

AUG 27 1983

IN THE MATTER OF MEDIATION/ARBITRATION PROCEEDINGS

BETWEEN

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

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BROWN COUNTY MENTAL HEALTH)	
CENTER REGISTERED NURSES,)	Case CLXXXI No. 30906
LOCAL 1901-E,)	
)	MED/ARB 2082
and)	
)	Decision No. 20486-A
BROWN COUNTY, WISCONSIN.)	
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I. BACKGROUND

This is a matter of final and binding interest arbitration pursuant to Section 111.70(4)(cm)6 of the Wisconsin Municipal Employment Relations Act. The Brown County Mental Health Center Registered Nurses, Local 1901-E (Union) is the exclusive bargaining representative for the employees in a bargaining unit consisting of all registered nurses employed by Brown County (County or Employer) at its Mental Health Center, but excluding supervisory, confidential, and managerial employees.

The Union and the Employer were parties to a collective bargaining agreement which expired on December 31, 1982. On December 21, 1982, the Union filed a petition requesting that the Wisconsin Employment Relations Commission (WERC) initiate mediation-arbitration. An investigation was conducted by the WERC staff which disclosed that the parties were deadlocked in their negotiations. On March 10, 1983, the parties submitted to the WERC their final offers as well as a stipulation on matters agreed upon.

On March 31, 1983, the WERC certified that the conditions precedent to the initiation of mediation-arbitration had been met. The parties thereafter selected Jay E. Grenig as the mediator/arbitrator in this matter.

Mediation proceedings were conducted on May 20, 1983. Although the parties diligently attempted to resolve the impasse through mediation, they were unable to reach a voluntary settlement and the dispute was submitted to the Mediator/Arbitrator, serving in the capacity of arbitrator on the same date.

The Employer was represented by Gerald E. Lang, Personnel Director and John C. Jacques, Assistant Corporation Counsel. The Union was represented by James W. Miller, Staff Representative, AFSCME Council 40.

The parties were given full opportunity to present relevant evidence and arguments at the hearing. Upon receipt of the parties' briefs, the hearing was declared closed on July 7, 1983. At the Mediator/Arbitrator's request of August 5, 1983, the hearing was reopened in order to obtain clarification of certain wage data. Upon receipt of the clarification from the parties on August 17, the hearing was again declared closed.

II. FINAL OFFERS

A. THE UNION

1. 26¢ per hour adjustment, effective 1/1/83.
2. 7% across the board increase, effective 1/1/83
3. Increase night shift differential to 20¢ per hour and 25¢ per hour 3rd shift.
4. Amend vacation schedule as follows:
 - a. Add after 10 years 18 work days;
 - b. Add after 13 years 19 work days;
 - c. Delete after 14 years 17 work days;
 - d. Change after 15 years 20 work days;
 - e. Delete after 16 years 19 work days;
 - f. Delete after 17 years 20 work days;
 - g. Add after 25 years 25 work days.

B. THE EMPLOYER

Wage increase of 46¢ per hour across the board effective January 1, 1983.

III. STATUTORY CRITERIA

In determining which offer to accept, the Arbitrator must give weight to the following statutory (Wis.Stats. § 111.70(4)(cm)7) criteria:

- a. The lawful authority of the employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and 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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in 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 employees, including direct wages, 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, factfinding, arbitration, or otherwise between the parties in the public service.

IV. POSITIONS OF THE PARTIES

A. THE UNION

1. TWENTY-SIX CENTS PER HOUR ADJUSTMENT

The Union states that the average 1982 hourly wage (excluding Brown County) is \$9.99 per hour for 1982. If the nurses were to receive the average of those 18 county rates, their hourly wages would have to increase by 29¢. With the 26¢ adjustment requested by the Union, Brown County would move from 11th to 9th in the ranking.

2. SEVEN PERCENT ACROSS THE BOARD INCREASE

The Union asserts that the average hourly rate of the 1983 settled contracts of the highest paid seven counties above Brown is \$11.28 per hour. If you include Brown and add the next lower paid four counties settled for 1983, the average is \$10.88 per hour.

