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STATE OF WISCONSIN  
MEDIATION/ARBITRATION AWARD

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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In the Matter of the Mediation/Arbitration  
between

FOND DU LAC COUNTY

and

FOND DU LAC COUNTY MENTAL HEALTH CENTER AND  
ROLLING MEADOWS EMPLOYEES, LOCAL 1366A,  
AFSCME, AFL-CIO  
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Re: Case LIV  
No. 24230  
MED/ARB-338  
Decision No. 16952

Appearances

For the Employer, Fond du Lac County, Mr. Richard Celichowski, Administrative Assistant, Office of the County Administrator, County Courthouse, Fond du Lac, Wisconsin 54935.

For the Union, Mr. James L. Koch, Staff Representative, Wisconsin Council of County and Municipal Employees, Council #40, 53 North Park Avenue, Fond du Lac, Wisconsin 54935.

Background

The Union represents two units of hourly employees of Fond du Lac County at Rolling Meadows Home and the Mental Health Center. The two units bargain together. Their most recent collective bargaining agreement expired by its terms on December 31, 1978. Bargaining for a renewal of that agreement commenced in October, 1978. After several negotiations sessions the parties met with Douglas Knudson of the Wisconsin Employment Relations Commission staff on January 15. The Union filed a petition for mediation/arbitration on March 2. Mr. Knudson held another mediation session on March 27. Following the latter session the Commission certified on April 6 that conditions precedent for the initiation of mediation/arbitration had been met and ordered the parties to select a mediator/arbitrator. The undersigned was notified of his appointment on April 19. Thereupon a date for mediation/arbitration was set for May 22. The undersigned met with the parties on that date at the Fond du Lac County Courthouse. At the conclusion of about two hours of mediation the parties executed a stipulation waiving notice of hearing and agreeing to proceed directly to an arbitration hearing. The hearing was held on the afternoon of May 22. The parties presented evidence from witnesses and in documentary form. There was no record kept other than the mediator/arbitrator's own notes. At the conclusion of the May 22 session the parties agreed to exchange briefs. The briefs were exchanged on June 28. On July 6 the Employer filed a reply brief in accordance with the understanding reached at the hearing. The Union did not file a reply brief.

THE ISSUE

This is a final offer selection proceeding. The issue is very narrow. The Union's final offer is for the following set of wage increases: Probationary employees, \$.24 per hour; Step I employees, \$.28 per hour; Step II employees, \$.32 per hour. The Employer's final offer is for the following set of wage increases: Probationary employees, \$.36 per hour; Step I employees, \$.28 per hour; Step II employees, \$.26 per hour.

The probationary period is six months and the Step I period is one year. Thus the Union would raise rates for new employees by \$.24 per hour and for employees in the top step, after eighteen months, by \$.32 per hour. The Employer would raise rates for new employees by \$.36 per hour and for employees in the top step by \$.26 per hour. Both offers would raise rates by \$.28 for employees in Step I.

Findings of Fact

The job classifications in the two units are similar but not identical. The rates for the same job classifications in the two units are the same in some cases and different in others. For instance, Cooks in both units have the same rates: \$3.11, \$3.57, and \$4.19 in the three levels described above. Food Service Workers also have the same rates at \$2.93, \$3.36, and \$3.95. On the other hand, Building Maintenance Mechanic I at Rolling Meadows gets \$3.29, \$3.78, and \$4.43 while the same classification at the Mental Health Center gets \$3.79, \$4.34, and \$5.09.

