

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

RECEIVED
JUL 13 1989
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of

DISTRICT 1199W/UNITED PROFESSIONALS
FOR QUALITY HEALTH CARE a/w NATIONAL
UNION OF HOSPITAL & HEALTH CARE
EMPLOYEES, AFL-CIO

To Initiate Arbitration Between
Said Petitioner and

SAUK COUNTY

Case 85
No. 39819 INT/ARB-4678
Decision No. 25999-A

Appearances:

Mr. Phillip A. Moss and Ms. Ellen LaLuzerne, Organizers, District 1199W/
United Professionals for Quality Health Care, appearing on behalf of the Union.
Mr. Eugene R. Dumas, Corporation Counsel, Sauk County, appearing on behalf
of the County.

ARBITRATION AWARD:

On June 6, 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, to resolve an impasse existing between District 1199W/United Professionals for Quality Health Care a/w National Union of Hospital & Health Care Employees, AFL-CIO, referred to herein as the Union, and Sauk County, referred to herein as the Employer or the County, with respect to certain issues as specified below. The proceedings were conducted pursuant to Wis. State. 111.70 (4) (cm) and hearing was held at Baraboo, Wisconsin, on June 30, 1989, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were not transcribed. The parties made oral argument at the conclusion of hearing on June 30, 1989.

THE ISSUES:

The issues in dispute between the parties are set forth in their final offers as follows:

ASSOCIATION FINAL OFFER:

1. A two-year term of agreement from January 1, 1988 through December 31, 1989.
2. Increase all wage rates, effective February 1, 1988, by thirty-eight (38) cents per hour above 1987 established rates, except that the rates

for Psychiatric Nurse and Public Health Nurse I and II shall be increased by an additional twenty-three (23) cents per hour and the rates for Home Care Nurse shall be increased so as to equal the adjusted rate for Public Health Nurse II.

3. Increase all wage rates, effective January 1, 1989, by forty-three (43) cents per hour above 1988 established rates.
4. Implement tentative agreements confirmed on January 17, 1988, as set forth in a separate stipulation entered into by the parties herein.
5. Add the following language to the wage scale:

Employees beginning employment with the County from January 1, 1988, to the date of the arbitrator's decision or voluntary settlement shall receive credit on the Sauk County salary schedule. Credit shall be on the basis of one-half (1/2) the number of years of relevant experience.

Employees hired after the date of the arbitrator's decision or voluntary settlement, may be given credit for relevant experience, upon mutual agreement of the parties.

6. All other provisions of the Agreement shall remain the same.

EMPLOYER FINAL OFFER:

1. A two-year term of agreement from January 1, 1988 through December 31, 1989.
2. Increase all wage rates, effective January 1, 1988, by 38 cents per hour above 1987 established rates.
3. Increase all wage rates, effective January 1, 1989, by 43 cents per hour above 1988 established rates, except that the rates for Psychiatric Nurse and Public Health Nurse I and II shall be increased by an additional twenty-three cents per hour and the rates for Home Care Nurse shall be increased so as to equal the adjusted rate for Public Health Nurse II.
4. Implement tentative agreements confirmed on January 17, 1988, as set forth in the separate stipulation entered into by the parties herein.
5. A new Section 24.01 (I) shall be created to read as follows:

The parties intend that the leave benefits provided under this Agreement, insofar as consistent with the terms of this Agreement and any applicable federal or state law, shall satisfy the minimum leave benefits provided employees under such federal or state law. The Employer shall give the Union sixty (60) days' notice prior to requiring Employees to contribute to an escrow account under s. 103.10(9) (c), Wis. Stats., or any equivalent arrangement.

6. Add the following language to the wage scale:

Employees beginning employment with the County from January 1, 1988, to

the date of the arbitrator's decision or voluntary settlement shall receive credit on the Sauk County salary schedule. Credit shall be on the basis of one-half (1/2) the number of years of relevant experience.

Employees hired after the date of the arbitrator's decision or voluntary settlement, may be given credit for relevant experience, upon mutual agreement of the parties.

7. All other provisions of the Agreement shall remain the same.

DISCUSSION:

The provisions of Wis. Stats. 111.70 (4) (cm) 7 direct the Arbitrator to give weight to the factors found at subsections a through j in making any decision under the arbitration procedures as authorized in the paragraph. The undersigned, therefore, will review the evidence adduced at hearing and consider the arguments of the parties in light of that statutory criteria.

