

STATE OF WISCONSIN
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MANITOWOC COUNTY HUMAN SERVICES
DEPARTMENT PROFESSIONALS
AFSCME, LOCAL 986-A
AFL-CIO

And

Case 402
No. 65597
INT/ARB 10649
Dec. No. 32312-A

MANITOWOC COUNTY
(Human Services Employees)

Appearances:

For the Union: Joseph M. Guzynski
Staff Representative

For the Employer: James P. Korom, Esq.
Von Briesen & Roper

DECISION AND AWARD

The undersigned was selected by the parties through the procedures of the Wisconsin Employment Relations Commission. A hearing was held on June 3, 2008 in Manitowoc, 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. The Arbitrator has reviewed the testimony of the witnesses, the exhibits and the briefs of the parties in reaching his decision.

BACKGROUND

Manitowoc County is located in Northeast Wisconsin. One of the Bargaining Units in the County consists of the employees that work in the Human Services Department. The employees in that Department are represented by AFSCME, Local 986-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. The Parties agreed to a 3% across the board increase for both 2006 and 2007. They have agreed on a two-year contract. The one outstanding issue involves pay for the Psychiatric Nurse. There is currently only one such nurse. The Union seeks to add a \$.75 lift to the wages of the Psychiatric Nurse prior to her receiving the 3% increase in 2006. The County would not add any lift to the wages of that Classification. The cost of the Union proposal over the life of the Agreement is \$1560.

DISCUSSION

The Union has made its proposal based on the argument that the wage of the Psychiatric Nurse has not kept pace with her counterparts in the other jurisdictions. It also contends that the duties of this position are quite similar to the duties of the Social Worker. A Social Worker with whom the Psychiatric Nurse works testified as to how the positions interrelate. The Union contends there is a compelling need for catch-up with the Social Worker position that makes its proposal the better one. The County disagrees with the Union as to the position to which this one should be compared. It says the better

comparison is with the wages of the Public Health Nurse. It argues historically that position has been used to set the benchmark for this position. Further, it argues that even if the Union were correct that there is a need for catch-up, it still must offer a quid pro quo in order for it to achieve what it seeks. On this last point, the Arbitrator must disagree. As he stated in New Holstein:

The City maintains that a quid pro quo is required. They are not correct. Many arbitrators have found that when the employees in question lag behind the employees in the comparable jurisdictions that no quid pro quo is required. A need to catch-up creates an exception to the general rule. If a quid pro quo was required here, the Union would have to give up something that would put it behind in that other area.¹

Thus, if the Union can show there is a genuine need for the Psychiatric Nurse to obtain the additional increase, the absence of a quid pro quo would not be fatal to its cause.

Statutory Factors

The answer as to whether a need has been shown will come from a review of the Statutory Criteria that must be used by an arbitrator in interest arbitration. 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.

¹ Dec. No. 31996-A (2007); See also City of Oshkosh Dec. No. 32148 where this Arbitrator found the City proposal to change health insurance similarly did not require it to offer a quid pro quo.

Greatest Weight and Greater Weight

The Statute requires the Arbitrator to give the greatest weight to any law or directive placing limits on expenditures. The Statute further requires the Arbitrator to give Greater Weight to economic conditions that may exist in the Employer in question. In this case, the total additional cost of the Union proposal is only \$1560 for two years. This represents approximately .00002% of the total budget. The Union maintains based on the small amount in issue that these factors are not applicable in this proceeding. The County takes no position on their applicability. The Arbitrator finds given the minimal difference in costs that neither of these factors applies here.

External Comparables

The parties agree on the communities that make up the appropriate list of comparables. Arbitrator Rice set forth a list of comparables that has been followed by the Parties in the past² Those comparables are the Counties of Brown, Calumet, Dodge, Fond du Lac, Kewaunee, Outagamie, Ozaukee, Sheboygan and Washington. It also includes the Cities of Manitowoc and Two Rivers.

