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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of Final and Binding Arbitration Between	:	
WISCONSIN NURSES ASSOCIATION, INC. Union	:	AWARD
and	:	CASE XLIII No. 24801 MED/ARB-449 Decision No. 17372-A
RACINE COUNTY (HIGH RIDGE HOSPITAL) Employer	:	

I. HEARING. A hearing in the above entitled matter was held on April 23, 1980, beginning at 2:30 p.m. at the Racine County Office Building, Racine, Wisconsin.

II. APPEARANCES.

WILLIAM HAUS, Attorney, KELLY AND HAUS,
appeared for the Association

WILLIAM R. HALSEY, Deputy Corporation Counsel, County of Racine,
appeared for the Employer

III. NATURE OF THE PROCEEDINGS. This is a matter of final and binding arbitration after mediation under Section 111.70 of the Municipal Employment Relations Act of the State of Wisconsin. The parties had a collective bargaining agreement which expired on December 31, 1978. On February 22, 1979, the parties exchanged initial proposals, and met six times prior to June 25, 1979. On that date the Association filed a petition with the Commission requesting mediation-arbitration pursuant to Section 111.70 (4) (cm) of the MER Act. On October 15, 1979, Mr. Amadeo Greco, a member of the Wisconsin Employment Relations Commission, conducted an investigation and found the parties deadlocked. The Commission concluded on October 29, 1979, that the parties were at an impasse, certified that conditions precedent to mediation-arbitration as required by the statute existed, and ordered mediation-arbitration. On November 14, 1979, the Commission appointed Frank P. Zeidler, Milwaukee, Wisconsin, as mediator-arbitrator. The parties thereafter sought to resolve the matter, and finally arranged for mediation-arbitration to commence on April 23, 1980. On this day, the arbitrator, after conducting a mediation for a reasonable period of time, concluded that the parties remained at impasse. Arbitration commenced on the same day. Briefs were filed and exchanged through the arbitrator on May 15, 1980.

The agreement here is for a period from January 1, 1979, to December 31, 1980.

IV. FINAL OFFERS

A. Association Offer

It shall be a condition of employment that all employees of the Employer covered by this agreement who are members of the certified representative in good standing and those who are not members on the effective date of the agreement shall, on the thirtieth day following the execution date of the agreement become and remain members in good standing in the organization. It shall also be a condition of employment that all employees covered by this agreement and hired on or after its execution date shall, on the thirtieth day following the beginning of such employment become and remain members in good standing of the bargaining representative. Nurses who for philosophical reasons do not desire to become members of the representative shall pay an agency fee equal to the amount of dues normally paid by members to the representative.

B. Employer Offer

Maintain the present contractual Article XXIX-Dues Check-off and Maintenance of Membership.

"Article XXIX

"DUES CHECK-OFF AND MAINTENANCE OF MEMBERSHIP

"The County shall deduct the membership dues of the Association from the salary of any nurse who executes the authorization form agreed upon by the County and the Association. Such dues shall be deducted from the first check each month in an amount certified by the Treasurer of the Association. Withheld amounts shall be forwarded to the designated Association office within ten (10) days following the actual withholding, together with a record of the amount and the names of those nurses for whom such deductions have been made. Automatic renewal of such authorizations will be made, unless written notice of the revocation is given to the County by the nurse prior to the start of any new contract year.

"Any nurse represented by the Association, who paid dues to the Association, at any time on or after January 1, 1975, during these contract years, shall continue to pay dues to the Association or an amount equivalent thereto, as a condition of employment during the term of this Agreement.

"The Association agrees to indemnify and hold the County harmless from any and all claims, demands, suits or other forms of liability that may arise out of the County's compliance with the provisions of this article."

V. FACTORS TO BE CONSIDERED.

Section 111.70 (4) (cm) 7 is as follows:

7. "Factors considered." In making any decision under the arbitration procedures authorized by this subsection, the mediator-arbitrator shall give weight to the following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and the welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in the public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.
- e. The average consumer prices for goods and services, commonly known as the cost-of-living.
- f. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Those factors which are appropriate to this matter will be given consideration specially here.

VI. INSTITUTION STATUS. The High Ridge Health Care Center is a public health facility operated by Racine County to provide for geriatric patients and patients with chronic mental and physical disability. It provides skilled care for those patients requiring it. It consists of three buildings with nine units, and at the time of the hearing had from 420-428 patients, a figure down from the 600 patients in 1968. The facility operates on a 24 hour basis, seven days a week. It has about 31 or 32 persons in the category of Registered Nurse, represented by the Wisconsin Nurses Association. It has another bargaining unit, Local 310, AFSCME, AFL-CIO, which represents from 300-325 people.

