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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of NORTHWEST UNITED EDUCATORS To Initiate Mediation-Arbitration Between Said Petitioner and BARRON COUNTY	Case XX No. 24665 MED/ARB-409 Decision No. 17479-A

Appearances:

Mr. Alan D. Manson and Mr. Robert West, Executive Directors, appearing on behalf of Northwest United Educators.
Mulcahy & Wherry, S. C., Attorneys and Counselors at Law, by Mr. Stephen L. Weld and Mr. Michael J. Burke, appearing on behalf of the Employer.

ARBITRATION AWARD:

On December 20, 1979, the Wisconsin Employment Relations Commission appointed the undersigned as mediator-arbitrator, pursuant to Section 111.70 (4)(cm) 6.b. of the Municipal Employment Relations Act, in the matter of a dispute existing between Northwest United Educators, referred to herein as the NUE, and Barron County, referred to herein as the Employer. Pursuant to the statutory responsibilities the undersigned conducted mediation proceedings between the NUE and the Employer on January 16, 1980, over the matters which were in dispute between the parties as they were set forth in their final offers filed with the Wisconsin Employment Relations Commission. The dispute remained unresolved at the conclusion of the mediation phase of the proceedings, and consistent with prior notice that arbitration would be conducted on January 16, 1980, the NUE and the Employer waived the statutory provisions of Section 111.70 (4)(cm) 6.c. which require the mediator-arbitrator to provide written notification to the parties and the Commission of his intent to arbitrate and to establish a time limit within which each party may withdraw its final offer. Arbitration proceedings were also conducted on January 16, 1980, at Barron, Wisconsin, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were not transcribed, however, briefs were filed in the matter, which were exchanged by the Arbitrator on February 27, 1980.

THE ISSUES:

Two issues remain unresolved in this initial Collective Bargaining Agreement between the parties - wages and vacations. The parties' final offers, as certified to the Wisconsin Employment Relations Commission are set forth below:

EMPLOYER FINAL OFFER - WAGES

POSITION	EFFECTIVE 1-1-79	EFFECTIVE 9-1-79	EFFECTIVE 1-1-80	EFFECTIVE 9-1-80
Assistant Director	8.48	8.48	8.60	8.60
Home Care Coordinator	6.77	6.77	7.20	7.20
CPN				
A	6.04	6.50	6.75	7.05
B	5.84	6.30	6.75	7.05
C	5.75	6.21	6.75	7.05
RN				
A	5.78	6.00	6.25	6.45
B	5.70	5.92	6.25	6.45
C	5.56	5.78	6.25	6.45

NUE FINAL OFFER - WAGES

Positions	Effective 7/1/79	Effective 1/1/80
Registered Nurse	$6.00	$6.51
Public Health Nurse	6.50	7.05
Home Care Coordinator	6.87	7.45
Assistant Director	8.48	8.95

EMPLOYER FINAL OFFER - VACATIONS

A. All regular full time employees in the bargaining unit shall receive the following vacations with pay:

After one year of employment - one week of vacation
After two years of employment - two weeks of vacation
After ten years of employment - three weeks of vacation
After fifteen years of employment - one day of vacation for each year of employment to a maximum of 25 days.

B. Vacation shall be taken on a current year basis and shall not accumulate from year to year.

C. Whenever possible, employees shall request vacation time off two weeks in advance.
Such requests shall be made to the Department Head. Employees may not take vacation time off in increments of less than one work day. The Department Head shall determine the number of employees who may be on vacation at any given time.

D. The date of hire shall be the vacation anniversary date for all employees.

E. Holidays occurring during any employee's scheduled vacation shall not be charged against the vacation time.

F. If two or more employees select the same vacation period, seniority shall prevail.

G. In the case of termination, retirement or death of an employee, the employee or the employee's estate or designated beneficiary shall receive his/her vacation pay. Such vacation pay shall be computed on a pro rata basis in accordance with the number of months worked in the year. Such payment shall be based on the current earnings of said employee.

NUE FINAL OFFER - VACATIONS

Vacation article from the 1979-80 Barron County Social Services Contract shall be the vacation article.

The Employer final offer also contained offers with respect to overtime and mileage, however, those issues are now undisputed.

