

IN THE MATTER OF THE ARBITRATION BETWEEN

ASCME Iowa Council 61 and Local 2843
Sunnycrest Manor Employees
Union

and

Dubuque County, Iowa
Employer

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PUBLIC EMPLOYMENT
RELATIONS DIVISION

ARBITRATOR Frederick P. Kessler
DATE OF HEARING September 7, 2016 at the Emergency
Responder Training Facility
DATE OF AWARD November 2, 2016

FOR THE UNION

Robin White, Staff Representative

FOR THE COUNTY

Attorney Arthur Eggers
Attorney Sigurd Zaehring

INTRODUCTION

This interest arbitration was conducted pursuant to Section 20.22 Iowa Statutes. The American Federation of State, County and Municipal Employees Local 2843 is the exclusive representative of the employees of Dubuque County who are employed at Sunnycrest Manor. The Parties have entered into contract negotiations and have agreed to all but the items listed below. Those are now before the arbitrator

At the conclusion of testimony by witnesses, the parties agreed to submit Briefs to the Arbitrator by October 7, 2016. The Arbitrator would then have the 15 days to rule on the disputed issues and notify the parties.

On October 3rd, Ms. White notified the Arbitrator and the County that she was extremely ill and was confined to bed rest while doctors were attempting to diagnose her illness. She requested an extension of the deadline for filing Briefs to October 31, 2016. The County strongly objected, but the Arbitrator granted the extension on October 4th, and so informed the parties on that date. On October 5th, the County requested a specific deadline for briefing. The Arbitrator set October 31st as requested by the Union and informed the parties. On October 14th, the County asked that an expedited finding be issued five days after the receipt of the Union Brief, with a detailed decision following sometime later. The Union Brief was received by the Arbitrator on October 29th.

ISSUES

The issues remaining at impasse are as follows:

1. Hours of Work (Article 3)
2. Rest Periods (Article 3)
3. Overtime (Article 6)
4. Seniority (Article 17)
5. Grievance Procedure (Article 19)
6. Wages

STATUTORY CRITERIA

Section 20.22 of the Iowa Statutes relating to Binding Arbitration provides as follows:

7. The arbitrator shall consider, in addition to any other relevant factors, the following factors:
 - a. *Past collective bargaining contracts between the parties including the bargaining that led up to such contract.*
 - b. Comparison of wages, hours and other conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classification involved
 - c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of service.
 - d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations

DISCUSSION

Past Collective Bargaining Agreements. The past Labor Agreements between the parties were reviewed to determine prior agreements as to wages and other conditions of employment relevant to the issues involved in this impasse. I have also compared the Labor Agreements between the County and this Union with the Agreements between employees represented by other unions and Dubuque County, and between this Union and similar represented employees in Black Hawk County.

Ability to Pay. The primary source of funding for Sunnycrest Manor is Medicaid. Sunnycrest Manor was designed to provide residential care and service for residents of the county who qualify financially for Medicaid. Medicaid does not pay all the cost of operating the facility. Recently it has been necessary for Dubuque County to provide additional financial assistance for Sunnycrest Manor from the County General Fund. This is necessary used because Medicaid reimbursement to the County is not always timely. In this case, the Managed Care Organization (a private Company) which took over the administration of a number of residential care programs has been regularly up to 90 days late in providing the Medicaid reimbursement to the County creating a shortfall in operating funds.

The testimony indicates the County does not currently have the authority to compel the Managed Care Organization to promptly forward Medicaid payments to the County. Dubuque County is currently operating at its maximum tax rate for the General Fund. Any reallocation of spending because of the shortfall which would adversely affect other County programs.

Comparison of Wages, Benefits and other items. The Union has submitted information only from Country View Care Center a similar facility operated by Black Hawk County as an external comparison for the 2015, 2016 and 2017 Labor Agreements. Black Hawk County appears to be an appropriate external comparison with Dubuque County. Black Hawk's population was about 130,000 compared to Dubuque's population of nearly 100,00.

The Union submitted internal comparison information showing the percentage wage increases for County employees of Sunnycrest Manor, the Deputy Sheriffs, Courthouse workers, Road workers, Attorneys and the Sheriff Department Administrators. I find that Courthouse workers and Road workers increases are appropriate comparisons. Deputy Sheriffs, Sheriff Department Administrators and Attorneys should be viewed differently because of the nature of the work they do in law enforcement.

