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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

EDWARD B. KRINSKY, ARBITRATOR

In the Matter of the Petition of	
ROCK COUNTY	Case 218
	No. 38361
To Initiate Arbitration Between Said Petitioner and	ARB-4302
	Decision No. 25172-A
ASSOCIATION OF MENTAL HEALTH SPECIALISTS	

Appearances:
Carlson Patterson Associates, by Mr. Bruce K. Patterson, for the County
Herrling, Swain and Dyer, by Mr. John S. Williamson, Jr., for the Association.

On March 7, 1988, the Wisconsin Employment Relations Commission appointed the undersigned as arbitrator in the above-captioned matter to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6 and 7 of the Municipal Employment Relations Act by selecting the total final offer of one of the parties.

A hearing was held at Janesville, Wisconsin, on May 3 and 4, 1988. A transcript of the proceedings was made. At the hearing both parties had the opportunity to present evidence, testimony and arguments. Both parties submitted post-hearing briefs and reply briefs. The record was completed on August 15, 1988, with the exchange by the arbitrator of the parties' post-hearing reply briefs.

The final offers of the parties are appended to this Award. The dispute involves several issues: wage increases for 1987 and 1988, layoff language, subcontracting language and language governing "supervisory nurses." Although there are additional classifications in the bargaining unit, the largest groups are nurses and psycho-social workers. These are the employees which were the subject of the parties' presentations and thus they are the subject of this Award.

In making his decision the arbitrator has considered and weighed the criteria enumerated in the statute governing the arbitrator's decision. Specific references to these factors are made below, where relevant to the analysis. 1/

Issues: "Supervisory Nurses," Section 15.04

Facts and Arguments

The Association's final offer specifically continues in effect Section 15.04 of the 1985-86 Agreement. The County's final offer deletes Section 15.04. The language of 15.04 is set forth in the County's final offer (attached).

The following history of the 15.04 issue is relevant to the dispute. (*It is not the entire history; only that which* the arbitrator views as necessary for understanding the dispute.)

When final offers were initially submitted in this proceeding the County's final offer included 15.04, thus continuing in effect that provision from the prior Agreement. On May 8, 1987, the Association petitioned the Wisconsin Employment Relations Commission for a declaratory ruling, because of the County's inclusion of 15.04 in its offer, asserting that 15.04 was not a mandatory subject of bargaining. Then on May 21st, the County submitted a revised final offer in which it specified that 15.04 was deleted.

On August 20, 1987, the WERC dismissed the Association's petition concluding that by deleting 15.04 from its final offer, the ". . . County had eliminated any dispute between the parties concerning the duty to bargain as to said proposal." Subsequently, the WERC denied the Association petition for rehearing.

1/ No issues or arguments were raised by the parties with regard to factor (b) "stipulations of the parties," that part of (c) dealing with "the financial ability of the unit of government to meet the costs of any proposed settlement, (h) "the overall compensation presently received by the municipal employees. . ." and (i) "changes in . . . circumstances during the pendency of the arbitration proceedings." The *factors considered relevant by the parties, and by the* arbitrator, are (a) "the lawful authority of the municipal employer," (c) "the interests and welfare of the public," (d), (e) and (f), the comparability criteria, (g) ". . . the cost-of-living," and (j) ". . . other factors . . . which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. . ."

As directed by the WERC the parties submitted new final offers. The Association's final offer included 15.04. The County's final offer did not include 15.04. The County then revised its final offer to include 15.04.

On November 2, 1987, the Association petitioned the WERC once again to determine whether 15.04 was a mandatory subject of bargaining. On November 4th the County again revised its final offer to delete 15.04.

The WERC dismissed the Association's petition on January 6, 1988. As previously, it cited the County's deletion of the 15.04 proposal in its final offer and the WERC stated, ". . . there is presently no dispute before the Commission concerning the duty to bargain as to said proposal." It added:

> . . . even assuming that the Association could establish . . . that the County was seeking to delay and frustrate the interest arbitration process, we are not persuaded that it is appropriate or even jurisdictionally possible to "remedy" that conduct by proceeding to the merits of a declaratory ruling on a proposal as to which there is no "dispute" because the proponent has withdrawn same. . .

There was testimony and evidence presented at the arbitration hearing concerning 15.04. County representative Patterson testified that the County's decision to have the deletion of 15.04 in its final offer was necessitated by the Association's tactics in attempting to force a hearing on the matter before the WERC. In both proceedings before the WERC the Association objected to the inclusion of 15.04 by the County in its final offer, and both times the County acquiesced to the Union's objections and revised its final offer to delete 15.04, according to Patterson. The County's deletions, he testified, were "simply to expedite the bargaining process."

Under the existing language of the Agreement, 15.04 provides that if a bargaining unit nurse is required to be a "supervisory nurse," the nurse will be paid at time and a half for that shift. If the Association's offer is adopted, that practice would continue, because the Association's offer maintains the language from the prior Agreement. The County's offer deletes 15.04. Thus, if the County were to continue to require bargaining unit

nurses to serve as "supervisory nurses," there would no longer be a contractual requirement that such pay be at time and one half. 2/

At the arbitration hearing the Association asked County witnesses whether the County, if it prevailed in this proceeding, would continue to maintain the right to make such assignments. That question was not answered directly. Associate Administrator for Treatment Services Vickerman testified that since there are no vacancies at the present time among non-bargaining unit nurses, it is not anticipated that there will be a need to assign bargaining unit nurses as "supervisory nurses."