In the registered nursing staff there are 19 full-time employees, 12 part-time employees with regular part-time assignments, and 11 nurses "on call", that is with irregular part-time assignments. Call-ins who work more than 600 hours per year can get fringe benefits, but many do not work such a number of hours during the year.

There have been bargained agreements between the parties since 1966. However at the end of 1980 the Wisconsin Nurses Association will not be the representative agency. The local union of the nurses holds that nevertheless it will qualify to continue as the bargaining representative of the nurses at the institution. The local union is considering another affiliation.

Prior to the current negotiations, irregular part-time nurses were not in the bargaining unit. The parties have reached stipulations and agreements on all other points except the issue of Fair Share. The stipulations include a change in Article I, the Recognition clause, in which the County recognizes the Association as the exclusive collective bargaining representative for all registered nurses, including all part-time nurses, but excluding the Director of Nursing Service. This means that the irregularly scheduled nurses, the on-call nurses, will be in the bargaining unit.

VII. LAWFUL AUTHORITY OF THE EMPLOYER. There is no issue here on the lawful authority of the Employer to implement either offer.

VIII. STIPULATIONS OF THE PARTIES. It has been noted that the parties have stipulated to all other issues, and the remaining issue is that of Fair Share. The Association through testimony and its brief noted that out of 16 Employer proposals, the Association agreed to all but three; but out of some twenty Association proposals, only six were accepted. The Association notes that the County has not implemented any of the agreed upon articles except that of a COLA provision, and in effect the County has frozen wages for a year and a half. The Association argues

that these conditions and what it considers foot-dragging by the Employer in the bargaining process, gives the Association cause for concern about the Employer's purposes and about future bargaining relationships after the WNA is no longer the representative for the unit.

Discussion. The arbitrator finds in the stipulations of the parties no significant weight to be accorded to either party. The implied argument of the Association that it yielded on more issues than the Employer is not of sufficient weight to decide the issue of Fair Share, which depends more heavily on other factors which will be considered hereafter.

IX. FINANCIAL ABILITY OF THE UNIT OF GOVERNMENT. There is no issue here on the ability of the Employer to meet the costs of the settlement.

X. INTERESTS AND WELFARE OF THE PUBLIC.

A. The Employer's Position. An important issue for the Employer in this matter is in the area of the interests and welfare of the public. The concern relates to the matter of whether the Association represents a majority of the people to be represented, including irregularly scheduled part-time people. Another concern of the Employer is that part-time employees, whether regular or on-call, will have to pay full dues. A third concern is that if the part-time and on-call employees have to pay dues, then this might interfere with recruitment. It is the County's contention that nurses are not organized in the area, that there is a shortage of nurses and that therefore nurses will find it more attractive to work elsewhere, where Fair Share does not exist.

The Employer notes that the final offer of the Association would require all employees of the Employer covered by this agreement to pay Union dues. Although the Union representative says that this language would not require the call-in nurses to pay such dues, the formal language would require it, and no exception is written into the offer so that the County would be bound to treat all nurses alike.

The County is further concerned that if at the end of the year the WNA no longer represents the unit, a successor organization like the Illinois Nurses Association will require full membership of all nurses, including part-time nurses.

To force the 24 part-time positions to pay mandatory dues could very well present problems in filling vacancies, since there are employers of nurses in the area who do not have organizations, and the demand for nurses is very high, and they pay substantially the same salaries and fringe benefits.

The County also argues that there is a doubt that the Association represents a majority of the members if all the on-call nurses are included. From its own records of dues check-off, the County believes that a majority are not dues paying members.

B. The Association's Position. The Association representative, Ms. June Wattke, states that during the negotiations in October, 1979, there was no provision for nurses to pay dues for part-time employment. At the time of the negotiations for this agreement, there was a requirement of the WNA for full dues for full-time work; half dues for full-time students or unemployed nurses; one-quarter dues to retired nurses or those over 62 and a gratis membership for persons with over 25 years membership in the Association. In October 1979 the House of Delegates of the WNA, representing 21 districts and the State board and officers, adopted a dues system in which full-time employees pay a full membership dues of \$131; part-time employees pay an \$86 membership fee; students or unemployed nurses pay \$65, and associates pay \$32.50. The representative states that this information was given to the Employer on the telephone early in 1980 while the parties were still trying to settle the issue.