The Union to support its argument that there is a need for the Psychiatric Nurse to catch up to the wages paid to this same position in the comparable Counties offered the following exhibit:

| County | 2000 | 2006 |
|--------------------------------|----------------|----------------|
| Brown County [^] | - | \$27.70 |
| Calumet County | \$20.47 | \$27.14 |
| Dodge County | \$21.92 | \$27.17 |
| Fond du Lac County | \$20.32 | \$25.35 |
| Outagamie County | \$20.97 | \$25.28 |
| Ozaukee County | \$23.13 | \$28.53 |
| Sheboygan County | \$19.45 | \$22.97 |
| Washington County | \$20.98 | \$25.06 |
| | | |
| AVERAGE | \$21.03 | \$26.15 |
| | | |
| Manitowoc County (ER Offer) | \$21.01 | \$25.38 |
| Difference from Average | -\$0.02 | -\$0.78 |
| | | |
| Manitowoc County (UN Offer) | \$21.01 | \$26.15 |
| Difference from Average | -\$0.02 | \$0.00 |

The Union believes this exhibit demonstrates that the Psychiatric Nurse has fallen further and further behind the wages paid to those same nurses in the comparable jurisdictions.³

The Employer argues that even though the list is the correct one for this Unit, the use of all these Counties is not appropriate in this case. It points out that Brown County has a position of Psychiatric Nurse in its budget, but presently has no employee in that slot. In Calumet and Outagamie, this position is salaried and exempt from FLSA coverage. That means there is no overtime pay required. The position is not represented by a Union in Fond du Lac, Washington and Brown. It argues that none of these Counties should be

² Decision No. 27753 (Human Services, 1994)

³ No information was provided for the two Cities that were found to be appropriate comparables previously. They most likely do not have this position. Thus, they are not included here.

used in the comparison. If these Counties were excluded, the chart would look like this:

| <u>County</u> | <u>2000</u> | <u>2006</u> |
|----------------------|--------------|--------------|
| Dodge | 21.92 | 27.17 |
| Ozaukee | 23.13 | 28.53 |
| Sheboygan | 19.45 | 22.97 |
| Average | 21.50 | 26.22 |
| Manitowoc (Employer) | 21.01 | 25.38 |
| Difference | -.45 | -.84 |
| Manitowoc (Union) | 21.01 | 26.15 |
| Difference | -.45 | -.07 |

The Arbitrator agrees with the County that the inclusion of non-represented employees in a comparison is something that is rarely done. As it notes, usually the shoe is on the other foot and it is the Union that argues for exclusion on that basis. This Arbitrator has often agreed with Unions that including non-represented employers as comparables should not be done, as those employees did not have the benefit of collective bargaining. That argument holds true here as well. The fact that it is the Union that wants to include them does not change the rationale for exclusion. Therefore, Fond du Lac, Brown and Washington should not be included.

The Arbitrator also agrees that Brown County should be excluded for a second reason. The Union has argued for catch up based upon its argument that these employees are falling further and further behind their counterparts. The base year it is using is 2000. Brown did not have a position listed in that year. The employees in this County cannot argue that they have fallen further behind the employees in Brown County when there was no comparable position in the base year. Thus, it is improper to include Brown in the comparison for this additional reason.

That leaves the question as to whether to include Calumet and Outagamie.

Those employees are represented, but are exempt from overtime requirements.

If those two Counties were included, the chart would look as follows:

| <u>County</u> | <u>2000</u> | <u>2006</u> |
|----------------------|--------------|--------------|
| Calumet | 20.47 | 27.14 |
| Dodge | 21.92 | 27.17 |
| Outagamie | 20.97 | 25.28 |
| Ozaukee | 23.13 | 28.53 |
| Sheboygan | 19.45 | 22.97 |
| Average | 21.18 | 26.21 |
| Manitowoc (Employer) | 21.01 | 25.38 |
| Difference | -.15 | .83 |
| Manitowoc (Union) | 21.01 | 26.15 |
| Difference | -.15 | -.07 |

It is interesting that adding these two Counties did not significantly change the average in 2006 when using the County's proposed comparables. It was only a \$.01 difference. Using the Union list, it only changed it by \$.06.

