STATE OF WISCONSIN
BEFORE THE ARBITRATOR

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In the Matter of the Stipulation of

DOUGLAS COUNTY

and

LOCAL 2375-A, AFSCME, AFL-CIO

To Initiate Arbitration
Between Said Parties

OPINION AND AWARD

Case 175
No. 44641 INT/ARB-5790
Decision No. 26687-A

Gil Vernon, Arbitrator

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APPEARANCES:

On Behalf of the Employer: Mark L. Pendleton, Personnel Department - Douglas County.

On Behalf of the Union: Victor Musial, Staff Representative - Wisconsin Council 40.

I. BACKGROUND

The Union is the exclusive collective bargaining representative of certain employees of the County, in a collective bargaining unit consisting of all regular full-time and regular part-time registered nurses employed by the Douglas County Health Department, excluding supervisory, managerial, confidential, and casual employees. On June 21, 1990, the Parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement which was due to expire on December 31, 1990. Thereafter the Parties met on three occasions in efforts to reach an accord on a new collective bargaining agreement. On October 11, 1990, the County and the Union filed a stipulation requesting that the Commission initiate Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On November 7, 1990, an employee of the Commission

conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and by November 7, 1990, the Parties submitted to said Investigator their final offers, written positions regarding authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the Commission, as well as a stipulation on matters agreed upon. Subsequently, the Investigator notified the Parties that the investigation was closed and advised the Commission that the Parties remained at impasse.

On November 14, 1990, the Commission ordered the Parties to select an Arbitrator to resolve their interest dispute. The undersigned was selected from a list provided by the Commission, and his appointment was confirmed November 26, 1990.

A hearing was held March 25, 1991. Post-hearing briefs were received and exchanged May 21, 1991.

II. FINAL OFFER AND ISSUES

Wages, wage structure, and mileage reimbursement are the only issues before the Arbitrator.

The Union proposes the following wage increases with no change in wage structure.

3% Effective 1-1-91
3% Effective 7-1-91
3% Effective 1-1-92
3% Effective 7-1-91

They also propose that the figure for mileage reimbursement be raised from 24 cents to 26 cents per mile.

The Employer proposes the following wage increases:

3% Effective 1-1-91
1% Effective 7-1-91
3% Effective 1-1-92
1% Effective 7-1-92

They also propose to add (after application of the 3% January 1, 1991, increase) two new steps to the salary schedule as follows:

Step		Staff	PHN	H.H.H.C.
-6-	After 8 years	12.45	13.14	13.48
-7-	After 12 years	12.57	13.27	14.02

The following changes are proposed to the credit a nurse can receive for previous employment upon his/her hire with the County:

Article IX, Salary, Section B, revise subsections 1, 2, 3 as follows:

1. One (1) and two (2) years of experience will begin employment at Step 1.

2. Three (3) years of experience will begin employment at Step 2.

3. Four (4) years of experience will begin employment at Step 3.

4. Five (5) or more years of experience will begin employment at Step 4.

The credit formula under the current contract is as follows:

1. One (1) and two (2) years of experience will begin employment at Step 1.

2. Three (3) or four (4) years of experience will begin employment at Step 2.

3. Five (5) or more years of experience will begin employment at Step 3.

IV. ARGUMENTS OF THE PARTIES (SUMMARY)

A. The Union

The Union first addresses its selection of external employers for its comparable pool. They acknowledge that consideration be given the counties (Ashland, Bayfield, Burnett, Sawyer, Taylor, and Washburn) used in the prior two (2) awards involving the Parties. However, the Union also maintains that it is inappropriate to limit comparisons solely to this group of county public health agency nurses. This is because, in their opinion, this comparable grouping does not coincide with the labor market. The labor market, in their opinion, is primarily linked to Minnesota based on general commuting patterns. Moreover, Douglas County's population is more than double that of the next largest county in the traditional comparable group. Additionally, these counties do not reflect relative ability to pay. Taylor County is also not geographically proximate. The Union also notes that nurses in these counties are small parts of larger wall-to-wall units, which affects nurses' ability to exert influence on bargaining outcomes. Only Burnett County has a self-standing nurse bargaining unit like Douglas County. Thus, for many reasons, the settlements from the traditional comparables, even though more supportive of the Union's offer, do not entirely reflect the job market for PHA nurses. Accordingly, the Union will look at other county government across Wisconsin and private hospitals in Duluth, Minnesota, in addition to the traditional comparable group.

