WISCONSIN EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ARBITRATOR

In the Matter of the Petition of BROWN COUNTY MENTAL HEALTH CENTER EMPLOYEES, LOCAL 1901, AFSCME, AFL-CIO To Initiate Mediation-Arbitration Between Said Petitioner and BROWN COUNTY (MENTAL HEALTH CENTER)	AWARD AND OPINION

Case No.	274 No. 36214 Med/Arb 3728 Decision No. 23871-A
Hearing Date	October 29, 1986
Appearances:	
For the Employer	MR. KENNETH J. BUKOWSKI, Corporation Counsel
For the Union	MR. JAMES W. MILLER, Staff Representative
Mediator/Arbitrator	MR. ROBERT J. MUELLER
Date of Award	May 14, 1987

BACKGROUND

The Brown County Mental Health Center Employees Local 1901, AFSCME, AFL-CIO, hereinafter referred to as the Union, filed a petition with the Wisconsin Employment Relations Commission to initiate mediation-arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act on December 30, 1985.

The petition was thereafter processed pursuant to the statutory procedure and impasse was subsequently found to exist between the Association and Brown County (Mental Health Center), hereinafter referred to as the County or Employer. The undersigned was subsequently appointed to serve as mediator/arbitrator to resolve the impasse. The matter was subsequently set for mediation. Mediation efforts were unsuccessful and the matter was then heard in arbitration. Both parties were present and were afforded full opportunity to present such testimony, evidence and argument as they deemed relevant. Post-hearing briefs were submitted to the mediator/arbitrator.

THE FINAL OFFERS

The parties reached agreement on all matters relating to an agreement for the calendar year 1986 with the exception of the amount of wage increase to be included in said agreement. The parties' final offer positions on said issue are as follows:

Union's Propsal - 4% across the board increase effective January 1, 1986.

County's Offer - (a) Increase Food Service Worker and Nursing Assistant (trained and untrained) hourly rate by 2% effective January 1, 1986.

(b) Increase all other classifications except Food Service Worker and Nursing Assistant hourly rate by 4% effective January 1, 1986.

DISCUSSION

The Union argues that the County's offer is not supported by the evidence and is inconsistent. They contend the County

exhibits themselves establish their inconsistency. Said exhibits show that for 1985 registered nurses were paid higher at the Brown County Mental Health Center than employees in the same classification at Western Village, San Louis Manor, Pleasant Acres, and Outagamie County Health Care Center. Despite such fact, the County passed a resolution which granted a 4% wage increase for 1986 to the registered nurses of the Brown County Mental Health Center. Employees in the LPN classification at Brown County are also paid higher than their counterparts at other institutions to which the County has made reference. Despite such feature, the County has not proposed to offer employees in the LPN classification less than the 4% wage increase granted to all other County employees. The Union points out that despite such apparently higher rates in most other classifications in which few employees are located at the Brown County Mental Health Center in comparison to other facilities referred to by the County, 4% has been proposed as an increase to their rates.

The only exception in the County's position concerns their offer to employees in the classification of nursing assistant and food service worker. Approximately 75% of the bargaining unit employees are in those two classifications. The Union argues that other than the obvious reason that offering a low increase to groups of employees who make up the majority of the bargaining

unit saves more money for the County, the County has offered no reason to offer a lesser increase to such two classifications where they have not similarly offered a lesser increase to such other classified employees in the unit.

The Union further contends that the duties and responsibilities of employees in the Brown County Mental Health Center are not comparable to employees in the similar classifications at other institutions and primarily those private nursing homes to which the County attempts to make comparison The types of patients are different. The Brown County facility receives the worst of all patients. They care for not only the elderly but also those with physical and mental deficiencies. The Brown County facility is the final stopping place for a variety of mental patients and the hard to handle patients that are sent tc the facility from those nursing homes to which the County would seek to make comparison.

