

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

RECEIVED  
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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

In the Matter of the Petition of

DOUGLAS COUNTY FEDERATION OF  
NURSES & HEALTH PROFESSIONALS,  
LOCAL 5035, AFT, AFL-CIO

To Initiate Arbitration  
Between Said Petitioner and

DOUGLAS COUNTY

Case 161  
No. 41318  
INT/ARB-5070  
Decision No. 25954-A

APPEARANCES:

Bob Russell on behalf of the Union  
Mark Pendleton on behalf of the County

On March 28, 1989 the Wisconsin Employment Relations Commission appointed the undersigned Arbitrator pursuant to Section 111.70 (4) (cm) 6 and 7 of the Municipal Employment Relations Act in the dispute existing between the above named parties. Pursuant to statutory responsibilities the undersigned conducted an arbitration hearing on June 5, 1989 in Superior, Wisconsin during the course of which the parties presented evidence and arguments in support of their respective positions. Post hearing exhibits and briefs were filed by the parties by July 25, 1989. Based upon a review of the foregoing record, and utilizing the criteria set forth in Section 111.70 (4) (cm) Wisconsin Statutes, the undersigned renders the following arbitration award.

In dispute are the 1989 and 1990 wages to be received by Licensed Practical Nurses working at the County's Middle River Health Care Facility. The County is proposing no increase in 1989 and 3% in 1990, while the Union proposes a 4% increase in 1989 and a 4% increase in 1990.

UNION POSITION:

The Union represents the RNs and LPSn working at the Facility.

The parties have agreed to increase the RNs' wages 9% in 1989 and 6% in 1990. In this context, the County's proposed wage freeze for LPNs is extremely unfair. Such a disparity will cause friction in the health care team at the Facility that must work closely together.

The County has never argued that it could not afford the modest cost of the Union's proposal, which amounts to about \$20,000 over

the two year period of the Contract. In fact, the 1989 budget for the Facility adopted by the County Board had a 3% wage increase factored into the budget, and indeed, all non represented employees of the County received a 3% increase for 1989 with the exception of the Middle River salaried group.

Relatedly, the County's higher than normal tax levy for 1989 was not due to the operation of the Facility. Instead, the County had been operating on substantial reserves up to 1989. Because said reserves have been reduced, the County was forced to make an adjustment in the levy for 1989.

It also was conceded by the Administrator of the Facility that the Union's proposal would have no impact on the County tax levy.

The Union's final offer will provide LPNs' more competitive wages, which will enable the County to recruit and retain LPNs. The labor market for RNs and LPNs is very tight. The County is therefore forced to use more LPNs because RNs are in such short supply. Because of this problem, LPNs are working a great deal of overtime. The loss of additional LPNs will escalate overtime costs, which is clearly not in anyone's best interest.

On the comparability issue, the County's proposed comparables conveniently omit the LPNs employed by the County in the Health Department, and one of the biggest health care employers in the County, Superior Memorial Hospital.

The Union has utilized as comparables counties employing LPNs which have been utilized by other arbitrators in other County arbitration proceedings (citation omitted), counties employing LPNs included in the Department of Development's Northwest Region, counties employing LPNs which are geographically proximate to counties in the aforementioned northwest region, , and St. Louis County in Minnesota because of its contiguous location and close economic ties to Superior and Douglas County. In this regard the Bureau of Economic Analysis has established 12 economic areas in Wisconsin whose economies are closely linked. Region 9 includes the Counties of Douglas, Bayfield, Ashland, Iron and St. Louis County, which includes Duluth, Minnesota.

With respect to the use of non Wisconsin comparables, the unique circumstances involving the nursing shortage are sufficient to distinguish this case from previous arbitration decisions. Artificial boundaries must give way to the pressures of market forces. In this regard the record clearly indicates that there is a shortage of LPNs not only in the area, but nation wide.

A review of the comparables offered by the Union clearly show that the wage relationship between Douglas County and the comparables would be adversely affected by the County's offer. Every comparable, including the Parkland Nursing Home in Douglas County, has higher wages, even if the Union's offer of 4% is selected. Conversely, the Union's offer would only maintain the ranking and

relationship that previously existed among the counties. The County's proposed wage freeze would put the LPNs at Middle River \$1.67 an hour behind the average wage of LPNs working for other counties.

The County has given the LPN working for the County Health Department a 3% raise for 1989, bringing her wage up to \$8.24 per hour. The Union is proposing a maximum wage of \$7.84 per hour for 1989.

The County agreed to a 3% wage increase for LPNs working at the other (Parkland) County operated nursing home. This brought the maximum rate of to \$8.24 per hour. In addition to the 3% increase, the County paid a bonus of \$580 for full time LPNs and \$400 for part time LPNs. Unequal treatment of County employees performing the same work is unfair and unjustified.

