

IN THE MATTER OF THE ARBITRATION BETWEEN

Minnesota Nurses Association,

Union,

and

DECISION AND AWARD

BMS Case No. 14-HN-0839
Interest Arbitration
(Registered Nurses)

Cook County Hospital District Board,
Grand Marais, Minnesota,

Employer.

ARBITRATOR:

Janice K. Frankman, J.D.

DATE OF AWARD:

January 24, 2015

HEARING SITE:

Cook County North Shore Hospital
Conference Room
515 5th Avenue West
Grand Marais MN 55604

HEARING DATE:

December 2, 2014

RECORD CLOSED:

December 22, 2014

REPRESENTING THE UNION:

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JURISDICTION

The hearing in this matter was held on December 2, 2014, pursuant to Minn. Stat. § 179.38. The Arbitrator was selected to serve pursuant to BMS procedures. The parties agreed to waive provisions for selection of a board of arbitrators. They have availed themselves of the provisions of Minn. Stat. §§ 179.01-179.17.

The Employer is a "Charitable hospital" as defined at Minn. Stat. § 179.35, Subd. 2. The Cook County Hospital District ("the District"), governed by the District Board is, in fact, the Employer. Minnesota Nurses Association ("MNA" "Union") represents "Hospital employees" as defined at Minn. Stat. § 179.35, Subd. 3. The parties are not "public employee(s)" or "employee(s)" or "public employer" or "employer" as defined at Minn. Stat. § 179A.03, Subds. 14 and 15. They are, therefore, expressly excepted or excluded from coverage under the Public Employment Labor Relations Act ("PELRA").¹

Minn. Stat §179.38 provides for mandatory arbitration where any "labor dispute" cannot be settled by negotiation between the parties. This matter was submitted to mediation on April 23, 2014. A procedural chronology provided by the Employer refers to a Demand for Arbitration on April 28, 2014, which is not included in this record. The law requires that "any unsettled issue concerning terms and conditions of employment, and other conditions of employment concerning union security shall, upon service of written notice by either party upon the other party and the commissioner, be submitted to the determination of a board of arbitrators whose determination shall be final and binding upon the parties." (emphasis added) It further mandates that the determination be made "with all due diligence" and that a copy of this Decision be filed with the commissioner. "Labor dispute" is defined at Minn. Stat. §179.35, Subd, 4: 'Labor dispute' includes any controversy concerning employment, tenure, conditions, or terms of employment. . . . " (emphasis added)

A Demand for Arbitration was served by the Employer upon counsel for the Union on November 18, 2014, which includes the District's arbitration issues. An email response dated the same day sets out the Union's issues for arbitration. A separate Union Statement of Issues was presented to the Employer and the Arbitrator at this hearing. The Employer's Demand for Arbitration is included in this record as Employer Exhibit 4. There is no evidence that the Demand was served upon the Commissioner of the Bureau of Mediation Services.²

The parties were afforded a full and fair opportunity to present their cases. Witnesses were sworn to testify, and were subject to direct and cross examination. Voluminous loose-leaf notebooks from each party were received into evidence. Post-Hearing Briefs dated December 19, 2014, were received on December 22, 2014, when the record closed and the matter was taken under advisement.

¹ Note that amendments, enacted in 2014, to Minn. Stat. §179A.03, Subds. 14 and 15 become effective on July 1, 2015. The amendments provide limited exceptions to the exclusion of the parties from coverage under PELRA.

² It is noted that law which applies in this case does not require certification for arbitration by the Commissioner. Consequently, final issues have not been certified for arbitration.

At the opening of this hearing, the Union agreed to a two year Contract term as proposed by the Employer for the period January 1, 2014 through December 31, 2015. Appropriate conforming changes should be made to the CBA on the title page, on page 1 in the introductory paragraph and in Article XXI as set out in the Employer's Demand.