From the final offers of the parties, it is seen that there are two issues in dispute between the parties. The first issue involves the timing of the increases for Psychiatric Nurses and Public Health Nurses I and II and for the Home Care Nurses. The Union proposes that these increases become effective February 1, 1988. The Employer proposes that these increases become effective January 1, 1989. Also in dispute is the effective date for the general increase in 1988. The Union proposes an effective date of February 1, 1988, while the Employer proposes an effective date of January 1, 1988. In all other respects, the wage proposals of the parties' final offers are identical.

In addition to the foregoing, there is also disputed the Employer proposal which reads:

A new Section 24.01 (1) shall be created to read as follows:

The parties intend that the leave benefits provided under this Agreement, insofar as consistent with the terms of this Agreement and any applicable federal or state law, shall satisfy the minimum leave benefits provided employees under such federal or state laws. The Employer shall give the Union sixty (60) days' notice prior to requiring Employees to contribute to an escrow account under s. 103.10 (9) (c), Wis. Stats., or any equivalent arrangement.

The undersigned will first consider the wage dispute. Initially, it should be noted that the parties disagree as to the cost differential between the two final offers as related to wages. Union Exhibit No. 3 fixes the difference between the Union and Employer offer at \$768.88, the Union offer being the more expensive of the two. The Employer, in Exhibit No. 27, sets forth package costing of the proposals of the Union and the Employer, and at page 4 thereof determines that the additional cost of the Union offer is \$3,640.75. A review of the calculations of the Employer found in County Exhibit No. 27 satisfies the undersigned that the Employer data is reliable, and, therefore, the undersigned accepts the cost differential of \$3,640.75 as advocated by the Employer. Having accepted the differential of \$3,640.75, it is noted that the differential is relatively small, the undersigned calculating it to be approximately a difference of .45% in 1988. The fact that the differential is relatively small is not sufficient reason to find for one party or the other. It does, however, minimize the impact of the decision no matter which way it is made.

The Union relies on comparisons with Columbia County in support of its position that its offer should be adopted. The Union cites prior arbitration awards which have found Columbia County to be the most comparable county for the purpose of these determinations. The cases relied on by the Union are: Sauk County (Sheriff's Department), Case XI, No. 20993, MIA-264, Decision No. 15161-A (Somers, 1977); Sauk County (Sheriff's Dept.), Case XXIV, No. 25546, MIA-470, Decision No. 17740-B (Hutchison, 1980); Columbia County (Social Services) Case XLV, No. 29050, Decision No. 19608, MED/ARB-1502 (Weisberger, 1982); Sauk County, Case XLIV No. 30905, MED/ARB-2081, Decision No. 20404-A (Zeidler, 1983); and Sauk County (Highway Dept.), Case XLII, No. 30797, MED/ARB-2055, Decision No. 20499-A (Krinsky, 1983). The undersigned is satisfied from the argument of the Union and from the authority which it cites that Columbia County is indeed a comparable of primary importance in determining wage rates. Having so determined, however, it does not follow that the Union necessarily will prevail on the wage issue. While it is true that for 1988 the Union position is much closer to the wage rates paid in Columbia County than is the position of the Employer, the disparity between the two offers is limited when we look to 1989. Thus, while 1988 is supportable by the comparable of Columbia County, the equities are restored with the Employer offer for 1989. Put another way, the dispute here is not what the final wage rates should be, but, rather, the amount of back pay that should be paid to the employees in the unit. While the comparables do narrowly support the Union offer in this matter, it is the opinion of the undersigned that other factors should take primacy when considering the wage dispute between the parties.

We have in evidence other additional factors which necessarily must be considered. County Exhibit No. 27 establishes that the County offer for 1988 calculates to an increase above the 1987 rates of 8.43% compared to the Union final offer on an annualized basis of 8.92%. The Union percentage of 8.92 is reduced by reason of the deferral of the wage increases in the Union offer to February 1, 1988. The actual amount of wage increases, if it were not deferred, would have calculated to 9.31%, the true amount of wage increase on wage rates which the Union offer generates. Based on the experience of this Arbitrator, a wage increase of 8.43%, which the Employer offers, is adequate for 1988. Furthermore, the undersigned looks to the fact that a significant number of employees within this bargaining unit are former employees of the Tri-County Human Services Center. A number of employees who terminated with the dissolution of the Tri-County Human Services Center were employed by Sauk County and stand to receive significant wage rate increases with the offers of either the Employer or the Union. For example, employee Locy was employed by Tri-County at \$13.57 per hour and under the Employer offer will receive for 1988 \$15.64 per hour, an increase of 15.25% (Employer Exhibit No. 27). County Exhibit No. 3 shows that in addition to the 15.25% wage increase received by Locy, he was given severance pay from Tri-County in the amount of \$4,208.67. The record testimony of Carol Bassett, Personnel Coordinator for the Employer, further establishes that Locy and others in similar circumstances who were employed by Sauk County after the dissolution of the Tri-County Human Services Center were hired immediately following their separation from Tri-County and suffered no time off of the payroll. The undersigned is persuaded, from all of the foregoing, that the 8.43% increase offered by the County for 1988 is an adequate increase and is preferable for that year than the increase proposed by the Union, which is 8.92% for the year and calculates to 9.31% on the wage rates. From the foregoing, it follows that the offer of the Employer is preferred with respect to the wage issue.

