

RECEIVED

STATE OF WISCONSIN  
MEDIATION/ARBITRATION AWARD

DEC. 7 1983

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

-----	:	
In the Matter of the Mediation/Arbitration	:	
between	:	
DODGE COUNTY	:	Re: WERC Case
	:	LXXXII
and	:	No. 30925
	:	MED/ARB-2084
DODGE COUNTY COMMUNITY HEALTH CENTER EMPLOYEES,	:	Decision No. 20727-A
LOCAL 1323A, AFSCME, AFL-CIO	:	
-----	:	

Appearances: For Dodge County: Lindner, Honzik, Marsack, Hayman & Walsh, S.C., by Roger E. Walsh, Esq., 700 North Water Street, Milwaukee, Wisconsin 53202.

For the Union, Dodge County Community Health Center Employees, Local 1323A, AFSCME, AFL-CIO: James L. Koch, District Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Highway 151 S, Box 234, Route 5, Fond du Lac, Wisconsin 54935.

The Union represents a collective bargaining unit of all regular full-time and regular part-time employees of the Dodge County Community Health Center excluding supervisory, managerial and confidential employees. Negotiations over renewal of their collective bargaining agreement, which expired on December 31, 1982, commenced in November, 1982. The Union filed a petition for mediation/arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act on December 27, 1982. Following attempts at mediation by the staff of the Wisconsin Employment Relations Commission the parties submitted final offers and the Commission certified on June 3, 1983 that an impasse existed and that conditions precedent to the initiation of

mediation/arbitration had been met. The undersigned was notified of his appointment as mediator/arbitrator by letter from the Commission dated July 21, 1983.

A mediation session was conducted at the Dodge County Courthouse in Juneau on September 20. When it seemed clear that mediation efforts would be unsuccessful, the parties agreed to an arbitration hearing. At the hearing the parties presented evidence from witnesses and in documentary form. They were allowed opportunities to cross examine witnesses and to raise questions concerning the documents. No formal record was taken other than the arbitrator's handwritten notes. At the conclusion of the hearing the parties agreed to submit written briefs to be exchanged by the arbitrator. The briefs were duly exchanged on November 2, 1983 and the record is considered closed as of that date.

#### The Issue to be Arbitrated

The parties have stipulated their agreement on a number of issues. The single issue remaining in dispute is the size of the wage increase. The Union would increase wages by eight cents per hour. The Employer would increase wages by seven cents per hour. The final offers are attached to this report, the Union's being Addendum "A" and the Employer's being Addendum "B".

#### The Union's Position

There are two health care institutions operated by Dodge

County. The Community Health Care Center, involved in this proceeding, has patients, in the words of the Union in its brief, who "consist of residents who have mental and/or developmental disabilities, some of which can be severe enough to cause excessive physical and verbal aggressions being expressed against the Employees." The other health care unit, Clearview Nursing Home, which is located across the road from the Community Health Center, consists mostly of ambulatory and non-ambulatory geriatric residents whose behavior tends to be more placid and docile.

It is the Union's contention that because of the distinction between the patients, the stress, the difficulty, the unpleasantness, and the hazard for employees are considerably greater at the Community Health Care Center than they are at Clearview. This difference in working conditions is reflected in somewhat higher wage rates for some of the classifications and greater shift differentials for employees of the Community Health Care Center. Consequently, in its negotiations with the Employer the Union has taken the position that in view of these circumstances, an eight cent rather than a seven cent hourly increase is required in order to maintain the historic differential in employment conditions between the two institutions.

There are five collective bargaining units of Dodge County employees represented by AFSCME. These units and pertinent data describing them are shown in Table 1, page 4.

All other units have settled 1983 contracts without arbitration. In each case medical (and Chiropractor) insurance contributions by the Employer were increased by \$14.34 per month for family coverage and by \$5.62 for single coverage. The Employer agreed to contribute \$30.74 per month for family coverage of a

Table 1

	Highway Employees Local 1323	Sheriff's Dept. Local 1323B	Courthouse Employees Local 1323G	Clearview Nursing Home Employees Local 1323E	Community Health Center Employees Local 1323A
No. of Employees	90	51	99	136	156
Hrs. worked/month	173.3	165	173.3	164	164
Average hourly rates	\$8.11	\$9.82	\$7.04	\$5.92	\$6.01
Average monthly rates	\$1405.71	\$1619.81	\$1220.24	\$970.72	\$985.64
Health Insurance Coverage					
Family Plan	81	45	70	76	99
Single Plan	6	6	30	46	34

dental plan and \$9.07 per month for single coverage. Settlements by other AFSCME locals in the Courthouse, Highway, and Deputy Sheriff units provided for the \$30.74 dental insurance contribution from January. The Clearview AFSCME unit did not settle until the end of March and consequently there was an agreement that the Employer would make a lump sum payment of \$47 to each member of the unit and that the dental insurance and the \$30.74 contribution would become effective on April 1.

