

IN THE MATTER OF ARBITRATION ) INTEREST ARBITRATION  
 )  
 between )  
 )  
 Monticello-Big Lake Community ) BMS Case No. 07-HIN-1058  
 Hospital District )  
 )  
 -and - )  
 )  
 Minnesota Nurses Association ) June 18, 2008  
 ))

**APPEARANCES**

**For Monticello-Big Lake Community Hospital District**

Mark S. Mathison, Attorney, Gray Plant Mooty, Minneapolis,  
 Minnesota  
 Sam Diehl, Attorney, Gray Plant Mooty, Minneapolis, Minnesota  
 Kathy Voss, Human Resources Director

**For Minnesota Nurses Association**

Phillip I. Finkelstein, Labor Counsel  
 Susan Mason, Staff Specialist, Labor Relations  
 Kate Kline, Staff Specialist, Labor Relations  
 Linda Goerdts, Registered Nurse, Negotiating Committee  
 Rebecca Billmyer, Registered Nurse, Negotiating Committee  
 Nina Gottsch, Registered Nurse, Negotiating Committee

**JURISDICTION OF ARBITRATOR**

Monticello-Big Lake Community Hospital District (hereinafter  
 "Hospital", "District" or "Employer") is a health care  
 organization consisting of a 25-bed hospital, as well as an  
 attached nursing home and an ambulance service located in  
 Monticello, Minnesota. The District is involved in the operation  
 of an outpatient clinic in Monticello and it also provides  
 community education.

The District has recently embarked on several new ventures entailing substantial commitments of capital and other District resources. A new outpatient clinic in Big Lake, which is a joint venture with CentraCare, Monticello-Big Lake Physicians and North Memorial HealthCare, began operations October 1, 2007. In addition, the District is in the process of building a new cancer center next to the Hospital, which it will operate as joint venture with CentraCare and North Memorial. These ventures are generally expected to provide increased revenue to the Hospital within three to five years, but with any business start-up, they have a draining effect on the District's operating capital.

Together, the attached nursing home and the Hospital provide care to more than 35,000 patients and their families each year. The District employs more than 500 staff members and has more than 150 medical staff members.

The Minnesota Nurses Association ("MNA" or "Union") is the certified bargaining representative for all registered nurses ("RNs" or "nurses") employed by the District. All but four of the nurses currently work only in the Hospital. Nursing services in the nursing home are provided by Licensed Practical Nurses ("LPNs") and other health care providers who are members of a separate bargaining unit represented by AFSCME Council 65 rather than MNA.

The District's RNs have been represented by MNA since 1981. The Employer and MNA (hereinafter "Parties") have had an excellent collective bargaining relationship for many years. In fact, only once before have the Parties had to finalize their contract through interest arbitration. Monticello-Big Lake Community Hospital and MNA, BMS Case No. 86-N-35 (June 25, 1986) (Charles Swenson).

The MNA contract with the Hospital was effective during the period July 1, 2004, through June 30, 2007. The Parties commenced negotiations on a successor three-year contract (July 1, 2007, through June 30, 2010). They participated in numerous collective bargaining sessions since the expiration of the current contract in an effort to reach a negotiated settlement. A mediator from the State of Minnesota Bureau of Mediation Services ("BMS") was present at some of the sessions. A few issues have been resolved, but the Parties have been unable to resolve all outstanding issues. As a result, the matter is now being submitted to compulsory conventional interest arbitration pursuant to the provisions of the Minnesota Charitable Hospital's Act, Minnesota Statute § 179.38, as amended.

Mr. Phillip I. Finkelstein, MNA Labor Counsel, was designated as the MNA's representative on the tripartite arbitration panel. Attorney Mark S. Mathison was designated as

the Hospital's panel member. Richard Miller was chosen as the impartial Chairperson of the arbitration board.

A hearing in the matter convened on April 24, 2008, at 9:30 a.m. in the Hospital Board Room (Conference Room A), Monticello, Minnesota. The Parties were afforded full and ample opportunity to present evidence and arguments in support of their respective positions. The Parties filed post hearing briefs which were received and exchanged electronically by the Arbitrator on May 16, 2008.