BACKGROUND:

The parties were unable to come to total agreement in the first Collective Bargaining Agreement negotiated between the NUE, representing all regular full time and regular part time public health and registered nurses in the employ of the Employer. The NUE was certified by the Commission as the exclusive bargaining representative as a result of an election which was conducted on February 21, 1979. Prior to the certification of the NUE as exclusive bargaining representative for this unit, in August, 1978, hearing was held over a petition filed by the AFSCME Union to accrete these employes into an existing bargaining unit comprised of social service employes. Prior to hearing AFSCME withdrew its petition, and the instant employes remained unrepresented until NUE was certified as exclusive bargaining representative after the election conducted on February 21, 1979. Subsequent to AFSCME withdrawing its petition, and prior to any representation proceedings involving the NUE, the Employer, on or about January 1, 1979, adjusted all wages for employes who are now represented in this unit by 7%, and profferred individual employment contracts to employes who are now within this unit. Individual employes returned the contract, accepting the 7% increase, however, included with the return of the contracts was the signed statements by individual members of what is now this bargaining unit, which stated: "Enclosed find my signed individual contract. By signing, I do not waive my right to collective bargaining or adjustment as the result of collective bargaining."

Subsequent to certification the parties met in an attempt to work out a first collective bargaining agreement. During the latter stages of bargaining, in the course of mediation, all issues that had been disputed between the parties, with the exception of wages and vacations, were resolved. The parties in arriving at their initial Collective Bargaining Agreement used the collective bargaining agreement which the Employer had negotiated with represented employes of the Department of Social Services, who were represented by AFSCME, Local 518, as a

pattern or model for their agreement. The vacation issue impassed when the NUE proposed that the terms of the vacation provisions of the Agreement be patterned after the Social Services contract between the Employer and AFSCME; and the Employer offered the terms of the vacation provisions which were contained in the Barron County Courthouse employes' collective bargaining agreement.

DISCUSSION:

The two issues of vacation and wages will be discussed separately, utilizing the statutory criteria found at 111.70 (4)(cm) 7, subparagraphs a through h, as the basis for the analysis.

VACATION ISSUE

The dispute with respect to vacation deals with the time at which employes become entitled to a specific number of days and weeks of vacation. As noted in the discussion above the Employer offer is identical to the vacation schedules contained in the collective bargaining agreement between the Employer and the courthouse employes represented by AFSCME; while the NUE offer is identical to the vacation provisions of the social service employes' collective bargaining agreement with the Employer, who are also represented by AFSCME. Because the NUE final offer as certified to the Commission merely refers to the social service contract, the final offers do not clearly manifest the differences between the two positions. Consequently, the differences in the vacation proposals are now set forth as follows:

After one year of service - 5 days vacation
After two years of service - 10 days vacation
After ten years of service - 15 days vacation
After fifteen years of service - one extra day per year to a maximum of 25 days.

After one year of service - 5 days vacation
After two years of service - 10 days vacation
After four years of service - 11 days vacation
After five years of service - 12 days vacation
After six years of service - 13 days vacation
After seven years of service - 14 days vacation
After eight years of service - 15 days vacation
After nine years of service - 16 days vacation
After ten years of service - 17 days vacation
After eleven years of service - 18 days vacation
After twelve years of service - 19 days vacation
After thirteen years of service - 20 days vacation

From the foregoing the differences in the two proposals occur after the second year of service. The NUE proposal provides for one additional day of vacation commencing with the fourth year of service until 20 days vacation after the

thirteenth year of service. The Employer proposal provides for fifteen days of vacation after ten years of service, and one additional day of vacation over the fifteen days commencing after fifteen years of service until a maximum of 25 days vacation is reached. Thus, the Employer offer provides more potential days of vacation than that of the NUE (25 vs. 20); while the NUE offer provides for additional days of vacation at an earlier point in service. For example, under the NUE offer employes would be entitled to 21 days of vacation after 13 years of service, whereas under the Employer offer employes would not be entitled to 21 days of vacation until after 20 years of service.

With respect to vacations the NUE argues that since other provisions which are now agreed to between these parties have been patterned after the Social Services Agreement, the vacation provision should also be so patterned. Additionally, the NUE argues the comparables support its vacation position.

