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IN THE MATTER OF MEDIATION/ARBITRATION PROCEEDINGS OCT 26 1984

BETWEEN

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

THE ASSOCIATION OF MENTAL
HEALTH SPECIALISTS

Case CLXXX No. 32905

and

MED/ARB 2664

ROCK COUNTY, WISCONSIN.

Decision No. 21793-A

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 Association of Mental Health Specialists (Association or Union) is the exclusive bargaining representative of certain employees of Rock County (County or Employer) in a collective bargaining unit consisting of Registered Nurses and Psycho Social Workers employed at the Country Health Care Center.

The Association and the Employer were parties to a collective bargaining agreement which expired on January 1, 1984. On February 8, 1984, the Association filed a petition requesting the Wisconsin Employment Relations Commission (WERC) initiate mediation/arbitration. On June 12, 1984, the parties submitted to the WERC their final offers as well as a stipulation on matters agreed upon.

On June 19, 1984, 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 September 10, 1984. The parties were unable to reach voluntary settlement and the matter was submitted to the Mediator/Arbitrator serving in the capacity of arbitrator on the same date.

The Employer was represented by Bruce K. Patterson, Employee Relations Consultant. The Association was represented by John S. Williamson, Jr., Attorney at Law, Habush, Habush & Davis.

The parties were given full opportunity to present relevant evidence and arguments at the hearing. Upon receipt of the parties briefs, the record was declared closed on October 9, 1984.

II. FINAL OFFERS

A. THE ASSOCIATION

Wages: Effective January 1, 1984, a wage increase of five percent and an additional three percent increase on July 1, 1984.

B. THE EMPLOYER

Wages: Effective January 1, 1984, a wage increase of five percent.

III. STATUTORY CRITERIA

In determining which offer to accept, the Arbitrator must give weight to the following statutory (Wis. Stats. sec. 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 ASSOCIATION

The Association asserts that its proposal is more reasonable than the County's, primarily because the employees represented by the Association have received no increase in salary since January 1, 1982, as a result of the County's refusal to negotiate with it for the 1983 contract year on the ground that the Association's request for reopen the contract was untimely.

With respect to the arbitral principle that gives great weight to internal settlements, the Association says that this denies those employees who are entitled to a greater increase for the work they perform the increase to which they are entitled because other groups of employees who are not entitled to such an increase have settled for an increase to which they are entitled. It argues that the principle is "pernicious as well as erroneous."

In addition, the Association contends that the use of internal comparables is inconsistent with Section 111.77(6)(d), wherein the statute refers specifically to comparisons with "other employees performing similar services" but not to comparisons with other employees of the same employer.

Turning to the 1984 increases for County employees, the Association points out that the County agreed to increases of 2%, 2.27%, 3%, 4% and 5%. It says that this means the County has recognized that different groups of employees are entitled to different percentage increases depending on the work they perform.

Stressing that the Association was unable to negotiate a pay increase for 1983, the Association says that all but two of the bargaining units received pay increases ranging from 1.32% to 4%. It notes that the cost of living rose 3.9% in 1982.

The Association states that since 1978 the employees represented by the Association have received greater percentage increases than the Public Health Nurses (except for 1980 when the two bargaining units received the same percentage increase), the Association states it was reasonable to conclude that, had the Association negotiated with the County in 1983, the employees the Association represented would have received an increase greater than the 2.25% granted to the Public Health Nurses.

Even if the Association had only been able to negotiate a 2.25% increase, that increase plus the five percent increase on January 1, 1984, would have given the employees the Association represents an effective increase of 7.25% in 1984 over that they received in 1982. It points out that the effective 1984 increase requested by the Association is 6.5%.

The Association contends the data show the salaries in the County for Registered Nurses were the lowest of counties having comparable populations for which comparative information was available. Whichever proposal the Arbitrator adopts, the Union says the top rate of the Registered Nurses remains the lowest for the comparable counties.

Recognizing the difficulty of comparing the many different positions in the Psycho-Social Division, the Association says it appears that, while these employees have a higher relative standing than the nurses, no matter which proposal is adopted none will become the highest paid for that position.

Finally, the Association asserts that the Association's proposal costs approximately \$20,000 more than the County's. It concludes that the price of providing justice in this proceeding is not high.

B. THE EMPLOYER

Contending that its proposal is more reasonable than the Association's, the County points out that the Association's proposal would at some point impact on the costs of providing health care services to County residents to a greater degree than the County's proposed increase would.

The County claims that its final offer will maintain the relative position of bargaining unit employees within the County's employment structure. It points out that its final offer is equal to or greater than negotiated increases voluntarily agreed upon with ten other represented bargaining units. The County says that the wage and benefit packages averaged 2.89% and wage increases costing the County an average of \$.3946 per hour.