It contends that the increase proposed by the Employer is less than was offered to the County Highway Department and less than settlements in the Green Bay-Brown County area.

3. NIGHT SHIFT DIFFERENTIAL

Pointing out that the night shift differential has not been changed over the last ten years, the Union says it is asking for a modest increase in the shift differential.

4. VACATIONS

According to the Union, the nurses are behind other Brown County and Green Bay units in vacation benefits.

B. THE EMPLOYER

The Employer believes its final offer more nearly conforms to the statutory criteria primarily because it is closer to the wage rate prevailing in comparable communities for registered nurses performing similar services. In addition, it contends that its final offer provides an overall compensation package comparing favorably with that received by other municipal employees.

The Employer asserts that its offer more nearly conforms to the current changes in the cost of living.

V. FINDINGS OF FACT

A. WAGES

1. INTRODUCTION

The bargaining unit represented by the Union consists of 15 staff nurse positions and four head nurse positions.

The County's wage offer would result in a wage increase of 4.7% for staff nurses and 4.1% for head nurses. The Union's offer would result in a 9.89% increase for staff nurses and 8.51% increase for head nurses.

The County's proposal would provide a starting staff nurse wage rate for staff nurses of \$9.59 per hour and a maximum wage rate of \$10.16 per hour. The Union's proposal would provide a starting staff nurse wage rate of \$10.05 per hour and a maximum hourly wage rate of \$10.66.

The total payroll cost of the Union's proposal is \$442,874 and the cost of the County's is \$420,170. Thus, the difference in payroll costs between the two proposals is \$22,704.

The average 1982 staff nurse hourly wage was \$9.70 and \$11.28 for head nurses. A staff nurse can reach the maximum wage rate in two years. A head nurse can reach the maximum head nurse rate in the same time.

2. STATUTORY CRITERIA

a. Lawful Authority of the Employer

There is no contention that the County lacks the lawful authority to implement either offer.

b. Stipulations of the Parties

While the parties were in agreement on a number of facts, there were no stipulations with respect to this issue.

c. Ability to Pay

There is no contention that the County lacks the financial ability pay either offer.

d. Comparison of Wages, Hours and Conditions of Employment

The parties disagree with respect to which counties are appropriate for purposes of comparing wages, hours and conditions of employment. The Union suggests the comparison be made with the following counties (listed together with their populations):

Milwaukee	964,988
Dane	323,545
Waukesha	280,326
Racine	173,132
Rock	139,420
Winnebago	131,732
Outagamie	128,726
Kenosha	123,137
Sheboygan	100,935
LaCrosse	91,056
Fond du Lac	88,952
Washington	84,848
Manitowoc	82,918
Eau Claire	78,805
Dodge	74,747
Wood	72,799
Walworth	71,507
Ozaukee	66,981

Brown County has a population of 175,280.

The County suggests that the comparison be limited to the following counties:

Winnebago
Fond du Lac
Manitowoc
Sheboygan
Washington
Outagamie

The County complains that the Union's comparables were selected on the basis of county population and not geographic location. On the other hand, the County's comparables were

apparently selected on the basis of geographic location without regard to population.

Where the parties cannot reach agreement as to the basis of comparison, it is the arbitrator's responsibility to determine from the facts and circumstances of the case the appropriate comparables. Both population and geographic location are factors to be considered in determining the appropriate comparables.

The parties not only disagree as to which counties are to be used in making comparisons but they also compare different wage data. Accordingly, it is necessary to examine both sets of comparables. However, in making comparisons, the wage rate of Milwaukee County has not been included. Not only is Milwaukee County somewhat geographically removed from Brown County, but its population is nearly four times as great. Accordingly, it is not an appropriate comparable.