With regard to this unit and this dispute the parties signed a stipulation dated May 31, 1983 that contained, inter alia, the following sentence:

The County will pay each regular full-time Employee the amount of \$17.33 per month worked from January 1, 1983 until the month in which the dental insurance referred to in Section 11.1A becomes effective.

Section 11.1A states that "as soon as possible after the execution of the 1983 contract, the County will obtain dental insurance . . . (and will then) . . . pay \$30.74 per month toward the premium for family coverage and \$9.07 per month toward the premium for single coverage. . ."

The figures in Table 2 (page 6) are taken from the Union's exhibits introduced at the hearing. As shown in the table, there is a difference of 5/100 of one per cent in favor of the Union's final offer for the Community Health Center when it is contrasted with the settlement at Clearview. Although the table does not show it, if the Employer's offer of seven cents is substituted for the Union's offer of eight cents, the percentage increase is calculated at 5.80 per cent, which is 12/100 of one per cent lower than the settlement negotiated at Clearview.

In its brief the Union made similar calculations using monthly figures. These comparisons indicated that the Employer's final offer in this dispute is 93/1000 of one per cent lower than the final offer of the Union (although the brief erroneously characterized the figure as "almost one percent").

In sum, although not stated quite this strongly, the Union's position is that all other comparisons are of minor importance except for the comparison with Clearview. The work for members

TABLE 2

Comparison of Settlements in Other Units with  
Offers in This Unit

	Hwy. Dept. Local 1323	Sherrif's Dept. Local 1323 B	Courthouse Employees Local 1323 G	Clearview Nursing Home Employees Local 1323 E	Community Health Center Employees Local 1323 A
Average 1982 Rate	\$ 8.11	\$ 9.82	\$ 7.04	\$ 5.92	\$6.01
Medical Insurance Increase	14.34/mo	14.34/mo	14.34/mo	14.34/mo	14.34/mo
Dental Insurance	30.7 /mo	30.74/mo	30.74/mo	30.74/mo	30.74/mo
Total Benefits Increase	45.08/mo	45.08/mo	45.08/mo	45.08/mo	45.08/mo
Benefits Increase (Hourly)	.2601	.2732	.26	.2749	.2749
Wage Increase (Hourly)	.19	.24	.13	.07	.08*
Reclassifications (Hourly)	.0022			.0054	.0037
Total Increase (Hourly)	\$ .4523	\$ .5132	\$ .39	\$ .3503	\$ .3586
Percentage Increase	5.58	5.23	5.54	5.92	5.97

\*Union Proposal

of the unit at the Community Health Center is more demanding, unpleasant and even hazardous than the work for unit members at Clearview. There is an historic differential in the rates and some of the benefits. The differential is justified by the different circumstances of the work between the two institutions, and the Union offer would maintain the differential while the Employer's offer would reduce it without regard to the fact that the work at the Community Health Center is more stressful and requires "additional skills and professional aptitudes and techniques than Employees of Clearview Nursing Home. . ."

#### The Employer's Position

The Employer presented data providing a variety of comparisons both with other units with which it had settled and with wage levels for similar institutions in other counties.

The Employer's principal argument is that the settlement in this unit must be compared with the voluntary settlements negotiated in the other units. The Employer does not disagree substantially with the figures presented by the Union and appearing above in Tables 1 and 2, although it would adjust the calculations of the cost of reclassifications slightly, and the reduction of work week for one person in the deputy sheriff unit, and would compare the dental insurance benefit contribution by the Employer between this unit and Clearview with an assumption that the dollar figures agreed upon for the first three months of 1983 should be used instead of using \$30.74 for each of the twelve months of 1983. With these adjustments

the Employer makes the following calculations comparing the percentage settlements in the various units.

Table 3

<u>Bargaining Unit</u>	<u>Settlement Increase</u>
Courthouse	5.54%
Sheriffs	5.35%
Highway	5.58%
Clearview	5.54%
<u>Average</u>	<u>5.50%</u>
Community Health Center (County Offer)	5.46%
(Union Offer)	5.63%

The Employer interprets these figures to indicate that its own offer is closer to the average as well as closer to the settlement at Clearview than is the final offer of the Union. The Employer also presented the same comparisons using the Union's method of calculation for the dental insurance. Those figures are shown below in Table 4.

