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RELATIONS COMMISSION

Interest Arbitration

of

SHEBOYGAN FEDERATION OF NURSES & HEALTH PROFESSIONALS, LOCAL 5011, AFT, AFL-CIO

and

SHEBOYGAN COUNTY

re

WERC Case 196, No. 49046,
Dec. # 27842-A; **INT/ARB 6852**

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FINAL OFFER INTEREST ARBITRATION AWARD

ISSUES

The final offers of the County and the Union provide for two year agreements ending 12/31/94 with across the board wage increases of four and one quarter percent (4&1/4%) on 1/1/93 and 1/1/94. The issues in dispute are:

Union	County
1. Vacation 21 years = 26 days 22 years = 27 days	1. Vacation 25 years = 26 days
2. Effective 1/1/94 - Add 60 month step to scale, 3% above 48 month step.	2. No proposal
3. No proposal	3. Shift Differential: Standardize the P.M. shift to 3 to 11 p.m. & night shift to 11 p.m.- 7:00 a.m.

INTRODUCTION

The arbitration hearing in the above identified dispute of Sheboygan County, hereinafter called the Employer or the County, and the Sheboygan Federation of Nurses and Health Professionals, Local 5011, AFT, AFL-CIO, hereinafter called the Union, was held on March 10, 1994 in Sheboygan, Wisconsin by the undersigned arbitrator selected by the parties from a panel submitted to

them by the Wisconsin Employment Relations Commission in accordance with Section 111.70 of Wisconsin Statutes. Appearing for the Employer was Louella Conway, Personnel Director; appearing for the Union was Carol Beckerleg, Field Representative. The hearing was not transcribed. Post hearing briefs and rebuttals were received by the arbitrator on April 4th and April 18th, 1994.

Pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act, the Union filed a petition for arbitration on April 5, 1993. Initial proposals were exchanged on September 29, 1992 and the parties met on four occasions before filing for arbitration. WERC Commissioner William Stryker conducted an investigation on July 14, 1993, finding that the parties had reached impasse and received final offers from them on September 7, 1993. The Commission issued an order for arbitration on October 18, 1993 and appointed the arbitrator on November 30,1993.

BACKGROUND

Comparables: Nine of the comparables were selected by both the Union and the Employer. These are the five adjoining counties (Calumet, Fond du Lac, Manitowoc, Ozaukee and Washington) and four surrounding counties (Brown, Dodge, Outagamie and Winnebago). The Employer presented data for six additional counties that it deemed comparable on the basis of population (La Crosse, Eau Claire, Marathon, Rock, Racine and Kenosha). The Employer also presented data about private sector health facilities in the City of Sheboygan and argued that these were proper comparables. The Union contends that the private sector data should be given no weight because the data are not complete, i.e. there is no indication of how many additional private facilities did not respond to the survey. Also, Employer Exhibit 17 shows rates "but does not provide the scale." (Union Rebuttal, p.1). The Union stated that it had no objection to the addition of the

six counties added by the Employer on the basis of population.

Vacation: The Employer proposed that an additional day of vacation be given to employees completing twenty-five years of employment bringing the total to twenty-six days. Under the '90-'92 contract the maximum vacation is 25 days after 20 years service. The Union proposes that the additional day be given after 21 years of service and that a second additional day be given after 22 years of service. The Employer argues that the Union proposal is "drastic" and is not warranted when compared with the institution employees, the unit most closely related to the R.N.s at the institutions since the other institution employees receive twenty-five days of vacation after twenty-five years of service.

Chart Two, attached to the Union brief shows the vacation schedule for eight groups of County employees. Except for the Institution Employees schedule relied upon by the Employer, the other six schedules are more generous than the schedule offered by the Employer in this dispute. Five of the six groups, including the non-represented employees, receive twenty-seven days of vacation after eighteen years of service while the sixth unit receives twenty-five days after eighteen years service.

