

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of Petition

OPINION AND AWARD

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

Case 261
No. 51998 INT-ARB-7505
Decision No. 28460-B

To Initiate Arbitration
Between Said Petitioner and

SHEBOYGAN COUNTY

APPEARANCES:

On Behalf of the Union: Carol Beckerleg, Field Representative -
Wisconsin Federation of Nurses and Health Professionals, AFT, AFL-CIO

On Behalf of the Employer: Louella Conway, Personnel Director -
Sheboygan County

I. BACKGROUND AND FACTS

On September 29, 1994, the Parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement which expired on December 31, 1994. Thereafter the Parties met on two occasions in efforts to reach an accord on a new collective bargaining agreement. On December 22, 1994, the Union filed the instant petition requesting that the Wisconsin Employment Relations Commission initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On March 29, 1995, a member of the Commission's staff conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and by June 13, 1995, the Parties submitted to the investigator their final offers, positions regarding authorization of inclusion of non-residents of Wisconsin on the arbitration panel to be submitted by the

Commission. The investigator then notified the Parties that the investigation was closed and advised the Commission that the Parties remained at impasse.

On July 10, 1995, the Commission ordered the Parties to select an arbitrator. An arbitrator was selected and appointed. For reasons not relevant here, the appointment of that arbitrator was set aside and a new list was supplied to the Parties on August 22, 1995. The undersigned was selected and appointed on September 28, 1995. A hearing was set for and held on January 11, 1996. Post-hearing briefs and reply briefs were filed, the last of which were received February 14, 1996.

II. ISSUES AND FINAL OFFERS

There are three issues in dispute. The first involves the amount of the wage increase for 1995 and 1996. The second issue relates to the Employer's proposal to change the longevity provisions. The last proposal concerns the Employer's proposal to adjust the pay schedule to grant higher starting rates and to decrease the amount of time it takes an employee to reach the maximum rate.

Concerning the amount of the wage increase, the Union proposes a 3.5 percent increase in each of the two years of the contract. The Employer proposes to increase the 1994 rates by 3 percent in 1995 and by another 3 percent in 1996.

Regarding longevity, the Union proposes to maintain the status quo language. The longevity language in the 1993-94 contract reads as follows:

B. LONGEVITY

All employees subject to this Agreement shall be entitled to longevity pay as follows:

1. Those employed continuously for a period of five (5) years shall be paid an additional two and one-half percent (2-1/2%) of their hourly base pay.
2. Those employed continuously for a period of ten (1) years shall be paid an additional five percent (5%) of their hourly base pay.

3. Those employed continuously for a period of fifteen (15) years shall be paid an additional seven and one-half percent (7-1/2%) of their hourly base pay.
4. Those employed continuously for a period of twenty (20) years shall be paid an additional ten percent (10%) of their hourly base pay.
5. Those employed continuously for a period of twenty-five (25) years shall be paid an additional twelve and one-half percent (12-1/2%) of their hourly base pay.

The continuous years of employment shall be calculated from the last date of hire.

The Employer proposes to change the longevity from a percentage basis to a flat dollar basis for all employees hired after January 1, 1995. All employees hired prior to that would be "grandfathered" under the previous longevity provisions. For new employees the Employer proposes:

Longevity program for employees hired after 1/1/95

- \$10.00 per month after 5 years of service
- \$20.00 per month after 10 years of service
- \$30.00 per month after 15 years of service

On starting rates, the Employer proposes essentially to drop two steps off the 1994 pay schedule. The 1994 schedule had ten steps for Registered Nurses (RNs). They were "start," and then interval increases at 6, 12, 18, 30, 36, 42, 48, and 60 months. The Employer proposes to drop the 48- and 60-month interval steps and drop the first two pay steps, sliding the pay scale in a corresponding fashion. The 1994 pay schedule was as follows:

<u>Classification</u>	<u>Start</u>	<u>6 MOS</u>	<u>12 MOS</u>	<u>18 MOS</u>	<u>24 MOS</u>	<u>30 MOS</u>	<u>36 MOS</u>	<u>42 MOS</u>	<u>48 MOS</u>	<u>60 MOS</u>
Reg. Nurse	13.98	14.07	14.16	14.38	14.89	15.12	15.31	15.54	15.76	16.23

Their proposed pay scale for 1994 (on which their proposed 1995 increase of 3 percent would be applied) would be as follows:

<u>Start</u>	<u>6 MOS</u>	<u>12 MOS</u>	<u>18 MOS</u>	<u>24 MOS</u>	<u>30 MOS</u>	<u>36 MOS</u>	<u>42 MOS</u>
14.16	14.38	14.89	15.12	15.31	15.54	15.76	16.23

Thus, employees would start at a higher rate, would reach the maximum pay step in three and one-half years instead of five years, and would enjoy a higher rate at each interval or step.

