

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

RECEIVED  
MAR 20 1992  
WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

-----  
In the Matter of the Petition of  
BROWN COUNTY MENTAL HEALTH CENTER  
PROFESSIONAL EMPLOYEES ASSOCIATION  
To Initiate Arbitration  
Between Said Petitioner and  
BROWN COUNTY (MENTAL HEALTH CENTER)  
-----

Case 457  
No. 45557 INT/ARB-6011  
Decision No. 26957-A

Appearances:

Mr. Frederick J. Mohr, Attorney at Law, appearing on behalf of the Association.  
Mr. Kenneth J. Bukowski, Corporation Counsel, Brown County, appearing on behalf of the Employer.

ARBITRATION AWARD:

On August 13, 1991, the Wisconsin Employment Relations Commission appointed the undersigned Arbitrator, pursuant to 111.70 (4) (cm) 6. and 7. of the Wisconsin Municipal Employment Relations Act, to resolve an impasse existing between Brown County Mental Health Center Professional Employees Association, referred to herein as the Association, and Brown County (Mental Health Center), referred to herein as the Employer, with respect to the issues specified below. The proceedings were conducted pursuant to Wis. Stats. 111.70 (4) (cm), and hearing was held at Green Bay, Wisconsin, on November 4, 1991, 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, however, briefs were filed in the matter. The final response from the Association was received by the Arbitrator on December 21, 1991.

## THE ISSUES:

The issues at impasse are set forth in the final offers of the parties.

The final offer of the Employer provides the following:

1. General wage increase effective December 22, 1990 - 4%  
General wage increase effective December 21, 1991 - 4%
2. Occupational Therapist Registered - Adjustment increase of 41 cents per hour in 1992.

The Association final offer is as follows:

1. Eliminate County residency requirement.
2. Salary increase effective January 1, 1991 - 3%; effective July 1, 1991 - 3%; effective January 1, 1992 - 3%; effective July 1, 1992 - 3%.

## DISCUSSION:

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

While the Employer has proposed a 41¢ adjustment for one classification which is not included in the Association offer; and, while the Association has proposed an elimination of the residency requirement which is not addressed in the Employer offer; the focus of the evidence and the argument contained in the parties' briefs satisfies this Arbitrator that the primary consideration to be addressed in this dispute is the matter of the general wage increase.

Here, the Employer proposes a 4% increase for 1991 and a 4% increase for 1992 for a total lift of 8% over the two years of the Agreement. By way of contrast, the Association proposes four 3% adjustments, one at the beginning of each of the Contract years and one at mid-year of each of the Contract years. The Association proposal results in a lift of 6% per year, and a cost of 4.5% when considering each of the years independently. The Association argues that its split

increases are supported by the evidence, based on the Association contention that the employees in the bargaining unit are entitled to catchup when compared to comparables, both when comparing wage rates among comparables as well as when comparing rates paid by Brown County to employees employed in similar positions in the Brown County Department of Social Services.

The undersigned agrees with the Association's assessment that if its position is to be adopted, the Association must make a convincing case that the positions in the bargaining unit represented by this Association are significantly underpaid when compared to similar positions in comparable communities, and similar positions in the sister agency to which the Association compares itself, the Brown County Department of Social Services. The Association proof must be compelling because the settlement data among other collective bargaining units with whom this Employer bargains supports the Employer offer. Employer Exhibit No. 13 establishes that the internal patterns of settlement for bargaining units bargaining with this Employer are established at a 4% level. While there is evidence that supervisory employees of the Employer at the Mental Health Center received an average increase of either 5% or 6% depending upon whether the Employer data or the Association data is relied upon, the undersigned considers that to be unpersuasive in light of the bargained settlements which have occurred, which show that the voluntary settlement patterns have been firmly established at 4%. Furthermore, it is the Association who is the proponent of the split increases, and arbitral authority is consistent in holding that the proponent for the proposed change has the burden of establishing by clear and convincing evidence that its proposed change should be adopted.

Based on the foregoing conclusions, it is necessary to compare wage rates among comparables and wage rates for similar positions in the Brown County Mental Health Center compared to the wage rates in the Brown County Department of Social

Services in order to determine whether the additional proposed increases of the Association are warranted.

