STATE OF WISCONSIN

ARBITRATION AWARD

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In the Matter of the Arbitration between

RICHLAND COUNTY (PINE VALLEY MANOR)

and

PINE VALLEY MANOR EMPLOYEES UNION, LOCAL 3363, AFSCME, AFL-CIO

Re: WERC Case 101
No. 49217
INT/ARB - 6880
Decision No. 28017-A

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APPEARANCES: For the Employer: Godfrey & Kahn, S.C., by Jon E. Anderson, Esq., 131 West Wilson STreet, P.O. Box 1110, Madison, Wisconsin 53701-1110. Mr. Anderson was accompanied at the hearing by Suzanne Dishaw Britz, Labor Research Coordinator, and Jo Anne Lasinski, both of Godfrey & Kahn, S.C.

For the Union: David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 583 D'Onofrio Drive, Madison, Wisconsin 53719.

The undersigned was notified of his selection as arbitrator in this case by letter dated May 11, 1994 from A. Henry Hempe, Chairperson, Wisconsin Employment Relations Commission. This is an interest arbitration case under Wisconsin Statutes Sec. 111.70(4)(cm)6. The Union represents a collective bargaining unit consisting of all regular full-time and regular part-time employees of Richland County at its Pine Valley Manor, with the usual exclusions. The parties have had a labor agreement that expired by its terms on December 31, 1992. Negotiations over the terms of a new agreement were initiated on October 29, 1992. On May 17, 1993 the Union filed a petition to initiate arbitration under the statute. On August 9, 1993 a member of the WERC staff determined that the parties were deadlocked. Final offers and stipulations of matters that had been agreed upon were not submitted until April 18, 1994. Thereafter WERC certified conditions precedent to arbitration and ordered arbitration on April 25, 1994.

A hearing was held on May 19, 1994 in Richland Center. Aside from the written presentations of the parties no formal record was kept other than the arbitrator's handwritten notes. At the conclusion of the hearing the parties agreed to exchange written briefs. Those briefs were received by the arbitrator at the end of the first week in July. Reply briefs were exchanged at the end of the first week in August and the proceeding was closed as of the date of exchanging the reply briefs, August 10.

One other consideration should be noted here. On June 8, about three weeks after the hearing in this case, the Employer counsel's Labor Research Coordinator sent the arbitrator a copy of a consent agreement that had been reached by an arbitrator in the Employer's professional employee unit. There had been agreement at the hearing that certain additional information was to be submitted post-hearing. There was nothing in the record about submitting an award from among the other three arbitration proceedings of this Employer that were being conducted more or less at the same time. Therefore, I believe that this consent award was improperly submitted and it has not been considered in my deliberations.

Then on September 16 the Union sent the arbitrator a copy of another arbitration award in the Employer's Highway Department unit. In my belief that this award was also improperly meant to be added to the record, which had been closed to additional arguments on August 10, I have not considered the Highway Department award in this proceeding.

THE ISSUES

There are two issues. The Union proposes a general increase in wage rates of 4% effective January 1, 1993 and a general increase of 4% effective January 1, 1994. The County proposes a 3% general increase effective January 1 in each year of the agreement.

The second issue is a proposal by the Union that all overtime beyond eight consecutive hours be paid at a rate of time and one-half. The County makes no proposal on this issue.

The arbitrator is obligated by the statute to choose the entire final proposal of either one side or the other.

INITIAL CONSIDERATIONS

There are ten factors listed in Sec. 111,70(4)(cm)7 of the statute that arbitrators are required to consider. The parties made no arguments on Factor a., the lawful authority of the municipal employer; on Factor b., stipulations of the parties; or Factor i., changes in any of the circumstances during the pendency of the proceedings. Three of the factors that usually have primary importance in cases such as this are Factors d., e., and f. Respectively these relate to comparisons of wages, hours, and conditions of employment of these employees with employees performing similar services; with employees generally in public employment in the same community and in comparable communities; and with other employees in private employment in the same community and in comparable communities.