The Association also states that it does not intend to assess dues or Fair Share against the on-call employees, because it does not consider them regular employees, and they are not listed as persons holding a "position" under the number of positions set by the County Board for the Center.

The Association argues that out of six grievances it has processed in the recent history of the contract, three of these have been on behalf of non-dues paying members. One such grievant continues in employment. It holds that it is unjust that these persons get a "free ride".

Concerning the position of the County that Fair Share would increase recruitment problems, there is absolutely no evidence to support this, and is in essence based on Employer speculation.

Concerning the matter of payment by part-time employees of dues, the Association has a dues schedule for payment of 50% dues equivalents by part-time employees working half-time or less.

Concerning the question of how many people the Association represents, the Association points out that it offered to decide the issue on the basis of a referendum, and the County did not accept. The Association also asserts that the challenge to the majority status has only occurred in this matter, and was never challenged or questioned

during five other contract negotiations. The Association points to the fact that the employees have gone without a pay raise while the issue of Fair Share has been in dispute. The willingness of the employees to do this indicates their support of the bargaining unit.

The Association contends that the real opposition of the County is a philosophical opposition to Fair Share which it has expressed over the years in negotiation. The issues which the County has raised on Fair Share are only surrogate issues. The Association contends that there is a clear trend in labor relations toward Fair Share, and it is consistent with majority rule. The Association cites the decision of Arbitrator Stern in MANITOWOC PUBLIC SCHOOL DISTRICT, WERC Case XVII, No. 22639, MED/ARB-46, Dec. No. 16227-A in support of its position.

C. Discussion. With respect to the number of employees in the bargaining unit, the representative of the Association contended in the hearing that it did not want to show the County the names of all the members in addition to those who pay dues on a check-off, because some of the members did not want to be known. It was agreed that this arbitrator would look at certain Association documents to ascertain the membership after the hearing. From documents supplied by the Association, the arbitrator believes that 15 of the 19 full-time nurses pay dues, 7 of the 11 part-time nurses pay dues and 2 of the on-call nurses are members of the Association. Thus it appears that the Association represents the majority of the nurses in the interim before contract conclusion, and it will also represent most of them if the new agreement is approved with the Association provision which includes the on-call nurses also.

As to whether the County would have to assess all nurses in the bargaining unit full dues under the contract, the matter hinges on the dues system of the Association and on the language of the contract. The testimony of the Association is that there is now a dues system in operation in which part-time nurses will pay an \$86 fee as compared to a \$131 fee for full-time employees. The Association also says that it told the County it would not require dues of on-call nurses, since they were not in positions numbered by the County Board, and the Association would not require payments until they worked a substantial number of hours.

In light of this information one must then look at the proposed language of the Association for Fair Share. The Association offer states that all employees of the County covered by the agreement shall become and remain members in good standing in the Association. The language does not describe what membership in good standing is, but an assumption can be made that an essential basis of such good standing is that the members will pay the required dues. If there is a dues schedule that requires less than full dues for part-time regular employees and no dues from on-call employees, the County then is not obligated to deduct full dues for all employees regardless of the schedule worked.

The proposed language of the Association also says that nurses who for philosophical reasons do not desire to become members of the representative shall pay an agency fee equal to the amount of dues normally paid. Thus under the Association proposal, if the normal dues for on-call nurses is zero dues, on-call members who do not want membership for philosophical reasons will not have dues deducted from their earnings. The County certainly in its arguments does not perceive this to be the effect of the Association proposal, and the Association may not perceive or have perceived this fact; but based on the testimony of the Association representative on the dues structure and dues intention as to what "normal" dues will be, the arbitrator concludes that the above described pattern will be the effect. If so, the concerns of the County about on-call persons paying full dues, will not be valid.

As to the concern of the County that a new major union of which the Association may become an affiliate will require full payment from every nurse, it must be noted that this agreement will expire on December 31, 1980, and up to that time the WNA will be the representative. A new contract then will have to be negotiated, and the County then has a new opportunity to protect its interests on this issue.

There is one issue raised by the Employer which, in the opinion of the arbitrator, has some merit. That is the issue of whether there may be recruiting difficulties if the Association offer is given the award. The County presented no evidence, but gave arguments that since other nearby employers of nurses do not have such a system of Fair Share, the County will not be in a good competitive position.

