

IN THE MATTER OF ARBITRATION

OPINION AND AWARD

Between

Contract Arbitration

**Cook County Hospital and Care
Center Association**

**And
Cook County Hospital North Shore
Grand Marie, Minnesota**

BMS Case No. 12 HN 0429

APPEARANCES

On behalf of Cook County Hospital and Care Center Association

Thomas F. Andrew, Esq.
Andrew and Bransky, Duluth, MN

APPEARANCES

On behalf of Cook County North Shore Hospital, Grand Marie, Minnesota

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Hanft, Fride, Duluth, Minnesota

JURISDICTION

In accordance with the Public Employment Labor Relations Act, as amended, this Contract Arbitration case was submitted to Joseph L. Daly, Arbitrator, on March 16, 2012 in Grand Marais, Minnesota. Post hearing briefs were mailed by the parties on April 2, 2012. The decision was rendered by the Arbitrator on April 18, 2012.

ISSUES AT IMPASSE

The State of Minnesota, Bureau of Mediation Services, certified to the Arbitrator the following issues at impasse in the dispute:

1. Wages 2012 and 2013.
2. Paid Time Off during 2012- 2013 contract year.
3. The Parties Stipulated at the Arbitration Hearing that the CBA shall run from January 1, 2012 to December 31, 2013.

INTRODUCTION

The employer is the Cook County Hospital District Board. Its Administrator is Kimber Wraalstad. She is an employee of St. Luke's Hospital, Duluth, Minnesota. St. Luke's has a

management agreement with the Cook County Hospital District Board in Grand Marais, Minnesota.

The Board operates a sixteen (16) bed critical access hospital, a thirty-seven (37) bed skilled nursing facility, a home health agency and an ambulance service. The hospital is located further from the next closest hospital than any other Minnesota hospital. The nearest hospital and public care center is located almost 80 miles away in Two Harbors, Minnesota. The Board operates as a hospital district with taxing authority and is governed by a five member elected Board of Directors.

The Cook County Hospital and Care Center Association (hereafter referred to as Association) for the last thirty years is the collective bargaining representative the employees of the hospital and care center except the registered nurses represented by Minnesota Nurses Association and the exempt employees and the non-union employees. There are six exempt and non-union confidential employees.

The Minnesota Nurses Association is the only other collective bargaining representative recognized by the Board. Its twenty-five members are all R. N.'s with six (6) in the care center, three (3) in home health care and sixteen (16) in the hospital.

The Board and the Association have successfully negotiated most of the provisions of the new labor agreement which runs from January 1, 2012 through December 31, 2013. The two issues upon which the parties are at impasse and are to be resolved in this arbitration proceeding are: 1. Wages and 2. Paid Time Off Accrual Schedule.

The positions of the Association members are identified in the "Appendix" to the parties 2010-2011 Collective Bargaining Agreement. There are currently eighteen employees in pay grade 1 working as Activity Aids, Dietary Aids and Housekeeping Aids. There are thirty one Association members pay grade 2 working as Cooks, Home Health Aids, In-house EMTs, Nursing Assistants in the care center, File Clerks and Receptionists. There are nine members of the Association in pay grade 3 working as Assistant Dietary Manager, Clerk Business Office, Clerk Medical Records, Purchasing Agent and Unit Clerk. There are three employees in pay grade 4 working as Housekeeping Supervisor and two Paramedics for the ambulance. There are three employees in pay grade 5 working as an EMT Supervisor for the ambulance and two in maintenance. There is one member of the Association in pay grade 7 working as Medical Records/Business Office Supervisor. There are eight employees in pay grade 8 working as Lab

Technicians, Maintenance Supervisor, Registered X-ray Technicians and Social Workers. There are four employees working as Physical Therapists. There are two employees in pay grade 10 working as Chief Lab Technician and Chief X-ray Technician. There is one Association member in pay grade 11, the Chief Physical Therapists. Of the ninety-one (91) Association members who are regular employees, fifty-eight of them are in pay grades 1, 2 or 3.

ISSUE #1: Wages for 2012 and 2013

THE ASSOCIATION'S POSITION

The final position of the Association is a 2% wage increase in 2012 retroactive to the first full pay period in January, 2012 and a 2% wage increase in January 2013.

THE BOARD'S POSITION

The Board's final position is for a 0% wage increase for 2012 and a .5% wage increase in 2013.