(1) 1982 Maximum RN Wage Rates

Using the Union's comparison of 1982 maximum RN wage rates, the County ranked eleventh out of the 18 counties (Dane County was not included in this comparison.) The median top wage rate of the 17 comparables was \$9.88. The average top salary of the 17 was \$9.95. The County's 1982 top RN wage rate of \$9.70 was 18¢ below the median and 25¢ below the average. At the top wage rate, the County ranked tenth.

Using the Employer's comparables, the County ranked fifth out of the seven counties at the top RN wage rate in 1982. The median top salary of the County's comparables was \$9.99. The average salary was also \$9.99. The County's 1982 maximum RN wage rate of \$9.70 was 29¢ below the median and average.

Thus, in comparing maximum 1982 RN wage rates, it is immaterial whose comparables are used. Both comparables show the median RN top wage rate was higher than the County's 1982 maximum RN wage rate.

(2) 1983 Maximum RN Wage Rates

Using the Union's comparison of the 1983 maximum RN wage rates of the counties that have settled for 1983 (Milwaukee, Outagamie, Ozaukee, Waukesha, Dane, Fond du Lac, Racine, Walworth, Eau Claire, Washington, Sheboygan, Winnebago and Dodge), the median 1983 top wage rate is \$10.64 and the average top wage rate is \$10.62. The County's offer of \$10.16 per hour would result in a maximum hourly rate 48¢ below the median and 46¢ below the average. The Union's offer of \$10.66 per hour would result in a wage rate 2¢ above the median and 4¢ above the average. The County's offer would place the County tenth out of the 13 counties and the Union's would place it seventh out of the 13.

The Union's offer would result in a wage rate 47¢ above the median and 15¢ above the average. The County's offer would result in a wage rate 3¢ below the median and 35¢ below the average. The Union's offer would place the County second among the six counties. The County's offer would place it fourth among the six.

In the County it takes RNs 24 months to reach the top salary rate. In the comparison counties listed by the County it can take as long as 60 months to reach the maximum rate.

(3) 1983 RN Starting Wage Rates

The Union has not provided a comparison of RN starting wage rates. Examining the County's comparison of 1983 starting wage rates in the four comparable counties that had settled for 1983, the median starting wage rate is \$8.52 and the average is \$8.56. As in the comparison of maximum wage rates, the RN staff nurse rate for Winnebago County is used as is the average annual increase for Washington County.

The County's offer of a starting wage rate of \$9.59 would provide a starting wage \$1.07 above the median starting wage and \$1.03 above the average. The Union's offer of \$10.05 would provide a starting wage \$1.53 above the median and \$1.49 above the average.

The Union's offer would place the County first, 23¢ above the next highest county. The County's offer would place the County second, 23¢ below the highest county.

(4) 1983 Head Nurse Wage Rates

The median 1983 maximum wage rate for head nurses employed by Winnebago, Fond du Lac and Outagamie counties is \$11.33. The average maximum rate is \$11.13. The Union's offer for the head nurse top wage rate is \$12.35--\$1.02 above the median and \$1.22 above the average. The County's offer of \$11.44 is 11¢ above the median and 31¢ above the average.

Using the Union's list of comparables, the average maximum wage rate for head nurses in those counties that have settled for 1983 is \$11.29 and the median maximum wage rate is \$11.18. The Union's offer is \$1.06 above the average and \$1.17 above the median. The County's offer is 45¢ above the average and 56¢ above the median.

The median 1983 starting wage rate for RN head nurses employed by Winnebago, Fond du Lac and Outagamie Counties is \$8.39. The average starting wage rate is \$8.33. The Union's offer of a starting wage rate of \$11.78 would result in a starting wage rate \$3.39 above the median and \$3.45 above the average. The County's offer of a starting wage rate of \$11.21 would result in a starting wage rate \$2.82 above the median and \$2.88 above the average.

(5) 1983 Settlement Pattern

The County settled with its Highway Department for a 47¢ per hour increase to all rates. The 1982 average hourly rate was \$8.60. The total package increase was equal to 5.34%.

