty time. Employees in the Division will never be relieved of the responsibility to be on-call and that will cause them to look for work elsewhere.

#### DISCUSSION

The Statute requires an interest arbitrator to consider several factors in rendering a decision. As is always the case, not every factor is relevant in any particular proceeding. The Arbitrator shall only address those issues that he feels are relevant here or that need explanation given the arguments of the parties.

## External Comparables

The parties disagree as which communities make up the appropriate list of comparables. The Union argues that two prior Arbitrations Decisions decided this issue.<sup>1</sup> It contends that Adams, Buffalo, Clark, Eau Claire, Juneau, La Crosse, Monroe, Trempealeau and Wood Counties make up the proper list. The County would use Buffalo, Burnett, Dunn, Pepin, Polk, St. Croix and Washburn Counties as the comparables.

One of the two cases cited by the Union involved the same Department involved here. The second case involved the Highway Department. La Crosse and Eau Claire were included on the list in the first case, but were not included on the list in the second case. The others were. Once a list has been established, subsequent Arbitrators should give credence to that finding absent some significant change of circumstances. The County has not suggested that there are any circumstances that would justify revisiting this issue. Given that fact, the Arbitrator will abide by the determination of his predecessors and use the list suggested by the Union, including La Crosse and Eau Claire since they were included in the prior case involving this same Department.

The Union points to the similarities it believes exist as to who is required to be on-call in this County and the requirements in the other Counties that make up the comparables. It believes these similarities show that the external comparables favor its position. The County points to the pay received by those on-call in its proposal compared with the pay received by those elsewhere. It

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<sup>1</sup> Decision No. 28623 (Human Services, Johnson- 1996); Dec. No. 28802 (Highway Department, Petrie-1997)

contends this comparison favors its proposal. The Arbitrator shall look at both areas. A chart has been prepared showing a comparison for both these issues.

| <u>County</u> | <u>On-call requirement</u>   | <u>On-Call Pay</u>          |
|---------------|--|-----------------------------|
| Adams         | Not specified, but not more than once/month  | \$1.25                      |
| Buffalo       | Not specified in Contract. Currently 6 rotated and all from Children and Family Serv.<br>2 most senior employees not on-call | \$1.25<br>\$1.50 weekends   |
| Clark         | Family Serv, Juvenile Intake and Aftercare are all rotated for on-call   | Not specified               |
| Eau Claire    | 2 Juvenile Intake Officers, No social workers  | \$1.75<br>\$2.00/weekends   |
| Juneau        | Not limited in Contract  | \$1.50                      |
| La Crosse     | Not limited in Contract  | \$1.50                      |
| Monroe        | 6 social workers. They are least senior and volunteers   | \$1.50                      |
| Trempealeau   | All employees in Department, but long-term Care  | \$1.70<br>\$2.10/weekends   |
| Wood          | Minimum of 14 volunteers. If insufficient Number, Department assigns who it wants  | \$25/day<br>\$40/day-wkends |

The Arbitrator shall deal in this Section of the Discussion with a comparison of those on-call here and those on-call in the comparables.<sup>2</sup> Many of the comparables have no language in their agreement limiting or specifying who shall be on-call. Monroe, Trempealeau and Wood do have specific language. Monroe requires the least senior employees overall be on-call. That is similar to what currently exists in this County. Wood on the other hand allows the Department to designate whom it wishes to serve. They can be from the Child and Family Services Division or from other Divisions as the Department

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<sup>2</sup> The pay issue will actually be addressed later when discussing the quid pro quo being offered.



sees fit. Trempealeau puts everyone on the rotation. In all the others, the absence of language allows the Department to choose who it wants to be on-call. Current practices may be that only certain groups be placed on-call, but that is each County's choice, not a contractual requirement. Buffalo County has chosen to exclude the two most senior in the Division from being on-call, but the County limits on-call to the employees in the Children and Family Services Division. Thus, these comparisons cut both ways.

From the above, the Arbitrator is not convinced that the external comparable pool supports the position of the Union. Too many localities leave discretion to the Human Services Department Personnel for the Arbitrator to find that the current procedure in this County is in line with what the others are doing. There is not enough of a pattern to find that the comparables supports the Union position or the current language.

#### Changing the Status Quo

The Arbitrator has found that the procedures used in the external comparables as to who is to be on-call do not support the current language. However, the current language is the status quo. The Arbitrator is being asked to change that status quo. While externals may not lend support to the Union argument regarding what should be done here, the fact of the matter is that the current procedures are what the parties agreed to during their prior bargaining. It is long settled that the party seeking to deviate from the status quo bears the burden of justifying that change. Therefore, the question is not whether the external comparables point towards or away from either party's position, but whether there is reason to change how the parties voluntarily

agreed on-call should be handled when they sat across the bargaining table from each other during prior negotiations.

The County recognizes it has a burden to meet in order to prevail. It concedes that it must show that a need for the change exists, that the proposal reasonably addresses that need and that it has offered a sufficient quid pro quo in exchange for its proposal. It must meet all three requirements. That then are the questions the Arbitrator must now address.

### Need for the Change

The County contends that turnover has been a problem for it and that its proposal will help alleviate that problem. Five employees had left the Division within the 18 months prior to the date of the hearing. Two left because they wanted a less stressful job with less overtime. One left for monetary reasons. The fourth person left for a better chance of advancement and the last one left for no related reason. It believes these examples prove its point. The Union on the other hand submitted a report from the State of California that sought to determine why there was turnover in the Child and Family Services Divisions it examined. One finding from that report was:

Interestingly, the Counties that paid the highest salaries were also the least likely to allow overtime or keep their employees on-call. This implies that these counties placed a high value on their employee's time as well as their finances.