DISCUSSION AND AWARD ON WAGES FOR 2012 & 2013

The basic standard in determining an interest arbitration award is to try to determine, based on the best evidence available, what the parties would have negotiated for themselves in the absence of interest arbitration. *Teamsters Local 320 and Dakota County BMS 11-PM-0466 (Jacobs 2011)*. In doing so, Arbitrators typically consider: 1) Internal Pay Equity; 2) External Market Comparison; 3) Employer's Ability to Pay; 4) Costs of Living and Purchasing Power; 5) Other Economic Factors such as geographical differential, turnover, retention rates. A further factor used by some Arbitrators is past bargaining history.

Minnesota Statute 179A.16, Subdivision 17 in relevant part provides: "[t]he Arbitrator ... shall consider the statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations." When reviewing the history of Interest Arbitrations in the state of Minnesota, it has been typical that Arbitrators give greater weight to internal comparisons. *See, Minnesota Teamsters Local 32, BMS 08-PM-0349 (Joseph Daly 2009); Dakota County Attorneys Association and Dakota County, BMS 96-PM-57 (Steven F. Beffort 1996)*. External comparability has also been a

key criterion that has been influential in an Arbitrator's decision. But, as Arbitrator J.C.Fogelberg said in *Teamsters Union Local 320 and the Metropolitan Council Metro Transit Police Department, BMS 09-PN-833 (J.C.Fogelberg 2010)* “[u]nfortunately, that has changed, one would have had to be in a coma for the past few years to legitimately claim ignorance over the current economic conditions. Not only is this state, but nation, if not world. It is not necessary to expound upon eroding economy here. To suffice to say that the existing recessionary climate and the relative hardships that this has caused and continues to cause, heightens the Arbitrator's consideration of the statutory mandate of public employer's ... efficiently manage and conduct their operations within the legal limitations surrounding the financing of operations.” Today a public employer's deteriorating ability to pay is a significant factor when assigning weight to the criteria used in evaluating the party's position on the issues at impasse.

The Association contends the only internal comparison is with the Minnesota Nurses Association. The Association argues that the MNA and the Association have almost always been in “lock step”, therefore internal comparison is a strong reason for granting the Association, at least the 2% pay increase in 2012 and the 1% in 2013 which matches the MNA rate increases for 2012 and 2013..

The Board countered this argument by saying “in four of the last fourteen years the wage increases have been different for the Association and MNA.” [Post Hearing Brief of Board at 7]. The Board contends that the wage increase for the R.N.s was based on base wage market competition. “No such increases are required for the Association where, even adopting the employer's wage proposal, the Association employees would remain above market.”[Id]. The Board contends it is seeking market rate wages and benefits for two important reasons: 1) to address its financial condition; and 2) to bring credibility to any required requests for future tax levy increases. [Id].

The Association argues that a 2% increase in 2013 is actually justified because in large part the Association is made up of employees who are paid significantly lower wages than management and registered nurses. The Association cites Arbitrator James A. Lundberg in his July 5, 2005 Arbitration decision between the same parties. See *Cook County Hospital BMS 04-HN-1437 (James A. Lundberg 2005)*. The Association strongly contends that “[t]he drastic difference in hourly pay to Association members versus MNA members increases each time

the percentage increases is the same.” “The Association recognizes that registered nurses earn more than the great majority of the members of the Association, but because of the high cost of living in Grand Marais, all Association members need to make a living wage to be able to stay in the area.” [Post Hearing Brief at 9]. The Association essentially contends that because its members are made up of employees that make significantly lower wages this justifies an equitable upward adjustment given to Association members in 2013 to 2% over the 1% given to the MNA for 2013.

Grand Marais, Minnesota is a resort area. The cost of living is higher than other comparables. Arbitrator Lundberg decision compared Two Harbors, St. Luke’s in Duluth, Silver Bay, Virginia, Cloquet and Ely. The Board disagrees with the comparables used by Arbitrator Lundberg. Ms. Wraalstad, the Cook County Hospital Administrator, considers the best comparables to be Big Fork, Cook, Ely, and Deer River. Her comparables show that the Association members are paid higher than those specific markets. The Association contends that the Board “cherry pick” hospitals completely out of the N.W. range except for Ely. [Post Hearing Brief at 12].

Arbitrators have recognized that a differential can exist because of geographic differentials including the cost of living. Medium home cost in Grand Marais is \$180,200, while in Silver Bay it is \$75,000. In Duluth, a larger city than Grand Marais, the medium home cost is \$150,400. Because Grand Marais is a tourist area the cost of food is higher. Of the several communities used by Arbitrator Lundberg in 2005 decision only Grand Marais has a higher than U.S. average cost of living Grand Marais cost of living is 3.30% higher than the US average cost of living. Duluth has a 1.30% lower cost of living than the U.S. average while the remaining five cities cost of living average from 3.6% lower to 13% lower.