The County contends that the Association's demand is 20.9% greater than the average wage amount of voluntary settlements with other County units.

According to the County, its offer maintains the relative relationship between the Social Worker Unit and the Psycho-Social Unit, while the Association's final offer would destroy that relationship by propelling the Psycho Social Unit ahead of the Social Worker Unit by about \$900 on average.

The Registered Nurses maintain their internal ranking and actually improve their relationship with the Public Health Nurses, according to the County.

The County believes it is following Arbitrator Mueller's 1978 rationale in an arbitration award between the parties, when it made an internally consistent offer to this bargaining unit. It claims that it must follow such a course of bargaining in order to have any semblance of credibility with its employees in bargaining. The County cites several awards by other arbitrators in supports of its reliance on internal comparables.

With respect to external comparables, the County argues that the Association has failed to submit data for more than one third of the counties in its own comparability sample. The County contends it may be reasonable for the Arbitrator to assume that the Association has omitted data which are not in support of its case. The County also argues that there is a lack of any data showing job duties of the Union's comparability sample and there is no consistent data on staffing levels or incumbent salary levels.

The County asks the Arbitrator to note that the Association chose not to offer data for the statutory criteria relative to the private sector.

Turning to the Consumer Price Index (CPI), the County says the growth in the CPI more closely approximates the County's wage increase of 5% for 1984 than the Association's demand of 8% at year's end.

The County asserts that the employees represented by the Association enjoy a benefit program equal to or higher than other county employees.

The County calls to the Arbitrator's attention that it has recently been advised that it will receive no increase in state aid for the period of July 1, 1984, through June 30, 1985, for services performed by members of the bargaining unit involved in this dispute.

Finally the County requests the Arbitrator to recognize that it was the Association that failed to comply with the reopener clause for the 1983 negotiations. In renewing the 1983 contract, the County honored all provisions and paid the substantial health insurance premium increases. It says that this benefit was equal to the improvement level that other bargaining units received.

V. FINDINGS OF FACT

A. INTRODUCTION

The Association represents a bargaining unit consisting of 28 Psycho-Social Workers and 33 Registered Nurses employed by the County.

The Association's wage offer would result in an average overall increase in compensation of 4.98% for the Psycho-Social Workers and 4.4% for the Registered Nurses. The County's wage offer would result in an average overall increase in compensation of 3.6% for the Psycho-Social Workers and 3.09% for the Registered Nurses.

The Association's offer would result in an average base salary of \$22,685 (effective July 1, 1984) for Psycho-Social Workers and an average base salary of \$19,488 (effective July 1, 1984) for Registered Nurses. The County's offer would result in an average base salary of \$22,025 for Psycho-Social Workers and \$18,560 for Registered Nurses.

The total cost of the Association's proposal is \$1,646,434 and the cost of the County's is \$1,625,162. The difference between the two proposals is \$21,272.

B. STATUTORY CRITERIA

1. Lawful Authority of the Employer. There is no contention that the county lacks the lawful authority to implement either offer.

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

At the hearing, the parties corrected one of their stipulations of agreed upon items. The parties agreed that the reference to "Nurses" in Section 14.04 should be deleted.

3. Ability to Pay and Interests and welfare of the Public. There is no contention the County lacks the financial ability to pay either offer.

4. Comparison of Wages, Hours and Conditions of Employment. The County contends that the comparison should be made with the negotiated salary increases of the other bargaining units in the County. The Association contends that the comparison should be made with the wages of employees performing similar work in other counties.

a. External Comparisons

The Association asserts that the following counties are comparable to Rock County based on population:

Walworth (71,507)
Dodge (74,747)
Washington (84,848)
Fond du Lac (88,952)
La Crosse (91,056)
Sheboygan (100,935)
Marathon (111,270)
Kenosha (123,137)
Outagamie (128,726)
Winnebago (131,732)
Racine (173,132)
Brown (175,280)

The population of Rock County is approximately 139,420. Comparisons with respect to the Association's offer have been made using the salaries that would be in effect on July 1, 1984.

These findings summarize the comparisons shown in detail in the parties' exhibits. Data was not furnished with respect to all the comparative counties. In some cases the data was not available and in others the parties had not yet settled.

PSYCHOLOGIST (Ph.D.) Disregarding Washington County's part-time psychologist, the County ranked fourth at starting salary for the Psychologist Ph.D. position and third at the top salary in 1983. In 1984 both proposals would place the County at third place with respect to starting salary for this position and drop it to fourth place at the top salary level.

