

IN ARBITRATION BEFORE

ROBERT J. MUELLER

RECEIVED  
MAR 06 1990  
WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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In The Matter Of The Interest  
Arbitration Between

WAUKESHA COUNTY  
(Public Health Nurses)

and

DECISION & AWARD  
Case No. 102  
No. 39898  
INT/ARB-4709

WAUKESHA COUNTY PUBLIC  
HEALTH NURSES, LOCAL 2494,  
AFSCME, AFL-CIO  
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APPEARANCES:

Michael, Best & Freidrich, Attorneys at Law, by MR. MARSHALL R. BERKOFF and MR. SCOTT C. BEIGHTOL, for the County.

MR. ROBERT CHYBOWSKI, Staff Representative, for the Union.

BACKGROUND

On July 20, 1989 the Wisconsin Employment Relations Commission appointed the undersigned as arbitrator pursuant to a joint request by the parties to resolve the impasse existing between the parties in accordance with the Voluntary Impasse Resolution Procedure Agreement of the parties. Hearings were held on September 18 and October 5, 1989 in the Waukesha County Courthouse. The parties were present and were afforded opportunity to present such documents and testimony as they deemed relevant. Subsequent to the hearings the parties exchanged additional exhibits by October 16, 1989, exchanged notice of corrections by October 27, 1989 and responded to corrections by November 10, 1989. Post hearing briefs were filed directly with the arbitrator and exchanged by the parties on December 19, 1989.

The voluntary impasse agreement provided that the arbitrator was to resolve the issue at impasse consistent

with the provisions of Section 111.70(4)(cm)6.d. through g. and 111.70(4)(cm)7. The arbitrator is to select, without modification, the final offer of one or the other party.

ISSUE

The sole issue involves wages.

COUNTY OFFER: 3% across-the-board increase 12/26/87  
3% " " " " 1/27/89

UNION OFFER 6% " " " " 12/26/87  
6% " " " " 1/27/89

DISCUSSION

The county argued that the controlling consideration bearing on the issue is that of internal comparisons. They pointed out that the county employs approximately 1200 persons, 750 of whom are represented by labor organizations. They are divided into six different bargaining units. The courthouse clericals, parks employees, social workers and custodians are represented by AFSCME (450 employees). The Public Health Nurses are also represented by AFSCME (23 employees). The Deputy Sheriffs (125 employees) are represented by the Wisconsin Professional Police Association. Civilian correctional officers and radio dispatchers are represented by ACCORD (60 employees). Highway department employees are represented by the Teamsters (80 employees). The Waukesha County Attorneys Association represents the attorneys (20 employees).

Settlements have been reached with all employees and employee groups except the PHN's on the same basis as the county's final offer in this case.

The union contends the controlling consideration in the case should be factor d. involving comparison of the wages, hours and conditions of employment of Waukesha County PHN's with other employees performing similar services.

In addressing such comparison, the union contends the county has used a variety of comparisons in the past, depending on which ones tend to be most supportive of the

county's position in any given case. In this case the county has selected only those counties contiguous to Waukesha County because they are the most favorable to the county's offer.

The union contends a comparison of demographic data shows that Dodge, Jefferson and Walworth Counties are clearly not comparable to Waukesha County. Waukesha is much higher than the above three counties as to per capita population, effective income and per capita income. Two of the contiguous counties referred to by the county are also included in the union's broad list of comparables. The union contends the larger comparable grouping consisting of the counties of Dane, Green Bay, Kenosha, LaCrosse, Ozaukee, Outagamie, Rock, Sheboygan, Washington and Winnebago are more appropriate. The union also includes the cities of Milwaukee, Madison and Racine in such grouping.

The union also quarrels with the county's reference only to annual salaries of comparables when making a comparison. They argue that the hourly rate paid by each comparable is more appropriate because of the difference in the total hours worked in a work week by the various comparables.

The union also contends the county fails to include longevity payments when computing the wage rates. They contend such payments are clearly a part of the salary received by employees and as such should be included when making comparisons on annual salary or hourly wage rate.

At page 12 of its brief the union sets forth the hourly rates of pay for comparable positions at the other listed comparables. For 1987 they conclude that the average of all others so listed was \$13.14 per hour compared to \$12.09 for Waukesha County PHN's. The average for 1988 was \$13.58 compared to a rate of \$12.45 under the county's 3% offer and \$12.82 under the union's 6% offer. The average for 1989 was \$14.21 compared to a rate of \$12.83 under the county's offer and \$13.58 under the union's offer.