Prior to making the comparisons of wage rates among comparable communities, it is necessary to establish where the comparables lie, since the parties are not in agreement as to what constitutes comparable communities. The Employer proposes that the comparisons be made with the following counties: Calumet, Fond du Lac, Manitowoc, Oconto, Outagamie, Sheboygan and Winnebago. The Association proposes that the comparisons be made among the following counties: Fond du Lac, Outagamie, Winnebago, Marathon and Dane. Thus, the parties agree on three comparable counties, i.e., Fond du Lac, Outagamie and Winnebago. Marathon County and Dane County as proposed by the Association are disputed by the Employer, and Calumet, Manitowoc, Oconto and Sheboygan counties are disputed by the Association. The undersigned has considered geographic proximity and population differences in determining the comparables.<sup>1</sup> The undersigned concludes that Calumet County, with a population of approximately 34,000 and Oconto County with a population of approximately 30,000, compared to the population of Brown County of approximately 195,000, should be excluded from the comparables proposed by the Employer. The undersigned will include comparisons with Manitowoc County which is immediately south of Brown County and whose population is within 10,000 of the population of Fond du Lac County which the parties have agreed is a comparable. The undersigned will also include Sheboygan County, which has a population of approximately 104,000 (approximately 14,000 more than Fond du Lac County) because its County Seat is approximately the same distance from Green Bay as is the County Seat of Fond du Lac County.

---

<sup>1/</sup> The Arbitrator relies on information published at page 731 of the State of Wisconsin Blue Book (1991-1992) for the population data)

Among the disputed comparables proposed by the Association, the undersigned will exclude Dane County because of its distance from Brown County and because it has almost twice the population of Brown County. The Association argues that Dane County is the second largest county in the state and Brown County is the fourth largest, and, consequently, Dane County should be considered as a comparable. The Association argument would be more persuasive if the Association had also proposed Waukesha County, which is the third largest county in the State, ranking between Brown County and Dane County, and is approximately the same distance from Brown County as is Dane County. The undersigned, however, will consider Marathon County as proposed by the Association, because its population of approximately 115,000 falls within the general population range of counties which the parties have agreed are comparable.

From all of the foregoing, then, the undersigned adopts the following counties as comparable: Fond du Lac, Manitowoc, Outagamie, Sheboygan, Winnebago and Marathon. Having concluded that the counties set forth in the preceding paragraph are the ones which constitute the appropriate counties for comparison purposes, we will now consider a wage rate comparison among those comparables.

The Association points out that while there are 22 separate job classifications for the 47½ full time equivalent positions contained within this unit, two classifications make up approximately one-half of the employees in the unit. Those classifications are Psychiatric Social Worker and Protective Service Specialist/Social Worker. The undersigned agrees with the Association that it is these two positions which constitute the primary positions which should be compared for the purpose of determining whether the evidence supports the Association case for catchup. We will, therefore, first look to those comparisons.

Comparing the Psychiatric Social Workers' rates for 1991 with the comparable counties, we find the following when comparing the maximum wage rates: Fond du Lac

County, \$32,260; Manitowoc County, data not available; Outagamie County, \$37,086; Sheboygan County, \$31,283; Winnebago County, \$36,566; Marathon County, \$34,902. The Employer offer at year end 1991 is \$33,529. The Association offer at year end is \$34,216. Thus, the Employer offer is within the range of the comparables which range from a low of \$31,283 at Sheboygan to a high of \$37,086 at Outagamie. The average of all of the comparables at the maximum is \$34,419, compared to the Employer offer for 1991 of \$33,529 and the Association offer of \$34,216. Thus, both offers fall within the range of rates paid Psychiatric Social Workers among comparable counties. The Employer offer is \$890 under the average of the comparable counties and the Association offer is \$203 under that average. The closest county in size is Outagamie County, and it is also located directly adjacent to Brown County. Because of its proximity geographically, and because it is the closest in size to Brown County of all the comparable counties, the Arbitrator believes that Outagamie County comparisons carry more weight than the other comparables. As noted above, Outagamie County rate for Psychiatric Social Workers at year end 1991 was \$37,086. Given that both offers are below the average of the comparables; and, given that the most comparable county paid a rate in 1991 that was approximately \$3,550 higher than the Employer offer, and was approximately \$2,870 higher than the Association offer; the undersigned concludes that the Association has established convincing proof of need for catchup when considering these comparisons. The 1992 data is too incomplete for comparative purposes, and, consequently, will not be considered.