Vickerman testified that where the County has required bargaining unit nurses to be "supervisory nurses," it has done so in order to fulfill the requirements of HSS 13.132 of the State Nursing Home Code. On cross-examination Vickerman maintained that a supervisory nurse's responsibilities for reporting the conduct of other nurses is not greater in that respect than that of any other nurse, but she acknowledged that a supervisory nurse has the authority to issue orders in an emergency and that a nurse who did not obey such orders could be disciplined. Vickerman testified that until now there has not been any need for such disciplinary action.

In December 1986, County Personnel Director Bryant issued a Memorandum "Re: Responsible Nurse Coverage." (It is stipulated that "responsible" nurse under the State Code is synonymous with "supervisory nurse" as used in 15.04). The Memorandum stated:

> Health Care Center management is required to provide on-site registered nurse coverage for LPN's in the facility under Ch. N-10 of the Nurse Practice Act. This requirement has been met in the past through voluntary commitments from AMHS as outlined in the 1984 contract and in stipulations to provide this "responsible" nurse coverage.
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> However, for 1987, there has been limited response from AMHS to provide this coverage. As the need remains to provide on-site registered nurse coverage, the Health Care Center management will be implementing the following procedure to insure that coverage is provided.

2/ The arbitrator is making no judgment in this case about whether, if the County's final offer is upheld, the County would have the right to assign bargaining unit nurses as "supervisory nurses," a matter on which the parties appear to disagree.

PROCEDURE

When the need arises to provide responsible nurse coverage at the Health Care Center or Rock Haven, the following people will be contacted, in order:

1. Listed Volunteer Staff Nurses
2. Nurse Supervisors

If neither is able to provide the coverage, the supervisor may then direct an RN to assume the role of responsible nurse based on her/his assessment of the nurses ability to perform the job duties. Failure to comply with these directives will lead to corrective discipline.

Bryant testified that the Memorandum isn't really in effect because the County has filled all of its management supervisory nurse slots and doesn't have to assign bargaining unit nurses as "responsible" nurses. Association President Landes testified that the Association has never been notified that the Memorandum is not in effect.

In its brief, the County reiterated that its reason for seeking deletion of 15.04 "was because of the (Association's) continuous challenge of the item . . . That continuous challenge was part of the Association's plan for protracted negotiations." The County makes the additional argument that if it prevails there will be little adverse effect on the employees, ". . . because the contract will be close to expiration by the time the arbitration process is concluded and the County has no intention of pursuing return of moneys paid during the time period prior to the issuance of the Arbitration Award."

The Association makes numerous arguments in support of its position that 15.04 should be retained. 3/ It states that neither party objects to the provision of premium pay to nurses

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3/ The Association argues that the County is requesting the arbitrator to rule that 15.04 is a mandatory subject of bargaining, and it argues that the arbitrator does not have jurisdiction to make that determination. The arbitrator does not view the County as making such a request, either directly or indirectly. The arbitrator is not addressing the question of whether 15.04 is a mandatory subject of bargaining. That is for the WERC to decide, should the parties wish it to do so. As stated by the arbitrator at the hearing, he also is not deciding whether "supervisory nurses," as that term is used in 15.04, are appropriately within the bargaining unit. That, too, is a matter for decision by the WERC should the parties seek such a ruling.

when they are "supervisory nurses." According to the Association, the County's deletion of 15.04 is based not on substance but only on its desire to avoid having a declaratory ruling on the status of 15.04. The Association argues also that it should not be penalized for having sought declaratory rulings. The WERC did not fault the Association for its conduct. According to the Association, even if it abused its rights in WERC proceedings, which it did not, that "is not a factor set forth in Sec. 111.70(4)(cm)7 . . . nor is it a factor 'normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment'. . ."

Discussion

The disputed language, 15.04, was contained in the prior Agreement. It would appear that this language was the result of voluntary collective bargaining between the parties. There is no evidence presented to suggest that the language was imposed upon the parties through the arbitration process. There have been no grievance arbitration awards interpreting the language. There have been two proceedings initiated by the Association before the WERC to determine the mandatory nature of the language for bargaining purposes, but both of those proceedings were dismissed, as described above. Thus, there has been no interpretation of the existing language, and there is no suggestion that problems with its implementation to date require that it be changed. The arbitrator believes that in such a situation, the contractual language should be continued in effect unless changed voluntarily by mutual agreement of the parties.

It must be noted that the only reason that the County gives for proposing deletion of the language is its desire to avoid the delays which would be entailed in a declaratory ruling proceeding by the WERC. Each time the County indicated it would continue 15.04 in effect, the Association petitioned for a declaratory ruling. Regardless of the merits of the parties' tactical positions on this issue, the arbitrator does not view the County's rationale for deleting 15.04 as being supported by the statutory criteria that the arbitrator must consider in making his decision. Avoidance of seeking a declaratory ruling is not a sufficient basis for the arbitrator to support the proposed deletion. Maintaining the language, as the Association proposes to do, continues the status quo. Deleting the language results in elimination of an existing requirement for payment of overtime, without sufficient basis for doing so. On this issue the arbitrator favors the Association's final offer.