The Union stated in its brief that there were 132 employees in the two units. The two collective bargaining agreements define members of the unit as regular full-time and regular part-time employees. Elsewhere in the agreements regular part-time employees are defined as those regularly scheduled to work less than 40 but not less than 20 hours per week. Part-time employees (excluded from the unit) are defined as those employees working less than 20 hours per week. An actual count of employees from the Employer's payroll exhibit for the March 2 to 15, 1979 period indicates that there were 105 regular full-time and regular part-time employees at Rolling Meadows and 64 regular full-time and regular part-time employees at the Mental Health Center. On that payroll there were 36 employees who appeared to be scheduled for less than 20 hours per week and who would therefore be outside the unit. Thus there appeared to be 169 employees in the two units in March, 1979. Of that number 126 (75 per cent) were Nurses Aides, Nursing Assistants, and L.P.N.s.

If we adopt the Employer's characterization of the overwhelming importance of these classifications in considering the impact of the final proposals, we can show percentage effects as follows:

<u>Classifications</u>	<u>Prob. Rate</u>	<u>Rolling Meadows</u>		<u>Empl. Proposal and Percentage</u>
		<u>Step II</u>	<u>Union Proposal and Percentage</u>	
Nurses Aide	\$2.91		\$.24 - 8.2%	\$.36 - 12.4%
		\$4.20	.32 - 7.6	.26 - 6.2
L.P.N.	3.65		.24 - 6.6	.36 - 9.9
		4.91	.32 - 6.5	.26 - 5.3

Mental Health Center

<u>Classifications</u>	<u>Prob. Rate</u>	<u>Step II</u>	<u>Union Proposal and Percentage</u>	<u>Empl. Proposal and Percentage</u>
Nursing Asst.	\$3.03	\$4.34	\$.24 - 7.9% .32 - 7.4	\$.36 - 11.9% .26 - 6.0
L.P.N.	3.68	4.95	.24 - 6.5 .32 - 6.5	.36 - 9.9 .26 - 5.3

It is also possible by using the Employer's payroll data to calculate the average hourly wage for all employees (including part-time employees not in the unit) who are at the probationary rate and all who are at the top step. A table showing the same calculations as those above follows:

Rolling Meadows

<u>Classifications</u>	<u>Average, All Employees at Prob. Rate</u>	<u>Average, All Employees at Step II</u>	<u>Union Proposal and Percentage</u>	<u>Empl. Proposal and Percentage</u>
All	\$3.02	\$4.29	\$.24 - 7.9% .32 - 7.5	\$.36 - 11.9% .26 - 6.1

Mental Health Center

All	3.15	4.48	.24 - 7.6 .32 - 7.1	.36 - 11.1 .26 - 5.8
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It is also possible, using the Employer's data from the March 2 to 15, 1979 payroll, to count the numbers of employees who are at each step. The following table shows those figures:

Rolling Meadows

Full-Time and Regular Part-Time Employees  
(Part-time in Parentheses)

<u>Classifications</u>	<u>Probationary Step</u>	<u>Step I</u>	<u>Step II</u>
Activity Therapy Aide (Cert.)			1
Activity Therapy Aide (Uncert.)			1
Bldg. Maintenance Mech. I		1	1
Bldg. Maintenance Mech. II			2
Cook	2	1	2 (2)
Domestic Service Worker			4
Food Service Worker	3 (5)		5
L.P.N.	2 (1)	3	8 (3)
Nurses Aide	12 (7)	18 (2)	36 (3)
Nurses Aide - Soc. Services Aide	1		1
Supervisor of Housekeeping Serv.			1
	<u>Subtotals</u>	<u>23 (2)</u>	<u>62 (8)</u>

Mental Health Center

Bldg. Maintenance Mech. I	1
Bldg. Maintenance Mech. II	1
Cook	5

Domestic Service Worker	1	2	1
Housekeeping Services Lead Person	1		
Food Service Worker		1	3
L.P.N.	3 (3)	2	7
Graduate Practical Nurse	(1)		
Linen Supply Clerk			
Storekeeper			
Utility Worker			1
Nursing Assistant	15 (6)	9 (2)	11 (1)
Subtotals	<u>20 (10)</u>	<u>14 (2)</u>	<u>30 (1)</u>
Grand totals	40 (23)	37 (4)	92 (9)

Sixty-two members of the unit are eligible for longevity payments, for which employees qualify after two full years of service. Two of the part-time employees also qualify for longevity payments.