Table 4

<u>Bargaining Unit</u>	<u>Settlement Increase</u>
Courthouse	5.54%
Sheriffs	5.35%
Highway	5.58%
Clearview	5.92%
<u>Average</u>	<u>5.60%</u>
Community Health Center (County)	5.80%
(Union)	5.97%



The Employer interprets these figures to indicate that its offer is higher than the average of the settlements and that the Union offer is higher than any of the settlements. For the arbitrator to select the Union's final offer, the Employer argues, would be to encourage arbitrations in the future rather than voluntary settlements.

The Employer made an extended argument on the issue of existing differentials between the Community Health Center and Clearview and whether there was convincing evidence of a difference in working conditions. According to the Employer there are two employment conditions that are more favorable for employees of the Community Health Center. The top of the wage scale for Nursing Assistants has been 4 cents per hour higher (the differential would remain at 4 cents per hour under the Employer's offer) and night shift premium is higher: \$10 per month for third shift work at Clearview and 10 cents per hour (\$16.40 per month) for second shift and 15 cents per hour (\$24.60 per month) for third and split shift employees at the Community Health Center. The Employer argued that on the issue of whether the work at the Community Health Center was more onerous than the work at Clearview, the Union's witnesses had limited knowledge of comparative conditions at the two units. While the Employer appears not to deny the alleged difference, it argues that no real proof was presented. In any case, the Employer argues that the differentials in hourly rates and in the night shift allowance are sufficient differentials. Adoption of the Union's final offer would increase the wage differential for nurse's assistants at the top of the scale from 4 to 5 cents, which the Employer characterizes as an increase

of 20 per cent in the differential. And obviously it would create a one cent per hour differential in all the rates where no differentials had existed between the institutions.

The Employer would make some other comparisons between the wage rates and progression within grade for employees at the Community Health Center with employees in those classifications in similar institutions in other counties. In this connection the Employer introduced wage comparisons from counties with characteristics similar to those of Dodge County, and which are contiguous to it. These counties are Columbia, Fond du Lac, Jefferson, and Washington. These comparisons are shown on Table 5, page 11.

The Employer points out that Dodge County rates in these typical classifications (which include a majority of the employees in the unit) are second only to Fond du Lac County, which raised its top rates by an extra \$.25 per hour this year and are substantially above the average rates for these classifications in the four comparable counties. In addition, the top rates are reached in a shorter time period in Dodge County than in any of the other counties.

The Employer also introduced some wage rate comparisons from the private sector, but since the specific employers could not be identified, they were not used by the arbitrator in arriving at a determination in this proceeding.

The Employer's cost-of-living data indicated that its wage offer in percentage terms was two and one-half times as great as the increase in the BLS Consumer Price Index from July, 1982 to July, 1983.

Table 5

Comparison of 1983 Rates of Two Classifications in  
Similar Institutions in Five Counties

	<u>Start</u>	<u>Top</u>	<u>Years to Top</u>
Columbia Co.			
Nurses Aide	\$4.74	\$5.48	5
Food Service Worker	4.58	5.27	5
Fond du Lac Co. (Health Care Center)			
Nurses Aide	4.46	6.36	3 1/2
Food Service Worker	4.48	5.99	3 1/2
Jefferson Co.			
Nurses Aide	5.41	6.03	3 1/2
Food Service Worker	5.17	5.71	3 1/2
Washington Co.			
Nurses Aide	4.50	5.51	2 1/2
Food Service Worker	4.21	5.12	2 1/2
<u>Average</u>			
Nurses Aide	4.78	5.85	
Food Service Worker	4.61	5.52	
Dodge Co.			
<u>COUNTY OFFER</u>			
Nurses Aide	5.33	6.13	2 1/3
Food Service Worker	5.07	5.87	2 1/3
<u>Rank</u>			
Nurses Aide	(2)	(2)	
Food Service Worker	(2)	(2)	
<u>Relation to Average</u>			
Nurses Aide	+.55	+.28	
Food Service Worker	+.46	+.35	

In sum, the Employer argues that on all the criteria in the statute that the arbitrator must consider, its offer better meets the standards than the offer of the Union.