The Union would make its comparisons with three contiguous counties: Grant, Sauk, and Vernon, and three nearby counties: Columbia, La Crosse, and Monroe. The Employer would compare itself with four contiguous counties: Grant, Iowa, Sauk, and Vernon, and with one nearby county: Lafayette. Three counties, Grant,

Sauk, and Vernon are in both parties' lists of comparables.

Both parties made elaborate presentations and arguments regarding comparability, each citing approximately twenty decisions in previous arbitration cases to support its choice of counties. On the basis of the expositions in their briefs it is fair to say that arbitrators differ on the criteria for choosing comparable communities. The County would like to compare itself with the counties that surround it. But since Crawford County immediately to the west does not have a nursing home facility, the Employer would substitute Lafayette County, which is one county removed from Richland County. The County argues that the five counties it has chosen are all rural and compare well with Richland County in terms of populations, tax, income, and labor market data. The Union would exclude Iowa County on grounds that employees in its nursing home facility are not organized for collective bargaining. It argues that "traditional measures of comparability" support the inclusion of Columbia, La Crosse, and Monroe Counties and that large areas of those counties are closer to Richland County than parts of four of the counties chosen by the Employer.

By that standard, of course, we could also include Adams, Dane, and Juneau Counties. I find the Union's choice of counties moderately implausible because of the inclusion of La Crosse County, which has an urban area larger than anything in any of the other counties and a population at least twice as large as any of the other counties proposed as comparable. Contiguity is a better rationale than any rationale put forth by the Union. Since the counties proposed by the Employer appear to have the same general characteristics as Richland County, I will accept them as the basis for comparisons of the wages, hours and conditions of employment of these municipal employees. The inclusion of Lafayette County was less useful than the others. No wage data were presented for that county except in 1992. The results of negotiations covering its nursing home employees were not available for 1993 and 1994.

GENERAL CONSIDERATIONS

In connection with the wage increase issue the parties presented data and arguments related to the level of rates in the comparable communities, rate and percentage increases for the years at issue, changes in the relative rank of the Richland County rates, turnover at Pine Valley Manor, rates in the private sector in southwestern Wisconsin, collective bargaining results in the nation, overall compensation of these employees, and cost of living changes. Since the parties introduced somewhere between 1,000 and 2,000 pages of exhibits and 160 pages of written argument, some of the specifics of the data will not be treated in this award and some of the conclusions will be drawn from summaries of my analysis of the data.

As of December 31, 1992 there were 101 employees in the collective bargaining unit. 71 of these were in the classification of Nursing Assistant. The next largest categories of employees in terms of numbers are Food Service Workers I and Activity Aides, each with 6. The Housekeeper classification has 5 employees and all the others have smaller numbers.

In 1992 the average starting hourly rate for Nursing Assistant in the five comparable counties was $6.20 as compared with Richland County's $6.11 after July 1, 1992. The County's starting rate was third from the top among the six counties. Three counties had lower rates. Richland County's maximum rate for Nursing Assistants after July 1, 1972 was $6.80, fifth from the top among the six comparables, whose average was $7.34.

In 1993 the average starting hourly rate for Nursing Assistant in the four comparable counties (Lafayette County data not available) was $6.41 (using the January rate and $6.44 using the July rate in Grant County). The Union proposal for this classification in 1993 is $6.35 and would make the rate in Richland County the second of five. The Employer proposal for this classification is $6.29, which would make it the third of five. The average maximum rate among the four comparable counties was $7.23 (using the January rate and $7.26 using the July rate in Grant County). The Union proposal for 1993 is $7.07 and the Employer's proposal is $7.00. In either case the Richland County rate for this classification would be fourth among the five counties.

Only Sauk and Grant Counties had settled for 1994 at the time of this proceeding. The average starting rate for the Nursing Assistant classification among these two counties is $6.86 (using the Grant County January rate, $6.93 using the July rate). The Union proposal is for a starting rate of $6.60 for this classification. The County proposal is for a starting rate of $6.48. In either case the County's rate would be second of three. The average maximum rate is $7.49 (using Grant County's January rate, $7.56 using the July rate). The proposed Union rate is $7.35 and the proposed Employer rate is $7.21. Adoption of either rate would put the County's Nursing Assistant classification rate at second among the three counties.