According to a report prepared by DILHR the average hourly rate (excluding overtime) in the Green Bay area was \$8.89 in 1982 and \$9.61 as of January 1983. This is an increase of 72¢ per hour or 8.09%.

e. Increase in the Cost of Living

Because cost of living increases are generally "catch up" in effect, the increase in the Consumer Price Index during the 12 months preceding the effective date of a contract is usually considered to be relevant. See Hartford Sch. Dist., Dec. No. 18845-A (Zeidler, 1982); City of Franklin, Dec. No. 19569-A (Imes, 1982).

The increase in the CPI from December 1981 to December 1982 was 3.9%. Both parties' offers provide for salary increases greater than the increase in the cost of living as measured by the CPI.

f. Total Compensation

The total percentage increase in wages and nonpayroll benefits if the County's offer were implemented amounts to 5%. If the Union's offer were implemented, the increase in wages and nonpayroll benefits would be 10.4%.

Health insurance benefits provided by the County's comparables are as follows (the figure in parenthesis indicates the employee contribution):

County	Family	Single
Manitowoc	\$154.11 (none)	\$60.45 (none)
Outagamie	\$166.58 (15.36)	\$70.25 (none)
Fond du Lac	\$141.30 (6.00)	\$51.68 (2.00)
Winnebago	\$151.85 (5.00)	unreported (none)
Washington	\$121.77 (none)	\$52.86 (none)
Sheboygan	\$144.00 (none)	\$52.10 (none)
Average	\$146.60	\$57.47
Median	\$147.93	\$52.86
Brown County	\$141.12 (7.43)	\$56.27 (None)

The County's contribution to health insurance is \$5.48 below the average and \$6.81 below the median for family coverage. It's contribution is \$1.20 below the average and \$3.41 above the median for single coverage.

Only one other county (Sheboygan) among the comparables proposed by the County provides its employees with dental insurance. Sheboygan County pays \$11.30 of the premium for both single and family coverage. The County pays \$35.25 for family coverage (the employee contributes \$1.85) and \$19.20 for single coverage (the employee pays nothing).

When the employers' dental insurance premium contributions are combined with their contributions for health insurance, the average contribution for family coverage is \$148.49 and for single coverage is \$59.73. The median family coverage is \$152.98 and the median single coverage is \$60.45.

The County's combined contribution for family coverage totals \$176.37 and for single coverage totals \$75.47. The County's combined contribution exceeds the median by \$23.39 and the average by \$27.88. The County's combined contribution exceeds the average combined contribution for single coverage by \$15.74 and the median combined contribution for single coverage by \$15.02.

The County's combined contribution ranks it first among the comparables for both family coverage and single coverage. The County's combined contribution for family coverage exceeds the next highest employer's by \$9.79 a month. Its combined contribution for single coverage exceeds the next highest employer's by \$5.22 a month.

g. Changes During the Pendency of Arbitration Proceedings

There were no relevant changes during the pendency of the arbitration proceedings.

h. Other Factors

This criterion recognizes that collective bargaining is not isolated from those factors which comprise the economic environment in which bargaining occurs. Cudahy Schls., Dec. No. 19635 (Gundermann, 1982); Madison Schls., Dec. 19133 (Fleischli, 1982).

There is no evidence that the County has had to or will have to reduce or eliminate any services, that it will have to engage in long term borrowing, or that it will have to raise taxes if either offer is accepted. There is nothing to show that the County cannot continue to provide its employees with wages and increases competitive with comparable employers.

B. NIGHT SHIFT DIFFERENTIAL

The night shift differential has not been changed for the last ten years.

The following indicates the shift premiums paid by the six comparable counties used by the County:

County	Second Shift	Third Shift
Winnebago	None	None
Fond du Lac	5¢ an hour	10¢ an hour
Outagamie	10¢ an hour	15¢ an hour
Manitowoc	12¢ an hour	14¢ an hour
Sheboygan	10¢ an hour	20¢ an hour
Washington*	20¢ an hour	20¢ an hour

*The Union's exhibit indicates a shift differential of 65¢ an hour for both shifts.