ISSUES AT IMPASSE

Based upon a thorough review of the record in this matter, the Arbitrator believes the following to be an accurate statement of the issues:

1. Wages for 2014 and 2015 – What shall the adjustment be for 2014 and 2015? Art. VI and Addendum A
2. Insurance Programs – What changes shall be made to the Table of premium Payments for 2015, if any? Art. XI
3. Leaves of Absence – What additions shall be made to discretionary leave language, if any? Art. X
4. Longevity Bonus – What change shall be made to the current provision, if any? Art. V

Background

Cook County North Shore Hospital and Care Center (“Hospital and Care Center” “Facility” “Employer”) is located in Grand Marais, Minnesota. It is a critical access hospital, licensed for 16 beds, connected to a Care Center, licensed for 37 beds, which provides skilled care. “Swing beds” in the Hospital allow a patient to transition from inpatient hospital care to higher level care without moving. Other services include emergency outpatient treatment, home health care, cardiac rehabilitation and ambulance/paramedic assistance.

Grand Marais is the County seat and the largest city in Cook County with current estimated populations of 3784 and 5281 respectively. The population in Cook County expands dramatically with summer dwellers and vacation visitors. There are 8,000 to 10,000 seasonal residents and an estimated 18,000 visitors per day during the summer.

The County spans the Arrowhead region of the state, along the shores of Lake Superior where most of the population lives, from Taconite Harbor on the south to the Canadian border at the northeast corner. Its south to north boundary extends due north from Taconite Harbor to the Canadian border which, from west to east, closes the triangle of the arrowhead.

The Hospital and Care Center primarily serves residents of Cook County. The closest critical access hospital is in Two Harbors which is about 1 ½ hours away in St. Louis County. Duluth, also in St. Louis County, where tertiary hospitals are located, is ½ hour beyond Two Harbors. Those two cities are recognized as sharing a defined market with the Facility.

The Hospital and Care Center employs 140 to 150 people totaling about 110 FTEs.³ MNA represents 23-27 registered nurses, not including supervisory nurses and others expressly excepted from the bargaining unit. A second bargaining unit, represented until recently by the Cook County Hospital and Care Association (“Association”) includes 70-90 employees holding 33-37 employees who hold a variety of positions ranging in grade from dietary aide to chief physical therapist.⁴ The Association CBA for 2014-2015 was signed in April, 2014.

No information with regard to non-union employees, including supervisory nurses, and only limited information about management has been provided. Together those two groups likely represent a significant number in the workforce. The Administrator serves on the Board of the Hospital and Care Center and is an employee of St. Luke’s Hospital in Duluth with which the Hospital and Care Center has a management agreement. It also has a working relationship with Sawtooth Mountain Clinics which has three Cook County locations.

The Administrator has been in her position since 2010. She was the only witness called to testify for the Employer. She explained the Employer’s wage and health insurance proposals, and primarily addressed the operation and financial status of the Facility.

This record includes financial documents and management letters prepared by its auditing firm, McGladrey, following annual audits; financial records and updated accounting data provided by the Facility’s Financial Director; and a recent market study dated November 21, 2014, which was requested to explore ways in which the Facility might improve its operations and financial position without investing in significant capital improvements. The three sources point to issues and areas of concern but, on the whole, they confirm a positive financial position with a great deal of potential and financial ability to pursue improvements expected to increase financial outcomes in all areas by 10 to 15%.

The Board has reserved \$5.1M for capital improvements to add beds, private rooms with bathrooms and space to provide additional needed services such as surgery and chemotherapy. A Duluth architecture firm has drawn plans for the improvements, and a Construction firm has been hired. At the time of this hearing, bids were out for contractors to complete the work. The Administrator did not provide an expected completion date for the project.

There are several sources of funding for the entire Facility operation including Medicare and Medicaid reimbursements; private insurances including Blue Cross/Blue Shield health insurance, and long-term care insurance; private pay patients; tax levies; and non-operating revenue from investment in related businesses; and investments.

After stating that the Facility was “not claiming a technical inability to pay” requested wage increases and to maintain employer health insurance contributions, the Administrator expressed her many concerns for the future well-being of the Facility which led to the wage and insurance proposals which have been made

³ This record includes varying numbers for total hospital employees , and for the numbers of employees in the two bargaining units. The record does not include an organizational chart or provide the number of employees who hold the several positions in the Association bargaining unit.

⁴ Service Employees International Union (“SEIU”) has represented the bargaining unit since November, 2014.