Finally, the Union argues that a 4% increase has been established as a solid pattern through voluntary wage settlements throughout the total area. The County has settled with numerous other bargaining units and County employees at 4% for 1986. The City of Green Bay has also settled with numerous other groups of employees at a 4% wage increase with but few exceptions where several increases have been higher. The Union points out that there are 12 voluntary settlements in Brown County at 4%;

10 voluntary settlements in the City of Green Bay at 4% and 4 voluntary settlements in the Green Bay Board of Education of 4% for a total of 26 voluntary settlements for the year 1986 at 4%.

The Union contends the most relevant and persuasive evidence that should control the award issued by the arbitrator by application of the statutory factors to this case, is that of the pattern of settlements in the City of Green Bay and Brown County area. Those settlements favor the Association's offer and should be awarded.

The District entered into evidence the following two exhibits consisting of wage comparison of nursing assistants to several other selected institutions (Exhibit No. 6) and a wage comparison of the food service worker classification (Exhibit No. 7). Said exhibits were as follows:

EXHIBIT 6

WAGE COMPARISON
NURSING ASSISTANTS
SELECTED COUNTY FACILITIES
1985-1986

COUNTY	1985	1986	PERCENT INCREASE	MONTHS TO MAXIMUM
rown County Mental ealth Center	$7.91	County: $8.07 Union: $8.23	2% 4%	6
anitowoc* ark Lawn	$6.76	$6.98	3.25%	12
anitowoc Health are Center	$6.79	$7.01	3.24%	12
innebago both institutions)	$7.00	$7.00	0%	42
eboygan all institutions)	$6.60	$6.80	3.03%	18
ond du Lac	$6.78	$6.93	2.21%	42
tagamie iverview	$5.35**	Not Settled	n/a	72
tagamie County ealth Care Center	$7.10	Not Settled	n/a	108

nty leased Nursing Home facility to private enterprise on July 1, 1986.
34 rate

EXHIBIT 7

WAGE COMPARISON (Maximum Rates)
FOOD SERVICE WORKER
SELECTED COUNTY FACILITIES
1985-1986

COUNTY	1985	1986	PERCENT INCREASE	MONTHS TO MAXIMUM
Brown County Mental Health Center	$7.38	County: $7.53 Union: $7.68	2% 4%	6
Manitowoc * Park Lawn	$6.55	$6.76	3.21%	12
Manitowoc County Health Care Center	$6.58	$6.79	3.19%	12
Winnebago	$6.92	$6.92	0	42
Sheboygan (Food Service Worker I)	$6.30	$6.49	3.02%	18
(Food Service Worker II)	$6.43	$6.62	2.95%	18
Fond du Lac	$6.41	$6.56	2.34%	42
Outagamie Riverview	$5.10**	Not Settled	n/a	72
Outagamie County Health Care Center	$6.94	Not Settled	n/a	108

*County leased Nursing Home facility to private enterprise on July 1, 1986.
**1984 rate

The County specifically points out the feature of the two exhibits wherein employees at the Brown County facility reach the maximum rate in a six-month period compared to a much longer period of time for all of the other comparables. Additionally, the Brown County rates are substantially higher than those rates in the comparable facilities.

The County further contends and argues that the annual percentage increase in the CPI more amply supports the County's proposal of 2% to those classified employees who are at a high level in comparison to their counterparts in other facilities than does the 4% offer of the Union.

The County contends its evidence substantiates its final offer pursuant to Section 111.70(4)(cm)7c, d, e and f as the most preferrable and should be awarded.

The County's position in this case is that the wage rates of employees in the classifications of food service worker and nursing assistant is too high in comparison to other employees performing similar services in other public and private facilities.