The union also contends that the role of PHN's in Waukesha County is professionally demanding, no less so than the demands on nurses at other county facilities. In addition, PHN's are professional registered nurses. They also have a higher level of training than most county RN's. In order to be a PHN one must have graduated from an accredited college or university with a bachelor's degree in nursing. RN's are not required to have such degree.

PHN's are required to perform a wide range of highly skilled nursing tasks including "hands-on" nursing. They provide a wide range of clinical services and in the process, make independent assessments, conduct physicals and provide treatment to patients without supervision or assistance of a head nurse.

With respect to the county's internal comparison argument, the union contends it is inaccurate. They contend the county IM Worker received a 3% increase for 1988 and a 7.8% increase for 1989. Also RN's employed either as jail staff nurses or at the Mental Health Care Center were given increases of 9.7% for 1988 and 4% for 1989.

Finally, the union argues that the PHN's are entitled to a catch-up increase so as not to create a greater disparity in the rates of pay. The union's offer results in a modest catch-up. Its offer also is more in line with the increases granted other RN's working in other settings.

The county contended the PHN job is totally separate and distinct from the RN work in the health care institution. PHN's work in a number of different settings, including the office, homes, clinics and schools. They work a regular 8:00 am to 4:30 pm shift of 40 hours per week.

The RN's at the institution work exclusively in that setting. The operation is staffed 24 hours a day, 365 days a year and results in all RN's working different shifts, weekends and holidays. On an average, the RN at the institution works every other weekend.

It is because of the requirement for such type working

schedules that the county has a number of vacancies at the institution for RN's that they have been unable to fill. On the other hand, there have been no vacancies in the PHN series. In fact many of the present PHN's previously worked in institutions or hospitals and moved into the PHN jobs because of the more interesting and less boring variety of work and the more desirable work hours. None of the PHN's have applied to transfer to any of the vacant RN jobs in the institution even though the position offers higher pay.

With respect to the union's argument that the PHN's deserve a larger increase because of the higher educational requirements of the job, the county points out that a number of other positions exist which require employees to have advanced degrees. They include social workers, sanitarians, educational specialists, microbiologists, and attorneys.

The county argued that the arbitrator should not be moved to allow one group of employees in the county to roll the dice and be rewarded by being the last to settle, where all other employees in the county have voluntarily settled for the same as the county is offering the PHN's. To do so would contribute to instability in the bargaining relationship of the parties for future negotiations.

As to the external comparisons, they contend external comparables also favor the county's final offer. The county has selected the comparables based on their proximity to Waukesha County. They are in the same product and labor market area. The county has excluded Racine and Milwaukee counties because neither county uses PHN's. They also would exclude the City of Milwaukee because of the difference in the manner in which services are provided and the differences in the working conditions of the PHN's.

The county argues that the counties selected by the union as comparables were done without regard to similarity of population or geographic proximity.

The county also contends comparison of PHN pay on a monthly or annual basis as opposed to an hourly wage rate is

the best measure for comparison purposes.

The county contends their offer serves to maintain the county's relative position among the comparables. Its offer ranks second among the 1989 wages offered in other contiguous counties. Under the union's proposed comparables, Waukesha County PHN's will be the fifteenth highest paid out of 46 counties.

The county contends the CPI increase also is more favorable to the county final offer than to the offer of the union. They contend the 1987 increase and the 1988 increase should be referenced because bargaining began in mid 1987. The 1987 increase was 3.8% and the 1988 increase was 4.1%. The total increase of 7.5 is much closer to the county offer of 6% over the two year period than it is to the total increase of 12% proposed by the union.

The primary issue presented in this case is that of determining which of two comparative factors is to be controlling, ie. internal comparisons or external comparisons.

The evidence established that the vast majority of employees, both represented and non-represented in the county, settled on the same basis as that offered to the PHN's in this case. There were however, two exceptions. Employees in the classification of IM Worker received an increase of 3% in 1988 and 7.8% in 1989. There is no evidence in the record to explain the reason or reasons for such deviation. Whatever the reasons were, such classification was the only one of the various classifications in the social services area that apparently were given an increase for 1989 greater than the 3% increase given to all other employees. There is no evidence showing that it affected other than one or a few employees in such classification.