Shift Differential: The Employer states that in order to "effectively utilize our time clock system" (Employer Brief, p. 11) it proposes to use the standard shifts of 3pm-11pm and 11pm to 7am. Currently, the shifts at two of the three locations at which the nurses are employed (Sunny Ridge and Comprehensive Health Center) are: Days - 6:45 a.m. to 3:15 p.m.; PM'S or evenings - 2:45 p.m. to 11:15 p.m.; and Nights - 11:00 p.m. to 7:00 a.m. The shift schedule at the third facility (Rocky Knoll) is Days - 6:00 a.m. to 2:30 p.m.; PM'S or Evenings - 2:00 p.m. to 10:30 p.m.; and Nights - 10:15 p.m. to 6:15 a.m. ((Employer Ex. 14).

The Employer does not propose to change the actual shifts but only to standardize the time period at which shift premium will be paid. This will means that thirty minutes of the shift worked by day workers at two facilities will be covered by the PM shift premium and that fifteen minutes of the PM shift at those facilities will be outside the hours covered by the shift premium. At the third facility, day workers will receive a shift premium for the hour they work before 7:00 a.m. while workers on the PM shift who start at 2:00 p.m. will not receive the shift premium for the first hour of their shift.

In order to change the shift premium payment boundaries, the Employer needs to replace the current language in the Agreement (Er. Ex. 14). The current language states:

> **ARTICLE 8 C. DIFFERENTIALS**
>
> 1. Shift: Any employee who works any p.m. or night shift shall receive a shift differential of sixty cents ($.60) per hour in addition to their hourly rate.

The substitute language proposed by the Employer in its final offer states:

> 1. Shift: Any employee who works the PM shift, 3:00 p.m. to 11:00 p.m., or the night shift, 11:00 p.m. to 7:00 a.m., shall receive a shift differential of sixty ($.60) cents per hour in addition to their hourly rate.

The Union argues that although the shift differential lost by some employees is offset by the gain of other employees, the Employer proposal would deprive Rocky Knoll employees on the PM shift of one hour's shift differential. The Union points out in its reply brief that kitchen employees' are exempt from the standardized shift differentials (Jt. Ex. 5, p.8) and suggests that nurses also should be exempt. The Union states that the County never made a proposal to change the actual shift starting and ending times and claims that the proper place to address this issue is under Article 7 which specifies the shift schedules.

Additional Step: The Union states that "the primary issue in this dispute is the addition of a sixty month step in January, 1994 (Union Brief, p. 3). It notes that the Social Workers, who already had a sixty month step, received two additional steps, each equal to three percent, after seventy two and eighty four months' service in addition to the 4.25% across the board wage increase each year (Un. Ex. 7). The Public Health Nurses and professional employees of the Division of Community Programs also received the 4.25% across the board increases and an additional step at sixty months' service, 3% above the forty-eight month step (Un. Ex. 8).

In further support of its offer, the Union claims that the registered nurses will be $.54 below the average of the comparables if the arbitrator chooses the Employer offer and would move from second from the bottom to the "middle of the pack" (Un. Brief, p. 4) under the Union offer. Using the County's proposed comparables "doesn't change the picture very much (Un. Br. p.4) according to the Union which finds that the Sheboygan nurses would rank fourth from bottom under the Employer proposal and sixth from bottom under the Union proposal (Chart 1, attached to Union brief). In all of these comparisons, the Union has used the top step of scale, without longevity.

The Employer used as its reference point for comparability comparisons the wage including longevity that would be received by a ten year employee. Longevity was calculated by multiplying the monthly longevity rate by twelve and dividing by 2080 to determine the cents per hour value of the longevity. The table on page 6 of the Employer brief lists 14 comparable counties. The $15.88 per hour 1993 wage for a ten year employee including longevity under the Employer offer ranks fifth from the bottom. The Employer describes this ranking as "in the middle of the pack." The Employer states that, under the Union offer, the additional 3%

step brings the Sheboygan rate of $17.04 "near the top of the list." The arbitrator's examination of the chart shows that, under the Union offer, Sheboygan would rank fourth of the nine comparables for which 1994 rates are known.

The Employer pointed to the need to control costs at the Institutions while the Union noted that there had been a surplus in the past. The Employer noted also that some employees would receive what it considered to be excessive raises, noting that five employees will receive a 9.75% increase in 1994. This figure is composed of the general increase of 4.25% plus the 2.5% longevity increase for additional service and the 3% flowing from the additional step.

The Employer obtained wage information from five private health facilities in the area and argues in its brief that the average top rate of $15.91 was sixty-four cents an hour less than the Sheboygan County rate for the ten year employee at the top step who is receiving longevity.