The average starting salary in 1983 was \$26,930.40 and the average top salary was \$30,338.20. The County's starting salary was \$1,138 below the average starting salary in 1983 and \$1,013.20 below the average top salary.

The 1983 median starting salary was \$26,706 and the median top salary was \$29,152. The County's starting salary was \$914 below the median and its top salary was \$173 above the median.

The average starting salary in 1984 is \$28,595.60 and the average top salary is \$33,188.60. The Association's proposal would result in a starting salary \$700.85 below the average and a top salary \$1,473.03 below the average. The County's proposal would result in a starting salary \$1,513.32 below the average and a top salary \$2,396.78 below the average.

The median starting salary in 1984 is \$25,522 and the median top salary is \$34,873. The Association's proposal would result in a starting salary \$2,372 above the median and a top salary \$3,157.43 below the median. The County's

proposal would result in a starting salary \$1,560.28 above the median and a top salary \$4,081.18 below the median.

SOCIAL WORKER III With respect to Social Worker III positions, the County ranked last among the seven comparable counties (including the County) at the starting salary level in 1983. It ranked in fourth place at the top salary level. In 1984 both proposals would place the County in fifth place at the starting salary and top salary.

In 1983 the average Social Worker III starting salary was \$20,993 and the average top salary was \$23,697. The starting salary in the County was \$2,059 below the average in 1983 and its top salary was \$275 above the average.

The median 1983 starting salary was \$20,638 and the median top salary was \$24,235.50. The County's starting salary was \$1,704 below the median and its top salary was \$263.50 below the median.

In 1984 the average Social Worker III starting salary among the comparables is \$20,804 and the average top salary is \$26,265. The Association's proposal would result in a starting salary \$327 below the average and a top salary \$339 below the average. The County's proposal would result in a starting salary \$924 below the average and a top salary \$1,094 below the average.

The median starting salary among the comparable counties is \$20,902 for 1984 and the median top salary is \$26,125. The Association's proposal would result in a starting salary \$426 below the median and a top salary \$199 below the median. The County's proposal would result in a starting salary \$1,022 below the median and a top salary \$954 below the median.

OCCUPATIONAL THERAPIST In 1983 four comparable counties ranked ahead of the County with respect to the starting salaries of occupational therapists. The County was next to last with respect to top salary in 1983.

In 1984, the County would rank last with respect to starting salary if the County's proposal were implemented and next to last if the Association's proposal were implemented. It would rank next to last at the top salary if the County's wage proposal were implemented and it would be in third place if the Association's proposal were implemented.

In 1983 the average starting salary among the four comparables was \$17,798 and the average top salary was \$20,648. The County's starting salary was \$1,517 below the average and its top salary was \$608 below the average.

In 1984 the average starting salary among the five comparables is \$18,397 and the average top salary is \$21,416.

The Association's proposal would result in a starting salary \$789 below the average and a top salary \$257 above the average. The County's proposal would result in a starting salary \$1,302 below the average and a top salary \$374 below the average.

The median starting salary among the five comparables in 1984 is \$18,446 and the median top salary is \$21,485. The Association's proposal would result in a starting salary \$838 below the median and a top salary \$188 above the median. The County's proposal would result in a starting salary \$1,351 below the median and a top salary \$443 below the median.

SOCIAL WORKER I In 1983 the starting salary of Social Worker I's in the County was the fourth highest out of five comparable counties. In 1983 the top salary in the County third highest.

The average starting salary among the comparables in 1983 was \$14,499 and the average top salary was \$18,050. The County's starting salary was \$150 above the average and \$1,613 above the average top salary.

The 1983 median starting salary among the comparables was \$14,741 and the median top salary was \$19,172. The County's starting salary was \$92 below the median and \$491 above the median top salary.

In 1984 both proposals would result in the County's being in last place with respect to starting salary. The Association's proposal with respect to the top salary would place it fourth out of seven and the County's, fifth out of seven.

In 1984 the average starting salary among the comparables is \$18,237 and the average top salary is \$22,320. The Association's proposal would result in a starting salary \$2,394 below the average starting salary and a top salary \$1,055 below the average top salary. The County's proposal would result in a starting salary \$2,856 below the average starting salary and a top salary \$1,674 below the average top salary.

In 1984 the median starting salary among the comparables is \$18,128 and the median top salary is \$21,472. The Association's proposal would result in a starting salary \$2,285 below the median and a top salary \$207 below the median top salary. The County's proposal would result in a starting salary \$2,747 below the median starting salary and a top salary \$826 below the median top salary.

REGISTERED NURSES In 1983 the County ranked next to last among the eight comparable counties for which data were available with respect to the lowest wages paid registered nurses. It ranked last with respect to the top wage paid

registered nurses.