HOURS OF WORK The County has proposed changing Article 3, the 80-hour work schedule for a fourteen-day work period. The County wants the schedule adjusted to allow between 64 hours and 80 hours for a fourteen-day work period.

The County argues that Sunnycrest Manor cannot be compared to any other County service. Sunnycrest Manor is open 24 hours a day seven days a week. It must be staffed at all times at levels required by Medicaid. Flexibility in scheduling staff is essential in a long-term care operation. Currently Sunnycrest employs one full time employee whose only duty is to schedule employee days and hours of work.

The County feels that the 80-hour work guarantee applied to certified nursing aides unreasonably limits staffing flexibility. The County argues that a 64-hour work schedule over a fourteen-day work period would allow the County to schedule 12-hour work days, which would greatly increase needed flexibility in staffing.

The Union argues that the County has never proposed to the Union changing the schedule of Certified Nursing Aides to 12-hour work days. It was not the subject of bargaining and would have a substantial impact on the work lives of Sunnycrest Manor employees. It would also limit the flexibility of scheduling since 12 hour employees cannot work more than 4 additional hours if the facility is short an employee at the start of a shift.

If the 12- hour work day is initiated, the County's proposal reduces 56 full time Certified Nursing Aides income by \$5,162.56 annual starting pay and by \$6,743.36 annual pay when the employee reaches step 6 in the salary scale if a maximum work week is 64 hours.

Arbitrators Decision. I conclude that the move to a twelve-hour day is a drastic change. Such a drastic change should be negotiated by the parties. The schedule that the County alleges is the industry standard would provide for three 12 hour shifts for certified nursing aides; this may be attractive to some employees, and it may make operations at the facility more efficient, but it may also adversely affect the income and daily lives of many employees. The fact that this change was not offered to the Union during negotiations, and therefore does not give the Union the chance to evaluate it is an additional reason for it not to be considered. To offer this proposal after bargaining has ceased diminishes its value as a serious proposal I decline to accept the County's Article 3 Hours of Work proposal.

REST PERIODS The County has also proposed that Article 3 which gives a 15-minute rest period during each one-half shift, be changed to a 15-minute rest period for each four hours worked. Additionally, the County proposes that employees may no longer combine two 15 minute breaks into one 30-minute paid break. Further, the County would also eliminate the provision which allows staff to seek an unpaid additional lunch break for smoking, or to leave the grounds for other reasons.

The County argues that these changes are also necessary to provide the flexibility in staffing the County needs to reduce costs and effectively manage staffing.

The Union argues that the County has offered no evidence that combining breaks has disrupted clients or adversely affected discipline of any employees. It is particularly important for employees who use tobacco to be able to combine their fifteen minute breaks so that they will continue to be able to leave the grounds of the facility so remains it smoke free.

IF the 12-hour work day had been approved, it would have required employees to work excessively long prior to breaks. It would also add to any confusion and difficulties that management already has in scheduling breaks.

Arbitrators Decision. I conclude that the rest period changes proposed by the County are fundamental aspects of daily working conditions which are more appropriate as a subject of negotiation by the parties. I do not find a compelling need for these changes, or that they generally appear in other contracts involving similar facilities. I decline to accept the proposal.

OVERTIME The County proposes that all of Article 6 of the current contract, which relates to Overtime and holiday pay, be deleted.

The County argues that paying time and one-half for working more than eight hours per day, or for working more than 80 hours in a 14-day work period, and paying double-time for holidays has increased the costs at Sunnycrest Manor and made scheduling more difficult. These problems have directly impacted the cost of operating Sunnycrest Manor and are a cause of the need to seek additional funds to continue operations.

The Union points out that Blackhawk County and all the other bargaining units in Dubuque County, have similar overtime language in their contracts. The current budget contains moneys specifically to pay for overtime. This appears to be only as a proposal to shift the cost of the projected deficit to the employees.

The Union points out that this proposal eliminates all overtime and holiday pay. Overtime is now controlled by the County. They control the schedule that employees must follow. There is no guarantee of overtime and only the County can determine when it is required.

In 2015 the County made an offer to eliminate all overtime except for working over 80 hours per week. This proposal is far more drastic. The 2015 proposal was somewhat logical if a 12-hour day was contemplated. Then there would likely be a mandatory four-hour overtime after an 80-hour week.