The Employer estimates the difference in annual cost between the two final offers to be \$2,220.66.

#### The Union Position

At the hearing the Union introduced 99 exhibits to support its position. Some 79 of the exhibits showed settlements in nearby counties, communities, and school systems. Six exhibits showed increases in the Consumer Price Index through the past several years. These data indicated that the cost-of-living had increased by about 9.5 per cent during the one year period of the expired contract, using the national CPI as a measure.

A great many of the Union's exhibits represented conditions for classifications in various labor grades in general city and county and educational units. Although some of these classifications were comparable to some of the classifications in these units, most of them were not comparable and are hereby ruled irrelevant to this proceeding. Those exhibits that are considered irrelevant are numbers 9 through 23 and 38 to 88. Those considered to be relevant were numbers 1 through 8, which covered general matters and Consumer Price Index data, and numbers 24 through 37, which showed rates for institution employees in nearby counties and some past history of rates for these two units. Also considered relevant were numbers 89 through 99, which showed payroll and wage rate data for these collective bargaining units.

The following table shows comparisons for several adjoining counties for the classifications of Nursing Aide and L.P.N. Unfortunately the data for Sheboygan County was not provided in sufficient detail to be used. (See page 5)

These data were used by the Union to show that other counties had raised top rates by 29 to 40 cents per hour and had increased starting rates by similar amounts in Winnebago, Outagamie and Manitowoc Counties but by substantially lesser amounts in Dodge County.

The general position of the Union is that it is unprecedented and unfair to employees at the top step to receive smaller cents per hour increases than new employees, that because

Comparative Wage Rat Data for Four Nearby and Adjoining Counties

<u>Classification</u>		<u>Dodge County<sup>1</sup> Clearview</u>	<u>Dodge Co. Mental Health Center</u>	<u>Winnebago<sup>3</sup> County</u>	<u>Outagamie<sup>4</sup> County</u>	<u>Manitowoc<sup>5</sup> County</u>
<u>Nursing Assistant</u>						
<u>1978 rate</u>	Start	\$3.93 <sup>2</sup>	\$3.74	\$3.85	\$3.76	\$3.92
	Top	4.31	4.22	4.67	4.37	4.27
<u>1979 rate</u>	Start	3.93	3.84	4.15	4.05	4.22
	Top	4.70	4.59	4.97	4.66	4.57
<u>1978-79 Increase</u>						
	Start	0	.10	.30	.29	.30
	Top	.39	.37	.30	.29	.30
<u>L.P.N.</u>						
<u>1978 rate</u>	Start	4.25	4.11	4.02	4.06	4.35
	Top	4.73	4.63	4.96	4.69	4.75
<u>1979 rate</u>	Start	4.25	4.19	4.32	4.35	4.75
	Top	5.11	4.98	5.26	4.98	5.15
<u>1978-79 Increase</u>						
	Start	0	.08	.30	.29	.40
	Top	.38	.35	.30	.29	.40

1. 37½ hour week; 28 month progression
2. Classification designated as "Attendant (Med.)"
3. Appears to be 4½ years progression
4. Three years progression
5. One year progression

of their long service these employees should be treated more favorably than new employees. The Union argues that earlier settlements, where the probationary employees received little or no increases, had been favored by the Employer and that the Employer had little standing to insist now that experienced employees should suffer as a consequence of earlier settlements.

The Employer's Position

The Employer also introduced the statistics in the table above showing comparisons for nearby counties. The Employer emphasizes that all comparisons in the table indicate that the starting rates in these units for both nursing assistants and L.P.N.s are low by amounts varying from as much as \$1.02 for nursing assistants down to \$.34 for the L.P.N. classification.