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. The County

The County agrees with the Union that 15 other counties are comparable. They are Brown, Calumet, Dodge, Eau Claire, Fond du Lac, Kenosha, La Crosse, Manitowoc, Marathon, Outagamie, Ozaukee, Racine, Rock, Washington, and Winnebago. However, the County believes that it is important to note that among these counties: (1) Sheboygan County's tax rate is the fifth highest, (2) Sheboygan's tax rate is almost 16 percent above average, and (3) the equalized value of Sheboygan County is seventh highest. They also note an anticipated loss at the County institutions in 1995. Thus, they assert, based on this information, Sheboygan County's tax rate is high and the citizens of Sheboygan County pay highly on their tax bills to support the operation of the Health Care Facilities.

In looking at the earnings of RNs in comparable counties, they also draw attention to the fact that Sheboygan County is above nine of the comparables at the top rate. In addition, it takes longer to reach the top rate in seven other counties than it does in Sheboygan County. Moreover, a registered nurse with verifiable experience can start at the step which recognizes this experience allowing a new Sheboygan County employee to start at the top of the scale in his/her first day of employment. They average the rates in these counties with longevity. They note Sheboygan County nurses earn as much as \$1.42 above the comparables when adding longevity. The fact that the hourly rates with longevity are so much higher than the comparables demonstrates, in their opinion, a need for change.

In the metro area the mean wage rates for RNs in private long-term care facilities is \$13.90, median wage at \$13.95, and weighted mean wage at \$12.46. The top rate paid is between \$14 and \$15.99. Thus, the County rates are \$2.28 higher than the median. In County homes, according to a statewide survey, the average rate is \$16.24 and the median wage is \$16.05. The Sheboygan County top rate for 1994 is \$16.23. When adding the proposed 3 percent across the board for 1995, the comparable 1995 rate is \$16.72 per hour.

Regarding internal comparables, the Employer notes that the other units in Sheboygan County open for negotiation in 1995 all include a provision to grandfather longevity, implement a new longevity program for employees hired after January 1, 1995, and a 3 percent across-the-board increase. In addition, contracts open for 1996 also include a provision to change the longevity

program. The non-bargaining employees of Sheboygan County received a 3 percent across-the-board increases for 1995, and the longevity program was eliminated for new employees hired after January 1, 1995. They argue this consistency must be given weight in the selection of a final offer. It is also argued their proposal is consistent with the cost of living and that granted to employees in public sector generally.

Focusing on the issue of longevity, the Employer notes that 9 of the 15 comparables offer no longevity package at all. Of the other six all offer a flat dollar amount which is paid once a year, often in December, and given to the employees as a lump sum payment. The Employer's proposal is consistent with the longevity benefit where it exists. It is an offer that is most reasonable in comparison to other counties. By grandfathering existing employees, they are not taking the benefit away, but offering a new program which most closely resembles that of other counties. Moreover, in comparing the amount of longevity paid by other counties after 15 years of employment, the new proposal of Sheboygan County is the most generous.

They also draw attention to the fact that the 1994 base rate for RNs in Sheboygan County is above eight of the comparables at the top rate. The inclusion of the existing longevity program increases the difference to over \$1.40 an hour after 30 years. They maintain that this distortion is much too great and cannot continue. They anticipate, too, that the Union will rely on longevity provisions in effect in the City of Sheboygan. However, the City urges the Arbitrator to reject those comparisons because they involve blue-collar units. Moreover, none of these longevity programs offer as generous a program as Sheboygan County's 12.5 percent. The maximum longevity program offers 9 percent.