She explained changing reimbursement protocols, difficult negotiations with Blue Cross/Blue and “push back” from taxing authorities when a recent levy request was presented. She discussed federal and state legislative proposals which could result in decreased or eliminated reimbursements. She referred to declining support for critical access hospitals. She expressed her concern about continuing operating losses. She pointed to reduced depreciation figures because of the age of the facility, and she explained the angst created by requirements limiting investments to non-restricted vehicles which typically provide low rates of return.

Insight Health Partners provided the above referenced market study report dated November 21, 2014. Its Key Conclusions address the Administrator’s overarching concerns with insightful observations and concrete recommendations which support actions already undertaken with the capital improvements. The conclusions are highlighted below:

- (The Facility) is in a unique but complicated situation. The organization serves a small population but provides an invaluable set of services to local residents (full-time, seasonal) and the burgeoning tourist industry due to its isolation vis-à-vis other hospital and long-term care facilities.
- Use rates for hospital inpatient and outpatient utilization in Grand Marais and other local zips are very low impacting hospital utilization.
 - Low rates appear to result from geographic isolation, dearth of specialists, lack of local outpatient and physician practice patterns.
- (The Facility) serves a mostly middle-to-upper income patient population (local residents, tourists). It must make a significant investment in facilities and equipment to increase consumer confidence and sustain patient flow.
- Due to lack of long-term services in the region, the Care Center is vital to the future success of the hospital.
- Because of its isolation, (the Facility) and Sawtooth Mountain Clinic (SMC) must cooperatively work hard together to build and maintain specialty outreach services.
 - (The Facility’s) affiliation with St. Luke’s ought to be leveraged in coordination with SMC to improve specialist coverage in Grand Marais.
- (The Facility) needs to build more depth/breadth of outpatient services.

Employer Exhibit 21, pages 6-8

Factors for Analysis

Four well-accepted criteria for deciding financial issues in interest arbitration include consideration of internal and external comparables, the Employer’s ability to pay and other economic factors including changes in cost-of-living and potential adverse impact on retention or attraction of employees.

The issues presented for resolution follow, together with the positions and arguments of the parties and analysis of the factors as they relate to the decisions which have been made.

Issue 1 – Wages – Adjustment for 2014 and 2015 – Art. VI and Addendum A

Employer Position

The Employer has proposed two wage increase “subsets” following classification of the nurses, differentiating them by base pay rate with the goal of matching costs with revenues. Grids have been proposed which detail pay rates by tenure and hours worked for the following four classes of nurses: Hospital Nurses, Cardiac Rehabilitation Nurses, Home Health Care Nurses and Care Center Nurses. It proposes wage increases for each of the two years in the amount of 1.75% for Hospital Nurses and .75% for the other three classifications.

The Employer supports its proposal for classification of the nurses with data set out in a Healthcare Human Resources Association of Minnesota, Inc. (“HHRAM”) Wage & Salary Survey effective January 1, 2013, which it asserts confirm classification of nurses, a “basic division of nurses”. It observes that it is industry knowledge that wage rates for registered nurses differ markedly based upon responsibilities, hours worked and certification to provide certain specialized care such as acute or emergency care.

The Employer points to the Association Contract for 2014 and 2015, asserting that its proposal here is similar to the one made to the Association which slowly moves the many different positions to market rate, based upon HHRAM data. It argues that in order to be comparable with the Association Contract, it needed to give an increase to the hospital side, and slow down an increase which was occurring on the long-term care side, providing some type of increase for everyone.

The Employer believes external comparables include facilities in Cook, Ely, Bigfork and Two Harbors. It compares mid-point wages and PTO, facility characteristics and some financial data.

Union Position

The Union opposes the Employer’s proposal to classify the nurses, providing disparate base pay and wage rate increases within the unit, a scheme which does not compare with external RN units. It argues that all nurses should continue to be paid at the same rate, that they work side by side in the workplace which is a contiguous facility, and that there is no basis for distinguishing their work through pay differentials.