The board of arbitration met on May 27, 2008, at 10:00 a.m. at the law offices of Gray Plant Mooty, Minneapolis, Minnesota to discuss the evidence introduced by the Parties at the arbitration hearing and the rationale set forth for their respective positions. After several hours of review, it was decided among the members of the arbitration board that the Chairperson would be required to resolve all of the outstanding issues for the successor contract.

#### **ISSUE ONE: WAGES**

##### **UNION POSITION**

100% of the wage rate received by RNs at North Memorial Hospital for year one, two and three. Add a 30-year step on the salary schedule. Maintain the parity language with Twin City hospitals contained in Section 4.11 of the current Contract.

## **HOSPITAL POSITION**

A wage increase of 2.5% for Year 1, 3.0% Year 2 and 3.0% for Year 3. Maintain status quo, no added 30-year step. Remove the parity language contained in Section 4.11.

## **AWARD**

A wage increase of 4.0% for Year 1, 4.0% Year 2 and 3.0% for Year 3. Maintain status quo, no added 30-year step. Maintain the parity language with Twin City hospitals contained in Section 4.11 of the current Contract.

## **RATIONALE**

The District does not claim a general inability to pay argument with regard to any of the economic issues. The Hospital simply wants the Arbitrator to award economic adjustments based upon comparison data. The Arbitrator has adhered to that standard by awarding economic increases only where there is justification by the comparables.

The salary award for all three years parallels the settlement trend received by RNs in Twin City hospitals without affixing the Hospital to the exact wage rate received by RNs at North Memorial. This approach is fair for several valid reasons.

As in most interest arbitration cases, one of the most important considerations in determining both economic and non-

economic issues is the appropriate comparables, both internally and externally.

Arbitrators primarily use internal comparisons in regard to salary and benefits in order to seek uniformity and internal equity across various bargaining units and non-contract employees. The District has three categories of employees. The first is the unionized RNs represented by MNA. The second is the unionized wall-to-wall AFSCME Council 65 unit numbering 250 employees other than RNs. The District also has approximately 150 non-contract or non-represented employees in which the District unilaterally determines their terms and conditions of employment.

Internal comparisons, at least to establishing wages for the RNs, are of little value to this case since the employees represented by AFSCME Council 65 has not settled for a successor contract which expired December 31, 2007. While non-union employees were given a 2.5% wage increase retroactive to October 1, 2007, there is no evidence that in the past this category of employees established the settlement trend for unionized employees. In fact, there is no evidence that in the past the unionized AFSCME Council 65 wage settlements established the wage rate for the RNs or even the non-contract employees. To the contrary, the evidence reveals that the Parties did not rely upon

internal comparisons to negotiate the current Contract, but instead relied upon the percentage settlement received by an external comparable (North Memorial Hospital) as their primary comparable.

For external market comparisons, the District proposes a mixed group that includes Twin City "metro" hospitals, rural hospitals, and exurban or "outer ring" hospitals. The rural hospitals include Avera Marshall Regional, Meeker County Memorial Hospital, Rice County District One Hospital and Owatonna Hospital. The exurban hospitals include Fairview Northland, Hudson, Wisconsin Hospital, River Falls, Wisconsin Area Hospital, St. Francis Regional Medical Center, Fairview Red Wing, Regina Medical Center and Cambridge Medical Center. The Twin City hospitals include Fairview-Southdale, North Memorial, Abbott Northwestern, Park Nicollet-Methodist, Children's, United Hospital, Healtheast (Bethesda, St. John and St. Joseph) and Mercy (Coon Rapids and Unity).

The Union's proposed comparability group contains eleven Twin City and suburban hospitals as well as nine exurban hospitals. The Twin Cities hospitals include North Memorial, Mercy, Abbott Northwestern, Children's-Minneapolis, HCMC, Unity, Children's-St. Paul, United, Methodist, Fairview-Minneapolis and Healtheast. The exurban hospitals include Cambridge, Hastings,

Hudson, Princeton, River Falls, Shakopee, Wyoming, Buffalo and St. Cloud.