Looking first to the traditional comparable group, the Union notes that four (4) of the six (6) area PHA units have settled for both 1991 and 1992. All but Taylor have January and July split increases. The total average lift for the highest nurse's classification where a BSN is required is 5.05% in 1991 and 5.30% in 1992. Thus, the Union's 6.0% lift is closer than the Employer's 4% lift. Where a BSN is not required, the Union is even closer to the pattern. Moreover, three (3) out of the four (4) 1991 settlements contained wage increases for nurses in excess of the internal lockstep pattern in those counties. This contradicts any assertion the County may make that an award for Local 2375-A would result in resentment on the part of other employee groups.

The Union also looks to the settlement pattern in self-standing nurses' units in the following government units: Columbia County, Dane County, Dodge County, Rock City, Waukesha County, Waushara County, Wood County, and the City of Madison. The settlements range from 4% to 9% lifts. Based on this, they argue that these settlements (all voluntary) give the most accurate picture of the labor market for PHA nurses and best reflect what the

Parties should have bargained on a voluntary basis in Douglas County. Again, nurse settlements in these units exceeded the internal settlements in these same municipalities.

The Union also believes that the external comparables demonstrate that the County structure proposal is also unreasonable. First, they note of the seventeen (17) employees in the unit, only one, the Home Health Care Coordinator, is eligible for the 12th-year step. Only four (4) other nurses would attain the eight-year step during the contract term, including Manley who would not reach this step until October 1992 and Typpo-Reich in November 1992. Secondly, only one of 46 statewide units with PHNs has an eight-step schedule. Only one other unit has even a seven-step salary progression.

The salary structure in the traditional comparable group is as follows:

	Number of Steps	Time to Maximum
Ashland	2	6 Months
Bayfield	3	18 Months
Burnett	6	48 Months
Sawyer	5	12 Months
Taylor	5	120 Months
Washburn	4	24 Months
Douglas		
Union	6	48 Months
County	8	144 Months

They also cite awards that look disfavorably on such structure changes. They also suggest that high-end adjustments will not address the turnover problem.

External comparisons are also made to private sector employers in Duluth. The following is presented:

Labor Market Wage Rates (12/31/90)

	Min.	After 4 Years	Maximum
Superior Memorial Hospital	12.25	14.35	17.58
St. Mary's	13.03	15.50	19.79
St. Luke	13.03	15.36	19.79

Douglas County			
RNs	10.84	End of '92	11.97
PHNs	11.41	PHN 13.70	12.63

(Chart Based on Exhibits 11A-11B)

They note, too, that private sector comparisons are particularly appropriate since such labor market considerations played a crucial role in the award involving the LPNs (Douglas County, Dec. No. 25952-A, 8/11/89, Yaffe). This was a case where the employer put emphasis on the private employers.

Regarding internal comparables, the Union believes they should not be considered significant in this case. First, there is no two-year pattern. Only one unit (courthouse) is settled for both years. There is one internal settlement which they find to be significant and that is the settlement for Middle River Nursing Home RNs. Although the County characterizes this settlement as a 3-1% split, upon closer examination one finds that both LPNs and RNs received a $.25/hour ATB increase prior to the 3%-1% general wage increase. When one computes the actual value of this settlement, one finds a result far more supportive of the Union's offer than that of the County for each of the nurse classifications in the unit. This resulted in a 6.3%-1% split in 1991 for LPNs and a 5.2%-1% split for RNs in 1991. They also note that the 1989-90 Middle River RN and LPN settlement is misleading. While it is true that LPNs received a wage freeze in 1989 and only a 3.0% increase for 1990, the RNs from the very same unit received a 9.0% increase in 1989 and a 6.0% increase in 1990. The Union also rejects the comparison to the increases for social workers since their wage levels are far greater than nurses'.

The Union also addresses other statutory criteria. First, with respect to the interest and welfare of the public/ability to pay, they note that the County claimed neither inability to pay nor that an award for the Union would cause budgetary problems. Regarding the interest and welfare of the public, they note that in the prior award involving the Parties, the unit's turnover problem was referenced. The problem of retaining employees has continued unabated since the issuance of the award. They argue that this high turnover is not in the public interest. The Union's offer would help abate this turnover.

The Union also contends that the cost of living is strongly supportive of its 6.0% lift. For instance, the two (2) most relevant indexes (National CPI-U and Small Metro/North Center States CPI-U) show a 6.1% inflation rate during calendar year 1990. As for "overall compensation," the Union questions the

Employer's total package costing and also contends that the benefit package of Local 2375-A falls within the mainstream of comparable counties.