Average	9.5¢ an hour	13.2¢ an hour
Median	10¢ an hour	14.5¢ an hour

County Offer	15¢ an hour	20¢ an hour
Union Offer	20¢ an hour	25¢ an hour

The County's offer is 5.5¢ above the average for second shift and 6.8¢ above the average for third shift. Its offer is 5¢ above the median for second shift and 5.5¢ above the median for third shift. The County's offer places Brown County second among the comparables for second shift and ties it for first for the third shift. The Union's offer is 10.5¢ above the average for second shift and 11.8¢ above the average for third shift. Its offer is 10¢ above the median for second shift and 10.5¢ above the median for third shift. The Union's offer ties Brown County for first for the second shift and places it first for third shift.

Using the Union's list of comparables (but excluding Milwaukee which pays a percentage of the hourly wage), the average shift differential for second shift is 20.91¢ per hour and the median is 12¢. Both offers provide for a shift differential in excess of the median.

For third shift, the Union's list of comparables indicates an average shift differential for third shift of 27¢. The list shows a median shift differential for third shift of 20¢. The County's offer places the County right at the median while the Union's provides a shift differential in excess of the median.

C. VACATION BENEFITS

Both parties have presented exhibits comparing the vacation benefits of bargaining unit employees with those of other persons employed by the County. With the exception of the Sheriff's Department, the bargaining unit employees' vacation benefits are generally comparable with that of other County employees.

The first year of employment County employees (with the exception of Sheriff's Department employees) receive five days of vacation. RN's at the Center receive 25 days of vacation in the twenty-fifth year of employment.

For the second through third years, the RNs have one to two days less vacation than the other employees. However, the RNs have more vacation days the sixth through ninth years they also have more days than a majority of the other bargaining units. The tenth through sixteenth years, the RNs have one to two days less vacation than the other employees. The seventeenth through twenty-fifth years, the RNs generally have the same vacation benefits as the majority of the other employees. After the twenty-fifth year the majority of bargaining units in the County have 26 vacation days while the RNs receive a maximum of 25 vacation days.

Of the six comparables used by the County, four provide ten days of vacation the first year. Two counties provide a maximum of 25 days of vacation after 20 years. One provides a maximum of 25 days after 30 years and another provides a maximum of 25 days after 18 years. One county provides a maximum of 23 days of vacation after 22 years employment. The sixth county provides RNs with a maximum of 20 days of vacation after 15 years.

VI. ANALYSIS

A. WAGES

Both offers provide for wage increases in excess of the increase in the cost of living as measured by the CPI during

the relevant period. However, there is no reason to select the offer closer to the increase in the cost of living if the other statutory criteria indicate that a larger increase is justified.

At the starting wage rate, both offers will provide a wage rate substantially above the median. At the top wage rate for staff nurses, the County's comparables show that its offer is closer to the median than the Union's. Using the Union's comparables, the Union's offer is closer to the median than the County's. The Union's offer is 46¢ closer to the median than the County's.

At the starting wage rate, the Union's offer would place the County at the top and the County's offer would put it in second place. At the maximum wage rate the Union's offer would place the County at seventh place (up from tenth in 1982) among its comparables and second place (up from fifth in 1982) among the County's comparables while the County's offer would maintain its tenth place among the Union's comparables and raise it to fourth place using its comparables.

In comparing the maximum wage rates it is also noted that the County nurses reach the maximum wage rate earlier than the nurses employed by many of the other counties in the County's list of comparables. They thus enjoy the maximum wage rate for a longer portion of their careers than nurses employed by the other comparables.

The County's head nurse wage rate offer and the Union's head nurse wage rate offer both provide wage rates above the median. The County's offer for head nurse maximum and starting wage rates are closer to the median than the Union's. Both offers would result in the head nurses' starting wage rate being the highest among the comparables. The Union's offer would result in a maximum head nurse wage rate higher than any of the comparables while the County's offer would result in only one county in the list of comparables paying a higher rate.

