IN THE MATTER OF MEDIATION-ARBITRATION BETWEEN

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| Douglas County Health Department Employees AFSCME, Local 2375-A | ) | Award |
| | ) | Mediator-Arbitrator: John W. Boyer, Jr. |
| -and- | ) | |
| | ) | Case 136 No. 37211 |
| Douglas County (Health Department) Superior, Wisconsin | ) | MED/ARB 3952 |
| | ) | Decision No. 23922-A |

APPEARANCES

For Douglas County Health Department Employees - AFSCME, Local 2375-A
James A. Ellingson, District Representative
WISCONSIN COUNCIL 40 - AFSCME
Mary Jo Olson, Bargaining Committee Member
Nancy Peterson, Bargaining Committee Member
Rebecca West, Bargaining Committee Member

For Douglas County (Health Department)
Mark L. Pendleton, Personnel Director
DOUGLAS COUNTY
Patrick Heiser, Health Officer
Nancy Hudson, Director - Nursing Division
Robert Kahlstrom, Douglas County Board Supervisor

STATEMENT OF JURISDICTION

Pursuant to applicable provisions of the Municipal Employment Relations Act, the Parties filed a petition with the Wisconsin Employment Relations Commission alleging an Impasse existed in the process of collectively bargaining matters affecting wages, hours and conditions of employment, and requesting the Commission initiate the Mediation-Arbitration process. Subsequently, on August 12, 1986, a Commission staff person conducted an investigation that concluded the Parties were at Impasse, the Parties were directed to and duly submitted respective statements of "final offers" and stipulations of matters agreed upon; and on October 6, 1986, the Commission issued its "Findings of Fact, Conclusions of Law, Certification of Results of Investigation, and Order Requiring Mediation-Arbitration".

The Mediator-Arbitrator, mutually selected by the Parties, was John W. Boyer, Jr. The Mediation-Arbitration Hearing was convened on

November 10, 1986 at 9:00 A.M. at the Douglas County Court House in Superior, Wisconsin. The Parties requested opportunity to submit post-hearing briefs, such were submitted by the date established, and the Hearing was declared closed on January 14, 1987.

## FINAL POSITIONS OF THE PARTIES

The position and requests of each of the Parties were outlined by their representatives and supported by a variety of documents and testimony as follows:

### Position of Union

1) Length of Agreement: A Two (2) Year Agreement effective January 1, 1986 through December 31, 1987.

2) Wages: A three (3.0%) percent increase in wage rates effective January 1, 1986, and a three (3.0%) percent increase in wage rates effective January 1, 1987.

3) Pension: ARTICLE XVIII - Pension and Insurance, Section A, shall be modified to delete the "cap" on contributions to the Wisconsin Retirement Fund.

4) Fringe Benefits: Effective January 1, 1987 all fringe benefits with the exception of ARTICLE XVIII (B)(1) shall be prorated.

5) Vacation Schedule: Modify the existing Vacation Schedule to provide for "15 days after 6 years" and "add 27 days after 19 years".

6) Tentative Agreements: All Tentative Agreements reached between the Parties shall be included in the Agreement.

### Position of Employer

1) Length of Agreement: A Two (2) Year Agreement effective January 1, 1986 through December 31, 1987.

2) Wages: A three (3.0%) percent increase in wage rates effective January 1, 1986, and a three (3.0%) percent increase in wage rates effective January 1, 1987.

3) Pension: ARTICLE XVIII - Pension and Insurance, Section A, shall be modified as follows: "Effective January 1, 1986 revise '$21,500' to '$23,000', and add a new paragraph to provide "Effective January 1, 1987 revise '$23,000' to '$24,500' ".

4) Conferences: ARTICLE XIV - Conferences, Workshops & Seminars, shall be modified to include a new sentence immediately after the first sentence to provide: "The County reserves the right to schedule up to two (2) inhouse workshops as part of the above six (6) day allocation."

5) Tentative Agreements: All Tentative Agreements reached between the Parties shall be included in the Agreement.

Discussion

On the basis of the considered evaluation of all documents, testimony and arguments presented by the Parties at the Hearing and in post-hearing briefs, the decision of the Mediator-Arbitrator is to sustain the position of the Employer. The basic reasons for the Award are the following:

1) Initially, the Mediator-Arbitrator can readily empathize with the concerns and apparent frustration inherent in the disparate positions of the Parties when after protracted attempts to resolve all negotiable issues through bargaining, the Parties remain at Impasse on the emotion-laden matters in dispute. Further, the Record (Employer Brief) indicates the Employer and the employees' Professional Alliance commenced negotiations during February, 1986, and during June, 1986 the Professional Alliance elected to affiliate with the Union and the chronology detailed in the "Statement of Jurisdiction" above evolved.