Last, the Union addresses the mileage issue. There is no internal pattern with respect to mileage. Regarding the external comparables, the evidence submitted by the Union shows increases in Bayfield (24 cents to the IRS rate), Washburn County (22 cents to 25.5 cents), and Sawyer County (22 cents to 24 cents). Iron County (presently at the IRS rate) and Ashland County (27 cents per mile) have been at or in excess of the IRS rate of 26 cents per mile for sometime now.

B. The County

The County also, at the outset, expresses its rationale for its selection of external employers. Two different arbitrations with this unit and six different arbitrations in other units have established/listed Ashland, Bayfield, Burnett, Iron, Sawyer, Taylor, and Washburn counties as the primary comparables for Douglas County.

The Employer also questions the Union's selection of comparables. They, in the County's estimation, appear to be selectively chosen using different employers for comparison purposes depending on the issue being considered. They also emphasize that numerous arbitrators throughout Wisconsin, including the 1987 Douglas County Health Department decision, have rejected the use of out-of-state employers as valid comparables to Wisconsin counties or cities.

The Employer contends that their offer is more reasonable because it is the offer which most closely reflects the probable results of voluntary settlement. This primarily relates to the internal comparables. There is an eight-year bargaining history of all units receiving the same wage increase. Breaking this pattern would affect the catch-up efforts of the Middle River Nursing Home RNs and negatively affect morale in this unit, as well as others, especially the relationship with social workers. This was a relationship in the past that the Union believed to be significant.

Relative to external employers, the County contends that the County's final offer of a 4% (total lift) wage increase more closely approximates the external pattern of County settlements than does the Union's final offer of 6% (total lift). They acknowledge that many of the area County Health Department

Nurses received special catch-up wage adjustments beyond the normal percentage increase, but they submitted that the area counties are simply trying to catch up to the wage rates paid to the Douglas County nurses. Douglas County rates exceed Sawyer, Ashland, and Washburn. The County considers further expansion in the wage rate leadership role, as the Union is proposing via a 6% wage increase, not only unnecessary but especially inappropriate. In short, they find no clear-cut, compelling need for the Union to arbitrate such an advancement in the wage rates at the expense of both internal and external settlement pattern. More importantly, they argue that the acceptance of the County's final offer would not cause the PHN or RH or H.H.C.C. wage levels to fall behind the wage rate levels in comparable Wisconsin counties (i.e., Ashland, Bayfield, Burnett, Sawyer, and Washburn).

The County also believe that when looking at the cost of living, total compensation figures ought to be used. In this regard, they contend that the County's final offer comes closer to the CPI than does the Union's. They also address the interest and welfare of the public. They draw attention to the facts that in the years 1989 and 1990 the property tax rate for the citizens of Douglas County remains at an all-time high dating back to at least 1976.

Last, they address the mileage offer of the Union. They note (1) there is no quid pro quo and (2) that currently all of the County's bargaining units utilize the 24 cent mileage reimbursement rate.

IV. DISCUSSION AND OPINION

At the outset the Arbitrator must say that the Employer's proposal to modify Article IX, Salary, Section B, Subsections 1, 2, and 3 and the Union's proposal to raise the mileage reimbursement 2 cents are inconsequential issues relative to the major issue of salary. They are not important enough to control or ultimately effect the outcome of the salary issue. Thus, as goes the salary issue, so go these minor issues.

Turning the focus of the analysis to the salary issue, it is noted that included in the record was the arbitration award (Arbitrator Kerkman) between these same Parties for the two years preceding the period under consideration in this case. Ordinarily this wouldn't be remarkable. However, there is an extraordinary similarity or symmetry between that case and this case. The offers were similarly distinguished--there was an internal pattern for the first of the two years, there was evidence concerning other counties in the traditional

group, and the Union made an appeal to the higher nurse wages in the private section employers in Duluth and the turnover problem. The only major difference in the arguments seems to be the Union's attempt in this case to expand the comparable group of external public employers beyond the traditional group.

In the previous case Arbitrator Kerkman characterized, quite appropriately, the basic issue as whether there were compelling enough circumstances evident to justify departure from the internal pattern. The Arbitrator sees that to be precisely the issue in case. It is well established that where an internal pattern exists it deserves great deference, particularly where such a pattern has been historically observed.