The Union seeks a general wage increase in the amount of three percent (3%) for 2014, retroactive to January 1, 2014; and two percent (2%) for 2015. It supports its request by wage comparison with bargaining units in Cook and Ely MN, the two external comparables with which there was agreement between the parties. Its group of external comparables would also include International Falls. It notes that the Employer seemed to agree that Two Harbors is not truly comparable. It has provided current wage information, comparing starting wages for each of the two years. The Union argues that there is no proper comparison with the Association (now SEIU) bargaining unit because it is comprised of individuals who hold a wide variety of job positions.

The Union argues that the Employer has clear ability to pay the increases which it proposes. It points to cash on hand, profit, operating expenditure figures and other financial indicators which support its position. It compares the \$72,000. cost to provide the proposed increases, a small sum considering the operating expenses in excess of \$13M. which the Employer reports. It also points to the Facility’s ability to reserve and utilize \$5.1M for capital improvements.

Award

The salary schedule set forth on ADDENDUM A – WAGE SCALES to the party’s Contract for 2014-2015 shall be revised to provide a general wage increase of 3.0% for 2014 and 2.0% for 2015. The sentence which follows the wage scale grid shall be amended as follows:

Base wage increases of ~~2%~~ 3% in ~~2012~~ 2014 (retroactive to the first full pay period in ~~2012–2014~~) and ~~1%~~ 2% in ~~2013~~ 2015 (commencing the first full pay period in ~~2013~~ 2015).

Discussion

Comparables

This Award is supported by apparent internal and clear external comparability, using figures for 2014 and 2015 in all cases. It properly compares starting pay figures for the Association bargaining unit, and the two external comparables to which there was agreement by the parties. It reflects wage rates which are in parity with the positions at or toward the top of the Association pay scale, and places this unit of registered nurses in a middle position each of the two years, below the unit in Ely and above the unit in Cook. The following grid reflects the comparisons:

Hospital/location	2014	2015
Cook	26.32	27.11
Cook County	26.71	27.24
Ely	27.04	27.50/27.62
Cook County Association	26.45-27.68	26.98-28.24 ⁵

To be clear and complete, there is a significant void in this record. It contains no wage or salary information for the non-union employees or management, which appear to comprise a significant in the workforce. The record also does not include job descriptions or any other basis

⁵ The Association bargaining unit is classified into Grades 1 – 11 which include 33 different positions. Each grade has a different base wage ranging from starting pay for Dietary Aide and three other positions in the amount of \$13.06 to starting pay for a Staff PT, Chief X-ray Tech, Chief Lab Tech with a wage range as set out on the grid. The latter range includes Grades 9 through 11. It is unknown how many employees are included in each of the 11 Grades.

for definitively determining parity between the registered nurse positions and the top grade positions included in the Association bargaining unit. Consequently, the conclusion reached here with regard to internal wage parity is significantly limited.

The Arbitrator's authority in this interest arbitration is to consider the parties' final offers where they were unable to reach agreement on a term or condition of employment. Classification of, or within, a bargaining unit is not a term or condition of employment. While they do not apply to the parties in this case, provisions of PELRA illuminate the definition of "terms and conditions of employment" and explicitly prescribe criteria for unit determination:

Subd. 19. Terms and conditions of employment. 'Terms and conditions of employment' means the hours of employment, the compensation therefore including fringe benefits except retirement contributions or benefits other than employer payment of, or contribution to, premiums for group insurance coverage of retired employees or severance pay, and the employer's personnel policies affecting the working conditions of the employees.

Minn. Stat. §179A.03, Subd. 19

Subd. 2. Unit Determination. The Commissioner shall determine appropriate units, under the criteria of section 179A.09.

Minn. Stat. §179A.04

Subd. 1. Criteria. In determining the appropriate unit, the commissioner shall consider the principles and the coverage of uniform comprehensive position classification and compensation plans of the employees, professions and skilled crafts, and other occupational classifications, relevant administrative and supervisory levels of authority, geographical location, history, extent of organization, the recommendation of the parties, and other relevant factors. The commissioner shall place particular importance upon the history and extent of organization, and the desires of the petitioning employee representatives.

Minn. Stat. 179A.09, Subd. 1

There is no evidence that this registered nurses unit has ever included classifications. The Employer has not provided a compelling reason to make the structural changes it proposes. Even if the Arbitrator had authority to consider the Employer's proposal, this record does not provide necessary support for proper classification of the unit.