The Employer contends that its vacation offer represents the status quo that had been enjoyed prior to bargaining by these employes, and that a presumption exists favoring the retention of the status quo. The Employer then argues that the presumption favors the Employer position because the internal comparisons as established by the terms of the agreement with the courthouse employes and the highway employes, as well as all the remaining unrepresented employes, are consistent with the Employer offer here. Additionally, the Employer contends that external comparisons with other comparable employers support the Employer offer.

With respect to the internal comparisons argued by the Employer, the undersigned considers them to be inconclusive. If there were a consistent vacation schedule in force for all employes of the Employer, the Employer argument would be very persuasive. That, however, is not the case here. The vacation schedule proposed by the NUE does exist for employes of this Employer in the Department of Social Services who are represented by AFSCME. While the fact that other terms of the tentative agreement reached by these parties in this dispute were modeled after the Social Service collective bargaining agreement carries some persuasive impact; in view of the status quo on vacations being reflected in the Employer final offer; and in view of the Employer's final offer on vacations also being supported by internal comparisons among unrepresented employes and represented employes in the courthouse and highway units; the fact

that the balance of the provisions of the agreements reached by the parties in this unit are modeled after the Social Service Agreement cannot determine which vacation schedule should be adopted. Since the internal comparisons are inconclusive, the undersigned will rely on vacation schedules which exist among comparable employes of other employers in the area.

Both parties have introduced evidence with respect to vacation comparabilities in contiguous counties, which include Burnett, Chippewa, Dunn, Polk, Rusk, St. Croix, Sawyer and Washburn. Among all of the foregoing employers, 20 days of vacation is granted by the sixteenth year of service, except for St. Croix County, which grants 20 days after twenty years of service. From the foregoing, it is obvious that vacation schedules among comparable employers more nearly conform to the NUE final offer than that of the Employer in this matter. Consequently, the undersigned determines that on the vacation issue the NUE offer should be adopted.

WAGE ISSUE

There are eight employes represented by the NUE in this bargaining unit. When the NUE was certified as bargaining representative no two employes were paid identical rates, even though three employes have identical responsibilities as public health nurses, and an additional three have identical responsibilities as nurses in the home care section. Both parties to the dispute recognize in their final offers the difficulty of establishing uniformity with respect to the rates paid these six employes. The Employer attains uniformity of pay for the six effective January 1, 1980, while the NUE establishes its basis for uniformity on July 1, 1979. Furthermore, with respect to nurses in the public health nursing section, both parties in their final offers establish a rate of $7.05 per hour; the Employer, however, makes the $7.05 rate effective September 1, 1980, while the NUE proposes January 1, 1980. With respect to the nurses in the home care section, the parties do not arrive at the same rate in their proposals. The final rate proposed by the NUE is $6.51 effective January 1, 1980, and the final rate proposed by the Employer is $6.45 effective September 1, 1980. Thus, there is six cents disputed as to the amount of hourly rate of pay for nurses in the home care section, as well as the effective date when that rate should be applied. From the foregoing, it is obvious that both parties agree that nurses in the public health section by the end of the term of the Agreement should arrive at

an hourly rate of $7.05 per hour. While the parties are not in agreement as to the end hourly rate for nurses in the home care section, the six cents per hour difference is quite minimal, and the undersigned concludes that neither party will be able to establish a preferential position with respect to the end rate provided for nurses in the home care section because of the narrowness of the difference. Thus, with respect to six of the eight employes in the unit, a dispute does not exist with respect to what rate should be paid those employes; rather, the dispute is when those rates should become effective. Consequently, with respect to the public health nursing section and the home care section the evidence, based on comparable pay for these nurses, has less relevancy. One can only conclude that both parties recognize that the comparables should establish rates of $7.05 per hour for nurses in the public health nursing section by the end of the Agreement; and rates of $6.45 to $6.51 per hour for nurses in the home care section by the end of the term of this Agreement. The decision necessarily with respect to the final offers for these positions will turn on the date on which the rates should become effective. In other words, how quickly should the catchup which both parties recognize is due these employes be effectuated.