Wages are only part of the compensation received by employees. Health and welfare benefits, among other things, must also be considered. The County's health and dental insurance contribution exceeds the median for family coverage by \$23.39. It is in first place by a significant margin in contributions to health and dental insurance.

What evidence there is with respect to public sector settlements indicates a range in 1983 wage increases from 5.02% to 7.41%. The County's wage offer is .32% below the bottom of the range and 2.97% below the top of the range. The Union's wage offer is 4.87% above the bottom of the range and 2.48% above the top. Thus, both offers are outside the range of settlements.

The DILHR report regarding the increase in hourly wages is of little assistance in determining which offer is more reasonable. There is no way to determine from the portion of the report admitted in evidence the working conditions and total compensation, including health benefits, vacation, holidays, and job security, received by the employees covered by the report.

There is some merit to the Union's position that the maximum wage rate for staff nurses should be improved. However, the proposal goes too far. First, in attempting to improve the maximum wage rate the Union fails to take into account that RNs employed by the County reach the maximum wage rate in only 24 months. It would have been more reasonable

had the Union proposed an increased maximum wage rate for employees employed for a period of time longer than 24 months.

Second, the Union's proposal would put the County's starting wage rate and wage rates for head nurses substantially above the medians of the comparables. If the reason for the adjustment is the need to increase the maximum wage rate, there is little justification in increasing the starting wage rate or the wage rates of the head nurses so far above the median.

The County's offer provides a wage increase in excess of the increase in the CPI and a starting wage rate that is the second highest of the comparable employers. Its offer also provides head nurses with the highest starting and maximum wage rates of the comparables. Its maximum wage rate offer for staff nurses provides them with the fourth highest wage rate (after 24 months of employment) of the counties in the proximate geographic area of Brown County, an improvement over its 1982 position. The offer maintains the County's 1982 relative position with respect to the counties in the Union's list of comparables. Finally, the compensation received by the RNS includes the highest employer contribution for health and dental benefits of any of the comparables.

Thus, based on an analysis of the statutory criteria, it is concluded that the County's wage offer is more reasonable than the Union's.

B. NIGHT SHIFT DIFFERENTIAL

The evidence establishes that the County pays the second highest shift differential of the comparables on its list for second shift and is tied for first place for third shift. The County's offer is considerably closer to the median shift differentials for the second and third shifts than is the Union's. Although there has been no increase in the County's shift differential for ten years, the County continues to pay the highest shift differential for third shift and the second highest for second shift among the comparables.

Using the Union's list of comparables, the County's offer is closer to the median shift differential for second shift and is right on the median for third shift.

For the foregoing reasons, it is concluded that the County's offer to continue paying the present night shift differential is more reasonable than the Union's offer.

C. VACATION BENEFITS

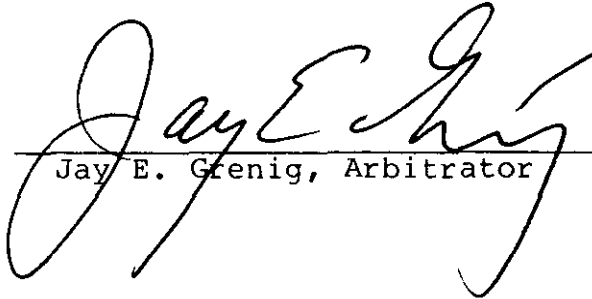
While there are some differences in the vacation benefits provided employees in the various County bargaining units, the evidence does not establish that the employees represented by the Union receive significantly less vacation days than employees in the other bargaining units. In some instances, the RNS actually receive greater benefits.

Accordingly, it is concluded that the County's offer to continue the present vacation benefits is more reasonable than the Union's offer.

VII. AWARD

Having considered all the evidence and arguments submitted in this matter in accordance with the statutory criteria, it is the Arbitrator's decision and award that the County's final offer be incorporated into the parties' collective bargaining agreement.

Dated at Waukesha, Wisconsin, this 22nd day of August, 1983.



Jay E. Grenig, Arbitrator