Arbitrator's Decision. I find that the proposal which eliminates all overtime, by dramatically changing hour of work as the County proposes is a change which should be the result of negotiation by the parties. There may be merit in drastically changing the way a workday/workweek is organized, however, changing the length of the work day, eliminating overtime and holiday pay, and shortening the work week impacts every employee in very substantial ways. Such a drastic change should not be done unilaterally. I decline to accept the proposal.

SENIORITY The Union that in Article 16 be changed so that when job postings occur the "assigned" hours or work "and the days of the week, days off and shift rotations" be added to the postings. In addition, Article 16 should specify that the "most senior employees with" special qualifications be considered first.

The Union argues that it is not unreasonable to post assignments that tell employees their days of work, days off, their rotation, and their hour of work. If two or more employees of equal qualifications apply, the senior employee should receive the job. Variable shifts and work hour are extremely disruptive to employees. Employees have child care obligations and other appointments and should be able to plan their non-working lives. Black Hawk County requires such postings for assignments at Country View. Although no other labor agreement in Dubuque County contain such a provision, none of the non-law enforcement positions require multiple shifts as Sunnycrest Manor does.

The County asserts that the Union is seeking to make seniority the primary factor in filling openings rather than special qualifications needed for that position. The current contract requires the posting of “primary” hours of work “when practicable”. The Unions proposal increases the burden the assignment process already places on management. Other agreements with the County do not require such a precise notification.

Arbitrator’s Decision. The posting of normally “assigned” hours of work, days of the week, days off, and shift rotations appears to make scheduling generally easier and predictable since an employee would know what is expected of them before they apply. It appears to the arbitrator that this would ease the scheduling process because employees would have a clearer picture of what time commitment is expected of them. A qualification requirement, with seniority as a “tie” breaker, would reduce the potential of arbitrary scheduling. The County could still have the flexibility to schedule replacements in the event of an employee’s absence. The job functions performed by Deputies, Attorneys, etc. are completely different from the functions of Sunnycrest employees. The need for a certain number of employees, with a variety of specific skills at all time is unique to an assisted living or medical facility. I would accept this proposal.

GRIEVANCE PROCEDURE The Union has proposed in Article 18, Step 2, the Administrator “meet with the grievant and steward and/or union representative at a mutually agreed upon date and time to attempt to resolve the grievance.” The Union also requires a written response “will be returned to the grievant, the steward, and union representative” in 14 days (after the meeting).

In Step 3 the Union has proposed “The Administrator shall contact the union steward and arrange a meeting to try (s) and resolve the grievance with the Union Representative, steward and grievant(s) on work time within 14 calendar days” with the written response also sent to “grievant(s), and Union Representative”.

The Union proposes that a meeting be set up with the administrator, the steward and the grievance to resolve grievances as soon as possible instead of fast tracking into arbitration. With the removal of permissive language after a PERB preliminary ruling, management is only required to respond to the steward. Neither the grievant or the Union Representative receives the responds. This does not facilitate early settlement of disputes.

The County asserts that the Union has failed to prove that the change was needed. The Union’s language requires the Administrator to meet with the Union representative, the steward and the grievant and then respond in writing to the grievance. This makes the process burdensome at both Step 2 and Step 3. This is not required in any of the comparable internal contracts, nor are the meetings in Black Hawke County on work time.

Arbitrator’s Decision. This proposal would appear to make the grievance process more burdensome to the administration of the facility without increasing the efficiency of resolving the grievance. I would reject this proposal.

WAGES The Union has proposed a wage increase of 2% effective 7/1/2016 and a wage increase of 0.25% effective on 1/1/2017. The County has offered no general increase in wages for this contract year.

The Union argues that Sunnycrest Manor’s union employees are the only bargaining group in Dubuque County that has not received a wage increase. The employees of County View in Black Hawk County received a 0.45% to 2.50% wage increase. Clearly, the comparable contracts support a wage increase of the 2.00% the Union is seeking.

No other employees of Dubuque County were asked to forgo a wage increase. The employees of Sunnycrest Manor did not cause the problems he County is attempting to solve. The County set the budget for all government functions it provides. It did not adopt a budget that met the benefits it negotiated with the Union. It failed to adopt an adequate budget and increased a deficit. It is unfair to recoup that deficit from the backs of the employees.

