IN THE MATTER OF ARBITRATION **OPINION & AWARD**

-between-

Interest Arbitration

MINNESOTA NURSES ASSOCIATION

B.M.S. Case No. 14-PN-399

-and-

Before: Jay C. Fogelberg

THE STATE of MINNESOTA **Neutral Arbitrator**

Representation-

For the Union: Phillip Finkelstein, Attorney

For the State: Joy Hargons, Labor Relations Consultant

Statement of Jurisdiction-

In accordance with the Minnesota Public Employment Relations Act ("Act"), the Commissioner of the Bureau of Mediation Services for the State of Minnesota ("Bureau"), certified six (6) issues at impasse in connection with the parties' (new) 2013-14 Collective Bargaining Agreement, on November 21, 2013. The certification followed a declaration of impasse, and an agreement by the parties to submit the outstanding issues to binding arbitration pursuant to the provisions of M.S. 179A.16, subd. 2. Subsequently, the undersigned was notified that he had been selected as the Impartial Arbitrator to hear evidence and arguments concerning the outstanding issues, and to thereafter render an

award. A hearing was convened on May 21, 2014, in St. Paul, after which the parties indicated their preference for submission of written summary briefs and reply briefs which were received on or before June 24, 2014. Thereafter, the hearing was deemed closed.

Preliminary Statement-

This matter arises from an impasse that has been certified by the Bureau earlier last year between the Minnesota Nurses Association (hereafter "Union," "Association," or "MNA") which represents some 800 bargaining unit members consisting of Registered Nurses employed by the State of Minnesota ("State," "Employer," or "Administration") in various capacities in a number of different agencies throughout the State. The majority of the nurses in the bargaining unit are engaged in direct patient care and are assigned to one of four major agencies:

- The Department of Human Services (DHS)
- The Department of Health (MDH)
- The Department of Corrections (DOC)
- The Department of Veterans Affairs (MDVA)

Others are assigned to investigative and evaluative positions at a number of different facilities. Nurses assigned to the DHS, the DOC, and to the MDVA provide care to the disabled, the elderly, the incarcerated, and those suffering from mental illness. Those bargaining unit members working at MDH inspect

hospitals, nursing homes and other health care facilities, or develop policies and provide training to other nurses or health care professionals. Every classification of nurse covered by the labor agreement are required to be licensed registered nurses under the Minnesota Nurse Practices Act, Minn. Stat. § 148 *et seq.*, and provide assessments of clients' skills as well as suggest appropriate nursing interventions where needed.

Historically, the parties have engaged in good faith collective bargaining over several contracts which normally follows the State's biennial budget, and is consistent with other contracts negotiated between the Employer and its various bargaining units. Although the Administration negotiates with each union separately, the bargaining process occurs concurrently with all of the organized employee units. The evidence demonstrates that seven of the nine labor contracts have been settled for the 2013-15 term. However, they have now reached an impasse relative to the issues identified here with the MNA, and consequently their dispute has been appealed to binding arbitration for resolution.

The Issues-[1]

1. Wage Schedule – Adding a 4% Step to Top of the Schedule for each of the two years of the new contract, while eliminating one step at the entry level on the schedule in each of the two years covered by the new contract.

2. Shift Differential – Premium Pay Adjustment for Evening & Night Shifts

3. Career Development –Advance Practice Nurse Continuing Education

Issue No. 1
Wage Schedule

Association's Position: For the first year of the new Agreement, the Union has proposed to add a 4% step to the maximum of the salary schedule for all classifications in the bargaining unit retroactive to July 1, 2013, and eliminate one step at the entry level of the schedule. For the second year of the Contract, they seek an additional step at the top of the salary range of 4% effective July 1, 2014, while eliminating one step from the bottom of the schedule.

State's Position: The Employer proposes that no additional steps be added to the top of the schedule.