Similar calculations for the classifications of Food Service Worker I, Activity Aide, and Housekeeper yield somewhat similar results. The starting Food Service Worker I rate in 1992 was $.41 per hour below the average for this classification in the five comparable counties and the maximum rate was $.84 per hour below the average. Both the starting and maximum rates were fifth from the top among the six rates. In 1993 both proposals would put the starting rate 35 cents (Union proposal) and 40 cents (Employer proposal) per hour below the average and the maximum rate 45 and 51 cents respectively below the average. Both Union and Employer proposals would leave Richland County fourth from the top among the five counties. Results for 1994 were somewhat similar. For both starting and maximum rates the Employer offer would leave Richland County second among the three counties for which data were presented for the first six months of the year and third after July 1. The Union proposal would raise it to second among three, slightly higher than Grant County.

Results of such analysis for the Activity Aide classification were similar except that in 1992 this starting rate was 25 cents below the average of the other five counties and the maximum rate 69 cents below the average. Both rates were fifth among the six counties. The differentials increased in 1993 and 1994 under both Employer and Union proposals and both starting and maximum rates would be the lowest among the comparable counties that had settled for both

years. Both the Union and the Employer proposals would change Richland County rates from fifth among six comparables in 1992 to the lowest rank among the comparables in 1993 and 1994.

Results for the classification of Housekeeper were about the same except that in 1993 Richland rates would be fourth among five comparable counties under either proposal. In 1994 Richland rates would be second, behind Sauk and ahead of Grant during the first six months under the Employer's proposal and third among the three counties after July 1, 1994. The Union proposal would place Richland County rates at second among the three counties in 1994.

In percentage terms Grant County raised its rates 3% on January 1 and 2% on July 1, 1993. Iowa County raised its rates 4%, Sauk County 4%, and Vernon County 3.5% in 1993. Without compounding the Grant County increases this is an average of 4.125% for the four counties in 1993. Grant County raised its rates by the same amount in 1994. The Union (which represents Sauk County Health Care Center employees) asserted at the time of the hearing that those rates were being raised 4.54% although the labor agreement had not yet been ratified.

On the subject of employee turnover (Factor h., "continuity and stability of employment") the parties draw very different conclusions from the same set of data. The turnover data here are based on employee departures from a list of all employees dated December 31, 1992. The Union identified 29 of the 101 employees on that list who had terminated their employment. It considers this an "astonishing level of turnover" and asserts that other employees had been hired and had departed in the intervening sixteen to seventeen months. In addition, a local Union official testified that membership (or its equivalent requirement of dues payment under the fair share agreement) has been stable at 65 to 75%. Since the fair share agreement does not require new hires to join or pay dues equivalent for their first six months, this testimony seemed to imply that at any particular time 25% to 35% of the unit are new employees.

On its part the Employer argues that 29 departures from employment in a unit total of 101 over a period of sixteen to seventeen months is not evidence of a high turnover rate. It was also pointed out that two of the 29 had retired, 2 had returned to school, and one was discharged. In any event, the Employer argues that turnover has not been a problem because there are multiple applications on file for each position when it becomes vacant and that it has not been necessary to advertise in order to recruit new employees.

To support its position with reference to Factor f., comparisons with employees in the private sector, the Employer presented data from the 1992 Wage Survey of Southwestern Wisconsin, published by the Department of Labor, Industry & Human Relations. Although the survey includes public emoloyers, the rates reported are paid predominantly by private employers. The usefulness of these data was diminished by the kind of comparison initially made by the Employer. Median rates for several common classifications (such as Nurse Aide, Food Service Worker, etc.) in southwestern Wisconsin were compared with County maximum rates for these classifications. A comparison of a median rate in a sample of rates with a maximum rate of a classification has doubtful value. Although we know that on December 31, 1992 a majority of the 101 employees in

this unit were at the top of their grades, not all were at their maximum rates.