Issue: Subcontracting

Facts and Arguments

In its final offer the Association proposes to delete from Article 2, Section 2.01 (Management Rights) the language ". . . the right to subcontract work (when it is feasible or economical for county employees to perform such work)." The County would maintain 2.01 as in the prior Agreement. The County points out that the Association's final offer is flawed insofar as the language that the final offer would delete is misquoted from the Agreement. The correct language is ". . . the right to subcontract work (when it is not feasible or economical for County employees to perform such work)." (emphasis added) 4/

The Association also proposes to add new language to the Agreement, an Article 28.06 which would prohibit the County from subcontracting bargaining unit work under certain circumstances. (See Association final offer attached.)

According to County representative Patterson, all of the County's other collective bargaining agreements contain either a provision that the County has the right to subcontract, or the same limited right that existed in the prior Agreement with this bargaining unit.

Kirchoff, the Program Director of the County's 51.42 Board testified that approximately 18% of the 51.42 budget is for contracted services. That percentage has remained approximately at the same level since his employment began with the County in 1984.

The County called Cutler, an expert witness. He testified that he is confident that the County provides a much higher percentage of its 51.42 services directly (as opposed to providing them by contracting out) in comparison to other counties in Wisconsin. He did not assert that a certain percentage or ratio was appropriate, but he testified that in his opinion it is important that the County have the right to make judgments and choices about either providing or purchasing services. On cross-examination he testified that he thinks there is some movement in Wisconsin towards purchase of services, but principally in new program areas, not existing ones. The only major area of shift, he testified, has been the decisions of some

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4/ The County did not make arguments about this alleged "flaw" and the arbitrator has decided to treat it simply as a typographical error, as the Association asserts was the case.

counties to get out of delivery of nursing home services; that is, eliminating such services entirely, not shifting from providing to purchasing services.

The Association has sought in bargaining to limit the County's right to subcontract. The parties have not agreed. There was discussion of limits on subcontracting in return for large wage concessions, but the discussions did not produce agreement, nor would the County agree to provide job security guarantees suggested by the Association in return for the Association's allowing subcontracting.

There was testimony about subcontracting that has taken place to date, and attempted and/or contemplated subcontracting. The Union introduced a page (undated, but apparently written in 1985) of the "Director's Report" of the 51.42 Director which states, in part:

> In an attempt to give the 51.42 Board the greatest possible flexibility with regard to who provides the state-mandated services placed under our auspices, I have added a clause to the "CP&B" indicating that the 51.42 Board may decide to contract with an agency or agencies other than Rock County to provide services in 1986. This includes all outpatient mental health and alcohol and drug abuse programing (sic) for Beloit and Janesville as well as the inpatient specialty hospital.
>
> . . .
>
> If the Board so desires, administration could begin planning tomorrow with regard to contracting out inpatient and outpatient services. With assistance from County administration, Corporation Council, (sic) Finance and Personnel, the process for contracting out could begin immediately and providers possibly could be identified by January 1, 1986. I have already had discussions with officers from the Rock County Association of Private Providers relative to these matters and indications are that they are willing to provide the services now provided by Rock County employees. They further indicate that those individuals now employed by the county would probably be absorbed by them to meet their increased service demands.
>
> Unless the Board indicates otherwise I will continue to develop alternate plans for consideration regarding which agency or individuals deliver state mandated services.

Former Association President Cousins testified that the contemplated subcontracting would have affected approximately 12

of the 30 - 33 County psycho-social workers. Cousins testified on cross-examination that the subcontracting contemplated by the Director's Report never took place.

In September 1985, the Association petitioned the WERC for a declaratory ruling to determine whether the County's subcontracting proposal (the language of 2.01 which the Association now wishes to delete) was a mandatory subject of bargaining. In May 1986, the WERC determined that it was a mandatory subject of bargaining and, contrary to Association assertions, was not illegal or in violation of public policy. It concluded also that a mandatory subject of bargaining was no less mandatory because its implementation would have a negative impact on the affected employees.

Cousins testified that the County has contracted out bargaining unit work. He cited a subcontract to Lutheran Social Service of educational services work. The Association filed a prohibited practice with the WERC. There was a mutual resolution of the dispute when agreement was reached that the newly hired employees would become County employees and Association members. The subcontracting was for a limited term and the people involved were hired for six months.

Cousins testified that on another occasion he learned from Association members that the County was going to subcontract Health Care Center work to the Crossroads Counseling Center. Cousins and the bargaining unit psycho-social workers developed a plan by which they would perform the needed services on an overtime basis. The County's Health Services Committee accepted the plan, and thus the subcontracting did not occur. Cousins testified also that this proposed subcontracting occurred at a time when there were two vacant positions for psycho-social workers. The lack of a full staff complement was discussed by the County as a reason for its desire to subcontract.

County Nursing Home Administrator Scieszinski testified that the County has no plans to close the Health Care Center in 1988, and probably will not do so in 1989 either. It may go through a long-range planning process to assist the County in a plan for the Health Care Center.

Personnel Department employee Peterson testified that since 1985 there has been an increase in the number of bargaining unit employees. The increase has been 10 F.T.E. positions.

In its brief the Association made lengthy and detailed arguments in favor of its proposal. They are summarized here as follows:

- the existing subcontracting language is ambiguous, particularly the word "economical." The language is

ambiguous also in the context of other provisions of the Agreement. The Association argues that its proposed language is not ambiguous. It states:

> ". . . in the subcontracting area, ambiguity is particularly pernicious because of the potential consequence to the party whose interpretation is rejected by the Arbitrator. Because the County's proposed subcontracting language is ambiguous and the Association's is not, the Arbitrator, for this reason alone, should prefer the Association's proposal to the County's."