The average starting salary in 1983 among the eight comparables was \$17,482 and the average top salary was \$20,936. The County's starting salary was \$1,338 below the average and its top salary was \$2,054 below the average.

The median starting salary in 1983 among the eight comparables was \$17,191 and the median top salary was \$20,758. The County's starting salary was \$1,047 below the median and its top salary was \$1,876 below the median.

If the Association's starting salary proposal were accepted, the County would rank in fifth place. The County's proposal would place it sixth out of seven. Both the Association's and the County's proposals for top salary would place it last among the comparables.

The average starting salary in 1984 among the six comparables is \$19,375 and the average top salary is \$23,521. The Association's proposal would result in a starting salary \$1,916 below the average and a top salary \$3,101 below the average. The County's proposal would result in a starting salary \$2,425 below the average and a top salary \$3,696 below the average.

The median 1984 starting salary among the comparables is \$18,510 and the median top salary is \$23,654. The Association's proposal would result in a starting salary \$1,051 below the median and a top salary \$3,234 below the median. The County's proposal would result in a starting salary \$1,559 below the median and a top salary \$3,829 below the median.

There is nothing in the record regarding the rate of increase (either dollar or percentage) among the external comparables.

B. INTERNAL COMPARABLES

With respect to the ten bargaining units that have settled in the County, the overall 1984 rates of increase in total compensation ranged from 3.57% to 1.63%. The average increase is 2.89% and the median increase is 3.09%.

The County's RN wage offer would result in an increase equal to the median percent increase and the Association's RN wage offer would result in an increase in excess of the median. Both offers would result in a wage rate increase for the Psycho-Social unit in excess of the median increase.

In 1983 only one other bargaining unit received no wage increase. That bargaining unit (Health Care Center) received a health insurance increase of five percent. The percentage total compensation increases in the ten bargaining units

ranged from 1.63% to 6.86%. The Psycho-Social Workers received an total compensation increase of 3.24% (increase in health insurance premium contribution by Employer) and the RN's received a total compensation increase of 4.82% (increase in health insurance premium contribution by Employer).

The average 1983 increase in total compensation in the ten bargaining units was 4.98% and the median increase was 5.3%. The increase in the total compensation of the Psycho-Social employees was 1.74% below the average increase and 2.06% below the median. The increase in the total compensation of the RN's was .16% below the average and .48% below the median increase.

In 1983 and 1982 the Psycho-Social employees ranked fourth among the 12 bargaining units in average wage rate. In 1981, 1980, 1979 and 1978 the employees ranked third. In 1977 they ranked fourth.

Both offers will result in a 1984 wage rate keeping the Psycho-Social employees in fourth place.

In 1983, 1982 and 1981 the RN's ranked seventh among the bargaining units in average wage rate. In 1980, 1979, 1978 and 1977 they ranked sixth.

Both offers would place the RN's in sixth place in 1984.

5. Changes in the Cost of Living. The cost of living as measured by the Consumer Price Index (CPI) increased by three percent in 1983. Both offers provide for salary increases greater than the increase in the cost of living as measured by the CPI.

6. Total Compensation. With respect to a comparison of benefits provided other County employees, the record shows that under either offer, the employees represented by the Association will continue to receive fringe benefits comparable to those provided in other bargaining units.

7. Changes During the Pendency of Arbitration Proceedings. The County asserts that it has recently been advised that it will not receive an increase in state aid for the period July 1, 1984, through June 30, 1985, for services performed by members of the bargaining unit involved in this dispute. In addition to the fact that no evidence regarding this was introduced at the hearing so that the Association can respond to it, there is no evidence regarding what portion of the cost of the services is paid for by state aid, what the impact of the State's action will be on the County, and whether this action will affect the tax rate or the ability of the County to provide the services or pay either offer.

8. Other Factors. In 1983 the Association failed timely to request negotiations under the reopener clause in the collective bargaining agreement. The Employer refused to waive the time limits in the reopener clause.

VI. ANALYSIS

In determining which party's offer is more reasonable, arbitrators attempt to determine what the parties would have settled on had they reached a voluntary settlement. Since the parties did not reach a voluntary settlement, one of the most important aids in determining where the parties would have settled is an analysis of salaries paid similar employees by other comparable employers. In addition, arbitrators have given great weight to settlements between an employer and its other bargaining units. See Elkouri & Elkouri, *How Arbitration Works* 781 (3rd ed. 1973). See also *Brown County*, Dec. No. 20455-A (Michelstetter, 1983); *Manitowoc County*, Dec. No. 19942-A (Weisberger, 1983); *Milwaukee County*, Dec. No. 20562-A (Fleischli, 1983); *City of Brookfield*, Dec. No. 19573-A (Rice, 1982); *City of Oconto*, Dec. No. 19800-A (Monfills, 1982).

