STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of BROWN COUNTY MENTAL HEALTH CENTER EMPLOYEES UNION LOCAL 1901, WCCME, AFSCME, AFL-CIO To Initiate Mediation-Arbitration Between Said Petitioner and BROWN COUNTY (MENTAL HEALTH CENTER)	Case CXLV No. 29277 MED/ARB-1554 Decision No. 19847-A

Appearances:

Mr. James W. Miller, Representative, Bay District, WCCME, AFSCME, AFL-CIO, appearing on behalf of Union.

Mr. Kenneth J. Bukowski, Corporation Counsel, Brown County, and Mr. Gerald Lang, Personnel Director, Brown County, appearing on behalf of Employer.

ARBITRATION AWARD:

On August 25, 1982, the undersigned was appointed by the Wisconsin Employment Relations Commission as Mediator-Arbitrator to resolve a dispute existing between Brown County Mental Health Center Employees Union Local 1901, WCCME, AFSCME, AFL-CIO, referred to herein as the Union, and Brown County (Mental Health Center), referred to herein as the Employer, with respect to certain issues as set forth below. The undersigned's appointment was made pursuant to 111.70 (4)(cm) 6.t of the Municipal Employment Relations Act, and pursuant to those statutory responsibilities the undersigned conducted mediation proceedings between the Union and the Employer on October 18, 1982. Mediation proceedings failed to result in voluntary settlement between the parties, and the parties on October 18, 1982, executed waiver of the statutory requirements found at 111.70 (4)(cm) 6.c. which require the Mediator-Arbitrator to provide written notice of his intent to arbitrate, and that the Arbitrator provide the opportunity for each party to withdraw his final offer. Arbitration proceedings were conducted on October 18, 1982, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. No transcript of the proceedings was made, however, briefs were filed in the matter, and the record was closed on November 22, 1982.

THE ISSUE:

Whether a special wage adjustment for the position of Licensed Practical Nurse of twenty-five cents (25¢) per hour effective September 1, 1982, and an additional twenty-five cents (25¢) per hour effective December 1, 1982, is supported by the evidence?

DISCUSSION:

The Union and the Employer were able to agree to all matters in collective bargaining with the exception of the issue as stated above. The final offers framed by the parties read as follows:

UNION FINAL OFFER:

There is only one remaining issue to be settled by the Arbitrator, that

being the adjustment for the Licensed Practical Nurses. The Union's final offer is an adjustment of twenty-five cents (25¢) per hour effective September 1, 1982, and an additional twenty-five cents (25¢) per hour effective December 1, 1982.

EMPLOYER FINAL OFFER:

It is Brown County's position that a wage adjustment not be granted to Licensed Practical Nurses.

THE COMPARABLES

The parties have selected different comparables for the purposes of these proceedings. Employer comparables include two categories of comparables, contiguous counties, and non-contiguous counties. The Employer comparables are the following counties: Calumet, Manitowoc, Outagamie, Shawano, Fond du Lac, Washington, Waupaca, Winnebago, Sheboygan, Marinette. The Union proposes the following counties for comparability purposes: Milwaukee, Dane, Waukesha, Racine, Rock, Winnebago, Outagamie, Kenosha, Sheboygan, LaCrosse, Fond du Lac, Washington, Manitowoc, Eau Claire, Dodge, Wood, Walworth and Ozaukee.

The determination of the comparables is somewhat unique in these proceedings. The issue before the Mediator-Arbitrator in this matter is not one commonly found in interest arbitration matters. Specifically, the parties have already agreed in this matter to the amount of general wage increase for all employees in the amount of 8% to all employees effective January 1, 1982, and an additional thirteen cents per hour (13¢) effective June 20, 1982. Additionally, the parties have agreed to special wage adjustments over and above the general wage increases for selected classifications. What remains disputed here is a special wage adjustment for Licensed Practical Nurses. The Union at hearing and in its brief describes this dispute as a limited comparable worth issue, i.e., the proper wage differential to be established between positions of Nursing Assistant, Licensed Practical Nurse and Registered Nurse. Obviously, the matters in dispute here are not the typical type of interest arbitration in which wage rates are set for all positions in the unit based on comparable wage rates paid in comparable communities. If this were a typical wage dispute for all wages in the unit, the undersigned would prefer the comparables of the Employer. However, since the Union grounds its case in this matter on the differentials paid between the aforementioned three classifications, the undersigned concludes that the differentials paid between Nursing Assistants, Licensed Practical Nurses and Registered Nurses, in the 18 counties which the Union advocates as comparables, is appropriate because it gives a broader base of comparison than the comparables suggested by the Employer. Furthermore, since the Union has provided evidence for all three positions, the undersigned is able to take into account the disparity between wage rates among the different counties at all three levels and, therefore, the undersigned concludes that the Employer is not prejudiced by the Union's selection of comparables.