- the County has attempted to subcontract in the past and is considering doing so now. Subcontracting would "almost certainly cost the jobs of a significant number of employees the Association represents." In the Association's view these employees should not be penalized for having gained through collective bargaining "the kind of wages and other conditions of employment that the Wisconsin Legislature, in adopting Section 111.70, intended them to enjoy." The Association asks, "should the Arbitrator adopt a contract provision that the County intends to use to permanently replace its represented employees because they receive wages based on 111.70 mandated criteria?"

- In support of its position the Association cites court cases and many arbitration cases, including a decision by the instant arbitrator, to the effect that an employer cannot subcontract solely for the purpose of having work done more cheaply by other employees.

In arguing that the existing language should be maintained, the County points to the fact that the existing language was bargained by the parties, and that it is similar or more restrictive of the County than the subcontracting language in the County's other labor agreements. In addition, the County argues:

> The Association . . . is seeking to remove the contract language which allows the County to provide services through the use of subcontractors. . . . the Association demand would totally remove the specifically granted statutory right to subcontract for mental health services as enacted by the Wisconsin Legislature in Wis. Stat. 51.42 and 46.036. This demand would have a detrimental impact on the County's "lawful authority" to provide services in the optimum method to County residents as intended by State legislation and public policy.

The County believes that its offer is in the "interest and welfare of the public" since it would retain "the County's (i.e. the public's) right to contract for mental health services . . . (and) to select the most effective service." The County emphasizes that it has used subcontracting sparingly in relationship to other counties and that "contracted services, as a percentage of the budget have declined from approximately 27% in 1979 to 18% in 1988" and that since 1985 there have been 10 F.T.E. positions added to the bargaining unit.

Discussion

The Association proposes to delete the County's right to subcontract from the Management Rights clause. It proposes new subcontracting language to be placed in Article XXVIII (see Association's final offer attached). Is there justification for such a change which the arbitrator should use to support the Association's position?

It would appear that the present subcontracting language was the result of voluntary collective bargaining between the parties. That is, there is no evidence to suggest that the language was imposed upon the parties through the arbitration process. There have been no grievance arbitration awards interpreting the language. In the proceeding initiated by the Association before the WERC, a determination was made that the existing language was a mandatory subject of bargaining and was not illegal or a violation of public policy. Thus, there has been no interpretation which would suggest that problems with the language or its implementation to date require that it be changed.

As described above, the Association views the existing language as ambiguous and urges the arbitrator to support that conclusion, and rule in favor of the Association's allegedly unambiguous language. The arbitrator does not view it as necessary for him to decide whether the existing language is ambiguous, or more or less ambiguous than the Association's proposed language.

The parties bargained the existing language. They can also bargain changes in it. Were this an initial contract, or were both parties proposing new language, the arbitrator would feel compelled to decide which language was the best. Or, had a grievance arbitrator found the language to be ambiguous and one party was insisting on maintaining the ambiguity, there might be reason to order a change. Here, however, the arbitrator supports the continuation of existing voluntarily bargained language. He does not know how the present language came about and/or what tradeoffs were made in order to arrive at it. He does not view the possibility that the parties' interpretations of the language

in a particular future subcontracting situation will be at odds with one another as reason to now order that the language be changed.

If interest arbitrators order changes in existing contract language based on one party's showing that the language is ambiguous, arbitrators will be asked, to a much greater degree than is already the case, to substitute their judgment for the collective bargaining process. Any existing language viewed by one party as ambiguous could be taken to arbitration with a reasonable expectation that it would be modified. In this arbitrator's view, that would not enhance the possibility that parties would reach their own agreements and such a development would not be in the "interests and welfare of the public."

There has been some contemplated and actual subcontracting, as related above. The subcontracting that did occur was challenged by the Association and a mutual resolution was reached. Some of the contemplated subcontracting never came about. This history is not viewed by the arbitrator as compelling reason for changing the existing language. Certainly it is the case, as is clear from testimony of Association witnesses, that the contemplated and/or actual exercise of subcontracting rights is a cause of insecurity for the employees affected, and thus it is understandable that the Association seeks to lessen the insecurity. However, the arbitrator does not see a record of abuse by the County to date of its exercise of its right to subcontract which should compel a change in the language at this time.

Contrary to the arguments of the County, the arbitrator does not view the Association's proposed language change as being restrictive of the County's lawful authority. The Association's proposed language is perhaps more restrictive of the County than the existing language, but it certainly would not prohibit the County from subcontracting under all circumstances.

Contrary to Association arguments, the arbitrator does not view the existing language as being in conflict with 111.70, as the WERC has already established. If the County exercises its options to subcontract, and the Association views the County's actions as being in violation of the Agreement and/or statute, the Association will grieve and/or file prohibited practices charges or other legal actions, and its theories and arguments can be tested at that time in the context of the specific facts of the dispute.

The arbitrator does not find that the language of either proposal is necessarily more in the "interests and welfare of the public" than is the other, and certainly not enough to determine the outcome of this issue.