The Employer believes that no weight should be given to the fact that the Social workers, the Public Health Nurses and Professional Employees of the Division of Community Program employees received additional steps on the grounds that

> To say that since one group received an additional step, another group should also receive it is totally out of the realm of the criteria evaluated when considering pay adjustments in the negotiating process. (Employer Brief, p.7-8)

The Employer argues that the addition of the sixty month step will give 31 of the 52 employees in this bargaining unit a total increase of 7.25%. Five employees will receive a 9.75% increase under the Union offer because they will be receiving a 2.5% increase in the longevity allowance, giving them a total increase well beyond that given to other bargaining unit employees.

DISCUSSION

Comparables: The arbitrator will rely primarily on the fifteen counties selected by the Employer. The Union offered nine of these counties as its comparables and stated that it did not object to the additional six proposed by the Employer.[1] The arbitrator will not give significant weight to the private sector comparables introduced by the Employer because the figures are open to differing interpretations.

The Union suggests that the private sector rates shown represent a range but do not indicate the scale (Un. Rebuttal, p.1). Unfortunately, private sector employers are not inclined to cooperate with requests for detailed salary information from the public sector. Unknown characteristics include such questions as number of steps and length of time to achieve a step, whether the rates are personal rates or whether there is a wage structure, how many nurses are employed at each institution and whether they are three year or degree nurses. The arbitrator recognizes that the public sector data do not contain all of the above information but the contracts are available to both the Employer and the Union and each is able to check the accuracy of the claims made by the other party. This is not true of the private sector data. For those reasons, the arbitrator has given little weight to arguments of the County based on private sector comparisons.

Vacation: If vacations of the nurses involved in this dispute are compared with those of nurses at comparable counties, the Employer offer is closer to the mark than the Union offer. None of the 14 comparable counties grants more than 25 vacation days regardless of length of service. The Union proposal of 26 and

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[1] The arbitrator can only use 14 of the 15 counties because wage and vacation data for Marathon County were omitted from Employer Exhibit 16.

27 vacation days is excessive when compared to the comparable counties. The Employer proposal of adding a 26th day of vacation after 25 years of service is generous compared to the other counties. The existing Sheboygan schedule grants vacation days earlier than do the comparables. For example, the Sheboygan contract for 1992 provides for 21 days of vacation after 8 years while the average length of service to acquire 20 days of vacation at the 14 comparable counties is 13 years. Only Racine county has a more accelerated vacation schedule than Sheboygan.

Although the external comparisons favor the selection of the Employer offer, the internal comparisons support the choice of the Union offer. The non represented employees, the social workers, support services workers, law enforcement workers and the professional employees of the divisions of Public Health and Community Programs have a schedule topping with 27 days of vacation after eighteen years of service. The highway Workers receive 25 days vacation after eighteen years, a faster schedule than that of the nurses but do not receive the 26th day of vacation as proposed in the Employer offer. Only the non-professional employees at the same institutions as the nurses have a schedule that is clearly inferior to the nurses' schedule. No explanation of the variations in the vacation schedules was offered by either the Employer or the Union.

The arbitrator believes that the merits of the Employer and Union proposals are about equal. The arbitrator accepts the Employer argument that it is addressing the problems in stages as it has in the past and interprets this to mean that the Employer agrees in principle to the idea of equal vacation schedules for its different groups of employees. Since the nurses are better off than their external comparables and will gradually catchup with their internal

comparables under the Employer proposal, the arbitrator believes, that, in so far as the vacation issue is concerned, the Employer offer is preferable to the Union offer.

Shift Differential: The arbitrator finds that the Employer has not made a case supporting its proposal to pay first shift workers a premium for thirty to sixty minutes depending on their shifts and not to pay PM shift workers for fifteen minutes to one hour of their shift. It is not enough to say that the new time clock requires standardized starting and ending times for premium payments. Why should the customary system be amended to fit the new technology? Perhaps the technology could be improved. Or perhaps the solution is to change shift starting and ending times as pointed out in the Union brief.