Analysis of the Evidence: In arriving at what is believed to be a fair and

[1] Three of the six issues originally certified at impasse have since been resolved. They include Holidays, Vacation Credits and Uniform Allowance.

reasoned decision concerning this and the other issues that have been certified at impasse, careful consideration has been given to the applicable provisions of PELRA which requires the reviewing neutral to examine such factors as the obligations of public employers in this state to efficiently manage and conduct their operations within the legal limitations specified, as well as the criterion set for the in MS 43A. Subd. 8 (a-e) referencing internal and outstate comparisons, management compensation as it relates to the employees supervised, as well as the relationship of job similar job classes and among various levels within the same occupation.

While my deliberations of this issue have included all of the relevant factors , I have been particularly influenced by two of them. First, it is unrefuted that the vast majority of the bargaining units involved in negotiations with the State have settled on a 3% general wage increase effective July 1st of each year of the contract along with an increase in meal reimbursements (Employer's Ex. 11). Indeed, the Association has agreed to the same adjustment for each of the two years that includes the same meal reimbursement in addition to an increase in student loan reimbursements for ARPNs. As I have noted in previous interest arbitration decisions, if there is a consistent internal pattern of settlements present, it cannot be ignored. In this instance, the MNA has acknowledged the importance of internal consistencies

with regard to wages by agreeing to the same wage percentage adjustments in each of the two years, just as the vast majority of other bargaining unit employees working for the state have. In *Sibley County and the Minnesota Public Employees Association,* BMS Case No. 13-PN-0299 the arbitrator (Befort) noted, "While not an exclusive factor, internal consistency of settlements with respect to other bargaining units is a principal factor relied upon by most Minnesota arbitrators in deciding issues of wages."

The evidence reveals that over the past decade, the general wage adjustments offered by the Employer to all of its units have been consistent (State's Ex. 11). However, it has been shown that where and when there has been "inequity adjustments" demonstrated, the parties have agreed upon departing from the norm. In such instances a number of factors have driven the exception – not the least of which is the compensation paid in the external markets for similar work. The other is where it has been confirmed that the employer is experiencing problems with retention of qualified personnel for the position(s) in question.

The Union has emphasized both factors as justification for the final position which deviates from the internal pattern of settlements to the extent that they wish to modify the salary schedule for all RNs by removing the existing entry step and adding a 4% new step at the top of the grid in each of the two years of the

contract's term. According to the MNA, the gap between state bargaining unit members and their metro and/or state-wide peers has reached a "tipping point" at the top of the schedule (Union's Ex. 1). More precisely, they assert that the most senior bargaining unit members are approximately $4/hour behind at the top of the Minnesota average, and the gap grows to $9/hour when compared to other unionized hospitals in the Greater Twin Cities Metro area (Association's Ex. 7).

The Union further claims support for their position can be found through an examination of the State's retention issues. It asserts that the MNA had a far more serious retention and turnover problem than almost all of the classifications that were granted market adjustments over the past three years, even when contrasted against the State LPNs (Association's Ex. 3).

The Employer counters with what has proven to be a more persuasive argument in my judgment concerning the external market comparators. It has been that the majority of the work performed by the bargaining unit members is more in line with the various tasks performed by RNs in a clinical setting as opposed to a hospital. It was demonstrated for example, that none of the correctional facilities provide emergency care, and moreover, there are no intensive care units or other surgical work performed at any of the relevant sites (Employer's Ex. 6). The same holds true for those assigned to the DHS where

approximately half of the bargaining unit members work. None perform surgical duties or work in an intensive care unit (testimony of Jim Yates, Director of Labor Relations for the Department). Similarly, those assigned to the MDVA provide routine custodial care as opposed to acute patient care offered in most hospitals both on a state-wide level and within the Greater Twin Cities area. Like other agencies, medical emergencies within Veteran's Homes in the state are treated in a hospital, not by members of the bargaining unit (Employer's Ex. 9). I would concur with the observations of the arbitrator in *Minnesota Nurses Association and the State of Minnesota,* BMS Case No. 08-PN-0114, who found that it was: "…inappropriate to compare the work performed by State nurses to those nurses working in a hospital setting which perform emergency services for patients in distress as well as complicated procedures and highly technical operations" (Miller, 2008). Other evidence in the record is equally noteworthy. For example, the Union's comparative data does not reveal how many years it takes to get to the top of the various salary schedules and whether all RNs start at the lowest step. According to the testimony of Assistant State Negotiator Jill Pettis, it takes fewer years for a bargaining unit member to achieve the top level on the grid as opposed to the 20 to 25 years of service that is required for most of the comparables utilized by the MNA.

