

STATE OF WISCONSIN

Before the Interest Arbitrator

In the Matter of the Petition)	
)	
of)	Case 298
)	
Sheboygan Federation of)	No. 54050 INT/ARB-7951
Nurses & Health Professionals)	Decision No. 28819-A
Local 5011)	
)	
For Final and Binding)	
Arbitration Involving)	
Personnel in the)	
Employ of)	
Sheboygan County)	

APPEARANCES

For the Union:

Carol Bekerleg, Field Representative WFNHP

For the County:

Louella Conway, Personnel Director

PROCEEDINGS

On September 12, 1996 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.70 (4)(cm)6. & 7. of the Municipal

Employment Relations Act, to resolve an impasse existing between Sheboygan Federation of Nurses & Health Professionals, Local 579, hereinafter referred to as the Union, and Sheboygan County, hereinafter referred to as the Employer.

The hearing was held on December 6, 1996, in Sheboygan Wisconsin. The Parties did not request mediation services. At this hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. The Parties stipulated that all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs were filed in this case and the record was closed on February 13, 1996 subsequent to receiving the final briefs.

ISSUE

The following represents the issue at dispute in this matter:

<u>EMPLOYER</u>	<u>UNION</u>
1. Grandfather longevity for employees hired before 1/1/96	1. Status quo
2. Longevity program for employees hired after 1/1/96--\$10 per/mo. after 5 yrs. of service; \$20 per/mo. after 10 yrs. of service; \$30 per/mo. after 15 yrs. of service	2. Status quo
3. \$100 signing incentive for all employees on payroll as of 1/1/96	3. No signing
4. Eliminate 7-step pay schedule which tops out at 5 yrs. to a 6-step system that tops out at 4 yrs.	4. Status quo

The Parties have reached a tentative agreement on all other issues in this matter including wages and term of the Agreement.

COUNTY POSITION

The following represents the arguments and contentions made on behalf of the County:

The County utilizes seven counties as comparables: Calumet, Dodge, Fond du Lac, Manitowoc, Ozaukee, Washington and Winnebago. The selection of these comparables is based on interest arbitration case 4063 wherein the interest arbitrator determined the above seven counties to be comparable. The County argues that it is commonly accepted for the Parties to utilize comparables that were set in past cases. The attempt by the Union to shop around to select comparables should be rejected by the Arbitrator in favor of the establishment of consistent comparables.

When comparing the seven counties, Sheboygan's tax rate is the highest and one of the highest in the state, some 5.3% above the average overall.

The statute requires that interest arbitrators give weight to certain factors which the statute classifies into ten categories. After weighing these factors the Arbitrator is required to select one of the final offers for inclusion in the successor agreement. Neither the lawful authority of the municipal employer nor the stipulation of the Parties enters into these proceedings.

With respect to external comparability, Sheboygan County has taken the seven labor contracts utilized as comparables and compared wages and longevity pay. Sheboygan County is above most comparables in its average hourly pay rates and, when looking at the actual top rates, Sheboygan County is above all comparables except for one. Likewise, Sheboygan is above all comparables at the start rate. These comparisons are made without any longevity. Even when adding in the County's proposed longevity program, the rates still remain significantly above average after five years and after thirty years for nursing staff. This is significant since the greatest number of employees in this unit are public health nurses while there are only a few employees in each of the other positions. This same concept follows through but not

as dramatically as the other positions. For example, the developmental disability specialist is the third highest of the comparables, and the community support program specialist is second highest when utilizing the top rate. In addition, under the proposed pay plan, Sheboygan County employees would only take 48 months to reach the top, second only to Ozaukee County at 36 months. All others take longer than 48 months to reach the top step.

When adding the current longevity increases to the hourly rates, the difference in average comparables now expands from \$1.24 to \$3.51 for public health nurse II. This variance is excessive. The fact that hourly rates with longevity are so much higher than the comparables gives weight to the criteria of a need for change. The County's proposal addresses this need.