More useful for purposes of comparison were the survey's data under the heading of "weighted starting mean wage." These figures can be compared with the average starting rates for several classifications in the comparable counties and with the 1992 starting rates for these classifications at Pine Valley Manor. Comparisons for the classifications of Cook, Institutional; Food Service Worker; Janitor; and Nurse Aide/Orderly in the survey indicated that in 1992 these starting rates were between sixty cents and a dollar an hour lower than Pine Valley Manor starting rates and ninety cents to a dollar lower than the average starting rates for these classifications in the comparable counties.

The County also introduced Bureau of National Affairs publications purporting to show that collective bargaining wage settlements in 1993 and early 1994, as reported by the Bureau of Labor Statistics of the U. S. Department of Labor, have generally been at about 3% or below that figure for various industries and in the North Central region of the country.

In further consideration of Factor h. (overall compensation) the Employer introduced testimony purporting to show that it currently pays 100% of employee health insurance while Grant, Sauk, and Vernon County employees had to contribute to the cost of their health insurance in 1992 and 1993 (85% of the family plan paid by the employer in Grant County; 93% of the least expensive plan paid by the employer in Sauk County; 75% of the family plan paid by the employer in Vernon County). On this issue the tentative 1994 settlement in Sauk County appeared to continue the same arrangement in effect in 1992 and 1993. The Grant and Vernon County relative contributions were continued in 1994. A dental plan, apparently at no extra cost to employees, is included in the Richland County health plans. Of the other comparble counties, only Iowa County has a dental plan.

The Employer presented Bureau of Labor Statistics data on changes in the cost of living in 1992 and 1993 (Factor g.). According to the Employer's calculations these figures indicated that the Consumer Price Index had increased by 2.5% in 1992 and 2.6% in 1993. Since the 1993 figure is below the 3% wage increase proposed and the 1994 figure is well under 3%, the Employer argues that its offer is adequate in terms of Factor g. The Union asserts that several other arbitrators have found that the pattern of wage settlements can be relied upon as the proper determinant of the effects of inflation on municipal employees. Since the pattern of wage settlements, even using the Employer's comparable counties, is over 4%, it ought to be used as the criterion under Factor g.

As a further position on the wage issue the Employer argues that both parties have made the same wage proposals in three other units (highway, sheriff, and professional) and that internal comparability considerations call for choosing the Employer proposal. In its brief the Employer cited Buffalo County (Human Services), Dec. No. 27521, 7/23/93, by Arbitrator Morris Slavney to support its position. On its part the Union argued that the Buffalo County case involved different circumstances from this one. In that case, the Union asserts, different unions had made different proposals and the arbitrator, in

deciding for the employer, had simply stated that the offers of the other unions had been closer to the employer's offer than the union's offer in the case at hand.

The overtime clause in the old labor agreement provides a time and one-half wage rate "for all hours worked in excess of eight (8) hours per day or eighty (80) hours in a fourteen (14) day period." For reasons related to shift changes or unexpected absences, sometimes employees are required to work two shifts in sequence. When this occurs during the same 24 hour period such as day shift and evening shift, the employee is paid time and one-half for the second shift. But when an employee works the evening and early morning shifts in sequence, he or she is paid at the straight time rate for the hours after midnight. The Union considers this an unfair imposition on employees and a condition that ought to be changed by rewording the labor agreement. It was able to support its proposal with a majority of clauses among its own proposed comparables calling for premium overtime for all continuous hours of work beyond eight hours. Among the comparable counties that I have accepted, however, only Sauk County has such a provision. The Union and the County differed as to whether Lafayette County pays premium for all hours beyond eight but no probative evidence about Lafayette County conditions was introduced.

On the issue of overtime premium the Employer also makes the argument that for a change such as the Union proposes there should be a "quid pro quo." The Union responds that wage rates at Pine Valley Manor are so low that the Union would have been justified in making a "catch-up" argument. Thus there is no need to trade anything in order to bring about conditions that more nearly approach what the Union asserts exist among the comparables.