Other evidence strengthening the Administration's position is found in the consideration of the total compensation received by the bargaining unit members. This includes the cost of health insurance benefits for the state nurses which appears to be significantly superior to the external comparisons (State's Ex. 15). I have also taken into consideration the retirement programs offered State-employed RNs versus those who work in hospitals. The data submitted indicates that over 25% of the bargaining unit members are eligible for the CERP which allows them to retire much earlier than nurses covered under the General Retirement Plan. In addition, these same members of the bargaining unit who are eligible for early retirement have the Employer's share of their health and dental insurance paid for them up to the age of 65 (testimony of Health Services Director, DOC, Nanette Larson; Registered Nurse Anne Mehltreteer).

Yet another factor taken into consideration in regard to the externals utilized for comparison purposes is the unrefuted fact that members of this bargaining unit are normally not taken off their work schedules due to low census numbers; a practice that is quite common within the hospital setting (testimony of Director Larson and Robin Gaustad, Acting Deputy Commissioner MDVA). Assoc

The Association contends further that evidence supporting their final

position can be found in the examination of the State's difficulties with the retention of RNs as well as the increased use of independent contractors to fill vacancies in the various agencies where its members are employed throughout the state. The claim is made that the Employer's own witnesses (Yates and Pettis) as well as their own documentation demonstrate that retention is a far more serious problem within this bargaining unit than almost all of the classifications that were granted market adjustments by a margin of nearly two to one (MNA Ex. 3).

The State counters there is no evidence that the Association's bargaining unit members are departing because they can earn more money elsewhere. None of the RNs called by the MNA to testify regarding the alleged issue indicated that they were planning to leave the State. To the contrary, they all indicated that they have been employed in their respective positions for many years. Moreover, the State's witnesses (Yates and Larson) offered unrefuted testimony that depending upon location, there are some nurses who do leave but the reasons are generally caused by a preference not to travel so far or that it is due to a desire not to work in a psychiatric or correctional setting. Acting Commissioner Gaustad stated that the Veterans' Homes do not have any recruitment or retention issues, while each of the Agencies report that they have a sufficient applicant pool to draw from whenever vacancies are

announced. It is further observed that Human Resources Director Gudknecht, allowed that while retention and/or recruitment can be a problem "from time-to-time," on the whole turnover rates within the Department of Health are not out of the ordinary.

While the Union's documentation (their Exhibit 3) would indicate a larger than average turnover rate within the State, this evidence must necessarily be tempered by the testimony of the witnesses from both sides. Furthermore, Ms. Pettis offered unchallenged testimony that a 10% turnover rate is "normal" in the Administration's experience, given the number of RNs employed state-wide. On the whole, I find their data to be supportive of this claim where the turnover rate for the total membership in the bargaining unit over the past three fiscal years has been either close to the 10% mark or below it (Employer's Ex. 13).[2]

I have also credited the State's position regarding the use of independent contractors. Both DOC Director Larson and Human Resources Director for the DHS, Jim Yates, testified that their agencies utilize contract nurses when their RNs call in sick or are on some type of leave and no other nurses are available to fill the temporary vacancy.

The Union has also presented evidence concerning the relatively harsh

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[2] The Employer has acknowledged that there have been difficulties with turnover within the class of Advance Practice Registered Nurses, but that the issue has already been addressed at the bargaining table with the Union by agreeing to add two steps at the top of their salary range effective January 1, 2013 (Administration's Ex. 15).

work environment for their members within some of the agencies (e.g. DOC, CBHHs) which they claim support their position. Clearly, there can be no question but that the work of State-employed RNs Is both extremely important and difficult – even dangerous at times. This alone however, does not sufficiently distinguish this bargaining unit from other employees in the state who work as correctional officers, psychologists, behavioral analysts, special teachers, and even food service personnel, all of whom work in the same environments as the nurses with the same or similar populations.

