

**IN THE MATTER OF ARBITRATION
BETWEEN**

MINNESOTA NURSES ASSOCIATION,

Union,

and

HENNEPIN COUNTY MEDICAL CENTER,

Employer

**ARBITRATION DECISION AND
AWARD**

BMS Case No. 11-PN-0059

Arbitrator:

Andrea Mitau Kircher

Date and Place of Hearing:

February 18, 2011

Date Record Closed:

March 25, 2011

Date of Award:

April 25, 2011

APPEARANCES

For the Union:

Phillip I. Finkelstein
Legal Counsel
Minnesota Nurses Association
345 Randolph Avenue Suite 200
St. Paul, MN 55102

For the Employer:

Frank J. Madden
Madden Galanter Hansen, LLP
505 North Highway 169, Suite 295
Plymouth, MN 55441-6444

INTRODUCTION

The Minnesota Nurses Association (“MNA” or “Union”) is the certified bargaining representative for approximately 1,048 eligible registered nurses employed by the Hennepin County Medical Center (“HCMC” or “Employer”). The Employer is a public hospital and clinic

system created by the state legislature and operated by a separate hospital board as a public subsidiary corporation of Hennepin County. It is subject to the Public Employment Labor Relations Act, PELRA, and all its employees are designated “essential employees” pursuant to Minn. Stat. Sec. 179A.03 Subd. 7. The parties are signatories to a collective bargaining agreement (“Contract”) effective July 1, 2008-June 30, 2011. The agreement is still in effect, but it contains a provision for a general wage re-opener for the period July 1, 2010 through June 30, 2011. The parties have negotiated that wage issue to impasse. After the statutorily required mediation process, the parties duly selected the undersigned arbitrator to hear and decide the general wage issue.

A hearing was held in a conference room at the Minnesota Bureau of Mediation Services on February 18, 2011. The parties agreed this matter was properly before the arbitrator. At the hearing the arbitrator accepted exhibits into the record, witnesses were sworn, and their testimony was subject to cross-examination. Post-hearing, additional facts were exchanged between the parties and made part of the record. The parties submitted briefs postmarked March 23, 2011. The record closed upon receipt of the last brief, March 25, 2011.

ISSUE

The Minnesota Bureau of Mediation Services certified the parties reached impasse on the following issue:

Wages – General Wage Increase 2010 – Art. 35, Sec. 1.

UNION POSITION

1. The Union seeks an across-the-board wage increase for all inpatient, ambulatory, and Roster nurses except for the nurses on the new lower ambulatory scale negotiated in 2008.
2. The Union seeks a 5% across-the-board increase for the nurses subject to the new lower ambulatory wage scale negotiated in 2008.

The Union explains that the RNs covered by the Contract (hereafter “nurses”) should have an across-the-board increase for several reasons: First, the nurses are behind their counterparts in the Twin Cities who work at other hospitals. The Union points out that they are \$1.68 per hour behind the Twin City average at comparable facilities. For a full-time Nurse, this would be over \$3,000 per year. Second, the Union claims that it is unfair and unreasonable to pay nurses employed at the various clinics less per hour than nurses who work inside the hospital, because the jobs require the same qualifications, and both involve difficult professional problems. Third, the Union argues that 215 nurses out of a total of 510 had their hours reduced through a rebidding process, as part of the cost cutting instituted during the last contract. This constituted a significant salary loss for them. Not only did these nurses suffer a direct loss of salary, but also, benefits. Some had to delay retirement due to loss of hours; over 50 lost their ability to qualify for short-term disability and approximately 25 lost the option of utilizing a special student loan payment program. MNA members took almost 20,000 low-need hours in 2010 alone in addition to the lost FTE hours. Finally, the Union claims that nurses should have a wage increase for 2010 because the Employer is planning to award merit pay increases in 2011 to non-union employees who number over 1,000. This, argues the Union, is evidence that the Employer is no longer in a position of financial hardship, and the Nurses should also benefit from the improved financial status of the hospital.

EMPLOYER POSITION

The Employer maintains there should be a 0.0% general wage increase for both groups of MNA nurses, for 2010.