To support its position with reference to Factor c., "the interests and welfare of the public," the Employer introduced a substantial amount of data purporting to show that the County is not only one of the poorest in the state in terms of personal and family income but that its property valuations and its population are growing at slow rates and its property tax rate is high. Data produced by the Wisconsin Taxpayers Alliance showed the equalized value growth rate since 1989 for Richland County was 7.8% while the state average was 28.70% and the average of the five comparable counties was 20.7%. The same source reported the Richland County property tax rate per $1,000 at 9.39 while the state average was 5.12 and the five county comparable average rate was 6.72. The property tax rate ranking was said to be fifth highest among the 72 counties. Family income was reported to be $26,161, 57th among 72 counties whose overall average was $35,082. The average family income of the five comparable counties was $29,272.

Department of Administration data reported a total population growth in the county between 1990 and 1993 of 0.75%. Although this was greater than Grant County (0.40%) and Lafayette County (0.50%), it was less than Iowa County (2.76%), Sauk County (3.84%), and Vernon County (1.62%). Overall, Richland County was 66th of 72 counties in population growth since 1990. The County argues that although the figures are not available for 1994, the history of very small increases in assessed valuation of property together with the levy limits imposed by statute makes the possibility very real of not being able to raise

enough revenue to pay for increased costs if Union proposals in these interest arbitration procedures are chosen by arbitrators.

The Union's main answer to the Employer's position on the effect of levy limits is that only a small amount of Pine Valley Manor's revenue ($46,100 plus $10,000 for special maintenance) is derived from County tax revenues that are expected to total $3,680,702. For the most part Pine Valley Manor is supported by federal and state funds from sources such as Medicare and Medicaid as well as from private insurance.

Instead of emphasizing the level of the County's tax rate and its high ranking among the comparables and in the state, the Union argues that the rate has been fairly stable since 1989 and has risen at a lower rate than the full value of the property. At the same time the County has been able to provide reasonable wage increases. For this reason the Union argues that the legislative mandate freezing the levy will not prevent the Employer from effectuating the Union's proposal. In any event, the Union argues, precedence of previous abitrations emphasizes the greater importance of comparability of employment conditions vis a vis any of the other listed factors in the statute.

DISCUSSION

Neither of these proposals contains any unreasonable features. The principal task for the arbitrator in this case is to determine the relative weights to be given to each of the factors in 111.70(4)(cm)7 of the statute.

The Union gives almost overwhelming importance to Factor d., comparison with employees performing similar services. In terms of Factor d., if it is limited to comparison of nursing home employee classification rates among the communities proposed by the Employer that I have found appropriate, then the Union's final proposal is to be preferred to the Employer's proposal. In the classification containing most of the employees in the unit, Nursing Assistant, the County starting rate would slip from 9 cents below the average in 1992 and third among six, to 11 cents below the average in 1993, although it would remain third of five. If we count the rather scanty settlements among the comparables in 1994, the County starting rate for this classification would slip 45 cents below the average, although it would be second among three. The results would be about the same for the maximum rates. Similar comparisons for the other classifications yield similar results.

In terms of percentages the Union proposal is closer to the level of settlements in the comparable counties, and in fact is lower than the average of their percentage increases in both 1993 and 1994. In terms of comparability of percentage increases the Union's proposal is preferable.

Factor d., however, is not limited to comparisons with public employees. The comparisons are to be made with "the wages, hours and conditions of employment of employes performing similar services." This includes private employment. Then in Factor f., the arbitrator is required to make comparisons of these rates and these proposed increases "with the wages, hours and

conditions of employment of other employes in private employment in the same community and in comparable communities." When these factors are applied with reference to rate increases in the private sector in 1993 and 1994 and to the level of rates in a five county area of Wisconsin that is roughly the same as the area that has been deemed comparable in this case (Green County is included while Sauk and Verona are left out, but the others are the same), the Employer's proposal better fits the considerations of the criteria. The Employer introduced credible evidence from the Bureau of National Affairs, a respected labor news service, that first year settlements in the North Central part of the United States are nearer to the Employer's offer.