The Employer introduced several tables showing the history of these rates over the past four years. This record indicates that the top rates have increased at a rate comparable to increases of other County employees and other employees with which comparisons are made but that probationary rates have not kept pace with those increases. Consequently the Employer argues that it has been difficult to recruit new employees. In answer to the Union's assertion that the Employer has been responsible for the disparity in increases, the Employer points out that those earlier settlements were negotiated with this same union and were therefore not unilaterally determined.

To buttress its position on the issue of difficulty in recruiting, the Employer set forth comparative wage rate data for nursing homes and hospitals in the City of Fond du Lac. These generally showed that probationary rates for L.P.N.s in this bargaining unit were lagging behind the beginning rates for other L.P.N.s employed in the area. These comparisons are shown in the following table, which was introduced by the Employer at the hearing.

1979 WAGE COMPARISON HOSPITAL AND NURSING HOMES  
IN THE CITY OF FOND DU LAC

NURSES AIDES

<u>MINIMUM</u>		<u>MAXIMUM</u>	
Maple Manor	\$2.90	Care Center	\$3.30
Grancare	2.90	Grancare	3.40
Lutheran Home	3.05	St. Francis	3.60
Care Center	3.05	Maple Manor	3.92
St. Francis	3.15	Lutheran Home	4.04
<u>Rolling Meadows (Union)</u>	3.18	St. Agnes	4.09
<u>Mental Health Center</u>		<u>Rolling Meadows (County)</u>	4.51
<u>(Union)</u>	3.27	<u>Rolling Meadows (Union)</u>	4.57
<u>Rolling Meadows County)</u>	3.30	<u>Mental Health Center</u>	
St. Agnes	3.31	<u>(County)</u>	4.60
<u>Mental Health Center</u>		<u>Mental Health Center</u>	
<u>(County)</u>	3.39	<u>(Union)</u>	4.66

L.P.N.

<u>MINIMUM</u>		<u>MAXIMUM</u>	
<u>Rolling Meadows (Union)</u>	3.89	Care Center	4.55
<u>Mental Health Center</u>	3.92	St. Francis	4.70
<u>(Union)</u>			
<u>Rolling Meadows (County)</u>	4.01	Grancare	4.75

<u>Mental Health Center</u>	4.04	<u>Rolling Meadows (County)</u>	5.17
(County)			
St. Francis	4.05	Lutheran Home	5.20
Maple Manor	4.20	<u>Mental Health Center</u>	
		(County)	5.21
Lutheran Home	4.20	<u>Rolling Meadows (Union)</u>	5.23
Grancare	4.25	<u>Mental Health Center</u>	
		(Union)	5.27
Care Center	4.25	St. Agnes	5.29
St. Agnes	4.27	Maple Manor	5.60

While the Employer views the rates for similar institutions in surrounding counties to be important, it is argued that the labor market for health care employees of this type is a narrow one and that the greatest labor market competition in recruitment of employees is from other health care institutions in the City of Fond du Lac.

The Employer also argued that pay ranges in these units are broader than those in comparable institutions and that adoption of the Union's proposal would broaden them further. The following tables were introduced to show pay ranges.