Finally, the Award shall not be interpreted as reflecting upon the integrity of the principals, given the behavior of each exhibited at the Hearing could be characterized as an open, reserved and sincere attempt to provide convincing argumentation supportive of their respective positions. Nevertheless, the Award was predicated upon the statutorily mandated criteria, the standards of contract arbitration recognized by principals in a dispute and neutrals alike, and the express requirement the Arbitrator Award that final total position of either Party determined as most appropriate.

2) The Mediator-Arbitrator was cognizant of the relatively small size of the bargaining unit, that is, the sixteen (16) staff were composed of eight (8) Public Health Nurses, seven (7) Staff Nurses, and one (1) Home Health Coordinator. Further, the Record indicated only one (1) employee had more than five (5) years service, one (1) had five (5) years, and all others had lesser years service.

The Record also reflects considerable, compelling and emotion-laden testimony by bargaining unit members as to alleged exceptional levels of personal and/or professional stress and/or anxiety inherent in the diverse duties of the profession and the Employer's departmental organizational structure. Further, the Record indicates employees are expected to be available at irregular hours and on weekends. Certainly, the Mediator-Arbitrator shall not dispute such perceptions, but research on employee perceptions of stress indicate such is generally characteristic of numerous professional and para-professional occupations and each may appropriately consider itself as "worse off" depending upon individual circumstances. Nevertheless, such factors are generally addressed by the Parties in determining the wage rates as further addressed below.

Further, given the Employer failed to plead an inability to pay

the negotiated and Awarded increases, and the Union (Exhibits 16, 17 and others) effectively support the current and relative stability of the Employer's financial base, such was not determined to be a significant constraint especially relative to the size of the instant bargaining unit. Finally, the Mediator-Arbitrator was totally cognizant of the significant impact of the local, regional and national economies on the bargaining process, and equally aware of the impact of such on the statutorily mandated criteria [Wisc. Stats., Section 111.70 (4)] for the Award. However, there is a general absence of disagreement as to the constrained condition of the regional economy.

3) The unique structure of the Parties' "final offers" was a definite factor in the decision given their identical position on both the effective dates and length of the Agreement, and the annual percentage increase in wage rates severely restrained the Mediator-Arbitrator's ability to more effectively address the specific needs of bargaining unit personnel within the statutory constraint for selection of a "final total offer". Such factors are traditionally the "key" variables and perhaps final aspects of any agreement, and the adequacy of any/all other items included in a proposed settlement is typically assessed with reference to length of agreement and wage rate improvements.

Accordingly, the Mediator-Arbitrator was also compelled by the Statute to consider the "stipulations of the Parties" as cited in the Award. Simply stated, the Mediator-Arbitrator was compelled to address the "totality" of modifications/improvements in the Agreement in terms of both the issues in dispute and those already negotiated between the Parties, and such was a factor in the decision. Specifically, the "stipulations" reference the Employer shall "pick up" the additional one (1.0%) percent of Wisconsin Retirement System, and the "side letters" relative to benefits while on Workers Compensation and Employer contribution rates for Insurance, in addition to the "child rearing" provision.

Therefore, assessment of the totality of the Awarded package in combination with the already agreed upon factors cited, indicates very significant improvements in the employee "wage/benefit package" wherein a major portion is retroactive more than one (1) calendar year, and the structure of the Agreement shall afford the bargaining unit additional opportunity to re-negotiate within the current calendar year.

4) The Parties both presented significant, compelling and divergent statements of alleged comparability to internal and external norms. Essentially, the primary difference was the extent to which the Employer's was consistently premised upon Public Health Nurses employed by counties in close or tangential proximity to Douglas County (Employer Exhibit 4) with specific reference to those counties where such employees are unionized, that is, Bayfield, Sawyer, Washburn, Ashland and Taylor. Further, the Union failed to challenge the Employer's assertion the neighboring counties of Iron and Burnett are not unionized.

Such similarity was in significant contrast to the Union's contention that a combination of both unionized and non-unionized public health and related professionals, in addition to Registered Nurses

employed in hospitals in Duluth, Minnesota ought constitute the appropriate comparison. The Record must be characterized as void of substantiation as to alleged similarities of duties, but more significantly, such assertions as the latter fail to address the differences in applicable collective bargaining statutes and/or other historical differences in bargaining outcomes.