First, the highest functioning organizations have the lowest turnover, highest salaries, and no requirements for being on-call or working overtime.<sup>3</sup>

This report would seem to indicate that requiring all eight employees in the Division to be on-call could increase, not decrease turnover. The Union

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<sup>3</sup> The Human Workforce Initiative, National Council on Crime and Delinquency, 2006

introduced statements from the employees themselves stating that they opposed the concept. When evaluating all the evidence, the Arbitrator is not convinced that the proposal will decrease turnover as suggested by the County. It might have a reverse effect, as the Study seems to indicate. Thus, on this basis no need has been shown.

The County also contends that the need to change the status quo has been shown in several other areas. It cited an audit performed by the State concerning the performance of the Children and Family Services Division of the County. The audit found that the County was doing well in several areas. One of the areas that had been examined was how well the County protected children from abuse and neglect. Out of ten cases it examined, it found that the goals of the Division were met in six cases and partially met in four. The audit then went on to comment that:

Another area of concern for the Agency involves a Union Policy that requires the 4 staff with the least seniority to be responsible for after hours on-call duty for children and families. The staff may be from other social services disciplines outside of CPS, having minimal training in the area.

The County contends that this audit proves that there is a need to adopt its proposal. Conversely, the Union argues that the Court system and Law Enforcement have never indicated that there have been any problems in how in-take has been handled by those who were handling cases while on-call, and that the audit is not enough of a reason to justify the change.

There is merit to the argument of the County despite the fact that there have been no complaints filed in the past. Employees who do not regularly perform this type of work are being required to do it. While they have had some

training, they are clearly not as qualified or experienced as those that do this type of work on a regular basis. Those in the Child and Family Services Division regularly perform in-take and are most familiar with the needs of children and families. They are unquestionably best suited to be the ones on-call. The audit was correct in that regard. Perhaps, that is why many of the comparable Counties have no contractual limitation on who can be on-call, leave it those Counties to decide who is best suited for that task and that many use the experienced personnel for this work.

There is also validity to the argument of the County that it is unnecessarily expending funds to train individuals in the Department to do on-call simply because of the current contractual provision. It contends it could better utilize these funds to assist the Division in fulfilling its objectives. The Arbitrator agrees that expending funds to train new employees hired by the Department, but who work in a different Division and who do different jobs is not the best use of those funds. The Arbitrator, therefore, finds that a need has been shown based on the audit and fund utilization. The Arbitrator finds that while the need has not been shown to be an overwhelming need, it is enough to allow the Arbitrator to move on to the next prong of the test.

Does the proposal reasonably address the need

The County proposal would rotate for on-call duty all of the Social Workers in the Division. There are currently eight. Seniority would play no part in the rotation. They would all be on-call for as long as they worked for the Division.

If the California Study referenced earlier is correct, this proposal would seem to fly in the face of one of the County's stated goals, which is to reduce

turnover. The feelings of the eight employees in the Department as expressed in the Union exhibit would seem to confirm the Study. While it may be a worthwhile goal to utilize only experienced employees for on-call, the fact that these employees would never be relieved of that responsibility, no matter how long they worked for the County, is most troubling to the Arbitrator, as it was in the Study. It has generally been held by Arbitrators when dealing with this prong of the test that the one suggesting change need not show that the proposal is the best proposal, but only that the proposal reasonably address the need. However, in this case, the fact that employees must serve in the rotation on a permanent basis causes the Arbitrator to question whether the proposal is reasonably addressing the need. It would solve the experience problem, but might create a new problem even more troublesome than the one being addressed.

Currently, four employees are required to be on-call and two more as backup. Under the proposal, eight are required to be on-call. Having more people in the rotation, means that although each is on-call less often than is currently required, there are more people who now have this obligation. Equally as important, seniority plays a role in the selection of those to be on-call under the current language. The proposal writes that completely out of the contract. The Union, as Union's usually do when the use of seniority is being challenged, objects to this change. Their objection is not unfounded. To now require even the most senior employees in the Division to be on-call in perpetuity does not seem reasonable to this Arbitrator and certainly does seem reasonable when the Study and the concerns of the current employees are

considered.<sup>4</sup> On this basis, the Arbitrator finds that the proposal does not reasonably address the problem and that the County has, therefore, failed to meet this second prong of the test.<sup>5</sup>

Having so found, the Arbitrator does not reach the question as to whether the quid pro quo offered is enough to justify the change. The Arbitrator does note, as is apparent from the chart discussed earlier, that the County offer would have put the pay for its employees who are on-call among the highest of all the comparables. Its proposal to decrease the time it takes to move to Social Worker III would also place it in a most favorable position vis-à-vis the comparables. Both these factors were also recognized in the Study as helping to decrease turnover. Whether the County offer was enough of a quid pro quo, however, will have to be answered at a later day given its failure to satisfy the second prong of the required test here.

#### AWARD

The Union proposal is adopted.

Dated: October 15, 2007

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Fredric R. Dichter,  
Arbitrator

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<sup>4</sup> Even Buffalo County, which utilizes only employees from the Children and Family Services Division excludes the two most senior employees from being required to be on-call.

<sup>5</sup> In making this finding, the Arbitrator has taken into consideration the fact that while a need has been shown the depth of that need has not been proven to be extensive.