COMPARISONS OF SIZE OF PAY RANGE AND PERCENTAGE OF MINIMUM TO MAXIMUM

NURSES AIDES

<u>Surrounding Counties</u>	<u>Minimum</u>	<u>Maximum</u>	<u>%Min/Max</u>	<u>Size of Pay Range</u>
Dodge Co. (NH)	\$3.746	\$4.511	83.0%	\$ .765
Winnebago Co.	4.15	4.97	83.5	.82
Dodge Co. (MHC)	3.836	4.586	83.6	.75
Outagamie Co.	4.05	4.66	86.9	.61
Manitowoc Co. (1-1)	4.22	4.57	92.3	.35
Manitowoc Co. (7-1)	4.27	4.62	92.4	.35
Sheboygan Co.	4.44	4.44	100.0	--
<u>City of Fond du Lac</u>				
Maple Manor	\$2.90	\$3.92	74.0%	\$1.02
Lutheran Home	3.05	4.04	75.5	.99
St. Agnes	3.31	4.09	80.9	.78
Grancare	2.90	3.40	85.3	.50
St. Francis	3.15	3.60	87.5	.45
Care Center	3.05	3.30	92.4	.25
<u>Union Final Offer</u>				
Mental Health Center	\$3.27	\$4.66	70.2%	\$1.39
Rolling Meadows	3.18	4.57	69.6	1.39
<u>County Final Offer</u>				
Mental Health Center	\$3.39	\$4.60	73.7%	\$1.21
Rolling Meadows	3.30	4.51	73.2	1.21
L.P.N.				
<u>Surrounding Counties</u>				
Winnebago C.	\$4.32	\$5.26	82.1%	\$ .94
Dodge Co. (NH)	4.253	5.110	83.2	.857
Dodge Co. (MHC)	4.194	4.979	84.2	.785
Outagamie Co.	4.35	4.98	87.3	.63
Manitowoc (1-1)	4.75	5.15	92.2	.40
Manitowoc (7-1)	4.80	5.20	92.3	.40
Sheboygan	4.90	4.90	100.0	--

<u>City of Fond du Lac</u>	<u>Minimum</u>	<u>Maximum</u>	<u>%Min/Max</u>	<u>Size of Pay Range</u>
Maple Manor	\$4.20	\$5.60	75.0%	\$1.40
St. Agnes	4.27	5.29	80.7	1.02
Lutheran Home	4.20	5.20	80.8	1.00
St. Francis	4.05	4.70	86.2	.65
Grancare	4.25	4.75	89.5	.50
Care Center	4.25	4.55	93.4	.30

Union Final Offer

Mental Health Center	\$3.92	\$5.27	74.4%	\$1.35
Rolling Meadows	3.89	5.23	74.4	1.34

County Final Offer

Mental Health Center	\$4.04	\$5.21	77.5%	\$1.17
Rolling Meadows	4.01	5.17	77.6	1.16

Opinion

The comparative rates introduced by both parties appear to confirm the arguments of the Employer that the starting rates are low for the key classification of L.P.N. when compared with adjoining or nearby counties and with health care institutions in the City of Fond du Lac. The starting rates for Nursing Assistants are also low when compared with rates for that classification in the county institutions. They are not low, however, when compared with rates in that classification in Fond du Lac health care institutions.

It seems likely that the labor market for higher paid classifications is broader geographically than it is for lower paid classifications. It is also quite likely that the Employer is not experiencing difficulty in the recruitment of nursing aides, at least as such recruitment efforts may be influenced by starting rates offered by other Fond du Lac health care institutions. The disparities between the nursing aides starting rates of the Employer and those of Winnebago, Sheboygan, Dodge, Manitowoc, and Outagamie Counties are probably less significant. In any case, these disparities are so great at the starting level that a difference of \$.12 per hour, between the amounts in the two final offers, might not have much effect. In my opinion there is not a strong case for a larger than average increase in the probationary rates for the classifications of Nurses Aid and Nursing Assistant in these two units.

The starting rates for the L.P.N. classification is more troublesome. If the Union's final offer is selected in this proceeding, the starting rates for the L.P.N. classification in these units would be anywhere from 30 to 86 cents lower than the starting rates in the adjoining and nearby counties. But if the Employer offer is selected, those rates would still be from 18 to 74 cents per hour lower (not using Sheboygan figures).

It is regrettable that so little information was introduced by the parties regarding progression periods. In three of the comparable county institutions the progression period is substantially longer than in these units. Thus L.P.N.s of this Employer reach their top rates faster than L.P.N.s in Dodge, Outagamie, and Winnebago Counties. In Manitowoc County, although L.P.N.s reach the top rate in only one year, that rate is substantially lower than the top rate in Fond du Lac County.