The Employer points out that a significant change in the economy and corresponding political funding decisions have adversely impacted the financial condition of the Medical Center. Approximately 65% of its operating budget is attributable to salaries and benefits, and

the Medical Center made unusually conservative budget decisions as it faced increasing legislative funding cutbacks. Despite its efforts, the Medical Center was still not in a position to improve wages for staff in 2010, according to Director of Finance, Dave Albright. The Employer contends that it correctly instituted a hard salary freeze for 2010, and that none of its nine other bargaining units or its non-union employees received a wage increase or salary step increases for 2010. The Employer argues this is the most significant factor to consider in deciding the wage reopener proposal of the Union. Even though the Employer pays nurses less than comparable hospitals at some points of wage comparison, the Medical Center's nurses have better benefits than most, and by way of external comparison, the MNA and Twin Cities hospitals agreement settled with a 0.0% increase for 2010. The Employer claims that for various reasons, internal equity should weigh more heavily in the arbitrator's analysis than external comparisons.

DISCUSSION AND DECISION

The general rule followed by arbitrators attempting to decide impasse disputes is that interest arbitration is not designed to discourage or supplant collective bargaining, but to encourage it. It is often said that an arbitrator's decision should be compatible with the contract the parties themselves might have reached had they been able to agree to one. Specific factors commonly considered by arbitrators in interest arbitration are these: internal comparables, external market conditions, bargaining history, ability to pay, and statutory considerations.¹ In a case like this, where only the wage provision is open for negotiation and the parties have reached impasse, the question is whether the facts demonstrate sufficient reason to warrant higher wages during the term of the contract. In accordance with the general rule encouraging collective

¹ I have considered the relevant statutory provisions prior to deciding this matter.

bargaining, an arbitrator must exercise restraint so as not to disturb the other ongoing contract provisions negotiated by the parties themselves.

A. Is there sufficient evidence to compel a wage adjustment that revokes a two-tier pay schedule for nurses?

Article 35, Section 1 provides that there will be a reopener regarding a general wage increase for 2010, the third year of the Contract. Section 10 of the same article creates a new, lower wage scale for certain nurses hired after 2008. These nurses are in the job class Ambulatory Care Nurses. By seeking a 3% wage increase for the vast majority of nurses and a 5% wage increase for Ambulatory Care nurses, the Union would negate the agreement to accept a two-tier wage scale. That is, the Ambulatory Care nurses would regain wage parity with the other RNs.

Supporting this proposal was testimony of Genevieve DuPlessis, a 35 year RN employee at HCMC and a tri-chair of MNA. She believes that the pay rate for these job classes should be the same, because she has worked in both and finds that the level of skill and responsibility required for the job is comparable. Additionally, the Union adduced testimony that a merger with Hennepin Faculty Associates is in process, which will change the relationship between the two entities and increase the number of nurses working in the Ambulatory Care job class. The Employer is likely to increase the role played by Ambulatory Care nurses. Finance Director Albright indicated that the trend in hospital admissions is generally decreasing while more patients are being treated in a clinic setting. Employer's Exhibit 38. The Union seeks wage parity between the jobs to address these factors.

Bargaining history is relevant to this dispute. During negotiations for the 2008-2011 collective bargaining agreement, the Employer apparently sought a lower pay scale because the Ambulatory Care nurses were paid more than nurses in comparable clinic jobs in the community.

External comparison data indicated that the average maximum Ambulatory Care nurse wage rate was \$34.78 and the HCMC wage rate maximum was \$41.31. Employer Exhibit 24. Another factor supporting its proposal was that Ambulatory Care nurses work hours (8:00 a.m. to 4:30 or 5:00 p.m.)² are considered preferable by many. During the give and take of 2008 negotiations, the Union agreed to a lower wage scale for Ambulatory Care nurses. There may have been some negotiated *quid pro quo*. The Union has not demonstrated a compelling reason for change during a wage reopener. This topic should be addressed during negotiations for the 2011 collective bargaining agreement.³

B. Should there be a 3% across-the-board increase for Inpatient, Ambulatory and Roster Nurses for July 1-2010-June 30, 2011?

The Medical Center employs approximately 4,091 people, of whom 1,048 are covered by this bargaining unit. There are 9 other bargaining units. For 2010, all other HCMC bargaining units agreed to 0.0% increases, and step movement was frozen. Employer Exhibit 49. Non-union and management employees received 0.0% wage increases in 2009 and 2010. Employer Exhibit 50. By way of contrast, MNA employees had a 3% increase in 2009 plus steps. For 2011, there are no across-the-board increases for any HCMC employees, but there will be step increases. MNA step increases were available in 2010. The Medical Center has established a depressing, but consistent pattern of no across-the-board wage increases for its employees. Internal comparison favors the Employer position.