We turn now to a consideration of the Employer proposal with respect to establishing an escrow account pursuant to Wis. Stats. 103.10 (9) (c) upon giving 60 days notice to the Union. The Wisconsin Statutes at 103.10 (9) (c) read as follows:

1. An employer may require an employe to have in escrow with the employer an amount equal to the entire premium or similar expense for 8 weeks of the employe's group health insurance coverage, if coverage is required under par. (b).
2. An employe may pay the amount required under subd. 1 in equal installments at regular intervals over at least a 12-month period. An employer shall deposit the payments in an interest bearing account.
3. Subject to subd. 4, an employer shall return to the employe any payments made under subd. 1, plus interest, when the employe ends his or her employment with the employer.
4. If an employe ends his or her employment with an employer during or within 30 days after a period of family leave or medical leave, the employer may deduct from the amount returned to the employe under subd. 3 any premium or similar expense paid by the employer for the employe's group health insurance coverage while the employe was on family leave or medical leave.

Arbitral authority has consistently held that the proponent of change in an interest arbitration has the burden of proof to establish the necessity for the change. The undersigned has reviewed the record evidence and finds support for the Employer offer. The Union agrees that the establishment of an escrow account is within the discretion of the Employer, and the Union does not contest that right. The Union does, however, argue that it has the right and the Employer has the duty to bargain over the impact of the establishment of the escrow account. The undersigned agrees with the Union argument. The Employer has made no provision in its proposal dealing with issues of impact of the implementation of the escrow account. The fact that there is no provision in the Employer offer which addresses the impact of implementing the escrow account does not automatically taint the final offer of the Employer. The proposed provision states that the Employer will provide the Union with 60 days notice prior to requiring an employee to contribute to an escrow account. Thus, the Union will have 60 days in which to bargain over whatever impact items there may be.

We now consider whether there is persuasive evidence to support the Employer's offer dealing with the escrow account. The record contains County Exhibits 24-A and 24-B. Exhibit No. 24-A is the summary of terms agreed to between this Employer and the Teamsters Union Local 695 (Courthouse Employees). Exhibit No. 24-B is the summary of terms agreed to between the Employer and the Teamsters Union Local 695 (Sheriff's Department). Both summaries set forth the terms agreed to for the year 1989. Both settlements include the identical provision dealing with escrow accounts that the Employer proposes here. The fact that two other bargaining units of the Employer voluntarily agreed to the same provision which the Employer proposes to this Union establishes the reasonableness of the Employer proposal. It follows from the foregoing that this proposal of the Employer is supported by the evidence.

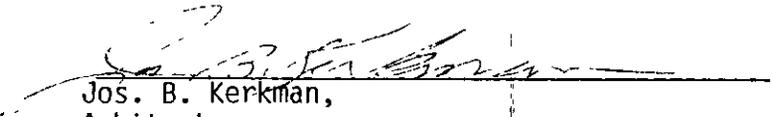
SUMMARY AND CONCLUSIONS:

The undersigned has concluded that the proposals of the Employer should be incorporated into the Agreement. It follows that the Employer offer will be adopted in its entirety. Therefore, based on the entire record, and the discussion set forth above, after considering all of the arguments of the parties and the statutory criteria, the undersigned now makes the following:

AWARD

The final offer of the Employer, along with the stipulation of the parties, as well as those terms of the predecessor Collective Bargaining Agreement which remain unchanged throughout the course of bargaining are to be incorporated into the parties' written Collective Bargaining Agreement for the years 1988 and 1989.

Dated at Fond du Lac, Wisconsin, this 12th day of July, 1989.


Jos. B. Kerkman,
Arbitrator

JBK:rr