With respect to internal comparables, the County has been consistent in its approach to bargaining in that longevity has been a major issue bargained with each unit. This consistency must be given weight in the selection of the final offer. All units in the County open for negotiation during 1995 and 1996 included a provision to grandfather longevity and to implement a new longevity program for employees hired after the beginning of the new contract and a 3% across-the-board increase. While some arbitration awards

avored a change in the longevity program, others did not. Each unit has its own issues, and each must be considered on its own merits.

This County offers this unit a pay rate well above the average of the comparables without any longevity program. This must be given considerable weight in determining a need for change. The County draws the Arbitrator's attention to the awards for the social workers and supportive service employees who share a building with this bargaining unit and asked the Arbitrator to consider Arbitrator Vernon's concept that each case must be evaluated on its merits and, therefore, the burden to demonstrate intrinsic need and quid pro quo are diminished. The other two units already have a change in the longevity program and support the notion of comparable contract provisions.

Over the years, longevity has been an issue with this bargaining unit, however, the County has not succeeded in making changes. The County Board effective 1/1/95 discontinued longevity benefits for new hires in non-bargaining unit positions.

When looking at the external comparables, three of the seven comparables offer no longevity increases. Of the other four, two offer a flat dollar amount, which is paid once a

year, often in December and given to the employees as a lump sum. The other two offer a cents per hour program. The lump sum payment proposal by Sheboygan County is most reasonable in comparison to other counties. The current longevity program is second to none. Even the program proposed by Sheboygan County is still the most generous after 15 years of employment. Sheboygan County is not attempting to deprive new employees of a longevity program, but only to develop a comparable program.

The annual cost for longevity payments is high. The County estimates that in 1996 the cost will be over \$1.25 million. The County has taken the first step to curb this cost by grandfathering the non-bargaining unit employees. The next step will be grandfathering bargaining unit employees and developing a new longevity plan. Since the Unions have refused to entertain any sort of change regarding this benefit, the only way to initiate change is through arbitration. The County is offering a new longevity program for new employees which is better than that offered by any other county in the comparable group. In addition, all current employees will continue to enjoy the present longevity package. The proposal of the County is a reasonable solution to the problem.

In 1995 thirty-one members of the bargaining unit received longevity. In 1996 this will rise to thirty-five individuals and in 1997, forty will be eligible for this benefit. Therefore, longevity costs to the County will increase substantially for this small group of employees.

Local municipal employers offer various longevity packages. Even though these comparables do not offer a longevity program as rich as Sheboygan County, numbers of those units cannot be used as comparables in that they are not comparing like workers.

Some arbitrators have required a quid pro quo when deviating from the status quo and the Collective Bargaining Agreement. The County argues that its \$100 signing incentive for employees of the unit and the adjustment in the wage grid must be considered sufficient quid pro quo. The County has attempted to address this issue through the negotiation process and has not met with success. The change must be made through the arbitration process. It is time for a change in longevity. Sheboygan County has made a sufficient offer to qualify that change and asked the Arbitrator to give this offer the necessary consideration in this dispute.

Arbitrators have addressed the criteria to initiate change in various arbitration decisions. Arbitrator Vernon

stated in a 1990 case that the status quo change must be balanced and weighed on four considerations: "(1) If, and the degree to which, there is a demonstrated need for change, (2) If, and the degree to which, the proposal reasonably addresses the need, (3) If, and the degree to which, there is support in the comparables, and (4) The nature of a quid pro quo, if offered." Arbitrator Vernon states that all four elements should be present to some degree, and the Arbitrator must determine if an acceptable mix of these considerations will vary from unique situation to unique situation. The County argued that it has met each of these criteria. Likewise, Arbitrator Tyson in his award for the Employer which changed the status quo regarding longevity stated "Here the evidence is overwhelming that the 11 other comparables have no longevity programs or longevity programs similar to the County's proposal. While the County's financial need for instituting the change is not at this time compelling, the Arbitrator has verified that, while longevity is a modest part of the wage costs, it will rise relatively substantially in this contract and subsequent ones."

The County would note that employees hired prior to 1/1/96 will continue to receive the benefit of longevity. New employees will receive the new program after five years of employment. In years to come the Parties will continue to negotiate new contracts which may or may not address

longevity. In the meantime, the pay rate of present employees and new hires will not be affected by the change. This approach addresses the need to change the longevity program over the long term and is the most reasonable solution to the problem.