It is clear that the Parties agree that Twin City and exurban hospitals are appropriate to include in the comparison group. These are the hospitals that have the same recruitment and retention issues as does Monticello and are in relative geographic proximity to Monticello. While it is true that Monticello is a small, rural, Critical Access Hospital, and the rural hospitals proposed by the District are closer in size to Monticello, they are not comparable given the recruitment, retention and geographic proximity to Monticello of the other comparable hospitals.

The wage award of 4% for 2007-08, 4% for 2008-09 and 3% for 2009-10 is consistent with the majority of Twin City hospitals and many of the exurban hospitals, albeit some of these hospitals have different contract effective and ending dates than Monticello. The effective and ending dates of a contract have little bearing on this case since most of these comparable hospitals have a three-year total wage increase of 11.0% which is the same as awarded to Monticello. Further, the wage award is the same as North Memorial (with the same effective and ending contract dates as Monticello) which the Parties used as their primary comparable in negotiations for the current Contract.

Section 4.11, Wage Parity with Metro, of the current Contract reads as follows:

The parties recognize a market relationship that exists between the salary schedule of registered nurses under this Contract Agreement and the salary schedule of registered nurses under the Contract Agreement between the Twin City Hospitals and the Minnesota Nurses Association. The parties are maintaining the ninety-nine (99%) relationship between the Twin City hospitals' salary scales for registered nurses.

There has been a long history of wage parity language appearing in the contracts between the Parties. The Employer has voluntarily agreed to make Monticello wages even closer to Twin City hospitals from a percentage relationship, which now currently stands at 99% of the Twin City hospitals. Thus, rather than the wage parity language being an ancient relic that is of no use, as argued by the Employer, this clause is even more relevant today.

The parity language, in relationship to the wage award, simply allows Monticello to keep pace with the settlement trend of the comparable hospitals without moving the Hospital up or down in relationship to the actual wages being to the comparables. There is no justification for Monticello to become the highest paid hospital (North Memorial) or for Monticello to pay wages below those percentage wage increases received by the majority of the comparables.

The record is devoid of any evidence to justify the addition of a 30-year step to the wage scale as requested by the Union. Neither internal or external comparisons, nor the District's bargaining history with MNA, support MNA's proposal. No Minnesota hospital has a 30-year step. All of the comparable hospitals have 20, or at most, 25-year final steps on their wage scales. In addition, the District's collective bargaining agreement with its AFSCME Council 65 employees has just 12 wage steps, each tied to 2080 hours (exclusive of overtime, per step). Finally, there has never been a 30-year wage step in the District's history of bargaining with MNA.

#### **ISSUE TWO: DIFFERENTIALS**

##### **UNION POSITION**

Increase the baccalaureate rate of pay from \$.50 per hour to \$.75 per hour for all hours. Increase hourly differential for coordinators from \$1.50 per hour to \$2.50 per hour for all hours. Increase shifts differentials (evening, night and 12 hours) by \$.20 per hour. Increase charge nurse from \$1.00 per hour to \$2.00 per hour. Increase preceptor from \$1.00 per hour to \$2.00 per hour.

##### **HOSPITAL POSITION**

The District is agreeable to increase the differentials, as proposed by the MNA, plus a corresponding \$1.00 per hour increase

to the differential for administrative supervisor relief if the District's wage proposal is awarded by the Arbitrator. In the absence of such award, the District's position on differentials is that the status quo should be maintained.

**AWARD**

The MNA's position is sustained.

**RATIONALE**

The evidence establishes that most of the comparables pay 3.5% above the associate degree in regards to baccalaureate pay differential. Monticello at \$.50 per hour is far below the average being paid by the comparables.

As for coordinator pay, these payments are made to nurses who are required to develop specialized skills such as wound care, discharge planning or diabetes care. There has not been an increase in coordinator pay since 2001. Most of the comparables pay a higher amount than is even being requested by the MNA. All of the Allina institutions (i.e. Abbott, United, Mercy, Unity) pay 10% above the staff nurse rate of pay versus the \$1.50 at Monticello. North Memorial pays \$2.50 per hour. Some of the exurban hospitals also pay more than \$1.50 per hour.

Regarding shift differentials, the RNs have not received an increase in over seven years and are requesting a modest \$.20 per hour. The MNA proposal does not even account for inflation and

is far behind what other comparables pay their permanent nurses both in evening and in night and on 12 hour shifts. Twin City hospitals pay \$4.00 per hour for permanent nights and such a higher payment is also followed by some exurban hospitals.