Finally, I have considered the Association's argument addressing comparable worth and the claim that the decades-old system has never properly measured the working conditions of the registered nurses. I find the contention to be less than relevant to the immediate dispute however, given the unrefuted fact that the Union's own expert witness called to address this subject, Faith Zwemke, a retired employee from the Department of Management and Budget and a certified rater under the Hay system, acknowledged the State's nurses have never been out of compliance with the Pay Equity Act. Moreover, it is not the charge of this arbitrator to change or challenge the job evaluation system currently being utilized in the course of my deliberations over the parties' impasse.

Award: Accordingly, based upon the foregoing analysis, I find the

Employer's final position relative to this issue to be the most persuasive and it is therefore awarded.

Issue No. 2
Shift Differential

Association's Position: That effective and retroactive to July 1, 2013, bargaining unit members rotating to the evening shift or working straight evening shifts (shifts that end past 7:00 p.m.) shall be paid shift differential at the rate of one dollar and twenty-five cents ($1.25) per hour.

That effective and retroactive to July 1, 2013, bargaining unit members rotating to the night shift or working straight nights (night shift ends past 11:00 p.m.) shall be paid shift differential at the rate of two dollars ($2.00) per hour.

Employer's Position: The Administration proposes no new language be appended to Article 17, Section 12 addressing premium pay for evening and night shifts.

Analysis of the Evidence: The issue here concerns the internal pattern which the State deems significant, versus the external market conditions relied upon by the Union. There is no disagreement between the parties that there currently exists a consistent practice of paying all State employees represented by a bargaining agent, the same single hourly premium for working either a evening or the night shift: $.65. The language in the various agreements is

nearly identical, save for the fact that the MNA employees earn an additional 5 cents more per hour. Similarly, there is no dispute but that when considering the external market, these nurses do not fair nearly as well as their counterparts working in hospitals (MNA Ex. 8).

There is no evidence in the record however, suggesting that members of this bargaining unit are refusing to work either the evening or night shift based upon the premium hourly rate they receive (which is currently 5 cents higher than the balance of the organized work force in the State). Nor is there evidence indicating that the existing rate has caused a problem with retention. Moreover, it was demonstrated that the RNs could bid onto the day shift as an option should they find it difficult to work nights (testimony of Union witness Anne Mehltretcer). I would concur with the Administration that it would not be reasonable to grant a near doubling of the existing rate to one bargaining unit when they are working side-by-side with other unionized employees all of which have agreed to the existing rate for both evening and night shifts. This issue is best left to the parties to address in future negotiations.

Award: The Employer's position is to be implemented.

Issue No. 3
APRN Continuing Education Funding

Association's Position: The MNA proposes that Registered Nurses in the

Advance Practice classifications who have continuing education requirements, be provided with an additional $1500 per year to be applied against the cost of courses necessary to maintain their licenses and for travel related expenses.

Employer's Position: The State proposed no new section be added to Article 23, "Career Development" which would automatically grant $1500 per year in training money towards continuing education credit for the APRNs and Psych APRNs.

Analysis of the Evidence: The MNA asserts that many of the courses that the APRN bargaining unit nurses take for their required continuing education by the State Board of Nursing cost up to $400 - $500. They maintain that what is currently provided to them by the Administration is simply inadequate.

The Employer counters that there are already free training courses for nurses in place within the system. For example the DOC offers "CD Direct" that covers some of the credits needed for continuing education, while the MDVA is in the process of purchasing a Healthcare Academy Clearinghouse program which will include skills, fairs, and other training that is approved by the Board of Nursing for continuing education requirements.

It is a commonly accepted axiom of the interest arbitration process, that the party proposing to change an existing provision or provisions in their collective bargaining agreement, or to otherwise add new language to the

contract, is assigned the burden of proof to demonstrate through clear and convincing evidence, first the need for such change and then the reasonableness of their proposal. See: *LELS and Crow Wing County,* BMS Case No. 94-PN-1687 (Fogelberg). While the Association has attempted to meet that obligation here via the foregoing arguments, I find that the preponderant evidence does not justify the additional benefit that they have proposed at this time.

Award: The Administration's final position is adopted.

Respectfully submitted this 23rd day of July, 2014.

/s/_____
Jay C. Fogelberg, Neutral Arbitrator