The arbitrator has addressed the parties' arguments about the "lawful authority of the employer" and "interests and welfare of the public" criteria. The Association has not presented data on comparable contracts elsewhere which would demonstrate that what it is proposing is more common than the existing language, and the County's other labor agreements suggest that the existing language is more comparable to what now exists in those agreements. Thus, the comparability criteria do not support the proposed change.

Based on all of the above considerations, it is the arbitrator's opinion that on the subcontracting issue, the County's final offer is preferred, because there is no compelling reason to change the existing language either under the statutory criteria or the parties' experience with the language to date. 5/

Issue: Seniority and Layoffs, Section 23.02

Facts and Arguments

The Association's proposed language would enlarge the bumping rights of registered nurses employed on the third, fourth and fifth floors of the Health Care Center in the event of layoff. Bumping rights of such nurses now are limited by the existing language of 23.02(c) to allow them to bump other nurses of the Health Care Center under certain conditions. Under the Association's proposed change, a nurse at the Health Care Center could bump a less senior nurse "employed in any unit of the Rock County Complex," not just the Health Care Center. The County does not propose any change in the existing language.

There was very little testimony or evidence presented in support of this proposed change. Union Vice President Amans testified that there was elimination of a nursing position on the fifth floor of the Health Care Center, but there was no testimony indicating that a layoff occurred. There was also testimony reflecting uncertainty about plans for the Health Care Center. As indicated above, Scieszinski testified that the facility would not close during 1988, and probably would not close in 1989 either. A long range planning process has been initiated to consider the future of the facility.

5/ The court and arbitration cases put into evidence or cited by the Association in its brief involve decisions about whether statutes or contracts were violated by the actions of employers under specific language and in particular fact situations. The arbitrator has not detailed those decisions here because he is not willing to engage in speculation about what the County might do in implementing its right to subcontract, or about the reasons that the County might have and be able to demonstrate in support of its actions.

The Association argues that its proposal would make nurses' seniority for layoff purposes "parallel (to) psycho-social workers' (seniority)." It argues that there is greater fairness in its proposal which would recognize the full seniority of employees for layoff purposes, and not restrict their use of seniority to use in a particular building or facility. The Association cites the fact that the County presented no evidence that the proposed change would "impair the efficiency or effectiveness of the nurse transferred or of the building from which or to which he or she is transferred." Also, the Association argues, no evidence was presented to show "that unit-wide seniority . . . would cause disruption or create any other problems for the County." The Association argues that it is important that this change be made because the County has already eliminated one nurse position and there are indications from remarks of County administrative personnel that there may be more positions affected.

The County argues that the existing language should be continued in effect. There has never been a layoff in which the language has been used and none is likely during the term of the Agreement being arbitrated here.

Discussion

It appears to be the case that the existing language of 23.02 was the result of voluntary collective bargaining between the parties. There is no evidence to suggest that the language was imposed upon the parties through the arbitration process. There have been no grievance arbitration awards interpreting the language. There have not been proceedings before the WERC or elsewhere resulting in interpretation of the language suggesting that there are problems with its implementation which require change. There is no evidence that anyone affected by the existing language has been laid off to date.

The Association may have reason to be concerned about the bumping rights of its members. It may legitimately fear layoffs as a result of subcontracting of services and/or closing of facilities. It has an interest in maximizing the protection of its most senior members. The County undoubtedly has reasons for wanting to maintain the current language to minimize the dislocation that occurs when bumping procedures are implemented (even though the Association is correct that the County did not offer testimony about its reasons for not wanting to change the language).

The Association has not demonstrated that its proposed language is contained in comparable labor agreements inside and/or outside the County to a greater degree than is language of the existing type. There is no basis in the statutory criteria for the arbitrator to order a change in the language at this

time. Moreover, the arbitrator believes that in a situation such as this, where the language has not been interpreted or tested or implemented, the existing contractual language should be continued unless changed voluntarily by mutual agreement of the parties. The arbitrator does not know how the present language came about and/or what tradeoffs were made in order to arrive at it.

On this issue the arbitrator supports the County's position since no compelling reasons exist for the arbitrator to impose a change.

Issue: Wages

Facts, Argument and Discussion

The Association contends that based on its population the County should be compared with ten other counties. However, it provides complete wage data for social workers in only five of them: Marathon, Outagamie, Washington, LaCrosse and Winnebago for 1987, and the 1988 data are only partially available. The Association presents no historical wage data. The County does not present wage data for other counties. It presents wage data for County and non-County institutions in Rock County, and it verifies and/or challenges the wage data presented by the Association.

The arbitrator is not persuaded that County population alone is an adequate basis for making comparisons. Certainly there is nothing to suggest that Rock County is in the same labor market or competing for social workers with Marathon, Outagamie, Washington, LaCrosse and Winnebago Counties. Also, without knowing anything about the historical relationship of wages in Rock County and these other counties, the arbitrator is not in a position to be able to judge the relative reasonableness of the parties' final offers based on comparability with them. One cannot even determine from the data the size of the increases granted in these counties from 1986 to 1987, the latter being the first of the two years in dispute in this case. Added to these problems is that there are serious discrepancies between the claims of the parties as to what the wage figures are for the above-named counties. The data are based on several "soft" sources including letters and telephone calls, in addition to some contractual sources which are more reliable. Part of the problem may lie in a lack of clarity concerning which are the appropriate classifications for comparison from one county to another. Another problem is that the County's wage data from other institutions within the County include the wages of supervisors and perhaps overtime wages as well.