DOES THE EVIDENCE SUPPORT A FIFTY CENT PER HOUR SPECIAL ADJUSTMENT TO THE POSITION OF LICENSED PRACTICAL NURSE?

The evidence establishes the following:

1. If the Employer offer is adopted the LPN rate at the end of this contract term will be $7.15 per hour; and the LPN rate would rank 10th among the Union comparables.

2. If the Union final offer were adopted in this matter the top LPN rate would be $7.65 per hour at the end of the term of this Agreement, and the LPN rate would rank 8th among the Union comparables.

3. The top Nursing Assistant rate under both parties' offer is $6.77 per hour, which ranks Nursing Assistants 6th among the Union comparables at the end of the term of the Agreement; and if the Employer offer is adopted the Nursing Assistant rate as a percentage of the LPN rate would be 94.6%, 1st among the Union comparables; if the Union offer were adopted the Nursing Assistant rate as a percentage of the LPN rate would be 88.4%, 10th among the comparables.

4. The top Registered Nurse rate in force in the instant jurisdiction is $9.70 per hour, which ranks 11th among the Union comparables; if the Employer offer here is adopted the LPN rate expressed as a percentage of the RN rate is 73.7%, which also ranks 11th among the Union comparables; and if the Union offer is adopted in this matter the LPN rate expressed as a percentage of the RN rate would be 78.8%, which would rank 6th among the Union comparables.

5. The average LPN rate paid among the Union comparables is $7.52 per hour; if the Employer offer of $7.15 per hour is adopted, LPNs would be paid 37¢ an hour below the average rate for LPNs among the Union comparables; and the LPN rate, if the Employer offer of $7.15 per hour were adopted, would be 95% of average rate paid among Union comparables; and if the Union final offer were adopted the LPN rate of $7.65 per hour would be 13¢ per hour above the average of the Union comparables for LPNs ($7.52 per hour); and if the Union final offer were adopted the LPN rate paid here would be 102% of the average LPN rate paid among the Union comparables.

6. The average Registered Nurse rate among the Union comparables is $9.96 per hour; and the Registered Nurse rate paid by the Employer of $9.70 per hour is 26¢ per hour below the average of the Union comparables; and the rate paid to Registered Nurses by the Employer is 97% of the average Registered Nurse rate paid among Union comparables.

7. The hourly rate paid Nursing Assistants by the Employer is $6.77 per hour; and the average rate among the Union comparables paid to Nursing Assistants is $6.50 per hour; and the Nursing Assistant rate paid by the Employer here is 27¢ per hour over the average of the Nursing Assistant rates paid among Union comparables; and the rate paid Nursing Assistants by the Employer is 104% of the average Nursing Assistant rate paid among the Union comparables.

The Union here grounds its case on the foregoing evidentiary submissions, arguing that the evidence establishes that the relationship of pay from LPN to RN and from Nursing Assistant to LPN here compared to the same relationship among the Union comparables establishes that the LPN rate is too low when making those comparisons. Turning first to the relationship of the rates of pay paid to LPN compared to the rates of pay paid to RN, the undersigned concludes that the foregoing evidence establishes that LPN and RN stand in relatively the same shoes when compared to the Union comparables. The foregoing conclusion is supported by the evidence which establishes that RNs are paid 97% of the average RN rate paid among Union comparables, whereas LPNs are paid 95% of the average LPN rate paid among the comparables. The evidence further establishes that the RN rate paid by the Employer here ranks RNs at the 11th place among the Union comparables, whereas the LPN rate proposed by the Employer ranks LPNs 10th among the LPN rates paid among the Union comparables. Furthermore, if the Union offer were adopted while RNs would remain 26¢ per hour below the average rate paid among Union comparables the LPNs would be paid 13¢ per hour above the average paid among Union comparables, and the percentage of average would increase to 102% of the average for LPNs if the Union offer were adopted, while the RNs would remain at 97% of the average. The foregoing evidentiary submissions persuade the Arbitrator that the relationship of LPN to RN for the instant Employer, when compared to the same relationships among the Union comparables, does not warrant the additional increase for LPN, which the Union seeks here. Furthermore, awarding for the Union final offer would result in establishing an LPN percentage relationship to RN rates of 78.8%, whereas, the average relationship among the Union comparables is 75.7%. Awarding for the Employer would establish a percentage relationship of 73.7%, compared to the same average relationship of 75.7%. Thus, if the Employer offer is adopted, the LPN rate would remain at 2% below the average percentage relationship of LPN rates to RN rates among the Union comparables, while the Union would seek to establish a percentage relationship of 3.1% over the average. Therefore, the Employer offer is closer to the average relationship of LPN to RN rates than is the Union. The undersigned concludes that an adjustment to LPN rates here, which would place them above the average relationship among the Union comparables, is not warranted where the evidence establishes that the RN rates are below the average of the RN rates paid among the Union comparables.