The arbitrator believes that this argument is reasonable, though it would have been stronger with specific evidence. In weighing this argument against the Association proposal, the arbitrator however believes that in the factor of the interests and welfare of the public, there is a weight tending to favor the Association, because its proposal is workable, and there is insufficient evidence to show that the proposal would work a hardship on the County in recruiting.

On the Association argument that there is a general trend of recognition of Fair Share as being a proper outcome of majority rule and should be therefore philosophically accepted, this arbitrator in other matters involving Fair Share has noted that the Wisconsin Legislature has permitted Fair Share to be an item to be bargained for, and therefore this arbitrator has not made awards on the basis of a philosophical reason why the union should have it, but on the basis of whether the offers of the parties meet the criteria set forth in Section 111.70 (4) (cm) 7.

XI. COMPARISONS WITH EMPLOYMENT CONDITIONS OF SIMILAR EMPLOYEES.

A. Both parties presented evidence of the existence or non existence of Fair Share clauses in other contracts. These are summarized here:

Table I

ASSOCIATION LIST OF NURSING UNITS WITH FAIR SHARE*

<u>Agency</u>	<u>Conditions</u>
State of Wisconsin, Professional Patient Care Unit	Proportionate Share
County of Milwaukee	
Manitowoc County	
Rock County	
City of Milwaukee	Regular Full-Time Employees
City of West Allis	
City of Madison - Public Health Nurses	
River Falls Area Hospital, Inc.	
Memorial Medical Center, Inc. - Ashland	Employees working 0.4 time exempt
Madison General Hospital - Madison	
Sheboygan County**	

* From Association Exhibits 6 through 16, inclusive.

** No exhibit showing contract language. On Exhibit 6 only.

Table II*

EMPLOYER'S SURVEY ON ORGANIZED REGISTERED NURSES

<u>Agency</u>	<u>Organized</u>	<u>Fair Share</u>
<u>Kenosha County</u>		
Brookside H. C.	No	
St. Catherine's	No	
Kenosha Memorial	No	
<u>Walworth County</u>		
Lakeland Nursing Home	No	
Lakeland Counseling Center	No	
<u>Rock County</u>		
Rock County H. C. Center	Yes	Yes, but not all through payroll
Mercy Hospital, Janesville	No	
Beloit Memorial	No	

Table II - continued

<u>Agency</u>	<u>Organized</u>	<u>Fair Share</u>
<u>Waukesha County</u>		
Northview Home	No	
Waukesha Memorial	No	
<u>Dane County</u>		
Dane County Home	Yes	Now bargaining
Madison General Hospital	Yes	Now bargaining
<u>Brown County</u>		
Brown County H. C. Center	Yes	Just had election
<u>Racine County</u>		
St. Luke's	No	
St. Mary's	No	
Lincoln Lutheran	No	
Westview Nursing Home	No	

*County Exhibit 10

Table III

RACINE AREA PUBLIC EMPLOYEE CONTRACTS WITH FAIR SHARE CLAUSES*

<u>Years</u>	<u>Agency</u>	<u>Fair Share</u>	<u>Conditions</u>
<u>Racine County</u>			
'77-'78	Local 310, AFSCME	Yes	All members
'79-'80	" " "	Yes	" "
'78-'79	Local 43, Teamsters (Highway and Parks)	Yes	All regular employees
'78-'79	Deputy Sheriffs' Assn.	No	Check off, maintenance of membership
'79-'80	Lodge 437, IAM, Unit I	No	Check off, maintenance of membership
'77-'78	Lodge 437, IAM, Unit II	No	Check off, maintenance of membership
'79-'80	" " " " "	No	Same as above
'77-'78	Registered Nurse, High Ridge	No	Check off, maintenance of membership
<u>Racine City**</u>			
	Crossing Guards	Yes	
	Dept. of Public Works and Water	Yes	

* Information from Association Ex. 6 and County Exs. 1 and 3 through 7 inclusive.

** Information found on Association Ex. 6 only.

B. The Association's Position. The Association makes a principal argument that the County already has a Fair Share agreement with employees at the health care facility. It argues that the factor of comparability is only one factor to be given some consideration, and relies on the argument of Arbitrator Stern in Manitowoc that Fair Share is a matter of contending principles and that an arbitrator should not take refuge in legal technicalities or the rubric of numbers. The Association holds that Fair Share is the prevailing trend. Obviously there are numerous bargaining units that do not have Fair Share and certainly unorganized units do not have it; but the State of Wisconsin has it in a state-wide agreement for nurses, and the County has two agreements which have it including another Local at the health center. It must be noted that employees need not join the Association. It is inexplicable why 325 non professional employees in the same facility need or deserve Fair Share and the members of this unit do not. The Employer's position is therefore inconsistent and indefensible.