### Discussion

Under the statute the mediator/arbitrator is required to consider several factors in arriving at an award. Of these there is no issue concerning the first two: the lawful authority of the Employer and the stipulations of the parties. The Employer has not raised any issue of inability to pay, the third factor, although each party argues that acceptance of its own final offer would be in the interests and would promote the welfare of the public.

It is in the fourth factor that both parties put the most stress although with quite different emphases. That paragraph of the statute reads as follows:

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 public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

Here the Union would limit the comparison to the Clearview employment conditions (although it did include data allowing the mediator/arbitrator to make comparisons with the other bargaining units of County employees). The Employer, while putting most emphasis on settlements in its other units, would

also make comparisons with similar employees in Columbia, Fond-du Lac, Jefferson, and Washington Counties. In this connection I find it hard to see how the clear wording of the statute would allow me to ignore the latter figures.

Let us first examine the comparison with the Clearview employment conditions. Here there is a difference between the proposed settlements only in that the Union would add one cent per hour to the Employer's settlement and there was a slightly smaller cost of reclassifications than at Clearview. The Union's support for the extra cent is that otherwise the percentage increase for the Community Health Center employees would fall about one-tenth of one per cent below the Clearview settlement. This is not an unreasonable position for the Union to take in view of the fact that a small percentage increase would decrease the overall differential that has been traditionally maintained and which the Union argues is based on a real difference in working conditions.

But the Employer's counterargument is also not unreasonable when it says that its offer in percentage terms is greater than the average of the other settlements and by its own method of calculating costs is closer to the percentage of the Clearview settlement, although below it, than the Union's offer, which is above it. Perhaps a stronger part of the Employer argument is that the Union would increase the four cent differential at the top of the nursing assistant rate to five cents and could create a one cent differential in all the rates. In addition, of course, the Employer's comparisons with the rates in other adjoining counties' public health care institutions tend to favor the Employer's position in that Dodge County wage

rates appear already to be near the top and to exceed those of three of the four counties.

On balance the Employer has presented the more persuasive case related to comparisons.

The fifth factor to be considered is cost-of-living. The Employer has presented data showing that the Consumer Price Index has advanced during the year preceding 1983 at a rate somewhat below the percentage increase it has offered. Even though it is well-established now that the rates of increase in the CPI for 1983 will be lower than the package increases involved herein, I am a bit reluctant to base an award on such considerations for the simple reason that when the bargaining started the rate of increase of the CPI was much greater, and the bargainers did not know what was going to happen to it. Therefore, since I do not think it was a determinative element in either sides' bargaining position, it should not play a part in arriving at my award in this case. And although I should acknowledge that unemployment is still high in the area, it can also be argued that in each case the entire package of settlements for units in this county was more modest than in most recent past years.

The sixth factor is overall compensation and benefits received by these employees. In consideration of this factor the Employer's offer is preferable. All the other settlements consisted primarily of increases in health and dental benefits. It seems obvious that the Employer was aiming at settlements with all the units that were in the vicinity of what turned out to be the average: about 5.5 per cent. Although the wage rate

increases for both health care units were low compared to the 24 cents for the deputy sheriffs, 19 cents for the highway employees, and 13 cents for courthouse employees, they were low because the bulk of the package settlement consisted of uniform dollar increases in Employer contributions for health and dental insurance. The pattern of the settlements was clearly dominated by those uniform dollar figures, and since the wages in both health care units were relatively lower than the others, the Union at some stage must have agreed with the pattern of a percentage increase that was fairly uniform for all the units. Otherwise the Union would not have settled for what it did settle for at Clearview. And since the Union must have accepted that way of considering the settlements, it makes it more difficult for it to maintain a position that somehow it deserves a percentage settlement higher than all the others. In other words, although I do not find it at all unreasonable for the Union to want to maintain the differential between this unit and the Clearview unit, its final offer would have the effect of increasing the differential. And while the Employer's final offer would reduce the overall differential by slightly less than one-tenth of one per cent, it would not increase the cents per hour differential, as would the Union's final offer. Although we are talking about relatively insignificant amounts, I believe that the Employer's final offer would leave the differential closer to status quo than the Union's final offer.

The seventh factor relates to changes in circumstances during pendency of the proceedings. The Employer's continuing \$17.33 payment to each employee in the unit in lieu of dental insurance presumably falls in this category. The Employer made

its cost calculations on the assumption that the settlement should include this payment only for the first three months of the year (and \$30.74 for the other nine months) on the theory that the Union could have accepted the offer at the end of March. The Union based its estimates of cost on payment of the \$30.74 for all twelve months. In actuality, however, the members of the unit have been receiving \$17.33 each month in cash but have so far foregone the benefits of the dental insurance. By one calculation (shown in the Union's brief) by the end of 1983 this will have resulted in a monetary loss for each member of the unit of some \$121 or a bit more than 6 cents per hour.