There is a great need, according to the Employer, to change the most expensive longevity program in the comparables. The costs are escalating every year too. For instance, any across-the-board percentage increase is compounded by the addition of the longevity percentage. This, then, is compounded by the longevity adjustments based on additional time of employment. The only way to curb this increase is to develop a new program which eliminates this compounding. The County made the change for non-Union personnel and had its proposal accepted in an arbitration with the social workers. They believe they have met the criteria to initiate change in this case too. They reasonably address the need by grandfathering existing employees and establishing a flat dollar program for future employees. It also offered a quid pro quo in the form of an adjusted wage program which allows present

employees and new employees to reach the top rate more rapidly. Numerous present employees will be granted considerable increases under the new plan.

B. The Union

The Union agrees that the comparable counties are Rock, Dodge, Ozaukee, Washington, Racine, Kenosha, Outagamie, Marathon, Fond du Lac, Manitowoc, Winnebago, Eau Claire, La Crosse, Calumet, and Brown. They reject, however, the Employer's comparisons to Sheboygan area nursing homes. This is because there is no way of knowing if employees reach the top wage in six months or six years, if there is a wage scale providing progression at set intervals or whether employees are three-year degree graduates or four-year graduates. In addition, not every facility in the area is included.

Regarding longevity, the Union notes that it is well established in numerous arbitration awards the party proposing a change in the status quo has the burden of proving a compelling need for the change as well as providing an adequate quid pro quo. The Union believes the Employer has not complied with either requirement. They base this principally on a comparison of the wage rate in Sheboygan with those in the comparables, which without longevity is below average. It is clear to them that longevity is necessary to maintain Sheboygan County's standings in the comparables. Without longevity Sheboygan County RNs will fall further in the rankings and further below the average.

For instance, without longevity in 1994 the average top rate of the comparables is \$16.82. Sheboygan's top rate of \$16.23 is 59 cents below the average. In 1995 the average top rate of the comparables was \$17.52. Sheboygan's top rate (without longevity) is \$16.72 or 80 cents below the average. When the average longevity payment of ten years is factored into the Sheboygan rate, the hourly rate was \$17.04 in 1994. Still, accounting for longevity only moves Sheboygan County from 11th place in 1994 in the comparables to 7th place and 22 cents above the average. In 1995, without longevity, the RNs drop another 21 cents below the average (for a total of 80 cents below average) and from a rank of 11 to a rank of 12. The Union contends using the ten-year longevity step for comparison purposes is justified because the average years of seniority in the bargaining unit is 9.35 years and because Arbitrator Stern used the ten-year step in a prior arbitration involving this unit.

Also, regarding longevity, the Union draws attention to the fact that two out of three arbitration decisions issued in other bargaining units have preserved longevity. In the unit that lost longevity in arbitration, employees were given an additional three percent step. In that decision the arbitrator ruled and the county argued the step was a quid pro quo for the proposed take away of longevity. In this case it is maintained that the Employer has failed to provide a quid pro quo for the change. They also argue it is clear from the evidence presented that longevity in this bargaining unit does not result in a windfall to the employees. It is sure to lead to demoralization and conflict when new employees perform the same work as their counterparts but receive less than not only their own co-workers, but the comparables as well.

Last, the Union addresses the general wage increase and the revised pay schedule. The average wage increase of the comparables for 1995 is 3.6 percent. In addition, two of the three decisions issued (AFSCME Institutions and the Law Enforcement) resulted in a 3/1 split increase each year. Thus, the Union's proposal of 3.5 percent each year is not out of line with the internal or external comparables.

IV. OPINION AND DISCUSSION

Clearly the most significant issue is the Employer's longevity proposal. The Employer seeks relief on the basis that (1) none of the comparables have a percentage longevity program where costs escalate with future wage increases, (2) the fact it clearly is the most expensive program, and (3) the fact that nine of the comparables have no longevity and only six have a flat program.

There is substantial appeal to the Employer's case for longevity standing alone. The fact they are among the few who have longevity and the only one with an expensive percentage-based system certainly militates for dumping it in favor of a flat dollar system. However, it would be inappropriate and unreasonable to view longevity isolated onto itself separate and apart from the hourly wage rates. Longevity is a direct hourly wage adjustment. The basic wage rate must be accounted for in any comparison of longevity provisions. For instance, if the Union was proposing a large catch-up increase because their regular hourly rate was below average, the Employer would be the first to say, and appropriately so, "Hold it, you have to consider longevity." The situation here is reversed. Talking about normalizing the longevity provision is fine, but what does it do to wage rates? There may be a need to change longevity just looking at longevity, but is there a need when considering the combination of

wage rates and longevity? Is the combination of wage rates and longevity particularly burdensome to the Employer relative to total wage payments in comparable employers? What is the impact on future wage payments and wage rates by changing longevity compared to the impact of not changing longevity?