As for charge pay, the RNs have not received an increase since 2001. The Twin City hospitals pay \$2.00 per hour and this amount is followed by other exurban hospitals. It is clear that an increase of \$1.00 an hour is needed to make Monticello competitive among the comparables.

Preceptor pay has also not been increased since the 2001-2004 contract. Twin City hospitals including North Memorial all pay \$2.00 per hour and this is followed by some of the exurban hospitals. Thus, there is a great need to award this pay increase.

### **ISSUE THREE: RETROACTIVITY**

#### **POSITION OF THE PARTIES**

The Parties agree that wages are retroactive to July 1, 2007. The MNA proposes that the awarding of the differentials should be retroactive to July 1, 2007, while the District requests that no retroactivity should be awarded.

#### **AWARD**

Wage increases are retroactive to the first full payroll period after July 1, 2007. Differential increases are effective

the first full payroll period after receipt of the Arbitrator's award.

#### **RATIONALE**

The Parties have historically agreed during negotiations of their numerous collective bargaining agreements that retroactivity is applied to wage increases only and not to increasing differentials.

There is also no external or internal comparables that would justify the awarding of differentials retroactive to the effective date of a contract. This would seem reasonable given the administrative complexity and expense in the calculation of back pay for differentials. The payment of increased differentials is best left to a prospective award.

#### **ISSUE FOUR: DEFINITIONS OF WEEKEND TO WORK AND WEEKEND OFF UNION POSITION**

Both the weekend to work and the weekend off shall begin at 7 p.m. on Friday until 7:00 a.m. on Monday.

#### **HOSPITAL POSITION**

Maintain the current Contract language in Article 3, Hours, Section 3.1(c), Hours of Work and Overtime, as follows:

For purposes of this Agreement, a weekend shall be defined as Saturday and Sunday for nurses on the day and evening shifts, except where otherwise mutually agreed between the Hospital District and the nurse to be Friday and Saturday.

For nurses who are scheduled to work the night shift, a weekend shall be defined as Friday and Saturday. Exceptions may be made by mutual Agreement between the Hospital District and the nurse concerned.

**AWARD**

The Hospital's position is sustained.

**RATIONALE**

While the evidence establishes that nurses can be required to work until 7:00 a.m. on Saturday which takes away a true weekend off, this scheduling practice is infrequent.

The Union's proposed change to the current Contract language seeks the unprecedented and unwarranted establishment of a universal three-day contractual weekend for nurses. There is no internal or external data to support the Union's request. Many of the comparable hospitals do not include a specific, detailed scheduling program at all.

Regardless, the current Contract language in Section 3.1(c) provides the flexibility needed in scheduling of weekends. Scheduling is an inherent management right. Through the existing contract language in Section 3.1(c) the District has partially ceded this authority to the collective bargaining process where compromises and concessions can be achieved through the collective bargaining process. There is no justification for an award that would further cede such authority without the

District's explicit consent. This is an issue best left for the Parties to resolve during successor negotiations.

**ISSUE 5: SPECIAL TIME OFF/SPECIAL TIME CALL**

**UNION POSITION**

Nurses are required to sign up for holidays. After doing so the Employer on the day of the holiday says they are not needed, but requires them to be on standby on-call. MNA proposes that on holidays that if nurses are required to sign up and work the holiday that the Employer does not put them on-call or tell them to stay home.

Nurses who lose scheduled shifts are entitled to full benefit credit for any hours lost due to low census and required to be on-call. The current Contract in Section 3, Hours, subsection 3.1 requires the Employer to provide benefit credit for all hours lost even while being paid on-call.

**HOSPITAL POSITION**

Maintain the status quo as to holiday STO/STC, no change to the current Contract. Maintain the status quo with respect to credit for benefits while on-call due to low census while receiving on-call pay, as this language is already in the current Contract.

**AWARD**

The Hospital's position is sustained.

## **RATIONALE**

While the Employer require nurses to sign up for required holidays and then on the day of the holiday tell them to stay home or put them on-call, Special Time Off and Special Time Call (STO/STC), known at other facilities as low census or low need time, is an important cost management tool.