Unfortunately there was no information on wage progression introduced for the City of Fond du Lac health care institutions. The disparities at the starting rates for L.P.N.s would be from 16 to 38 cents if the Union's proposal is adopted and 4 to 26 cents if the Employer's offer is adopted. St. Francis, Grancare, and Care Center, however, have very small spreads between beginning and top rates; and their top rates are substantially below what top rates will be in these units, no matter which final offer is selected.

Let us now look at the factors expressed in the statute that a mediator/arbitrator is instructed to consider in 111.70 (4) (cm)7. The lawful authority of the employer in 7.a. and stipulations of the parties in 7.b. are not relevant in this proceeding. Nor is ability-to-pay in 7.c., although "interests and welfare of the public" must be considered throughout.

As to "comparison of wages, hours and conditions of employment" in 7.d., I have adopted the convention of the Employer, which uses the rates for Nursing Assistants, Nurses Aides and L.P.N.s as representative of all classifications. In comparison with rates for these classifications in other counties, the larger increase proposed by the Employer at the probationary level is preferable. It is also preferable for the L.P.N. classification when compared with the rates for that classification in City of Fond du Lac health care institutions. On the other hand it should be noted that neither final offer would bring these L.P.N. probationary rates up to the level of other county and Fond du Lac health care institutions.

As to 7.e., "cost-of-living," it is necessary to note that more than half of the members of the unit are at the top step of their classifications and that fewer than a quarter of the employees in the units are at the probationary step. Thus only 40 out of 169 employees would be relatively advantaged by adoption of the Employer's final offer. While this may not be an important consideration in terms of the comparability factor, it is important in terms of cost-of-living, since adoption of the Employer's offer would yield percentage increases to longer service employees of 5.3 to 6.2 per cent, which is less than the 9.5 per cent increase in the Consumer Price Index for the year 1978. Although the Union proposal would yield increases of only 6.5 to 7.6 per cent for the employees at the top rates, this is better in terms of helping to meet increases in the cost-of-living.

This same consideration is important in terms of 7.f., "overall compensation," and 7.g., "changes in . . . circumstances during the pendency of the arbitration proceedings." Here the data introduced by the Employer indicated that its final offer would accord closely with settlements made since bargaining in these units commenced. A considerable amount of information was adduced showing improvements in insurance and pension benefits for all Fond du Lac County employees. Another way to look at overall compensation, however, is in terms of how numbers in the unit are to be affected. In these terms I am disturbed by the prospects of the majority of the employees under consideration here, those with the longest service and the most invested in their jobs, getting increases that in percentage terms are substantially less than increases granted to the minority of employees who have far less service in their jobs and less consequent commitment to this Employer.

This latter circumstance must also be considered under 7.h., "other factors . . . normally or traditionally taken into consideration. . ." In my opinion it would be injurious to the morale and to the welfare of the majority of employees if the Employer's final offer were adopted.

I agree with the Employer that the wage structure in these units is in need of changes and that beginning rates must be increased, especially for L.P.N.s. In my opinion very little of this would be accomplished by adopting the Employer's final offer. If it were adopted, however, it seems quite likely that the consequences for employee morale would be worse than the benefits to be derived from a small increase in probationary rates relative to the rates paid by other employers who compete with this Employer for workers. I suggest that the parties ought to discuss a specific increase in L.P.N. probationary rates in the next bargaining.

On balance, after consideration of all the factors to which I am obliged to give weight in making this award, I do not believe that probationary rates in these units should be raised in the manner proposed by the Employer at the expense of the majority of employees in these units.

AWARD

The Union's final offer is adopted as the award in this proceeding.

Dated: July 31, 1979  
at Madison, Wisconsin

Signed: 

David B. Johnson  
Mediator/Arbitrator  
appointed by the Wisconsin  
Employment Relations  
Commission