The failure of HCMC to agree to wage increases for its nurses is not unusual for the time period in question. Hennepin County, which contributes substantial funding to HCMC, is in poor financial condition, and the State of Minnesota has a \$6.2 billion deficit for the next

² Employer's Ex. 25.

³ At the hearing, both parties indicated that negotiations for the 2011 Contract were about to begin.

biennium.⁴ The Employer cites several recent arbitration awards emphasizing the financial hardships experienced by local public sector entities during the past year.⁵ Hennepin County and its numerous bargaining units have a consistent pattern of 0.0% wage increases for 2010 and 2011. Employer Exhibit 51. Further, in an external comparison group of private sector Twin Cities hospitals, nurses received 0.0% as a general wage adjustment for the same time period. Employer Exhibit 53.

Against this backdrop, the Union argues that the nurses at HCMC are different, and a 3% across-the-board wage increase should be awarded. First, they argue that their wages lag behind their counterparts in the Twin Cities, and there are facts substantiating this position. The differentials are not shockingly large, however, and it appears that failure to grant a wage increase for 2010 will not leave the HCMC nurses in any worse position going into negotiations for 2011, because the comparable private sector nurses themselves did not receive an across-the-board increase.

The Union also argues that its employees deserve an increase because nearly half of them suffered loss of pay due to reduced hours of work. The argument, in essence, is that HCMC improved its financial condition substantially during the last year, and a portion of that improvement came about because it reduced nurses' salaries by cutting full time equivalent ("FTE") hours. The Employer did not take this step unilaterally. The Union agreed to the complex rebidding process that led to the reduction in FTE hours, but according to Ms. DuPlessis, it would not have agreed to the process if the nurses had understood all of the facts

⁴ See, e.g. Hennepin County Medical Center Financial Position, 45 page document, Employer's Exhibit 29, 38; Hennepin County and Hennepin County Sheriff's Supervisors Association, BMS Case No. 10-PM-1022 (R. Miller, 2011).

⁵ Law Enforcement Labor Services, Inc., Local 18 and City of Plymouth, BMS Case No. 10-PN-1107 (Latimer, 2010); Hennepin County and Hennepin County Deputy Sheriff's Association, BMS Case No. 10-PN-0776 (Jacobs, 2010); Hennepin County Supervisors Association and County of Hennepin, BMS Case No. 10-PN-932 (Fogelberg, 2010).

and consequences at the time. Nonetheless, the rebidding process was handled in accordance with the negotiated agreement, and the Union's claim to higher wages cannot be based on the results of a negotiated rebidding process. The loss of hours was to minimize layoffs. The Employer reduced overall work hours across all units and required non-represented employees to take days off without pay. No merit increases were funded for those employees for the years 2009 and 2010. *See, i.e.*, Employer's Ex. 48 and testimony of Director of Compensation and Benefits, Pat Schmitt. Looking at the nurses' salary situation for the year beginning July 1, 2010, there is insufficient evidence that their salary loss was unfair as compared to other employees adversely affected by the financial situation of the Hennepin County Medical Center.

The Union argues that the Employer's plan to institute a merit increase of up to 3.5% for certain other employees for 2011, provides a basis to award a 3.0% wage increase for the nurses in 2010. Merit pay increases, however, are less costly than across-the-board increases for at least two reasons; Not all eligible employees are entitled to 3.5%, and there is an obvious difference in roll-up costs. The existence of a prospective merit increase is a good argument for the Union in the context of negotiation, but it does not provide a compelling reason for an arbitrator to grant a wage increase to one union when other relevant comparable groups did not receive an increase.

Based on the facts described by the parties, I do not see changes in circumstances sufficient to outweigh the internal and external support for a 0.0% across-the-board wage increase for 2010.

AWARD

Re-opener, Wages – General wage increase, 2010 – Article 35, Sec. 1.

The Employer's position of a 0.0% general wage increase is awarded for all nurses covered by the Contract.

Date: April 25, 2011

Andrea Mitau Kircher, Arbitrator