The Arbitrator finds that this last chart is the one that best analyzes the wages in this County versus the wages paid the Psychiatric Nurse in the other Counties. While the two added Counties do pay this position a salary, they are represented employees and the wage was thus the product of negotiations. For that reason it is included. Based solely on this chart, it would appear as though the Union is correct that adopting the County proposal would put these employees wages in a worse position than they were six years earlier. Their rank would also fall from third to fourth if the County proposal were adopted.

The Employer contends that it is error to look just at the wages paid these employees without also looking at what they do. It notes there is little information as to what duties these nurses perform in the other jurisdictions. Are they doing the same or similar job? None of this is known it contends. It

notes with police, fire or public works it can be safely assumed that the duties are the same, but that is not true for this type of position.

While there may be some merit to the County argument, the Arbitrator will not exclude these comparisons from consideration. Any job can have some variations from locale to locale, but the nursing profession has certain basic similarities. There is common licensing. Like with physicians, nurses tend to specialize in particular areas of medicine. Those nurses that have chosen the psychiatric field to work have enough in common with other nurses who have also specialized in that area to warrant using them for comparison. Though there may be some differences in scope, the basics are sufficiently similar. The Arbitrator finds that based on the chart adopted by him that this comparison favors the Union's proposal.

Comparable Positions

The Union as noted above raised an additional reason why it believes an adjustment in the wages of this position is warranted. It contends the duties of the Psychiatric Nurse are closely related to the duties of the Social Worker with whom this nurse has extensive contact. The County conversely argues that the only internal rate that the wages in this position should be compared is that of the Public Health Nurse.

The job descriptions for both the Public Health Nurse and Psychiatric Nurse were placed into evidence. Amy Wargin is the Director of Nursing. She testified that the duties of the two positions are very similar. Each has its own area of specialty, but that their duties as a nurse are not substantially different. Both

work under the direction of a physician and dispense medication as directed by that physician. They both must evaluate patients.

The County also argues that a historic pattern has been created that ties the wage of the Psychiatric Nurse to that of the Public Health Nurse. It notes that the Union was first certified as representative of the Psychiatric Nurse in 1993. At that time the Union proposed that:

The wage rate for Psychiatric Nurse shall be the same as that of the Public Health Nurse...

The Union then set out the wage rate for the position. The County agreed to that wage. The County added two steps to the wage progression of the Public Health Nurse in 1998. This Union in its later negotiations proposed adding those same two steps to the progression of the Psychiatric Nurse. The Employer accepted that proposal.⁴ The Union did from time to time seek to obtain a higher wage for this position, but never followed through on that proposal. The County believes this history demonstrates that the proper position to which this position should be compared is that of the Public Health Nurse.

The Union acknowledges that history, but maintains that it never agreed that the wages of the two positions be tied together in perpetuity. There is no signed agreement between the Parties that tie them together. It emphasizes that it is the bargaining representative for the Psychiatric Nurse, not the Union that represents the Public Health Nurses. In 1993, the wage of the Psychiatric Nurse was lower than that of the Public Health Nurse and for that reason the Public Health Nurse wage was used to set the rate for this position. It contends

⁴ The Parties did go to Interest Arbitration that year, but on different issues.

that today that is no longer true as this Position has fallen relative to the wages of the Professionals with whom this Nurse deals. It as Bargaining Representative now wishes to negotiate what it believes is a more appropriate rate and it argues anything that happened in the past is not relevant.