There is no basis in the Parties' bargaining history or in the AFSCME Council 65 contract for the Union's proposed change. Similarly, the record is devoid of any evidence of comparable hospitals having such limitations on this cost management tool.

Because the District operates one of the smallest hospitals in the state, STO/STC is even more important than it might be at larger hospitals. If there is even one nurse too many working on a holiday, this might be 20% or more of the nursing workforce that day. Thus, the Arbitrator should not further erode the District's inherent right to schedule its workforce in an efficient manner.

The MNA's second proposed change to STO/STC with respect to credit for benefits while on-call due to low census while receiving on-call pay is not necessary. Section 19.5 of the current Contract already provides for what MNA proposes with respect to STO and STC stating that "[a] nurse will be given credit toward contractually-provided benefits for all scheduled

work hours cancelled." This is both the Contract's language and the current practice of the District. If the MNA believes the current Contract language is not being honored by the past practice this issue can be resolved through grievance arbitration.

**ISSUE SIX: MINNESOTA NURSES ASSOCIATION CHAIRPERSON TIME UNION POSITION**

Whenever a new nurse orientation takes place, the MNA chair or designee will be given up to one (1) paid hour per class to meet with new members.

**HOSPITAL POSITION**

The Hospital opposes the Union's position.

**AWARD**

The Union's position is sustained. This award is effective from the first full payroll period after receipt of the Arbitrator's award.

**RATIONALE**

The MNA proposal is not a substantial cost item to the Employer since there are very few new nurses being oriented by the MNA chair or designee. The MNA is requesting only one hour of paid time for the chairperson or designee per new employee orientation class which would amount to at most two hours per month.

At present, under Section 26.4 of the current Contract, the MNA is supposed to be provided an opportunity to orient new employees to the MNA. This language is virtually meaningless because the MNA does not receive prior notice and the MNA chairperson or designee are required to donate their time to explain MNA dues and activities. It is clear by the chairperson or designee being able to explain dues and activities of the MNA this will avoid any possible confusion. It is for the benefit of both Parties that this proposal be awarded.

There are three large Twin City hospitals (Abbott-Northwestern, United and Unity) that provide such paid time for this purpose. Thus, there are some external comparables which support the award.

**ISSUE SEVEN: 457 PLAN CONTRIBUTIONS**

**POSITION OF THE PARTIES**

The MNA proposes to increase the 457 contribution eligibility from the District from 4% to 5%. The Hospital propose no change from the 4% 457 contribution.

**AWARD**

The Hospital's position is sustained.

**RATIONALE**

At Monticello, the nurses receive no pension other than the matching amount provided by the Employer.

The evidence is devoid of any justification to award the Union's position. Internally, the MNA seeks a benefit greater than any other group of District employees. Most interest arbitrators adhere to principle that uniform and equitable benefits should prevail across all bargaining units and non-contract employees. All District employees (contract and non-contract) currently receive the same 457 contribution eligibility from the District: a 1% unconditional contribution plus a maximum 4% matching contribution. Thus, had the Arbitrator awarded the MNA's position it would have unreasonably disrupted this equitable internal balance.

An interest arbitrator generally deviates from an internal pattern only if warranted by the external marketplace, with a showing that the employer's contribution rate for wages and/or fringe benefits are vastly inferior to the comparables. Externally, there is no consistency among comparison hospitals that would suggest the District's contribution rate is out of sync with the comparables. There is, in fact, wide diversity in retirement plan arrangements at Minnesota hospitals. Some hospitals appear to provide no retirement benefits. Other hospitals participate in the Twin City hospitals pension plan, have their own designed pension plan, or use a hybrid pension approach.

In any event, MNA has not presented any evidence demonstrating that these plans are comparable or even showing that employees with other plans receive a higher return. Certainly, a defined contribution plan carries somewhat more market risk than a defined benefit plan, but it also has a higher potential upside. Thus, any increase in the District's 457 contribution is completely unwarranted by the comparables, especially given that the Union's proposal would result in direct inequity of benefits with all other unionized and non-contract employees.