The County had the opportunity to reply to the Union's brief in this matter:

The Union asserts that the comparables presented by them are the most appropriate for utilization in this case. At the hearing the County stated that the only other arbitration case between the Parties was in 1987. County Exhibit 16 used comparables utilized by the County in preparation of that arbitration case. The case never went to a full hearing and was settled in a consent award. However, no other documentation was presented by the bargaining unit to indicate there was a dispute regarding these comparables. Arbitration awards of other units included with the exhibits of both the County and the bargaining unit indicate various comparables were used in each case. Each case must be based on its own set of comparables. The Union has presented no evidence to indicate that the counties it used as comparables have departments similar to that of Sheboygan County or have the types of employees represented in this case. The Union argues that the same comparables should be

used in this case as have been used in prior cases between the County and the institution's registered nurses. Some counties have health care facilities and some do not. Also, the types of work done by institution registered nurses is different than that performed by public health nurses or employees of Division of Community Programs. The Union contends that by using its comparables its rank position is greatly devalued since it becomes sixth in ranking for public health nurses. This sort of comparable shopping tends to produce the desired results for the bargaining unit. There was no evidence presented to determine that the comparables used in the 1987 case had not been accepted.

The Union objects to inclusion of County Exhibits 29 through 35. The information presented in County Exhibits 29 through 35 is valid in that the various counties researched and documented the comparisons of their job descriptions with those of Sheboygan County. Many positions have different duties in various counties, however, the documentation as prepared by the involved counties can be deemed most reliable and conclusive in these proceedings.

County Exhibit 18 outlines the hourly rates for positions involved in this arbitration case. The hourly rates were determined by utilizing the information presented in Exhibits 29 through 35. This is a true indication of

hourly pay rates in comparison of one employer to another. Proper documentation is provided. The Union questioned the top rate in Fond du Lac County as presented in Exhibit 21. This rate is represented at the ten year step because it takes more than five years but less than ten years to reach that particular step on the wage scale. This is not an error in calculation but a true representation of the comparison of wage rates and the time to reach various steps. The Union calculates the total cost of longevity at 2.6% of total pay in 1995. County Exhibit 27 indicates the total cost of longevity for this bargaining unit is \$42,322 for 1995, and \$54,590 for 1996. The County exhibits represent the actual payroll cost of longevity for these units which is much higher than purported by the Union. The amount is extreme and very costly for a unit of this size.

The Union contends that there is no quid pro quo offered by the County. There are a number of individuals affected by the adjusted step rate, and all employees will receive \$100 signing incentive. The proposal of the County is an appropriate quid pro quo in these proceedings, especially in light of the high rates already paid to these employees in comparison to those paid by other counties.

The County has presented extensive information supporting the fact that longevity paid by Sheboygan County

is extreme compared to that paid by comparable employers. A number of employees will receive additional longevity over the term of the contract and the additional cost will be incurred by the County. The proposal of the County is a reasonable approach to change the longevity program and is the most appropriate solution to address the situation. Therefore, the County asked that its offer be deemed most appropriate for inclusion in the successor bargaining unit.

UNION POSITION

The following represents the arguments and contentions made on behalf of the Union:

With respect to the comparables, the County asserted that the comparables had been determined in a prior decision. In fact, this case which was resolved on July 8, 1987, was not an interest arbitration award but a consent award. In fact, there was no arbitration and there was no agreement or decision regarding the comparables. The comparables proposed by the Union were the same as used in a prior award regarding the registered nurses at Sheboygan County nursing homes. Those comparables are the following counties: Brown, Calumet, Dodge, EauClaire, Fond du Lac, Kenosha, LaCrosse, Manitowoc, Outagami, Ozaukee, Racine, Rock, Washington and