The Union argues instead that the wages of this position should be compared with the wages paid to the Social Workers in this County. It had two witnesses testify that the Psychiatric Nurse works closely as part of a Community Support Team with Social Workers and that their duties are very similar. The Union offered wage comparisons to show the relative wage of the Social Workers in other jurisdictions to that of the Psychiatric Nurse. It also showed how the Social Workers in this County are at the top when comparing them with the other jurisdictions, whereas the Psychiatric Nurse is not. All of this it contends supports its proposal.

The Arbitrator using the same jurisdictions that he found appropriate earlier has tailored his own chart. The chart shows the wages paid to social workers elsewhere. It then compares those wages to the wages paid social workers in this County. Finally, it shows how those wages compare with the wages paid the Psychiatric Nurse in this County were the Arbitrator to agree with the Union position.

| <u>County</u> | <u>2000</u> | <u>2006</u> |
|----------------------------|--------------|--------------|
| Calumet | 20.48 | 25.10 |
| Dodge | 20.44 | 25.10 |
| Outagamie | 20.27 | 24.44 |
| Ozaukee | 19.26 | 23.81 |
| Sheboygan | 21.95 | 26.03 |
| Average | 20.48 | 24.90 |
| Manitowoc (Social Worker) | 22.10 | 26.70 |
| Difference from Average | +1.57 | +1.80 |
| Manitowoc-PSY N (Employer) | 21.01 | 25.38 |
| Difference from Average | +.53 | +.48 |
| Manitowoc-PSY N (Union) | 21.01 | 26,15 |
| Difference | +.53 | +1.35 |

It is interesting that while the social workers in this County fare better than their counterparts in the other jurisdictions, this position is still ahead of the social workers elsewhere under either Party's proposal. They only fall from \$.53 ahead to \$.48 ahead under the County proposal and it goes up to \$1.35 under the Union's. Thus, they are almost exactly where they were in 2000 under the County proposal, but would jump significantly under the Union's. What justification is there for this jump in differential? There is no indication that anything has changed since the Parties voluntarily agreed to this differential, intentionally or not, back in 2000.

It is true that the Social Workers here make more than the Psychiatric Nurse in this County. What is interesting is that the wage relationship between the Social Worker and Psychiatric Nurse varies from locale to locale. The social worker makes more than the nurse only in Sheboygan. In all the other locations on this Arbitrator's list, the nurse makes more. This dichotomy also diminishes the strength of the Union argument that because the Social Workers here are at the top of the comparables, the Psychiatric Nurse also should be. That simply does not hold true when the wages paid to the two

positions in each of these other communities is reviewed. There is no set pattern that merits also putting this nurse at the top.

The Arbitrator further finds that the past history does play a part here. The Union is correct that it is not bound forever to its initial desire to tie the Psychiatric Nurse wage to the Public Health Nurse wage. However, it needs to show that something has changed that justifies changing this past relationship. The Arbitrator from a review of the charts above cannot find that justification. The duties of the Psychiatric Nurse have not changed vis-a-vis the Public Health Nurse. There is no indication that any differences in duties between the two positions is more or less than it was in 1993 when the two were first tied together. While the Social Workers in this County are at the top of the comparables and the Psychiatric Nurse is not, that is no different than what existed in past years. Where then is the justification? The Arbitrator cannot find one.

Internal Comparables

The other bargaining units also accepted the same 3% wage increase the Parties agreed to here. There is no indication that any positions in the other bargaining units received any increases over and above those given here. Thus, the County offer is in keeping with the pattern established in the other units.

Conclusion

The Arbitrator found that the external comparables when comparing just this position's wages favored the Union. The external comparables using other positions that each party felt were similar favors the County. The internal comparables also favored the County proposal. Past history strongly favors the

County. When weighing these factors, the Arbitrator finds that the County proposal is favored. It better maintains the status quo than does the Union's and there has not been shown sufficient justification to change that status.

AWARD

The County proposal together with all tentative agreements shall be adopted as the Agreement of the Parties.

Dated: November 20, 2008

Fredric R. Dichter,
Arbitrator