Turning now to the Protective Service Specialist/Social Worker category, we find some discrepancies in the data submitted by the parties. The parties agree that in Outagamie County the annual rate at the maximum is \$31,657; at Sheboygan County, \$26,936; at Marathon County, \$26,915. The parties disagree as to the rates in Fond du Lac County and in Winnebago County. The Association contends

the Fond du Lac County rate is \$29,411; the Employer contends the Fond du Lac County rate is \$27,560. Similarly, in Winnebago County the Employer data shows a rate of \$32,468 and the Association data shows a rate of \$34,632. The Employer offer generates \$28,350 at year end 1991; the Association offer generates \$28,932 at year end 1991. If one averages the Association data, the average of Association data calculates to \$28,783; the average of the Employer data is \$28,474. The 1992 data is inadequate, therefore, it cannot be compared. The conclusions which were drawn with respect to the Psychiatric Social Workers emerge for the Protective Service Specialist/Social Worker, that is, the Association case for catchup is persuasive because both parties' offers at year end 1991 compare unfavorably to Outagamie County and to Winnebago County no matter which party's data is considered. Furthermore, the Employer offer fails to come up to the average of these comparables, even using the Employer data which is lower than the average of the Association data. From the foregoing, it is concluded that the Association has made a persuasive case for catchup for the Protective Service Specialist/Social Workers.

We now turn to a consideration of internal comparisons, and compare Brown County Social Services with the same positions at the Mental Health Center. We find mixed results. It is obvious to the undersigned that the Brown County Department of Social Services work fewer hours per year than do the employees at the Mental Health Center. The undersigned has calculated that the work year at Brown County Department of Social Services is 1,950 hours compared to a work year of 2,080 hours at the Mental Health Center. Consequently, the data both parties present is accurate data but is presented from a different perspective. Association Exhibit No. 12 sets forth a comparison of hourly rates for Protective Specialist/Social Worker with the same position at Brown County Department of Social Services for 1992, and the hourly rates set forth in Association Exhibit No. 12

show that the employees of the Department of Social Services average \$15.08 per hour. If we extend the \$15.08 per hour by the 1,950 hours worked at Social Services, we find that it annualizes to a rate of \$29,406 for 1992, while the County offer for 1992 annualizes to \$29,494 and the Association offer at year end to \$30,702. Thus, when comparing the hourly rates, the Association offer is favored, but when comparing the annual rates for 1992 the Employer offer is adequate. We see the same result when examining the data for Psychiatric Social Workers. Association Exhibit No. 12 shows that the average rate for 1992 at the Department of Social Services is \$17.67 per hour, and that the Employer offer here in 1992 generates \$16.67 and the Association offer \$17.45. When we annualize that information, however, we see a different result because of the difference in the number of hours worked each year in the Department of Social Services and in the Mental Health Center. The annualized data reflects a year end 1992 annualized rate of \$34,674 based on the Employer offer and \$36,296 based on the Association offer, compared to a rate of \$34,456 when considering the annualized rate at the Department of Social Services. From the foregoing data, the undersigned concludes that the internal comparisons are supportive of the Association case because the hourly rates support the Association position. The annualized rates are less persuasive because employees at the Mental Health Center work a greater number of hours each year than do the employees at Brown County Department of Social Services.

The undersigned has concluded that the Association has made a case for catchup when comparing rates proposed for the foregoing positions with rates paid in comparable counties and with rates paid at Brown County Department of Social Services. Because these positions constitute positions occupied by almost half of the employees in the unit, this Arbitrator is persuaded that the Association offer should be adopted, and it will be so ordered.

The undersigned has considered the distinctions in the parties' offers with



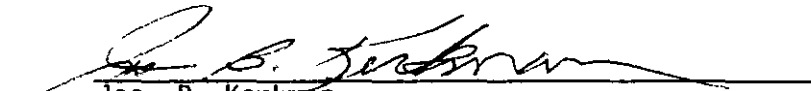
respect to the special adjustment proposed by the Employer for Occupational Therapist Registered in 1992, and the Association proposal for the elimination of the residency requirement. As stated in the initial phase of this discussion, neither party has emphasized these issues, and both parties have stressed the importance of the general wage increase in arguing which final offer should be adopted. The undersigned has concluded that the prime consideration in this dispute is the wage increase, and because the wage offer of the Association is preferred; and because the Statute requires the Arbitrator to select the final offer of one party without modification; it follows that the last offer of the Association in its entirety will be adopted.

Therefore, based on the discussion set forth above, and the record in its entirety, after considering all of the arguments of Counsel and all of the statutory criteria, the undersigned makes the following:

AWARD

The final offer of the Association, along with the stipulations of the parties as furnished to the Wisconsin Employment Relations Commission, as well as those provisions of the parties' predecessor Agreement which were not changed during bargaining, are to be incorporated into the parties' written Collective Bargaining Agreement for the years 1991 and 1992.

Dated at Fond du Lac, Wisconsin, this 19th day of March, 1992.

  
Jos. B. Kerkman,  
Arbitrator

JBK:rr