Even if the longevity pay received by Middle River LPNs is factored into the equation, the County's offer is still \$1.13 per hour lower than the Union's internal comparisons.

Even the County's proposed private sector nursing home comparables have granted LPNs significant increases, reflecting the market pressure for LPNs. In addition, historically, there has been a difference in the wages and benefits of the County LPNs as compared to the private sector LPNs. Additionally, the County is attempting to disturb the relative difference that has been established over several years between the two groups.

Although the Union concedes that the LPNs did receive some value because of the increased cost of health insurance premiums picked up by the County, all other County employees received the same benefit. In addition, three of the 17 LPNs in the unit do not have insurance coverage, and only 25% have family coverage. Furthermore, those qualifying for coverage participate in premium sharing, and therefore, these LPNs need a raise to help pay their share of the higher health premium.

In addition, the LPNs have lost purchasing power due to increases in the cost of living. In fact, the Union's proposed increase would not keep pace with inflation. The LPNs have lost ground to the CPI in the last two years, and the County's final offer would cause even further loss of their purchasing power.

The County attempts to buttress its position based upon the fact that one bargaining unit at Middle River has accepted a wage freeze for 1989. It is important to note however that the union in that unit received a promise of no more subcontracting in exchange for the wage freeze, thus saving unit housekeeping jobs. Thus, that agreement should not set the standard for other settlements in the County. This situation is clearly distinguishable from the LPN unit which is suffering shortages of personnel.

Recently the County entered into an agreement to sell the Parkland

Nursing Home to Catholic Charities, even though it had an opportunity to sell Parkland to a private operator with the prospect of significantly greater financial return. In these circumstances it is difficult to understand how the County can insist that it can't afford the cost of the Union proposal.

It is also patently unfair to expect the LPNs to accept a wage freeze to provide property tax relief in the County when other County employees are receiving wage increases.

#### COUNTY POSITION:

In the instant case the settlements among other County bargaining units should be given minimal consideration since the negotiation relationship between this unit and other County units terminated in 1986. However, if the Union's final offer is awarded, it would be the first time in at least 7 years that a Middle River LPNs would receive a larger increase than the other union employees throughout the County.

Secondly, other than Parkland, which has already been sold, there does not exist another county owned free standing nursing home in the geographic reason. Because the traditional external comparables are not available in the area, the local free standing private unionized nursing homes should be so considered.

In selecting appropriate comparables, similarity of function must be considered, i.e., free standing nursing homes should be utilized. In addition, only Wisconsin employers should be used, all of whom are covered by the same collective bargaining laws (citations omitted). Relatedly, comparables should include only geographically proximate employers who are experiencing the same labor market conditions.

The only internal comparable that deserves weight is the AFSCME bargaining unit that represents the Middle River general employees. Parkland should not be considered since the employment of the LPNs employed there will cease shortly.

With respect to the RN agreed upon wage increase, the record clearly demonstrates that said increase was in response to a need for significant pay catch up. However, there has been no persuasive demonstration of the need for pay catch up for the LPNs at Middle River. In fact, the Middle River LPNs receive a better compensation package than comparably employed LPNs in the area employed in local private sector unionized nursing homes. Also, there is no shortage of LPNs in the area since the LPNs who work at Parkland more than likely will be very interested in transferring to Middle River when Parkland closes. Relatedly, a majority of Middle River LPNs currently work part time, consequently, any work shifts that are vacant due to a temporary shortage of LPNs can be given to part time LPNs who can in turn earn more money.

The County has reached agreement with another union representing employees at Middle River guaranteeing that the employees represented by that union would not be laid off at least through 1990. By virtue of that agreement, the LPNs reasonably can assume the same guarantee. In exchange for that guarantee, it is reasonable to expect a similar quid pro quo, i.e., a one year wage freeze.

The County needs to achieve a wage freeze at Middle River in order to achieve a financially solvent health care institution. Over a two year period, if a wage freeze is awarded, the County will realize savings of over \$20,000 for each year of continued operations. When factored into other cost saving devices, significant cost efficiencies will be achieved. In this regard, the record demonstrates that the County has worked hard to achieve savings in many other areas in the recent past. Efforts have also been made to increase the Facility's revenue.

The Facility's financial problems are reflected in the fact that in 1987 and 1988 the County had to appropriate \$250,000 for its operation. Middle River's costs are exceeding its reimbursements on an increasing basis, which now requires that the County implement effective cost reduction measures. With a 48% increase in 1988 property taxes, this need becomes all the more important.

In this regard the record demonstrates that concessionary bargaining in county owned nursing homes in Wisconsin has become commonplace because of similar financial problems.

In response to the Union's CPI argument, first, the County's voluntary settlement with the union representing Middle River's general employees, including a 1989 wage freeze, is the best gauge of the weight which would be given to CPI in this dispute. Furthermore, the U.S. City average CPI is not as relevant as the north central urban nonmetropolitan CPI, which reflects only a 2.8% increase. Whichever index is utilized, the County's total package proposal is closer to the CPI than is the Union's.