The evidence shows that the Employer's combined total wage payments (hourly rate and longevity) are not out of line relative to the comparables. This strongly diminishes the argument that there is a dramatic need to change the longevity system. Even assuming maximum longevity payments of 12.5 percent, the Employer's wage payments aren't extraordinarily high. Before looking at the evidence in this regard, it is important to note that roughly only three bargaining unit members out of approximately 59 have been employed more than 25 years, thus entitling them to 12.5%. Four other employees have been employed between 20 and 25 years and four between 15 and 20 years. The average longevity is just under ten years, amounting to approximately 5.415 percent of total wages. Accordingly, a 12.5 percent scenario is the worst case and doesn't reflect reality at the moment. Even so, the Employer's wage payments aren't the highest or most expensive. Adjusting the 1994 rates by 3.5 percent for the Union's general increase and then by 12.5 percent for maximum longevity, the resultant hourly rate is \$18.90. This ranks third behind Rock at \$19.88 per hour and \$19.42 including longevity in Dodge County. They are just ahead of Ozaukee. If the Employer were on top or closer to it, relief would be more justified. Compared to the average wage rate even with longevity, the Employer doesn't pay its RN's dramatically more. The average is \$17.56 with longevity. The Employer pays at the maximum some 7.6 percent more. This is not an unacceptable or wholly unreasonable variation, although it is close. Moreover, it is more accurate to look at the reality. Longevity payments, as noted, average 5.415 percent of payroll, which corresponds roughly to the ten-year level at the 5 percent level. This means the Employer's average hourly rate, assuming all employees are at the 60-month step, which they aren't, would be \$17.64 per hour ($\16.80×5 percent), barely above (less than one percent) the average of \$17.56. This is if the Union offer is selected.

It must be kept in mind, too, that the nurse in Sheboygan has had to work ten years to get her or his combined rate above the average. This means that it would take more than ten years for them to catch up to the average career earnings for the average nurse in the comparables. This is an advantage to the Employer because they pay below-average rates for the first ten years. While they pay above-average rates after that, they have the advantage of retaining an experienced work force. After all, one of the purposes of longevity is to create

an incentive for experienced employees to stay. Experienced employees usually benefit the Employer.

Clearly the impact of the Union offer doesn't, comparatively speaking, put the Employer at a great disadvantage. In contrast, the impact of the Employer offer would disadvantage the basic wage rates in the future. If the Employe proposal is selected, then the basic maximum rate of \$16.72 would be enhanced by approximately twelve cents per hour for a ten-year employee. This combined rate of \$16.83 would lag behind the comparable average of \$17.55. Thus, the typical ten-year employee would have a combined rate of \$16.84 or 4.2 percent less than the average. Under the Union's offer, the typical ten-year employee earns just a little bit more than average. This favorable disparity is less than 1%.

The Arbitrator understands that the Employer "grandfathers" the existing employees and gives (under its structural change) employees with less than 60 months an additional increase. However reasonable, this is at the expense of the competitive wage scale. Under the Employer's offer the wage scale for non-grandfathered employees would be sub-par. What's wrong with this? The problem is it puts the monkey on the Union's back to catch up in bargaining. It is the Employer's burden, however, in the first instance to convince this Arbitrator on the merits of these particular facts and circumstances that there is a compelling need to change and that their proposal reasonably addresses that need. There is no compelling need at this point for this unit. Moreover, the Employer addresses the need in a way which moves the pay rates to below average.

In summary, all things considered, the Employer hasn't put forth a convincing case that the combination of wage and longevity payments is onerous and needs restructuring. On the other hand, the relative implications of adopting the Union proposal are not unreasonable. Their wage proposal is in line with other relevant settlements and its impact even with longevity, given the present circumstances, still leaves the Employer with essentially an average wage bill.

AWARD

The final offer of the Union is selected.

A handwritten signature in black ink, appearing to read "Gil Vernon", is written over a horizontal line.

Gil Vernon, Arbitrator

Dated this 10th day of April 1996.