Looking at the 1984 settlements in the County, it is apparent that the County's offer is closer to the pattern of settlement for this year. Looking at 1983 and 1984, the average increase in compensation for the ten bargaining units for those two years is 8.389%. (Averages have been computed using the year-end lift). The County's offer would result in a two-year increase in total compensation for the Psycho-Social Workers of 6.84%--1.549% below the average two-year increase in the County. The Association's offer would result in a two-year increase in total compensation for the Psycho-Social Workers of 9.7%--1.311% above the average two-year increase.

The County's offer would result in a two-year increase in total compensation for the Registered Nurses represented by the Association of 7.91%--.479% below the average two-year increase. The Association's offer would result in a two-year increase in total compensation for the Registered Nurses of 9.25%--.861% above the average increase.

Thus, using internal comparables for 1983 and 1984, the Association's offer with respect to Psycho-Social Workers is closer to the average increase in total compensation for that period while the County's offer with respect to Registered Nurses is slightly closer to the average increase.

Both offers maintain the relative relationship between employees represented by the Association and other County bargaining units, although the Association's will put the Psycho-Social Workers somewhat further ahead of the Social Worker Unit.

While arbitral authority establishes the principle that internal settlements are to be given "great weight," such internal settlements are not conclusive. It is still necessary to examine the other criteria, including external comparables. In *Rock County (Deputy Sheriffs' Ass'n)*, Dec. No. 20600-A (Grenig, 1984), this arbitrator gave great weight to evidence regarding the settlement pattern established by other bargaining units in the County, but also relied on evidence establishing that both offers would establish a top wage rate in excess of the median top wage and on evidence that the County's offer would maintain its ranking at the top wage rate. It was also determined that two other offers of the union were less reasonable than the employer's .

In this case, both parties' offers are relatively close to the two-year internal settlement pattern. Thus, the external comparables are of considerable importance in determining which offer is more reasonable. The evidence shows that both proposals will result in top salaries below the average and median for the Psychologist (Ph.D.), Social Worker III and Social Worker I. Both offers would result in starting salaries below the median for Social Worker III, Occupational Therapist and Social Worker I.

The County's proposal would result in the County ranking last among the external comparables with respect to the starting salaries of the Occupational Therapist and Social Worker I. Both proposals would place the County at Third place with respect to the starting salary of Psychologist and in fifth place with respect to Social Worker III.

The County's proposal would drop the County to fourth place at the top salary level for Psychologist. Both proposals would place the county in fifth place at the top salary for Social Worker III--a drop of one place. The Association's offer would improve the top salary ranking of the Occupational Therapist. Both proposals would drop the County's position for Social Worker I, the County's from third to fifth and the Association's from third to fourth.

Thus, for the Psycho-Social Workers, the County's offer generally does not improve the ranking of those employees, and, in some instances, actually worsens the ranking. The Association's offer generally maintains the ranking of those employees.

With respect to Registered Nurses, both proposals place the RN's in last place at the top salary. The Association's offer would slightly improve the ranking at starting salary and the County's would maintain its ranking.

Based upon the comparison of the starting and top salaries of the various employee positions represented by the

Association, it is concluded that the Association's wage offer is more reasonable than the County's.

While there may be some differences in the duties performed by the employees compared, the Association relied on job descriptions in the Wisconsin County Employee Wage and Benefit Survey 1983. These provide a reasonable guide. Although the County has access to the same information, it has not rebutted the Association's prima facie showing that the jobs are similar.

The record does not establish that the Association has omitted data which did not support its case. The Association states that data for all comparables was not furnished where the information was not available. Because this is not information solely within the control of the Association, it would be improper for the Arbitrator to draw a negative inference from the lack of such data. If there is data that were not provided the Arbitrator, the County had the opportunity to present the missing data, if such were in fact available.

The lack of data regarding private sector employees does not harm the Association's case. First, comparisons of settlement patterns with private industry and other public sector employers may be of some help, but they are not as helpful as comparisons with the wages of public employees. The conditions of employment are generally too dissimilar to make meaningful comparisons possible.

Second, the Association was not under any duty to present private sector comparisons, if any, that could support the County's position.

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 Association's final offer is more reasonable and is to be incorporated into the parties' collective bargaining agreement together with all previously agreed upon items.

Executed at Waukesha, Wisconsin, this 25th day of October, 1984.

Jay E. Grenig, Arbitrator