And a comparison of starting rates paid to samples of several classifications in the five county area in 1992 favored the Employer position. Starting rates for those classifications were substantially lower than the starting rates paid at Pine Valley Manor. In terms of comparisons with private employees performing similar services, the Employer's proposal must be favored.

As to Factor g., cost of living, the Employer's offer is clearly preferable. The Consumer Price Index applicable to non-metropolitan areas was well below 3% in 1993 and even lower thus far in 1994. In my opinion Factor g. is worded in such specific terms that I do not see how it can be interpreted to refer to any other measure of prices than some form of consumer price index.

Factor e. calls for comparisons "with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities." Both parties appeared to interpret this as applicable at least in part to pending settlements in other County units. As indicated above, I believe that consideration of awards that were not part of the evidence at the hearing or evidence the parties had agreed to send to the arbitrator after the hearing is procedurally improper. In any case, I do not see how either party can expect to persuade me to favor it in a decision in this unit by informing me about other contemporary proceedings involving this Employer about which I have no first-hand information.

As to Factor h., which calls for consideration of overall compensation, it is impressive that three of the comparable counties require employee contributions for health insurance whereas the Employer does not. A very rough estimate of the cost to employees who are required to pay from 7% to 25% of the family premium is between a low of about 15 cents per hour to a high of around 60 cents per hour. The existence of the County's dental plan is another consideration that lends some support to its wage increase proposal.

The other consideration under Factor h. is "continuity and stability of employment." On the issue of turnover neither party provided any comparative data to base a judgment on whether separation of 29 employees from a total of 101 in a 16 1/2 month period is or is not high. This is a separation rate of 1.7% per month. That percentage is roughly consonant with another figure that I have calculated. As of December 31, 1992 there were 13 employees with fewer than six months of service. This calculation conflicts with the Local Union Treasurer's estimate that only 65% to 75% of employees pay dues or fees under the fair share clause. The actual percentage of dues and fee payers should have

been about 87%, at least at the end of the six months before December 31, 1992. I am inclined to be skeptical of the Union's characterization of turnover as "astonishing" in view of the testimony of the Director that the Employer has waiting lists of applicants for vacant positions.

The second issue is the Union's proposal that time and one-half be paid for all hours worked beyond eight. My cursory reaction is to favor the Union's proposal. I agree with the Union that there is no need for any quid pro quo. If this were the only issue, I would choose the Union's proposal. If we are to apply comparability to this issue, however, we have to recognize that only one of the five comparable counties has been clearly shown to have a similar condition in its labor agreement. The County's principal expressed reason for opposing this proposal is that its adoption would cost about $4,000 per year. I would hope that in the future it is not beyond the ingenuity of the Employer, through the use of part-time employees, to arrange schedules so that it would not be necessary for any of the nursing assistants involved in this proceeding to work two shifts under the conditions where premium pay is withheld for hours worked after midnight.

The last consideration is Factor c., the interests and welfare of the public. The data introduced by the Employer support its claim that Richland County is one of the poorest in the state and yet has among the highest tax rates applied on property whose value has increased little in recent years. It also seems that its population is increasing more slowly than three of the comparable counties. While the total difference in cost between the two proposals is probably only about $25,000 per year, this amount is significant for the County as its fiscal circumstances have been described. On this factor the Employer's proposal is favored.

I have not found any evidence or arguments, as they have been presented in this case, that would affect the outcome under Factor j.: ". . . factors, not confined to the foregoing, which are normally or traditionally taken into consideration. . ."

As I have indicated above, the Union's proposal is in no way unreasonable. Yet under all the circumstances as described in the Discussion section herein, I believe that I must opt for the Employer's final proposal.

AWARD

The Employer's final offer is selected in this proceeding.

Dated: September 26, 1994

In Madison, Wisconsin

David B. Johnson