The second deviation involved a group of RN's employed at the jail as staff nurses and RN's employed at the Mental Health Care Center. The Union presented evidence that such

group of employees were given increases of 9.7% for 1988 and 4% for 1989.

The county sought to justify such deviation by alleging that the jobs were decidedly dissimilar. RN's at the Mental Health Care Center are required to work three shifts and generally are required to work every other weekend. They receive no shift or weekend premium pay. They work exclusively in the institutional setting where most of the patients are there against their will and are a threat to themselves and others, including the staff. RN's who work in the Waukesha County jail are also exposed to such type residents.

They contend the RN's at the Mental Health Care Center are required to exercise independent judgment and responsibilities equal to or greater than PHN's. In addition, they are directly responsible for exercising supervisory powers over staff and often times the RN is the only professional on duty at the facility.

Finally, the county contends the labor market for PHN's and RN's is not the same. Employers generally, and Waukesha County in particular, has had no problem attracting and retaining PHN's, whereas there has been and is a continuing problem with attracting and retaining RN's in the Mental Health Care facility as attested to by past and continuing vacancies that the county has been unable to fill. Evidence of such problem is reflected by the fact that a number of counties have offered better wages and fringe benefits to employees in health care facilities recently in an effort to attract RN's to work in such facilities.

What the above deviations appear to demonstrate is that deviation from a consistent pattern of internal settlements is appropriate where exigencies exist which support and justify such deviations. In the two instances referred to, the union apparently persuaded the county that circumstances existed to justify the granting of a greater increase to selected classifications within the county.

That is precisely what the union is attempting to do concerning the PHN's in this case, ie. persuade the arbitrator that the PHN's deserve deviation from the pattern settlement because of the merits of their position and because the external comparisons support and justify such deviation and granting of an equity adjustment.

In considering the comparative merits of the Union's argument that PHN's, by virtue of such position requiring a higher educational degree than that of RN's and their contention that the PHN job entails one of greater responsibility and diversification, I recognize that such differences in degree requirements do exist. As for comparison of the relative responsibilities as between the PHN and the RN generally, I find such comparison to be extremely difficult. It is like comparing apples to oranges. They are both round, but that is the only similarity. Each job is unique unto itself. Each has its advantages and its disadvantages. Each has its independent areas of responsibility and duties. It is difficult to conclude that the responsibility or the particular duties of one are of greater worth and/or value than the other. Each one is necessary in their own settings.

It seems to me that considerable consideration must be afforded the fact that even after the county has made a deviation from the pattern and raised the RN rates at the Mental Health Care Center, vacancies continue to exist whereas no PHN's chose to transfer to such higher paying jobs in that facility. Such facts constitute "proof of the pudding" as to the relative preference for employees to the PHN jobs over that of the RN in the health care facility.

The second part of the union's case for upgrading the PHN's involves the contention that the PHN rates of pay at Waukesha are unduly low when compared to employees performing similar services in other jurisdictions.



Each of the parties proposed different comparables. The county advocated a list of comparables consisting of the counties contiguous to Waukesha. The union contended the group should be wider ranging and include the 14 municipalities utilized by the county in its 1989 operational audit of its public health nursing division.

The county referred to the counties of Jefferson, Walworth, Washington, Ozaukee and Dodge as the most comparable because of being contiguous to Waukesha county. They excluded Racine County and Milwaukee County because they do not employ PHN's. I agree that such counties are relevant because of the fact that they are contiguous to Waukesha county. They are in the same labor market and they share in the same food basket market to a large extent. Aside from those two factors, the counties of Jefferson, Walworth and Dodge are not particularly comparable from the standpoint of population, tax base, per capita income, etc. The counties of Washington and Ozaukee are somewhat more comparable to Waukesha on those elements of comparison and they are also somewhat more relevant because of their proximity to the large metropolitan Milwaukee area.

The union has proposed comparables based to a greater extent on what the union perceives to be greater similarity as to population and other demographic features. The union referred to the counties of Chippewa, Dane, Kenosha, Ozaukee, Outagamie, Rock, Sheboygan, Washington and Winnebago and the Cities of Green Bay, Madison, Milwaukee and Racine. The union also argued that the PHN labor market area is not limited to those areas contiguous to the county. They contend it extends to a larger area than claimed by the county.