Winnebago. The Union argues for the inclusion of more distant counties based on the standard of geographically larger labor market for professionals. The inclusion of LaCrosse, EauClaire and Marathon are based on similar population and full value assessment. All are within a range of 25% more or less than Sheboygan County. Rock, Racine and Kenosha are based on a per capita income. Sheboygan ranks 9th in the state in per capita income with a rate of \$14,742. Rock, Racine and Kenosha are ranked 11th, 8th and 17th, respectively. A number of counties fall within a small percentage, up or down, of Sheboygan County's gross tax rate. Brown and Outagamie Counties have been included in every decision and were proposed by Sheboygan County as comparables for all other bargaining units. They are also in close proximity, sharing a common labor market as well as similar per capita income. Comparables proposed by the County have not been used in any prior arbitration. With any other bargaining unit, professionals in Sheboygan County have always used a wider set of comparables. In addition, all comparables proposed by the Union are counties with a major population center located within the County.

The Union objects to the inclusion of County Exhibits 29 through 35. The County sent each employer a questionnaire to ascertain comparable job titles. This approach leaves too much to speculation. It is unclear who made the

determination as to what jobs were comparable when annual salaries are provided. Is the full-time work week based on 40 hours, 37.5, 38 or something in between? Calumet County would be such an example. In Dodge County, the job descriptions provided require a two-year associate degree plus experience, whereas Sheboygan County requires a bachelor's degree. In addition, counselor II automatically moves to counselor III by meeting years of service requirements and obtaining additional CEUs. In Fond du Lac County the maximum rate for the developmental disability specialist is 78 months at \$16.94 in 1995, not \$15.88 as County Exhibit 21 indicates. Again, there is no job description to verify the comparisons. In Manitowoc County the pay scales are not provided as the contracts submitted do not list either the developmental specialist or the community support program specialist. In Ozaukee County the job descriptions provided for developmental disability specialist indicate a requirement for a bachelor's degree plus state certification as a professional counselor. A developmental disability case manager II requires a master's degree. Positions in Sheboygan County only require a bachelor's degree.

As has been 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 and, in the case of take-backs, providing an adequate quid pro quo. The Union believes the County has not complied with either requirement.

The County made no argument that it had an inability to pay. The County has seen a decrease in the mill rate in both 1994 and 1995. The total cost of longevity for this bargaining unit comes to 2.6% of total pay in 1995. Out of 49 employees in 1995, 21 receive no longevity at all. In 1996, 14 receive no longevity. The County costed out longevity and shows a cost of 2.8% of payroll for 1995, and 3.3% of payroll for 1996.

In this case the County has offered nothing in the form of a quid pro quo except for modification of the wage scale and a \$100 signing incentive for current employees and a new longevity system that results in substantial losses for new employees. Modification of the pay scale can hardly be considered an adequate quid pro quo. The pay scale modifications are slight and with regard to the signing incentive, it is absurd to believe that this can in any way compensate for the loss of longevity. Giving current employees \$100 will not make up for the hard feelings and morale problems that will occur when new employees become aware of the two-tiered structure that has been created. The two-tier wage structure was in place at Kohler for a

number of years, but was changed in the most recent bargaining due to the problems inherent in paying employees different rates of pay for the same work.

Regarding the comparables, public health nurse II, when utilizing the Union's group of comparables ranks 6th without longevity. Including longevity at the 8 year level bumps public health nurses to 2nd place in the comparables. The 8 year level is used because the average seniority in the bargaining unit is 8 1/2 years. Therefore, the comparables show that Sheboygan County is within the range of comparables. One other county, EauClaire, uses a percentage longevity system. In addition, the City of Sheboygan has a percentage longevity system, and the City of Sheboygan Transit System has just negotiated an increase in its longevity system. School system employees in Sheboygan County also have a longevity system based on years of service and percent of pay.

The Union also had an opportunity to reply to the County's brief:

The Union asked the Arbitrator to use the comparables proposed by the Union. The Arbitrator is not limited to the list proposed by the County as there was no decision issued setting the comparables for this unit. It is the County that

is on a shopping spree choosing only those comparables that bolster its arguments. All other professionals in the County have used a wider geographical area with no objection to the County. The County proposed this same set of comparables for the other unit of registered nurses employed by the County. The addition of other public sector workers within Sheboygan County should be utilized as well. Arbitrators have held that there is no rule that excludes City units in County cases and vice versa. These exhibits are offered to show the concept of a percentage longevity system is not unique in the County. In fact, the majority of public sector employees within the County have a similar type of longevity system.