In this case there has been a historical deference to the internal pattern. The Union doesn't dispute this. They do argue that no pattern has been established and that a variety of circumstances justify ignoring it. Regarding their argument that no pattern exists, they are wrong. A clear pattern exists for the first year just as in the previous case. In spite of the fact that no units were settled in the second year, this was determined to be a pattern in the Kerkman Award. In this case there is another unit settled in the second year and it happens to be the biggest unit in the county, which is rather significant since larger units tend to set patterns.

Thus, there is an internal pattern, and the Employer offer is most consistent with it. Again, just as in the Kerkman case, the question presents itself as to whether circumstances justify not observing it. This deserves a fresh look.

In its attempt to justify more than the internal pattern, the Union attempts to persuade the Arbitrator to look at other municipalities across the state. There simply is no reason, however, to go beyond the traditional comparable group of other Northwestern counties for the purpose of finding public sector comparables. The traditional group is adequate in size, there are also adequate similarities, and in some cases, they operate in the same labor market. The new group of public employers argued by the Union to be utilized includes, for instance, Dane County, which has very little in common with Douglas County. A departure from the traditional group is not justified on the basis that they generally are not nurses-only units. It is quite apparent that in spite of their wall-to-wall nature, nurses' wages are not lost in the shuffle. This is evidenced by the fact several of them have given individual equity/catch-up raises to nurses above and beyond the general increases.

Limited to the traditional group, the Union also attempts to show that the external settlement pattern of wage increases favors their offer. Not only is this not accurate, the wage levels of external employers is the most important comparison when determining whether an internal pattern should be departed from. A close examination clearly shows that acceptance of the Employer offer will not disadvantage Douglas County public nurses relative to the wage levels in the traditional comparables. They will remain one of the leaders. The Union's offer would push them further out in front for no apparent justifiable reason.

The Union argues that the wage increases in the traditional external group favored their offer when extra bonus raises were factored in. However, it is apparent that these adjustments beyond the general increases were meant as catch-up, no doubt to Douglas County as the or one of the wage leaders. It is not appropriate to give weight to the catch-up portions of these settlements. If Douglas County employees could use these increases to justify breaking the internal pattern, there would never be catch-up for the other employees. Ignoring the catch-up aspects of the external settlements, the general increases favor the Employer. The same can be said for the comparison to Middle River--the catch-up aspect of that settlement must be ignored.

The remaining possible basis to justify departure from the internal pattern is the combination of the high wages in area private hospitals and turnover. As for turnover, the Arbitrator isn't convinced that the turnover rate is necessarily attributable to low wages. There are any number of reasons that employees quit a job, and the evidence in this case doesn't necessarily identify wages as a key reason. Moreover, there isn't any apparent recruitment problem. In fact, the Employer's evidence suggests that in isolated cases Douglas County has attracted candidates away from higher paying area hospitals. This points up that wages are not the only factor in recruitment. Working conditions are often a major factor. The obvious difference between a private hospital and public nursing would be less shift, weekend, and holiday work. The medical nature of the work may also be a factor, along with differing degrees of independence. The plain fact is that you couldn't pay some nurses enough to work third shift, weekends, and holidays. No doubt there are employees who are willing to accept lesser wages for hours and working conditions different than those in the hospital regiment.

As for wages in area hospitals, direct time relevant comparisons are difficult because there is no settlement information through the end of 1992 for all the relevant private hospitals. Nonetheless, it is apparent there are

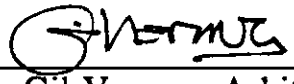
significant differences, and this favors the Union. It is noted that the differences are not as great at the minimums and four-year rates as they are at the maximum rates. The dramatic differences at the maximum rates are due to the fact that area hospitals have maximum step progressions from 12 to 20 years.[1] The Employer's offer seeks to militate this by adding an eight-year and twelve-year step. This is in their favor, but there is a long way to go.

Even though there is great disparity between Douglas County and the area private employers, the Arbitrator isn't convinced that the differences are, relatively speaking, any greater than they were in 1989-90. These differences were not deemed significant enough in 1989-90 by Arbitrator Kerkman to compel departure from the internal pattern. Thus, they are not now a basis to justify departure from the internal pattern.

In view of all the circumstances, the evidence doesn't justify a settlement greater than the Employer's offer which is more consistent with the internal pattern.

AWARD

The final offer of the Employer is accepted.



Gil Vernon, Arbitrator

Dated this 20th day of July 1991.

[1]Superior Memorial is at 12 years. St. Mary's and St. Luke's are at 20 years.