Turning to a comparison of Nursing Assistant to LPN rates paid by the instant Employer, when compared to rates paid among the comparables submitted by the Union, the picture is decidedly different. The Nursing Assistant rate of $6.77 paid by the Employer here, if the Employer offer is adopted, establishes a relationship of 94.6% when taking the Nursing Assistant rate as a percentage of the LPN rate proposed by the Employer. The 94.6% relationship is the highest relationship of Nursing Assistant rate to LPN rate paid among the Union comparables. If the Union offer were adopted the percentage relationship of Nursing Assistant rate to LPN rate would drop to 88.4%, and the ranking among the comparables would drop to 10th, when comparing Nursing Assistant rates to LPN rates. The evidence further establishes that the Nursing Assistant rate paid by this Employer is 27¢ an hour higher than the average Nursing Assistant rate paid among the Union comparables, and that the Nursing Assistant rate paid here is 104% of the average rate paid among the Union comparables. Thus, if the Union offer were adopted here the differential between the average LPN rate paid under the Union proposal compared to the average LPN rate paid among the Union comparables of 13¢ an hour would more nearly approximate the difference between Nursing Assistant rate paid by the instant Employer and the average Nursing Assistant rate paid among the Union comparables (27¢ per hour). Furthermore, the percentage relationship would more nearly square if the Union proposal were adopted in that the Union proposal would establish a relationship of 102% of the average paid to LPNs among the Union comparables, whereas, the average paid to Nursing Assistants is 104% of the average paid to Nursing Assistants among the Union comparables. Therefore, the undersigned concludes that when considering only the relationship of LPN and Nursing Assistant the Union proposal here is supported.

The undersigned is now confronted with circumstances which establish that comparing LPNs to RNs fails to support the Union proposal here; whereas, comparing Nursing Assistants to LPNs among the comparables does support the Union position. The undersigned concludes that, given the foregoing dichotomy, the Union's case here fails to establish satisfactory proof that the adjustments the Union seeks to the LPN rate should be granted. The foregoing conclusion is reached for two reasons. First, the undersigned concludes that the proper benchmark for comparison is the RN rate, rather than the Nursing Assistant rate, because it is the opinion of this Mediator-Arbitrator that the position with the more complex duties is the more appropriate for the purposes of comparison. Secondly, and most significantly the party proposing the change in interest arbitration matters has the obligation to establish by clear and convincing evidence that his position should be adopted. Here we have a situation where one comparison favors the Union proposal, whereas, the other comparison does not. The undersigned, therefore, concludes that the evidence fails to clearly and convincingly establish the need for the special adjustment to the LPNs which the Union seeks here, and absent that clear showing the undersigned concludes that the Union final offer must be rejected.

Therefore, based on the record in its entirety and the discussion set forth above, after considering the arguments of the parties and the statutory criteria at 111.70 (4)(cm) 7, the undersigned makes the following:

AWARD

The final offer of the Employer, along with the stipulations of the parties, as well as the terms of the predecessor Collective Bargaining Agreement which remained unchanged through the bargaining process, are to be incorporated into the written Collective Bargaining Agreement between the parties.

Dated at Fond du Lac, Wisconsin, this 11th day of February, 1983.

Jos. B. Kerkman,
Mediator-Arbitrator

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