Often external comparability is in contention in interest arbitrations. Internal has typically been given greater weight.

The key reasons the employer is seeking market rate wages and benefits has to do with its financial conditions and to bring credibility to any required request to the tax payer for future tax levy. [Post Hearing Brief Board at 7].

Does the employer have the financial ability to pay? The Board’s balance sheet as of December 31, 2011 shows it has liquid assets including:

Cash and Cash Equivalency:	\$ 516,283
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Certificates of Deposit:	\$ 796,178
Capital Reserves:	\$ 683,351
Capital Reserves Investments:	\$4,141,893
Capital SISU/CNDI & Restrict Savings	\$ 326,697
TOTAL	\$6,464,402

The Board contends that because of uncertainty in the financing of health care in Minnesota and the nation and because the Association members are generally above market rates, wages must be constricted. The Board contends that financial hardships are now. The “[e]mployer is facing financial difficulties including closure of the care center.” [Post Hearing Brief of Board at 3]. The employer has incurred ongoing and increasing operation losses. “With one year exception, operating losses have increased each year since 2006 from \$509, 686 in 2006 to \$925,812 in 2010 to \$1,091, 669 [unaudited] in 2011 and with monthly operating losses continuing in 2012”. [Id]. The Board contends that the finances of the care center are “critical”. [Id]. The fund balance has decreased every year since 2008. [Id]. Ms. Wraalstad testified that in addition to the historical operating losses she is also concerned with uncertainties in future fund sources and amounts. She expressed concerns in funding of this critical access hospital by Medicare, Medicaid, private insurance, Worker’s Compensation payments, auto insurance and private pay. She expressed concern about the care center which receives revenues through Medicaid and private pay with minor amount of Medicare. She further expressed concern about the home health care which receives payment through Medicare, Medicaid and private pay. She testified that the employer experienced a decreasing pattern of reimbursement of 3-10% caused in part by Cook County decreasing its contributions 3% for each of the last two years.

In response “[t]he Association agrees there is uncertainty ahead but does not agree that the remedy for that uncertainty is to not provide the lowest paid workers in the hospital and care center a living wage.” [Post Hearing Brief at 17]. The Association recognizes the Board has a right to close the care center. It is assumed that in making that decision the Board will carefully weigh the effect on families in Cook County who have family members in the care center where they can easily be visited and cared for versus being transferred at least 80 miles away to a care center in Two Harbors or more likely a care center 110 miles away in the Duluth area. Keeping the care center open should be the obligation of all tax payers in Cook County, not just the Association members. [Post Hearing Brief at 18].

While there is disagreement whether the Association and the MNA have “locked-step” over the years, it is clear that generally the Association contract and the MNA contract have been internally consistent in wage increases.

There is no doubt that Ms. Wraalstad and the Board are justified in their concerns about future funding sources. In these very difficult economic times the Board and the administration have done an excellent job in maintaining a healthy balance sheet.

But it is equally true that Grand Marais has a higher cost of living and higher housing costs than almost all the comparables used – whether using the Lundberg comparables or using the comparables suggested by the Board. And it is also true that most of the Association members work in the lower paying jobs in the hospital and care center. And, during most of the past 15 years the Association and the MNA have matched wage increases.

Based on the above reasoning: **It is awarded that there shall be a 2% wage increase in 2012, retroactive to the first full pay period in January, 2012, and a 1% wage increase effective January 1, 2013.**

ISSUE #2: Paid Time Off

THE ASSOCIATION’S POSITION

The Association suggests that it would be proper to make no change in the PTO schedule since the schedule was put in effect at the suggestion of the Board in the 2000 negotiation when the Association gave up its vacation, sick leave, and three floating holidays.

THE BOARD’S POSITION:

The employer’s proposal is internally consistent. Employer and NMA agree to an annually 40 hour reduction in NMA PTO accrual rate. That is the same proposal being made to the Association.

Discussion and Award on Paid Time Off

Internal consistency in this issue is also very important. This reduction in PTO is internally consistent with the MNA Collective Bargaining Agreement and helps deal with the employer’s

financial concerns about the future. Based on the above reasoning in the wages discussion: **It is awarded that the PTO accrual rate shall be the same as the MNA PTO accrual rate for the contract years 2012 and 2013.**

April 18, 2012

Joseph L. Daly
Arbitrator