But this is a great oversimplification of the effects of not getting the insurance. In the first place, it appears that the thirty-four single employees out of the total of one hundred thirty-three employees have been receiving \$17.33 per month in cash although the Employer's insurance contribution for them will be only \$9.07 per month. Some of those employees may not care whether the insurance ever becomes effective. In the second place, there are many attitudes about dentistry and many dental conditions in which employees and their families find themselves. Some who happen to have perfect teeth and some who have a mortal fear of going to see a dentist may prefer to keep on getting the monthly cash allowance rather than to have the dental insurance program. No doubt some others have had to postpone needed dental work while waiting for the insurance to become effective. In all probability the receipt of \$17.33 per month in lieu of dental insurance has been disadvantageous to a majority of the members of the unit. But there are probably others who have benefitted from receiving \$17.33



per month and having the dental insurance program delayed. There is no basis for deciding this dispute out of consideration for the money allowance that has been given in lieu of placing the dental program into effect pending the settlement of the dispute.

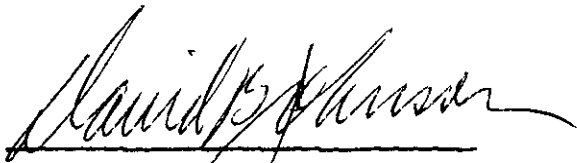
And finally the mediator/arbitrator is adjured by the statute to consider "such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public service or in private employment." I have considered this matter carefully and can think of no other factors than those already considered that should affect my determination.

AWARD

The final offer of the Employer is accepted as the settlement in this dispute.

Dated: December 6, 1983  
in Madison, Wisconsin

Signed: \_\_\_\_\_

  
David B. Johnson  
Mediator/Arbitrator  
appointed by WERC

ADDENDUM "A"

Dodge County Community Health Center 1323A

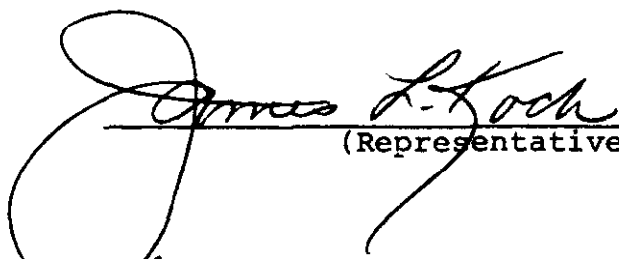
Name of Case:

LXXXII No 30925

MED/ARB - 2084

The following, or the attachment hereto, constitutes our final offer for the purposes of mediation-arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me.

MAY 31, 1983  
(Date)

  
\_\_\_\_\_

(Representative)

On Behalf of:

Dodge County Community Health Center Employees

Union Local 1323A AFSCME AFL-CIO UNCCME #40

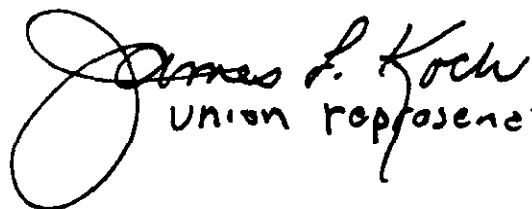
MAY 31, 1983

FINAL OFFER OF UNION

Dodge County Community Health Center  
Local 1323 A AFSCME AFL-CIO.

1. All previously agreed items
2. Wages: .08¢ across the board on all rates retro-active to January 1, 1983.

Submitted  
On behalf of  
Local 1323 A

  
James F. Koch  
Union representative

1:25 P.M.

ADDENDUM "B"

Name of Case: Dodge County Community Health  
Care Center

The following, or the attachment hereto, constitutes our final offer for the purposes of mediation-arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me.

5-31-83  
(Date)

Frank B. Zullinger  
(Representative)

On Behalf of: DODGE COUNTY

Final Offer  
of Dodge County to  
Local 1323A, AFSCME, AFL-CIO  
MAY 31, 1983

The provisions of the 1982 contract are to be continued for a one year term, except as modified by the agreed items signed on May 31, 1983, and by the following:

Wages: Increase all rates in effect on 12/31/82 by 7¢ per hour, effective January 1, 1983.

Dodge County  
Donald D. Wilkenburg