Numerous other arbitrators have agreed with Arbitrator Vernon considering the test for status quo changes. The Union believes that these tests were not met.

The County has made arguments that no other county provides such a rich longevity benefit and that the cost is excessive. These arguments fail to meet the compelling needs test. The cost of longevity in this bargaining unit is just above 3% of total payroll. The majority of employees receiving longevity are at the 2.5% rate. In addition, many of those have recently attained the 2.5% rate and will not be eligible for the next longevity increment for 4 more years. The County claimed 17 employees will benefit from the

compressed wage schedule, but 4 of those employees would have moved to the maximum in 1995 anyway, so will realize only a slight benefit. Three of the employees are already at maximum. This leaves a total of 10 employees who would clearly see an improvement, but this still leaves 35 employees with a \$100 signing incentive for the change in longevity.

The County also argued for the change based on the wage rates being above the average of the comparables. This argument is also flawed. The average is just that, an average. Some are below and some are above. Any employer ranked above the average could use the same argument, thereby compressing the ranks and effectively lowering the average for everyone. While the Sheboygan County public health nurses may be above average, they are not totally out of the ball park. They rank in the top tier of the comparables.

Sheboygan County clearly has the ability to pay for the longevity program. Using the five-year longevity rate, which is where the vast majority of employees are at, does not result in a windfall for this unit. The cost of longevity is not unreasonable when looked at as a percentage of total payroll. While a number of employees have moved into the first longevity step, it will be a number of years before they advance to the next level. It is the Union's position

that the County has failed to make a credible case for the radical change to the longevity program. It has not proved a compelling need, nor has it provided an adequate quid pro quo. The Union respectfully requests the Arbitrator to choose its final offer.

DISCUSSION AND OPINION

Contrary to the arguments made by the County, this is in fact the first interest arbitration between the Parties. The arbitration case which took place in 1987 did not result in an award, but merely a consent agreement between the Parties. The Arbitrator did not make any determination as to the appropriate comparables for this bargaining unit. The County's comparables, Calumet, Dodge, Fond du Lac, Manitowoc, Ozaukee, Washington and Winnebago Counties, are agreed upon by the Parties. The Union would wish to add Brown, EauClaire, Kenosha, LaCrosse, Outagamie, Marathon, Racine and Rock Counties. None of the Union's additional counties is contiguous to Sheboygan County. Rock, Racine and Kenosha Counties are in far southeastern Wisconsin. These counties have more in common with northern Illinois counties than with Sheboygan County. Marathon County is in central Wisconsin, and a much larger geographic area than Sheboygan County.

EauClaire and LaCrosse Counties are in central far western Wisconsin. With respect to proximity, therefore, only Outagamie and Brown Counties would be somewhat proximate to Sheboygan, and it is possible that Sheboygan County could recruit from either of those counties. This is not reasonably true of any of the other counties proposed by the Union. Those counties are simply not within the same economic community. This Arbitrator has had cases in each of the counties cited by the Union and finds that among those counties, only Outagamie and Brown Counties meet the criteria contained in the statute. Therefore, the Arbitrator will find that the appropriate external comparables are the counties proposed by both the County and the Union with the addition of Outagamie and Brown Counties. The Arbitrator would also note that Outagamie and Brown Counties have been included in other interest arbitrations between the County and other bargaining units.

This Arbitrator has made it clear in other decisions that, when one side or the other wishes to deviate from the status quo of the previous Collective Bargaining Agreement, the proponent of that change must fully justify its position and provide strong reasons and a proven need. This Arbitrator recognizes that this extra burden of proof is placed on those who wish to significantly change the collective bargaining relationship. In the absence of such

showing, the Party desiring the change must show that there is a quid pro quo or that other comparable groups were able to achieve this provision without the quid pro quo. It is the County that wishes to alter the status of the collective bargaining relationship in this case. The only major issue in dispute in this matter is the continuation of the longevity provisions in the Collective Bargaining Agreement.