The evidence fairly shows that the counties referenced by the union have more similarity one to the other based on features such as population, etc. than Waukesha county has to several of the contiguous counties referenced by the county. For such reason, they are relevant for comparative purposes.

As stated earlier herein, the search of the arbitrator in this case is one of determining if the rates paid PHN's in Waukesha county is unreasonably low or out of line comparatively to the external comparables.

An evaluation of the comparables referenced by the union reveals what appears to be a substantial difference between the rates paid PHN's at the counties of Dane and Sheboygan and at the cities of Madison and Green Bay, as a group. The rates of pay at such four are substantially higher than the rates paid at the other referenced counties and cities. The difference as computed from the rates shown in the data set forth at page 12 of the union's brief for 1988 shows an average rate of \$15.20 compared to an average of \$12.85 for the remaining nine listed comparables. That is a difference of \$2.35 per hour.

For 1989 the average of the "big four" is \$15.82 compared to an average for the remaining eight of \$13.41. The county's final offer would yield a maximum rate for 1988 and 1989 respectively of \$12.45 and \$12.83. Under the union's final offer the rates would be \$12.82 and \$13.58. A comparison of the rates in effect for the two counties of Washington and Ozaukee referred to by both parties as comparable shows that the maximum 1988 rates in effect is \$12.23 at Washington and \$12.35 at Ozaukee. The 1989 rates are \$12.66 at Washington and \$12.75 at Ozaukee (UN. EX 7-B).

It would appear from such analysis that the county's offer is "right on" as compared to Washington and Ozaukee counties. When compared to the group of nine and eight comparables for 1988 and 1989 respectively, it appears that the union's final offer is more justifiable. I hesitate to conclude that Waukesha county should be compared to the "big four" as the most appropriate. For whatever reason or reasons, that group is substantially higher than all others. The difference is not minimal. It is substantial. In the

absence of substantial direct evidence establishing that Waukesha county is in fact comparable in most relevant and substantial comparative respects to the "big four", I am not willing to regard them as the most meaningful comparatives.

It appears from an examination of the record evidence, particularly UN. EX. 8-E and F, that Waukesha county is the only one where the rate of PHN's would be substantially below that of RN's. Rock county shows a 1989 RN rate that is 15¢ higher than the PHN rate. Under the county's final offer the difference in the 1989 rate would be \$2.38. All other counties and cities referenced as comparables either provide PHN's and RN's the same rate or provide a higher rate for PHN's. On the basis of such data, it would appear that Waukesha county is placing an unreasonably high value on the shift and working conditions of the PHN as compared to the RN in the health care facility. They stand alone among all other comparables in creation of such a wide pay rate differential.

The union presented evidence concerning the increases granted to employees in the nursing profession compared to general increases granted to other employees. Such evidence revealed that in many jurisdictions, PHN's and/or RN's received increases in 1988 and/or 1989 substantially greater than the amount of the general increases granted to other employees. The union summarized and set forth a number of such comparative settlements from the exhibits at page 23 of its brief wherein it is indicated that a number of jurisdictions granted substantially larger increases to PHN's in one or more years from 1986 through 1989 than was granted to other employees generally. In Waukesha county the PHN's have not been the recipients of any pay adjustment whereas the RN's at the jail and the Mental Health Care Center have received an adjustment over and above the general increase given to other county employees.

Finally, an evaluation of the cost-of-living factor reveals that the county's final offer of 3% is closer to the increase in COLA for the year 1988 whereas the union's offer of 6% is closer to the increase in COLA for the year 1989. Application of such factor therefore does not favor either offer over the other.

I find the analysis of the external conditions to be most persuasive in this case. The county has granted a wage adjustment to RN's over and above that granted to all other county employees generally. I find the substantial rate differential existing between the PHN rate and that of the RN's to be wholly unsupported by any evidence, comparative and otherwise. There simply appears to be no justification for such a wide differential, if any at all, and there certainly is no justification shown to increase such differential. The county's final offer would serve to increase that disparity.

In conclusion, i find the considerations favoring the union's final offer to be more persuasive and supported by application of the statutory factors incorporated into the voluntary impasse procedure adopted by the parties than they are of the county's final offer.

It therefore follows from the above facts, evidence and discussion thereon that the undersigned issues the following decision and,

AWARD

The final offer of the union is selected to be incorporated into the terms of the parties 1988-89 collective bargaining agreement.

Dated March 5, 1990.

  
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Robert J. Mueller