The dispute with respect to the rates for the two remaining positions in the unit are significantly wider. The end rate for the term of the agreement proposed for the assistant director is $8.60 per hour in the Employer offer, and $8.95 per hour in the NUE offer. On the same basis, the home care coordinator of the Employer is $7.20 per hour, while the NUE proposes $7.45 per hour. Since, however, the majority of the employes in the unit fall within the classifications in the public health nursing and home care sections, this matter will be resolved by a determination as to which final offer should be adopted when considering those positions.

The Employer costs his final offer at 9.4% the first year and 9.3% the second year. The Employer costs the NUE offer at 11.1% the first year and 11.1% the second year. The foregoing costing uses the common methodology of the factoring influence of delaying increases later in the contract years commonly used by parties. Given the recognition that both parties recognize essentially the same end rate at the term of the contract for the positions occupied by six of the eight employes in the unit, this decision turns on whether the 9.4% offer of the Employer or the 11.1% offer of the NUE should be adopted.

In support of his position the Employer points to the patterns of settlements entered into with other represented employes of this Employer, and to the unilateral pay increases provided to unrepresented employes of this Employer. The Employer contends that the average settlement in Barron County for 1979 has been 7.4% compared with the 9.4% offer he has made here in this unit, and the 11.1% sought by the NUE. The Employer cites prior arbitration awards in interest arbitration matters. The awards cited are City of Madison, MIA-347 and Oshkosh Professional Police Association, MIA-277, in which it was held that the internal comparisons with other employes of the same employer should be given preference to external comparisons. While the undersigned agrees that internal comparisons have great impact on which final offer is preferred in matters of this type, the facts here require the undersigned to place less credence in the internal comparisons than normally would be given. Here we have a first collective bargaining agreement with its usual attendant problems of attempting to bring employes who were on disparate wage rates to a common classification. Additionally, as concluded above, the parties have come to agreement as to what the end rate should be, or very close to agreement, for the classifications occupied by six of the eight employes in the unit. The fact, then, that the percentage increase proposed by the NUE exceeds the pattern of settlements among other represented employes of this same employer by approximately 4% is unpersuasive.

The problems attendant to establishing a uniform rate structure have been addressed previously in interest arbitration matters by other arbitrators. In Rock County (WERC Case No. LXXVI, No. 22661, MED/ARB-53, Decision No. 16397-A), Arbitrator Mueller concluded that where a group of employes is shown to be substantially below the level of pay received by comparable employes in comparable communities, such comparative consideration should reasonably be entitled to the greater weight. He further concluded the only way to correct such inequitable comparable standing is to implement a substantial increase so as to improve it and correct the inequity. He then selected the offer of the Union which was significantly higher than that of the employer. Applying Arbitrator Mueller's reasoning to the instant dispute, it would seem that the NUE position should be adopted. While the dispute here with respect to the positions occupied by six of the eight employes in the unit is not really a dispute as to what the final

rate for those positions should be; the timing of the application of the rate is disputed. The parties themselves, as concluded earlier, have recognized what the final rate for these positions should be. In adopting the reasoning of Arbitrator Mueller in Rock County, it can only be concluded that to delay the point at which the inequities of the prior rates are eliminated should be avoided. It follows, then, that the NUE offer is to be adopted on the wage issue, as well.

The Employer has presented some persuasive evidence, however, with respect to the remaining two positions within the unit. By reason of the earlier conclusions of the undersigned that the positions of public health nurse and home care nurses necessarily must control the wage issue; the NUE offer for the remaining positions of assistant director and home care coordinator necessarily must also be adopted, pursuant to the NUE offer. While the comparables appear to favor the Employer position on these two positions, the undersigned is unable to separate the two in this decision, and those matters must necessarily be left to subsequent rounds of bargaining.

CONCLUSIONS:

The undersigned has concluded that the NUE offer should be adopted on both issues of wages and vacations. Accordingly, after consideration of all of the statutory criteria, the evidence adduced at hearing, the arguments of the parties, and the discussion set forth above, the undersigned makes the following:

AWARD

The final offer of the NUE along with all tentative agreements previously entered into between the parties are to be incorporated into the Collective Bargaining Agreement between the parties which becomes effective January 1, 1979, and remains in effect until December 31, 1980.

Dated at Fond du Lac, Wisconsin, this 31st day of March, 1980.