Accordingly, the Mediator-Arbitrator was compelled by the efficacy of the Employer's proposed comparables, but cognizant that Public Health Nurses are a unique profession, often required to perform a complex variety of duties that frequently may be divided among several professional and/or para-professional job classifications within the structure of other employers. Further, the Mediator-Arbitrator was compelled by the Union contention the larger population areas of the State were the first organized for collective bargaining purposes and generally had superior wage/benefit "packages", and such was substantiated by the Employer's summarization (Employer Exhibit 6) that compared both starting and maximum hourly wage rates for Public Health Nurses in its six (6) county data.

5) It is virtually axiomatic in Interest Arbitration that Mediators-Arbitrators consider the impact of negotiated/Awarded wages and/or benefits upon the internal structure of the Employer's total set of bargaining units. Further, such concept of internal equity is a primary factor affecting the bargaining process on all terms and/or conditions of employment, but especially significant in the wage and benefit area.

Accordingly, the Neutral was totally cognizant of the principle as effectively articulated by the often quoted Mediator-Arbitrator Gil Vernon that:

> ... The appropriate relative weight to be given the external versus internal comparables, is as much at issue as are the various bargaining proposals. Certainly, internal comparables, where there is a pattern of wage level changes (increases), and a pattern of benefits, deserves great weight. However, merely because there may be a pattern, can external comparables be ignored. Internal comparisons -- even if they involve dissimilar employees -- deserves most weight when adherence to the internal pattern results in wages and benefits that still fall within a reasonable range of the wages and benefits earned by similar employees in the external comparables. In other words, if the internal pattern would cause the employee to fall too far out of step with other employees doing similar work in comparable jurisdictions, the external comparables become more important. (Emphasis Added)[1]

The primary basis for the significance of such internal comparables across bargaining units of the same Employer is the emotion-laden factor of perceived equity.

Therefore, the Mediator-Arbitrator was compelled to consider the internal effect of the "final offers" as proposed by the Parties, and

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[1]See Arbitrator Vernon in Langlade County Law Enforcement, WERC Dec. No. 22203-A, October, 1985.

such was a significant factor in the decision to Award the Employer's position. Specifically, the Record (Employer's Brief Table 4) indicates the Employer's position is totally consistent with settlements on the issue of deleting the retirement "cap", prorating all fringe benefits and the improved vacation schedule that have been negotiated with each of the other ten (10) bargaining units, with the isolated exception of a prorating benefits provision for the Middle River General Employee unit.

6) On the basis of the analysis and conclusions above, the Mediator-Arbitrator was compelled to address the specifics of the Parties' "final offers". First, the Union's proposal to remove the retirement "cap" in contrast to the Employer's proposal to increase such by seven (7.0%) percent in 1986 and six and one-half (6.5%) percent in 1987 was considered less than compelling given the Record indicates the "cap" has not caused inconvenience for any but one (1) employee and that was for a relatively insignificant dollar amount. Further, the Awarded increases are both economically significant, reasonable and must be interpreted in terms of the related stipulation on pensions also cited.

Similarly, the Union proposal to prorate all benefits regardless of minimum hours worked was perceived as a significant statement of the unit's concern for their job security given the potential for the Employer to "manipulate" the work force by hiring numerous part-time employees and avoiding the benefit costs associated with the current and Awarded policy. However, the Record was totally void of any substantiation of such allegations, and the practice of requiring some minimum hours of employment for receipt of benefits is virtually universal in both the public and private sector. Further, the statutory format for the Award precluded the Mediator-Arbitrator from "fine tuning" the requirement to perhaps accommodate both Parties' needs.

Finally, the Union's requested modifications in the existing Vacation Schedule must be characterized as less than costly or having significant impact. However, as cited above vacation structures were not modified in any of the other internal bargaining units for 1986-1987, and the compelling trend in public and private sector bargaining nationwide is to limit and/or reduce the amount of time paid but not worked. Such is equally applicable to vacation, personal leave, holidays, discretionary holidays, etc., and given the demographics of the bargaining unit such requirements were not perceived as critical.

Further, the Employer's proposal relative to reserving its right to utilize two (2) of the six (6) allotted professional development and/or conference days for "inhouse" type seminars, etc. was determined to be both realistic and cost effective. The Mediator-Arbitrator shall not dispute the Union contention that a given professional may attend a continuing education program that could be perceived as of limited value, but the Employer's contention of distance to the primary training sites, and the reality that "inservice" is an increasingly common requirement of all professions, especially health-care related were compelling factors. Therefore, when the specific item is assessed within the "total package" such may be perceived as a "concession" by the Union, but given the size and structure of the bargaining unit the probability of the Employer conducting "inservice" of limited or zero value to a majority of the professional staff was not persuasive.