This issue is the kind of issue that is rarely taken to arbitration. It is a change that should be negotiated. No explanation of why the matter wasn't resolved in negotiations was furnished to the arbitrator. The arbitrator finds that the Employer has not provided adequate grounds for this change in the Agreement and therefore prefers the Union position of no change on this issue.

Additional Step: The arbitrator believes that the Employer comparisons including longevity are a better basis for comparing wages with the external comparables than the Union comparables using the top rate exclusive of longevity. Employer Exhibit 18 shows that 30 of the 52 employees receive longevity. Therefore, it is not correct to disregard longevity. The arbitrator rejects the Union claim that the comparison at the ten year longevity level is not representative of the situation. Eleven of the 30 employees receiving longevity are receiving the 5% longevity payment given to employees with 10 to 15 years service and the average longevity payment of the 30 employees receiving longevity is over 5% (Er. Ex. 18).

Because the 1994 settlements for five of the fourteen comparables are not available, the arbitrator decided to use the 1993 settlements for the fourteen comparables and compare those wages with the Sheboygan wage increased by the additional step. The arbitrator recognizes that the Union has proposed that the additional step become effective the second year of the contract, that is, starting in 1994 and that he has created an artificial comparison. However, this procedure provides a more reliable picture of the relationship of Sheboygan wages under the Union offer to those of its comparables because it is based on fourteen comparables, rather than nine.

Therefore, the arbitrator increased the Sheboygan 1993 top step by three percent, representing the increase called for under the Union proposal to add a step. This artificial Sheboygan rate with the extra step and longevity of ten years would be $16.35. This $16.35 rate places Sheboygan "in the middle of the pack" with seven comparables below it and seven above it. Without the extra step, Sheboygan was not in the middle of the pack, as claimed by the Employer, but was below the middle with ten comparables above it and only four below it. The arbitrator concludes, that so far as the external comparables are concerned, the Union offer is slightly preferable to the Employer offer.

The arbitrator's preference for the Union offer on this issue is strengthened by the fact that the Employer granted additional steps to the social workers, public health nurses and professional employees of the Division of Community Program. The arbitrator does not agree with the Employer claim previously cited that this comparison "is totally out of the realm of the criteria evaluated when considering pay adjustments in the negotiating process." Additional benefits given to any group of employees are taken into account by other groups negotiating with the same employer. Perhaps, the arbitrator does not

understand the Employer position, but Factor "e" of the statutory criteria specifically includes comparisons with other employees "generally in public employment in the same community."

The arbitrator considered the argument of the Employer differentiating the Institution Registered Nurses from the Public Health Nurses because of the lesser education requirement of the Institution Registered Nurses. The arbitrator does not find this difference to be sufficiently important to balance the fact that similar employees received an additional step. Furthermore, the external comparisons including the granting of an additional step favor the Union offer over the Employer offer.

Neither party supplied data showing the cost of adding a step. The fact that some individuals will receive a large increase because they will receive a step increase, in addition to the general increase and movement to a higher longevity bracket, carries less weight than the fact that the granting of a step increase to an employee with ten years' service will only raise the employee to the median wage of the comparables cited by the Employer.

Therefore, based on the external comparables and the fact that the Employer has granted additional steps to other professional groups, the arbitrator finds that, on this particular issue, the Union offer is preferable to the Employer offer.

Summary: The arbitrator believes that the Employer offer on vacations is preferable to that of the Union but that this finding carries less weight than his finding that the Union offer is preferable on the shift differential and the additional step ---- with the additional step being the most important item in dispute.

The arbitrator recognizes that bringing the nurses to the median of the comparables will provide some nurses with large increases. However, by its very nature, "catch-up" has such a result. No estimate of the cost of the additional step was provided, possibly because it is relatively small compared to the total cost of the general increase and other benefits. Absent evidence showing that the additional step gives this group a disproportionate increase compared to the other groups of Sheboygan employees who also received step increases, or that it results in an excessive increase in cost, the Union offer is preferable to the Employer offer under the comparability criterion of the statute.

AWARD

After full consideration of the exhibits, testimony and arguments of the Employer nd the Union, the arbitrator finds that the Union offer is preferable to the Employer offer under the statutory criteria.

The arbitrator therefore selects the final offer of the Union and orders that it be implemented.

5/21/94

May 21, 1994

James L. Stern
Arbitrator