The wage data are not presented here because of their inadequacy and inaccuracy and because of the amount of explanation that would have to be given to try to reconcile the figures. It appears that the County's psycho-social workers are paid less than social workers in the above-named counties, with the exception, perhaps of Washington County. However, given the data problems described above, the arbitrator does not attach much weight to the soundness of this conclusion nor does he feel that there is enough information given to persuade him that there is a basis for ordering more pay for Rock County psycho-social workers in relationship to these other social workers.

For nurses, the Association presents wage data for eleven other counties for 1987 and seven counties for 1988. It also makes comparisons with nine area hospitals and homes for 1987 and seven for 1988, although many of the comparisons for 1987 are at institutions different from the ones shown for 1988. No historic data are given (i.e. before 1987) and the only wages shown are starting wages. The County presents wage data for other institutions in Rock County. For other counties, and for non-County institutions, it verifies and/or challenges the wage data presented by the Association.

As with the case of social workers discussed above, there are serious wage discrepancies in the data presented by the parties. These figures are not reconcilable from the data presented because of the sources of much of the data which are telephone calls, letters, newspaper ads, and in some cases the parties' subjective interpretations of written pay plans. Also, as mentioned above in the case of social workers, the County's wage comparison data include the wages of supervisors, and perhaps overtime as well.

Even if the data were consistent and agreed upon by the parties, and if the parties agreed about which comparables were relevant, they would not be entitled to great weight, in the arbitrator's opinion. The use of starting wages only, and with no showing of the size of increases granted, does not allow one to make sound conclusions about the relative reasonableness of the parties' final offers in comparison to those given in other jurisdictions and institutions. Under these circumstances, the arbitrator views comparisons of Rock County psycho-social workers and nurses with those in other counties or with those employed by non-County institutions within Rock County as next to meaningless and an insufficient basis for any conclusion about what should be ordered here.

The data for bargaining units within Rock County government show that seven other bargaining units received wage increases for 1987 of 2.1% or less, and these were voluntary agreements. Some 366 F.T.E. employees were covered by these agreements, including a unit of 45 social workers. One unit, with 90 F.T.E. employees received 5.0% pursuant to an arbitrator's award. Another unit, consisting of 9.5 F.T.E. public health nurses

received 2.1% on January 1, 1987, and an additional 3.9% on December 31, 1987, pursuant to an arbitrator's award. Given these data for 1987, it is the arbitrator's opinion that the 2.71% offered by the County seems more reasonable than the 3.51% offered by the Union.

The Association argues that the County's offer is inequitable because of the way in which different employees are treated within the bargaining unit. It argues that the County's offer to psycho-social workers for 1987 is 1.5%, considerably below the offer made to the County's other employees. The greater offer to the nurses, it argues, is justified by a shortage of nurses, but that greater increase should not be given at the expense of the psycho-social workers. The Association argues that the County has given no explanation for the discrepancy in its treatment of these employees. In its view "the County's proposal apparently reflects its intent to disparage the psycho-social workers and to punish them for resisting its subcontracting efforts."

For 1988, the settlements reached to date in six other bargaining units covering 368 F.T.E. employees are all 3% increases. This includes the above-mentioned units of social workers and public health nurses. Both parties' final offers are in excess of 3% and are almost identical (3.98% vs. 3.97%). In terms of percentage increases for 1988 compared to those given to other Rock County employees, there is nothing to choose from among the final offers, as both are equally reasonable.

It is difficult for the arbitrator to evaluate the Association's arguments about the discrepancy in this bargaining unit between the offer to nurses as opposed to the offer to psycho-social workers. Certainly the Association has not supported the allegation made in its brief that the discrepancy is meant in any way to disparage psycho-social workers and/or punish them for their activities. What is difficult to evaluate is why, if it is the case, the offer to psycho-social workers is lower than that offered to any other classifications in the County. Even such an assertion is not clear, however, because the figures in evidence for other bargaining units do not indicate whether the increases for those units are across-the-board increases, or whether different amounts were given to different classifications. It should be noted also that the Association's final offer in both years treats the nurses and psycho-social workers differently (5% and 5.5% for nurses vs. 2.1% and 2.5% for psycho-social workers). However, the Association's final offer would give the psycho-social workers the same magnitude of increase as that seemingly given by the County to its other employee groups.

It would appear to the arbitrator, based solely on comparisons with increases given to other employees of the County, that overall the County's offer for 1987 and 1987-88 is more reasonable than the Association's offer. The overall treatment of the bargaining unit outweighs the issue of the disparity of offer to the two classifications, in the arbitrator's opinion.

One of the criteria which the statute directs the arbitrator to weigh is the change in the cost of living. The parties are bargaining a 1987 and 1988 Agreement, and their wage increase offers are essentially the same for 1988. Where they are apart is on the increase for 1987. Cost-of-living figures in evidence show that for the Janesville/Beloit area the increase in the cost-of-living figures from 1986 to 1987 was 4.5%. The 1987 total package offered by the County for 1987 is 3.49% and that of the Association is 4.22%. Both of the final offers, then, are lower than the increase in the cost of living during the year preceding the new Agreement. The Association's offer, being the higher of the two, would more nearly reflect the change in the cost of living. Thus, based upon the cost-of-living criterion, the arbitrator would favor the Association's final offer for 1987.