Accordingly, the Mediator-Arbitrator was also compelled to assess the appropriateness/reasonableness of the Parties' positions in terms of the axiomatic "Flagler Principle" of Interest Arbitration, that the Neutral attempt within the available constraints to approximate a settlement he believes the Parties could have voluntarily achieved and/or accepted had the bargaining process continued. In the instant matter given the statutory criteria cited, such flexibility is inherently limited. Therefore, the Mediator-Arbitrator was compelled to conclude the Employer's position was less inconsistent with such principle and the other criteria also detailed above.

7) The Mediator-Arbitrator was also compelled to address the efficacy of the Union's articulate argument for "catch up", where the Union contended its wage/benefit package ought be Awarded because bargaining unit employees have an atypically low fringe benefit package primarily resultant from a voluntarily negotiated "wage freeze" in 1983, and subsequent settlements have resulted in an alleged "short fall" of seven (7.0%) percent. The "catch up" concept is not atypical of negotiated settlements, but such is generally an inherent or sharply defined addendum to the "wage issue" and subject to the internal and external comparisons cited above. Accordingly, given the Parties submitted identical "wage" positions, the efficacy and urgency of such request was not totally substantiated.

Therefore, on the basis of all conclusions above, the Mediator-Arbitrator is compelled to render the Award below.

## AWARD

1) The decision of the Mediator-Arbitrator is to Award the Final Position of the Employer. Further, check(s) for any retroactive amount(s) due shall be issued within thirty (30) days of receipt of this Award.

2) The 1986-1987 Agreement shall include all previously agreed upon stipulations including the following:

1. Effective January 1, 1986, the County will pick up the additional 1% of the Wisconsin Retirement System.

2. Article XVT. Discipline
   Add the following: "Employee disciplinary notices will be removed from Personnel files if the incident is not repeated within one year."

3. Side Letter Agreement
   "All benefits to be paid while an employee is off on Workers' Compensation."

4. Article XXVIII. Conference Committee
   Add to Section A the following: "The person designated on the Conference Committee as recorder to these meetings shall check with the Union Secretary and/or President for

agenda items. If there are no items for the agenda 24 hours prior to the scheduled meeting, it may then be cancelled and all parties shall be notified by said person."

5. Side Letter Agreement on health insurance reflecting new contribution percentages as has been agreed to by other County unions.

6. Article XVII. Pension & Insurance
Delete "B-3" in its entirety. Outdated language.

7. Article XIII, Leaves of Absence, Section C., New Subsection 4g.
"A Child Rearing Leave of Absence may be requested and may be granted subject to the provisions of this Article. Such Child Rearing Leave shall be for no more than six (6) months duration. Medical Leave, Personal Leave must be used prior to the Child Rearing Leave of Absence and will be included in the maximum six (6) month allowance. An Employee absent for medical reasons as ordered by the attending physician shall result in an equal amount of time to be reduced in the Child Rearing allotment of 6 months. The Union agrees that if an employee who is on a Child Rearing Leave is replaced, such replacement shall receive no seniority credit for service."

3) The Mediator-Arbitrator shall retain jurisdiction for thirty (30) days following receipt of the Award to resolve any residual matter(s) of implementation of the "Final Position" and Stipulations Awarded.

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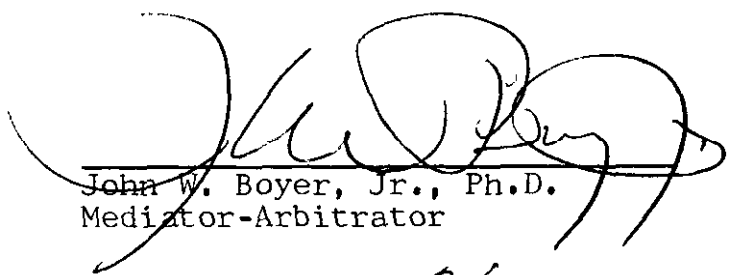
The Mediator-Arbitrator accepts and appreciates the stipulated desire of the Parties to cooperate in implementation of the specifics and intent of the Award. Further, the Award shall constitute finalization of all Issues remaining in dispute between the Parties in the instant matter.



John W. Boyer, Jr., Ph.D.
Mediator-Arbitrator

Dated: January 26, 1987
Duluth, Minnesota