Ability to Pay

The foregoing Background detail addresses the Employer's ability to pay and requires minimal elaboration here. The Union's argument that the Employer has the ability to pay the wage increases it proposes is well-supported. The Employer has not provided necessary evidence to support a conclusion that there is need to adjust wages to slowly bring the employees to a proper level, consistent with its financial status. The Employer's expressed concerns and strategies do not comport with or constitute the concrete support for its proposals required in interest arbitration. An award is not properly based upon speculation.

Other Economic Factors

The Employer's observation that its ability to garner needed tax levies is hindered, having "high paid" employees, is unsupported and lacks credibility. Its concern about changes in reimbursements, or the law, are speculation upon which a decision in an interest arbitration cannot rest.

Issue 2 – Insurance Programs

Employer Position

The Employer seeks an increase from 15% to 20% in the employee contribution to health insurance premiums in 2015. It has set out stipulated changes in Article XI of the CBA, in the provision of health insurance coverage in response to employee requests. It acknowledges that the ratio of employer/employee contributions to the VEBA 831 coverage has been the same for the two bargaining units in the past several years. However, it seeks greater contribution from the nurses unit for 2015, in part, as an equitable measure comparing the wages of the two units. The Administrator believes that employees make better choices when they have a higher share in the cost to provide health insurance, and she believes a return to different percentage contributions by the two bargaining unit is appropriate.

The Employer compares insurance coverages provided by external comparables, and points to premium increases for 2014 and 2015.

Union Position

The Union opposes the Employer's proposal. It argues for continuing parity with the Association unit, the only internal comparable for which information has been provided. It argues that the Employer has provided no compelling reason to change the provision in the Contract.

Award

The Employer's request is denied.

Discussion

The Union's arguments are persuasive. The Employer has not provided a compelling reason to make the change in contribution to health insurance premiums which it seeks. It admits that the stipulated changes which have been agreed to with regard to the provision of the employee-favored VEBA 831 group health insurance addresses earlier issues with regard to disparate ability to pay premium costs between the two bargaining units. It also acknowledges that there has been parity between the two units for several years, and its proposal represents a departure from that internal parity.

As noted above with regard to the Employer's wage proposal, the Employer has not provided information with regard to provision of health insurance to non-union employees or management, creating a void in relevant information. Internal parity with regard to benefits is strongly, if not exclusively, favored in interest arbitration.

Issue 3 – Leaves of Absence

Union Position

The Union seeks expansion of discretionary leave language to permit opportunity for employees to request leave for reasons currently unspecified, and for which it believes there is no mechanism to make such a request of the Employer. It refers to sabbatical time, leaves to take mission trips or for education, as examples.

Employer Position

The Employer opposes the Union's request as unsupported, and for which no compelling reason has been provided in support of it.

Award

The Union's request is denied.

Discussion

The Employer's position is persuasive. The Union has not provided a compelling reason for the change it seeks. It is a request properly left for resolution at the bargaining table.

Issue 4 – Longevity Bonus

Union Position

The Union seeks an increase in a one-time longevity bonus currently provided at Article VI of the Contract. It seeks an increase from \$2000. to \$2500. together with a provision for a 2% annual increase for each year of the collective bargaining agreement. It points to the Association Contract which currently reflects a higher one-time bonus (\$2208.16) as a result of an escalator provision. The Union seeks parity with the Association's Contract.

Employer Position

The Employer opposes the Union's request as unsupported. It observes that the escalator provision in an earlier Association Contract no longer exists, that the increased one-time bonus requested by the Union would provide it with more than Association unit members have, that there is no support for the request among external comparables, and that it is not a demand that would have been achieved at the bargaining table.

Award

The Union's request is denied.

Discussion

The Employer has effectively met the Union's request. There is no proper basis for awarding an increased one-time longevity bonus that would create a disparity with the Association unit nor is it appropriate to make a change now which would adjust the figure for which the parties bargained in the past. Any adjustment in the provision at this time is properly left for resolution at the bargaining table.

Dated: January 24, 2015

Janice K. Frankman, J.D.
Labor Arbitrator