Conclusion

The arbitrator's task in final offer interest arbitration is a very difficult one in that he must select one offer or the other one in its entirety. The statute indicates the criteria to be used, but does not indicate what weight should be attached to one of them as opposed to another. This is a close case. However, having reviewed the facts in the context of the statutory criteria, the arbitrator has concluded that based on the evidence presented, the wage issue favors the County's offer, and implementation of the County's offer will result in fewer significant changes to the parties' existing collective bargaining relationship than will implementation of the Association's offer.

Based upon the above facts and discussion, the arbitrator makes the following

AWARD

The County's final offer is selected.

Dated at Madison, Wisconsin, this 23rd day of August, 1988.

Edward B. Krinsky
Arbitrator

Name of Case: Rock County (Case 038361)

The following, or the attachment hereto, constitutes our final offer for the purposes of 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. Further, we (●) **(do not)** authorize inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted to the Commission.

2-9-88 (Date)

Bruce K Patterson (Representative)

On Behalf of: Rock County, Wisconsin

NEGOTIATION DISPUTE
EMPLOYER'S FINAL

Rock County, Wisconsin
The Employer
And
Rock County Employees
Association of Mental Health
Specialists

WERC CASE: 218
No: 38361
MED/ARB: 4302

The Employer makes the following final offer on all issues in dispute for a successor Agreement to begin January 1, 1987 and remain in full force and effect through December 31, 19 88.

1. All provisions of the 1985-86 Agreement between the parties not modified by a Stipulation Of Agreed Upon Items, if any, or this Final Offer shall be included in the successor Agreement between the parties for the term of said Agreement.

2. Delete Section 13.04 A. Supervisory of the 1985-86 Agreement from the successor Agreement (see attachment for specific language).

3. Term of Agreement: Beginning January 1, 1987 through December 31, 1988. The dates in the Agreement setting forth the terms shall be changed to reflect the above cited terms.

4. Stipulation Of Agreed Upon Items.

5. Wages: Effective January 1, 1987, increase wage rates on the 1986 Wage Appendix B as follows: (see attached 1987 Wage Appendix).

   Effective January 1, 1988 increase wage rates on the 1987 Wage Appendix as follows: (see attached 1988 Wage Appendix).

Bruce Patterson

11/3/87

cc: John Williamson

BJP
1/12/88

Item 2.

ROCK COUNTY FINAL OFFER

ATTACHMENT

"15.04 Supervisory. (As set forth in the 1985-86 Agreement to be deleted from the successor Agreement)

A. Association of Mental Health Specialists, Nursing Division, will designate a pool of nurses who have volunteered to serve as 'supervisory nurse' as may be requested by their appropriate supervisor. The Association of Mental Health Specialists will provide the pool of nurses by December 1st of each year for the following calendar year. Nurses added to this list after December 1st will be valid for the remainder of the calendar year. Placement of personnel on said list shall be subject to authorization by employer. Notice of said authorization shall be given by employer within fifteen (15) days of application for placement on said list.

Insofar as it is feasible, 'supervisory nurse' responsibilities shall be equally apportioned among those members listed in the pool.

Any individual required to exercise the responsibilities of 'supervisory nurse' shall be paid one and one-half times the salary he/she would regularly receive for working such shift. For purposes of computing time and one-half, base pay shall include any shift differential paid to the nurse."

Bruce K. Patterson
Consultant for Rock County

cc: John Williamson

BKP 11/3/87
BKP 11/12/88

WAGE APPENDIX A
Effective 1/1/87

CLASSIFICATION	0-6 Mos.	7-18 Mos.	Over 18 Mos.	Over 60 Mos.
Psychologist, Phd	14.2460	15.2336	16.1974	16.5213
Psych. MS or MA Clinical Pastoral Fellow (Chaplain)	10.8605	12.6224	13.2406	13.5054
Soc. Worker (MA, MS, MSW) Voc. Educator Com. Educ. Spec. Inservice Coord. OTR	10.4575	11.3780	13.2404	13.5052
Reg. Record Administrator	8.9926	10.0575	11.0686	11.2899
Soc. Worker BA/ BS) Admissions Officer Inservice Instructor	8.0910	9.7119	10.8605	11.0740
Staff Nurse with less than two years experience	9.1297	9.6170	10.6858	10.8995
Staff Nurse with BS Degree in Nursing which includes psychiatric affiliation	9.6170	10.0980	11.1229	11.3454
Staff Nurse with over two years experience	9.6170	10.0980	10.6858	10.8995
Experience BS Degree with two or more years experience	10.0739	10.6750	11.1229	11.3454

cc: John Williamson

11/3/87

1/12/88

WAGE APPENDIX B
Effective 1/1/88

CLASSIFICATION	0-6 Mos.	7-18 Mos.	Over 18 Mos.	Over 60 Mos.
Psychologist, Phd	14.6021	15.6144	16.6023	16.9343
Psych. MS or MA Clinical Pastoral Fellow (Chaplain)	11.1320	12.9380	13.5716	13.8430
Soc. Worker (MA, MS, MSW) Voc. Educator Com. Educ. Spec. Inservice Coord. OTR	10.7189	11.6624	13.5714	13.8428
Reg. Record Administrator	9.2174	10.3089	11.3453	11.5721
Soc. Worker BA/ BS) Admissions Officer Inservice Instructor	8.2932	9.9547	11.1320	11.3508
Staff Nurse with less than two years experience	9.6318	10.1459	11.2735	11.4990
Staff Nurse with BS Degree in Nursing which includes psychiatric affiliation	10.1459	10.5634	11.7346	11.9694
Staff Nurse with over two years experience	10.1459	10.5634	11.2735	11.4990
Experience BS Degree with two or more years experience	10.6280	11.2621	11.7346	11.9694