C. The County's Position. The County asserts that on the basis of comparability its offer meets the statutory standards of comparability more than does the offer of the Association. It asserts that on the basis of its list of comparables shown in County Exhibit 10 only 23.5% of the health care centers surrounding High Ridge have Fair Share agreement for Registered Nurses. No other facility in Racine County has such an agreement. Such agreements are very much the exception. Those units in the County, including Local 310, AFSCME, and Local 43, Teamsters, which do have Fair Share, also have had voluntary membership of 97% and 100% prior to the inclusion of the agreement in the contracts. The evidence is that within the community of labor organizations in Racine County, Fair Share is not the general rule.

D. Discussion. On the basis of the evidence shown in Tables I, II and III, the arbitrator comes to the following conclusions:

1. While Fair Share is generally included in contracts with nurses associations in Milwaukee County in public employment, it appears not to be generally in existence in other counties adjacent to or near to Racine County.

2. There is evidence that, other than in State employment, Fair Share does not appear to be a provision generally found in nursing contracts or nurses conditions of employment in Wisconsin. The evidence provided here is too sparse to make other conclusions.

3. Within Racine County, the pattern of dues check-off and maintenance of membership such as the County's offer contains, is more prevalent than Fair Share.

4. In High Ridge Center itself, the other general bargaining unit contains a Fair Share clause.

On the basis of these conclusions, the matters of the greater comparability of the County offer with conditions for other employees performing similar services, and of the greater comparability of the County offer with public employment conditions in the same community must be compared with the greater comparability of the Association offer with another bargaining unit in the same institution. It is the opinion of the arbitrator that the two factors favoring the County's offer outweigh the one factor favoring the Association offer; therefore the County's offer more nearly meets the statutory guidelines of comparability.

XII. COST OF LIVING. This factor does not apply here.

XIII. OVERALL COMPENSATION.

This factor does not play a major role in consideration here although the Association will have foregone an opportunity for some higher compensation in order to achieve Fair Share. From the testimony one concludes that the total compensation received by the employees is comparable to that paid elsewhere.

XIV. CHANGES DURING THE PENDENCY OF THE ARBITRATION.

No changes occurred during the pendency of the arbitration proceedings to affect it.

XV. OTHER FACTOR.

The principal other factor to be considered here is that of whether the issue should be decided on philosophical reasons, either for or against the issue of Fair Share. As noted earlier the Association has cited the view of Arbitrator Stern and has argued that there is a trend toward Fair Share. The position of this arbitrator has been noted in Section X of the report.

XVI. SUMMARY OF AND CONCLUSION.

Summarizing the findings and conclusions of the arbitrator on factors applicable in this matter:

1. The stipulations of the parties and the greater acceptance by the Association of Employer proposals than by the Employer of Association proposals is not of sufficient weight to decide the sole issue of Fair Share.

2. On the basis of the interests and welfare of the public, the Association offer is reasonable and workable, and insufficient evidence was shown that it might work harm on the County in recruiting.

3. In the matter of comparability the County offer of dues check off and maintenance is more comparable with the conditions of employment for nurses in the surrounding counties with the exception of Milwaukee County; the County offer is more comparable with employment conditions for nurses in the State, and more comparable with employment conditions of public employees in Racine County. The Association offer is comparable with the conditions which exist within the institution in one other bargaining unit. The weight of greater comparability rests with the County offer.

4. In the matter of other factors, as to whether the matter should be decided in favor of the Association because of a trend toward Fair Share, the arbitrator holds that other factors also must be weighed as required by statute.

5. In summary, the arbitrator finds that the factor of the greater comparability of the County offer with conditions elsewhere is the weightiest matter here, and therefore the ensuing contract for 1979-1980 of the parties should include the offer of the County on Fair Share.

AWARD. The 1979-1980 agreement between Racine County and the Registered Nurses, High Ridge Health Care Center, Wisconsin Nurses Association, should include the final offer of the County to continue Article XXIX DUES CHECK-OFF AND MAINTENANCE OF MEMBERSHIP without modification.

Frank P. Zeidler

Frank P. Zeidler
Arbitrator

June 6, 1979