Such position raises a number of questions. One must start with the premise that the existing rates of pay that exist for the various classifications presumably did not come into being by chance. Such rates were undoubtedly arrived at by voluntary give and take of negotiations over a period of years. Such rates presumably were not negotiated in a vacuum. They were negotiated

over a period of years and arrived at their present level by the give and take of negotiations. Undoubtedly the parties were aware of the levels of pay for similar classifications at other facilities. Whatever the reasons, and they undoubtedly are innumerable, the parties have over the years established the rates at their present level in relationship to all others and with consideration being given to all relevant factors that influence their actions. The existing rate structure constitutes the status quo.

In this case, the County's proposal attempts to change the status quo. Where, such as in this case, a 4% offer is on the table for all classifications with the exception of several designated as requiring an /inequity adjustment, the burden of presenting evidence justifying a deviation from the status quo is on the party proposing the inequity adjustment. In this case, there not only exists a pattern of offering the 4% pattern increase to some of the employees of the Employer, but a clear 4% pattern of increases exists throughout the County as to other groups of employees and throughout the City and City employees as well.

This case is similar to that of a person accused of a crime. Such person is innocent until proven guilty. In this case, the status quo and levels of wages set by the parties is presumed to exist for good reasons until proven otherwise.

From an evaluation of the record evidence, one can see that the level of wages paid employees in the classifications of nursing assistant and food service worker at the Brown County Mental Health Center is clearly higher than the rates paid comparable employees at other facilities. Simply because such fact exists and simply saying such fact justifies an inequity adjustment, does not make it so. The arbitrator recognizes the County's argument to the effect that in comparison to those facilities listed on Exhibits 6 and 7, the time required to advance from the starting rate to the maximum rate is much shorter at the Brown County facility than it is at the other comparable facilities. There is no evidence to indicate, however, that such distinguishing feature came into existence in the recent past. In the absence of evidence to the contrary, the arbitrator assumes that such differences existed for some time prior to this negotiation and was considered by the parties at prior contract negotiations and regardless of such difference, arrived at the present wage structure in comparison to such other facilities.

One area referred to by the Union in their testimony and argument that would appear to have some relevance and bearing upon the relevant wage level of employees at the Brown County institution in comparison to others, was the contention by the Union that the Brown County facility is not totally comparable

to other facilities because Brown County is the final placement facility for those most difficult patients that others frequently are unable to accommodate. No statistical evidence was entered into the record by either party with respect to such matter. Presumably, the higher wage level that the parties had developed over a period of years may have recognized and considered distinguishing characteristics and factors such as the type of patients involved, in arriving at and setting the level of pay.

In such case, the party seeking to change the status quo has the burden of presenting evidence sufficient to show that either the reasons that had previously existed and were contributory to the setting of a wage level at a particular level had ceased to exist or that such considerations simply were not valid and did not support the amount of difference in the wage rate that presently existed. The claim that a wage rate is too high is a highly subjective matter. How high is too high? The party making such contention, also has the burden of defining how high is too high and <u>why</u>.

The County has not established by supportive evidence as to how high is too high and why. The record does not contain evidence establishing any objective and supportive reasons for an inequity adjustment in the face of the status quo presumption and the settlement pattern.

The arbitrator has considered the argument of the County concerning the weight to be afforded the CPI as applied to the final offers. In view of the consistent and specific pattern of settlement reached by the County with numerous other employee groups in this case, the undersigned is reluctant to place any independent weight upon such factor for the simple reason that the parties themselves have determined the appropriate weight to be given such factor from the overall consideration as shown by their settlements of 4% in other areas and the fact that the County has in fact offered 4% to all other employees except the two classifications of food service worker and nursing assistant in this case.

On the basis of reviewing the total record evidence and application of the statutory factors of 111.70(4)(cm)7, of the Municipal Employment Relations Act, the arbitrator is of the considered judgment that the Union offer is the most supported from an overall consideration.

It therefore follows from the above facts and discussion thereon that the undersigned renders the following decision and

AWARD

That the final offer of the Union be incorporated into the 1986 Collective Bargaining Agreement.

Robert J. Mueller
Mediator/Arbitrator

Dated at Madison, Wisconsin
this 14th day of May, 1987.