cc: John Williamson

11/3/87
1/12/88

STIPULATION OF AGREED UPON ITEMS

ROCK COUNTY AND ASSOCIATION OF MENTAL HEALTH SPECIALISTS	WERC CASE: 218 NO: 38361 MED/ARB 4302

1. Revise 11.02 A--delete the word "scheduled" and add the following language:

11.02 A. Paid Holidays

1) New Year's Day, 2) Memorial Day, 3) July 4th, 4) Labor Day, 5) Thanksgiving Day, 6) Friday following Thanksgiving, 7) one full day before Christmas, 8) Christmas Day and two floating holidays of the employee's choice scheduled with prior approval of the department head or his/her designee no later than 48 hours before his/her shift will begin. Holiday work shall be scheudled on a rotating basis by the Health Care Center.

Bruce Patterson
FOR THE COUNTY
Date 4/20/87

FOR THE UNION
Date April 20, 1987.

The items attached hereto and initialed by representatives of Rock County and the Union, constitute the Agreed Upon Items for an Agreement Between the parties to be effective from January 1, 1987 through December 31, 1988.

cc: John Williamson

BKP 11/3/87
BKP 1/12/88

Name of Case: Rock County (case 038361)

The following, or the attachment hereto, constitutes our final offer for the purposes of 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. Further, we **(do)** ~~**(do not)**~~ authorize inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted to the Commission.

2/9/88
(Date)

John D Williamson, Jr
(Representative)

On Behalf of: AMHS

ZMARB9.FT

HERRLING, SWAIN & DYER, S.C.
ATTORNEYS AT LAW
120 N MORRISON ST
APPLETON, WISCONSIN 54911-5494
(414) 731-9161

ROBERT W. SWAIN, JR
DEE R DYER

JOHN S WILLIAMSON, JR
OF COUNSEL

DENNIS W HERRLING
(1932-1983)

October 16, 1987

Wm. C. Houlihan, Investigator
Wis. Employment Relations Commission
P. O. Box 7870
Madison, WI 53707-7870

RE: Final Offer of
The Association of Mental Health Specialists

Dear Mr. Houlihan:

I enclose the Final Offer of The Association of Mental Health Specialists. A copy of this Final Offer has been mailed this day to Bruce Patterson, Chief Spokesperson for Rock County.

Very truly yours,

John S. Williamson, Jr.

JSW/ga
Encs.
cc: Bruce Patterson
Judy Schultz ✓

2/9/88

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NEGOTIATION DISPUTE
ASSOCIATION'S FINAL

ROCK COUNTY, WISCONSIN,
the Employer,
and
ROCK COUNTY EMPLOYEES
ASSOCIATION OF MENTAL HEALTH
SPECIALISTS

WERC CASE: 218
NO: 38361
MED/ARB: 4302

The Association makes the following final offer on all issues in dispute for a successor Agreement to begin January 1, 1987 and remain in full force and effect through December 31, 1988.

1. All provisions of the 1985-86 Agreement between the parties not modified by a Stipulation Of Agreed Upon Items, if any, or this Final Offer shall be included in the successor Agreement between the parties for the term of said Agreement, including Section 15.04, ~~together~~ with the Stipulations.

2. Article 28.03. Delete present 28.03 and substitute therefore:

   "This agreement shall be effective on January 1, 1987, in its entirety and shall remain in full force and effect through December 31, 1988."

3. Article 23.02 Section C revise Second paragraph

   "In the event that there is no vacant equivalent position (i.e. same level of employment and same shift as that of the affected nurse) to which the affected nurse may be transferred, a registered nurse with more seniority may bump another nurse with less seniority employed in any unit of the Rock County Complex. (wherever position regularly held by an R.N.; i.e. Rock Haven, 51.42, or HCC)"

4. Article 28.06

   "The County shall not subcontract non-supervisory and non-managerial psycho-social work and work requiring registered nurses performed for the 51.42 Board and the Health Care Center where the sole or primary purpose for subcontracting the work is to achieve savings based on the wages or other conditions of employment that are inferior to those of the bargaining unit employees."

5. Delete Article 2 Section 2.01

"...the right to subcontract work (when it is feasible or economical for county employees to perform such work)."

6. Wages % increase over rates in effect on date increase takes effect

Nurses	1/1/87	~~4%~~ 5%	
	~~7/1/87~~	~~2%~~	
	1/1/88	~~5.4% 6%~~ 5.5%	
	~~7/1/88~~	~~3%~~	
Psycho-social	1/1/87	2.1%	
	1/1/88	~~2%~~ 2.5%	

Effective 1/1/87

	0-6 Mos	7-18 mos	Over 18 mos	Over 60 mos
OTR	10.4575	11.3780	13.2404	13.5052

Effective 1/1/89

OTR	10.7189	11.6624	13.5714	13.8428

Dated this 16th day of October, 1987.

John S. Williamson, Jr.

120 N. Morrison
Appleton, WI 54911
(414) 731-9161

2/9/88
JSW