Similarly, there is no bargaining history that supports this requested Union change. The Parties have long agreed on the use of a 457 plan for nurses, as with all other District employees. There is nothing in the bargaining history that would suggest the 457 contribution percentages have been key points of economic negotiation or that the Parties have used the 457 contribution as a significant leverage tool.

#### **ISSUE EIGHT: PROVISIONAL APPOINTMENT**

##### **POSITION OF THE PARTIES**

The MNA proposes no change from current Collective Bargaining Agreement language in Article 22, Orientation. The Hospital proposes to add provisional appointment period of 1040 hours.

**AWARD**

Add provisional appointment period of 1040 hours or one-year, whichever is shorter. This award shall be effective upon the date of the Arbitrator's award and shall not apply to any current employees.

**RATIONALE**

This award with regard to provisional appointment period is beneficial to both the District and the nurses. This provision will help eliminate new employees who may later be a problem both for the District and for the nurses who must work with incompetent employees, while at the same time allowing new employees adequate time to learn the job and achieve satisfactory performance. This award protects patient safety, nurses and the District.

The award is also nearly identical to the current "probationary period" in the AFSCME Council 65 contract. Thus, the award maintains some internal consistency among District employees.

**ISSUE NINE: MEASUREMENT OF STO/STC****UNION POSITION**

No change to current Collective Bargaining Agreement language in Section 19.5. Continue practice of voluntary and mandatory hours count toward STO/STC.

**HOSPITAL POSITION**

Change measurement and application of STO/STC from days to hours and only mandated hours count as follows: change current Contract reference from 6 shifts to 48 hours. Add provision that only hours mandated as STO or STC by the Employer count toward this requirement.

**AWARD**

Change the sentence in Section 19.5 of the Contract which currently reads: "No full-time or part-time nurse shall be required by the Hospital District to take more than three (3) home days and three (3) on-call days per Contract year" to "No full-time or part-time nurse shall be required by the Hospital District to take more than twenty-four (24) hours of home days (STO) and twenty-four hours of on-call (STC) per Contract year."

Maintain the current practice of voluntary and mandatory hours count toward STO/STC.

**RATIONALE**

The Employer proposes to change the measurement of STO/STC from 6 days to 48 straight hours. While the Employer claims this proposal is beneficial to nurses, the reality is different. As most nurses work 12 hour shifts or some combination thereof, this proposal would allow them to increase the number of low need

days up to 4 days at a greater financial penalty (i.e. 4 x 12 = 48 hours).

The award, from days to hours, however, makes the Contract more internally consistent with itself. Nearly all references to days or shifts have been changed to hours to account for the 12 and 8-hour shift differences. Moreover, the award that changes 3 days to 24 hours is consistent with the AFSCME Council 65 contract. Thus, there is internal equity among the unionized employees. In addition, non-contract STO/STC is also tracked by hours, not days.

The Employer position is to add language that only STO and STC hours mandated by management, as opposed to those for which nurses might volunteer, will count against the maximum that a nurse may be required to take annually. The Employer's position seeks to reverse the Parties' practice and guarantees under the current retention of benefit language by eliminating counting voluntary low need day shift days toward the limit of STO/STC. There is no justification for the Employer's position.

The Parties' practice in this regard is covered under the retention of benefits language in Section 17 of the current Contract. This practice has existed for over six years and has been utilized on many occasions to the benefit of both the nurses and the Hospital. This practice encourages nurses to volunteer

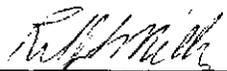
for low need shifts yet, if it is eliminated, far fewer nurses would volunteer knowing that they could still later be subject to being placed on STO/STC. The number of hours and shifts that nurses volunteer to stay home without pay far exceeds what is required in the current Contract.

On the other hand, had the Employer's position been granted, it would only create further tension and demand among nurses who would be obviously less likely to volunteer if those hours do not count.

**ISSUE TEN: DURATION/EFFECTIVE DATE**

The Parties agree that the contract should become effective the first full pay period after the date of the arbitration award and remain in effect through June 30, 2010.

The Arbitrator gratefully acknowledges the professionalism shown by the representatives in their presentation of the evidence, in their written briefs, and during the panel meeting.

  
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Richard John Miller

Dated June 18, 2008, at Maple Grove, Minnesota.