In this regard, the total compensation package is a more reliable and accurate measure of comparability than a salary only comparison (citations omitted).

#### DISCUSSION:

There are several issues which must be addressed in this matter, the first of which being with whom should the LPNs be compared for purposes of determining the comparability of the parties' proposals at issue herein. In that regard there really is no dispute that the LPNs employed in the private unionized nursing homes in the area are an appropriate comparable group. The dispute on this issue is whether other groups of employees should also be considered comparable. Though the Union has proposed a significant mix of LPNs, some of whom are clearly more comparable to Middle River's LPNs than others, the undersigned is persuaded that the

totality of the comparability evidence compels a conclusion that the LPNs whose wages are in dispute in this matter are paid appreciably better than private sector unionized LPNs in the immediate geographic area, and are paid appreciably below public sector LPNs who perform a broad array of duties and who are employed in a broader geographic area which has a number of common labor market characteristics.

With the foregoing in mind the undersigned must assess the relative merit of the parties' final offers.

In that regard, in the undersigned's opinion the Union's proposal is excessive in that it exceeds County wide increases, both to unionized and non unionized employees, it is not supported by a persuasive need for catch up, as was the case justifying the need for an RN catch up agreement, and it clearly appears to be excessive when viewed in the context of the wage freeze that has been effectuated for other employees at the Facility. On the other hand, there appears to be persuasive reason for the Union to be concerned about the LPNs' wages falling even further behind the wages received by other public sector LPNs' in the area, which would clearly happen if the Employer's position is awarded herein. In this context, the Union has made a reasonably persuasive case that the Middle River LPNs are deserving of some increase, at least in an amount that would not exacerbate the disparity which already exists between their wages and the wages received by other LPNs employed in the public sector in the area.

The County's proposal, in this regard, is not reasonable to the extent that it ignores the aforementioned disparity in wages, and to the extent that it would exacerbate that disparity. On the other hand, the record demonstrates that the Middle River LPNs are close to being in the middle of the pack in terms of their compensation package when the labor market for LPNs in the area is viewed in the context of both the private and public sector, thus supporting the County's assertion that there is no persuasive need for catch up for these employees, particularly at a time when widespread efforts are being made to assure that Middle River will become a financially viable health care facility which the County will be able to continue to operate in a manner which will be both economically and politically viable. In that regard, the County has persuasively demonstrated that there is a legitimate need to engage in cost cutting measures at the Facility, and that it has attempted to achieve these ends in a responsible and thoughtful manner. The question which must be answered herein is whether the harmful consequences of the wage freeze it is proposing can be justified based upon the circumstances that are present herein.

The totality of the record evidence supports the reasonableness of the County's second year proposal. The difficulty the undersigned confronts in this matter is that in the first year of the parties new agreement, the County's wage proposal appears to be

unreasonably low in that it would aggravate the disparity that already exists between the wages of Middle River LPNs and the wages of other LPNs employed in the public sector in the area, that said result cannot be justified based upon the economic arguments presented by the County herein, and furthermore, based upon the fact that the County's position on this issue will assuredly result in a loss of real income among the affected LPNs over the duration of the two year agreement.

On the other hand, the Union's first year proposal appears to be unreasonably excessive in light of other comparable settlements, the financial constraints that confront the Employer in the instant circumstances, and the labor market for LPNs in the area.

What this record demonstrates is the justification for a modest first year increase for the LPNs, perhaps slightly less than the 3% which has been granted to most County employees, which would give recognition to the legitimate interests of both parties to this dispute, i.e., the financial constraints that the Employer is confronted with in trying to continue to operate the Facility in a politically responsible and economical manner, and the reasonableness of the Union's professed goal of trying to prevent further exacerbation of the wage disparity that exists between the wages of Middle River LPNs and the wages of other public sector LPNs in the area.

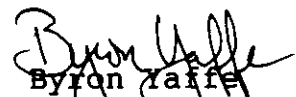
In view of the foregoing conclusion, the undersigned must conclude that both parties' first year proposals are about equally unreasonable in the context of what the first year outcome of this dispute should have been in the undersigned's opinion. Having so concluded, the undersigned is persuaded that the decision in this matter must be based upon the relative reasonableness of the parties' second year proposals, and in that regard, for the reasons discussed above, the undersigned concludes that the County's two year final offer is less unreasonable than the Union's.

Based upon the foregoing considerations the undersigned hereby renders the following:

ARBITRATION AWARD

The County's final offer shall be incorporated into the parties' 1989-1990 collective bargaining agreement.

Dated this 11<sup>th</sup> day of August, 1989 at Melbourne, Australia.

  
Byron Zaffe  
Arbitrator