This Arbitrator is in agreement with Arbitrator Vernon's reasoning in a 1990 decision with respect to determining change in the status quo: (1) a demonstrated need for change; (2) the degree to which the proposal reasonably addresses the need; (3) support in the comparables; and (4) the nature of a quid pro quo, if offered. The County in this matter has not pleaded an inability to pay. In fact, even though there is some disagreement as to the impact of the longevity program, while the impact currently is somewhat minimal in the 3% of total wages area, the County has noted that out into the future the impact will be much greater and % costs will rise dramatically in the next several years. Certainly, this bargaining unit is a relatively small bargaining unit and its impact on the total tax burden of the County is very minimal, yet the impact on the services of the community is much greater than its number because this is a professional unit providing essential services to the neediest and others of the County's population. When making

this decision, the Arbitrator will be very cognizant of the County's need to attract well qualified professionals to fill openings which may occur in the future. While the County has identified a need, that need is certainly prospective. This is particularly true since the County's proposal would not affect any current employees, that is those hired prior to 1/1/96.

Certainly, the County's proposal addresses its identified need. It is a moderate proposal in that, as noted above, it only affects prospective employees. The Union argued that a two-tiered system would ultimately cause dissention among the employees. This Arbitrator has had some experience with two-tier wage systems, and in a significant number of those instances there is some dissention caused by employees earning disparate salaries after a number of years although this certainly could be addressed in future negotiations and perhaps interest arbitrations.

With respect to the comparables, the external comparables for a unit of this type do favor the County's position. There are no other comparable counties that would have a provision as lucrative, or even nearly as lucrative, as in the former Collective Bargaining Agreement. Other comparables such as labor agreements with local municipalities would somewhat favor the Union's position. It

is not unusual for labor contracts in municipal jurisdictions, particularly among police, fire and teachers, to contain significant longevity provisions. Those have been justified by the additional training and education that is required of those public employees on an ongoing basis. The Arbitrator would note, however, that this is a professional unit and some of that ongoing training and education would be quite common among a unit of public nurses and social workers. With respect to the internal comparables, it is a mixed bag. The County has indicated that it is in the process of trying to eliminate the longevity provision in all of its Collective Bargaining Agreements, and it has already done so among its non-represented employees on the same basis as proposed here. All in all, the Arbitrator finds that there is some support for the County's position among the comparables.

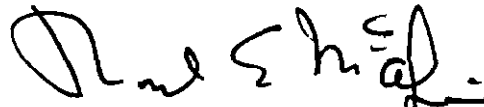
We are then left with the nature of the quid pro quo. The County has offered changes in the pay schedule. It has offered to grandfather longevity for employees hired before 1/1/96. It has offered a modest longevity program for employees hired after 1/1/96 and \$100 signing incentive for all employees on the payroll as of 1/1/96. Taken in its totality this is a very modest quid pro quo and, were the County simply wanting to eliminate the longevity provision altogether, even for current employees, this would be a very

easy decision and the Union would prevail. However, that is not the proposal of the County in this matter and any significant impact on future employees will be many years down the road offering the Union numerous opportunities to attempt to correct any perceived problems from the elimination of the longevity program. The Arbitrator notes that there is no economic impact on the current employees and yet it is they who receive the bulk of the quid pro quo benefit. The Arbitrator would like to note for the record that it would have been a much better conclusion for these negotiations had the County attempted to buy out the longevity provisions from the current employees as the Employer did in the City of Racine and the Racine Police Association interest arbitration (MIA-1981). Finally, at least at this point, there is no concern about this County being able to attract professionals of appropriate qualifications to fill any openings it might have, at least in the immediate future. Therefore, the Arbitrator will find in an extremely close call that the County has proven its case as required and it shall prevail in this matter.

AWARD

On the basis of the foregoing and the record as a whole, and after full consideration of each of the statutory criteria, the undersigned has concluded that the final offer of the County is the more reasonable proposal before the Arbitrator and directs that it, along with the stipulations reached in bargaining, constitute the 1996-1997 agreement between the Parties.

Signed at Oconomowoc, Wisconsin this 31st day of March, 1997.



Raymond E. McAlpin, Arbitrator