The County asserts that the wage proposal of the Union is more unreasonable and that the County's wage proposal of 0% is more appropriate. Funding for Sunnycrest's payroll and its ability to pay bills is precarious at this time. In prior years Medicaid reimbursements for patient care were regularly received by the County directly from the Medicare agency. Now they are being paid by a Managed Care Organization with whom the County subcontracted to administer the program. That organization is not making the payments in a timely fashion, which, in turn requires a supplemental appropriation from the County to meet Sunnycrest's payroll. That fact creates uncertainty on the budget making process. The County made a supplemental appropriation of almost \$2,000,000 to meet the shortfall from the Medicaid Managed Care Organization.

Dubuque County indicates that it is currently taxing at the maximum rate allowed under law for the General Fund (and has done so since 2003). There are no other tax options available, thus the only option is reducing the budgets of other departments. The County points out that many employees will be receiving a 1.4% step increase that will cost \$71,660. The zero increase in the County's offer is only applicable for one year. In 2017 The County will enter a new agreement with the Union.

Past Labor Agreements between the County and the Union have provided for wage increases. The Union proposal exceeds the increase in the most recent voluntary agreement between the parties.

Arbitrator's Decision. Both sides have compelling arguments in support their recommendations. When the wage increase given to the workers at Country View in Black Hawk County they received a 2.50% increase compared with the Union's proposal of 2.25% for Sunnycrest workers. Those facts support the Union's proposal. When internal comparisons with the other bargaining units in Dubuque County are considered every other bargaining unit received a wage increase. Most of the other units increased at 1.25%.

I also examined historical wage increases of the Courthouse employees and the Road Maintenance employees which I find more appropriate than a comparison with law enforcement employees. The Sunnycrest employees received a higher increase than Courthouse or Road employees in Fiscal Year 2009, 2010, 2013, but did not exceed Courthouse or Road Maintenance employees in 2011, 2014 or 2015. The aggregate increase for Sunnycrest employees was a 16.0% increase for Fiscal Years 2009 to 2016, while Courthouse employees received an 18.75% and Road Maintenance received a 18.6% increase. In fiscal year 2017 Dubuque County gave increases to those two bargaining units. A labor agreement has not yet been reached to between the County and this Union for the employees of Sunnycrest.

I am however persuaded by the arguments of the County regarding its fiscal problems. Until the problems with the Managed Care Organizations are resolved, so that the County can get timely reimbursement for its Medicaid expenses, the fiscal strain on the County will be substantial. The Managed Care Organization does not promptly make timely regular payments to the County. The County needs and deserves a managed care administration that makes timely payments. Until then it will not be necessary for the County to make up the shortfall. The voters of the County unlikely to allow this unacceptable situation to continue. When the County is reimbursed for administrated failure of timely payments, one would hope that the employees of Sunnycrest, will receive comparable increases as the other County employees received in the interim.

At present, however, the ability of the County to finance the increase is temporarily impaired. The County's capability to levy taxes, and to provide the other essential services would be impossible if the Union's proposal were adopted at this time. I therefore accept that the County's proposal for wages.

SUMMARY OF THE AWARD

Under Section 20.22 of the Public Employment Act, the Arbitrators has the authority to select for either party's offer on each issue. The following is awarded:

1. Hours of Work. The County proposal is rejected
2. Rest Periods. The County proposal is rejected
3. Overtime. The County proposal is rejected
4. Seniority and Posting. The Union proposal is adopted
5. Grievance Procedure. The Union proposal is rejected
6. Wages. The Union proposal is rejected



FREDERICK P. KESSLER

ARBITRATOR

November 2, 2016

I certify that on the 2nd day of November, 2016, I served the forgoing Award of Arbitrator upon each of the parties in this matter by mailing a copy to them at their respective address as shown below:

Attorney Arthur W. Eggers

Califf & Harper, PC

506 15th Street, Suite 600

Moline, IL 61265

Robin White, Staff Representative

1533 265th Avenue

Earlville, IA 52041-8669

I certify that on the 2nd day of November, 2016, I submit this award Award for filing by mailing a copy to the Iowa Pubic Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, IA 50319

Frederick P. Kessler

Arbitrator

