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Department of Labor and Economic Growth
Michigan Employment Relations Commission
Fact Finding

Schoolcraft Memorial Hospital

—and— MERC Case No. L05 G-5007

Michigan Nurses Association

FACT FINDING REPORT

Appearances:

Fact Finder:	William E. Long, Attorney
For Schoolcraft Memorial Hospital:	Bonnie Toskey, Attorney Joy Strand, Chief Operating Officer
For Michigan Nurses Association:	Anita Czepanski, Attorney David Perlove, Labor Relations Representative
Date of Report:	May 21, 2007

PROCEDURAL BACKGROUND

The current agreement between these parties covered the period November 1, 2002 to October 1, 2005. Reference to the contract in this document will be to the "current contract."

Materials in the case file reveal the parties held negotiation sessions or at least exchanged proposals on three occasions between October 13, 2005 and April 18, 2006. Additionally two mediation sessions were held on May 15 and June 23, 2006. The Union filed a petition for fact finding dated June 14, 2006. The Michigan Employment Relations Commission appointed this Fact Finder in a letter dated November 8, 2006. As

a result of discussions with the representatives of the parties, hearing dates of February 7 and 8, 2007 were established and fact finding hearings were held on those dates at the Schoolcraft Memorial Hospital in Manistique, Michigan.

At the hearing the parties provided testimony and exchanged and presented exhibits to the Fact Finder. The Union presented one notebook containing exhibits involving previous exchanges of positions on issues from the parties and some comparable data on the issues in dispute. The Union also provided the Fact Finder with the contracts of the ten Union's proposed comparable communities/hospitals and the current contract between the parties. The Employer presented one notebook containing the current contract between the parties and the contracts from four of the five Employer's proposed comparable external hospitals/communities. The Employer's notebook also contained exhibits relating to other Schoolcraft hospital employees, financial information pertaining to Schoolcraft Hospital operations and external and internal comparable data on some of the various issues in dispute. The Union's notebook identified its exhibits by tabs A through E and numbering 1 though 40. The Employer's notebook identified its exhibits by tabs 1 through 61. This Fact Finding Report will refer to those exhibits as (U-A), U-1), (E-1), etc.

During the course of the two day hearing the following individuals were present and/or testified on behalf of the Employer:

Joy Strand – Chief Operating Officer
Gina Lindquist – Human Resource Director
Melanie Williams – Director of Nursing

During the course of the two day hearing the following individuals were present and/or testified on behalf of the Union:

Jennifer Casey, RN – Chapter Chair
David Perlove – MNA Labor Representative
Dawn Oserhout, RN – Negotiator
Nicole Russell, RN – Negotiator
Susan Neddow, RN – Negotiator

At the conclusion of the hearing it was agreed the parties would exchange post hearing briefs through the Fact Finder by March 23, 2007. That date was later extended by agreement of the parties and the Fact Finder and closing briefs were received and exchanged by the Fact Finder April 5, 2007. Initially the parties agreed there would be no reply briefs but following exchange of the briefs the parties contacted the Fact Finder

and at the conclusion of an April 16, 2007 conference call the parties and the Fact Finder agreed that supplemental briefs would be filed on or before April 20, 2007. Those supplemental briefs were exchanged on April 21, 2007.

During and following the hearing the parties agreed to withdraw several of the issues they had previously presented during negotiations and reached tentative agreement on two others. Following is a brief listing of those issues withdrawn:

Article 12 – Seniority (Employer issue 6)

Article 14.11B – Low Census (Employer issue)

Article 18.04B - Per Diem nurses limit (Employer issue)

Article 19.03A - Night shift overtime short notice pay (Union issue 14)

Article 25 – Sick Bank Pay-Out (Employer issue)

Article 26.03 – Maximum PTO accrual (Union issue)

Article 28.04 – Bereavement leave (Employer issue)

Article 28.08A – General guidelines, leaves of absence without pay (Employer issue)

Following is those issues which the parties reached tentative agreement on:

Article 10.04 – Notice to staff council chairperson

Article 31.10C - Replacement of Scrubs/cover-up, deletion (Employer issue)

Article 31.10E – OR and Outpatient scrub uniforms supplied by Employer, deletion (Employer issue)

Article 32.01 – Term of Agreement – The parties have agreed the period for a new contract would be November 1, 2005 through October 31, 2008. The fact finder will indicate as part of his recommendations on each issue the recommended effective date of any recommended contract revisions.

In addition to the above, during the hearing, the Union pointed out that in its 5/15/06 proposals it proposed adding language to Article 1.01, the recognition clause of the current contract, by adding the word "supervisory" to clarify which RN's would be excluded from the bargaining unit. The Employer objected on the basis that this issue presented a permissive subject of bargaining. Following arguments and discussion by the parties at the hearing the Fact Finder ruled this was a permissive subject of bargaining and was therefore not within the scope of the Fact Finder's authority upon which to make a finding and recommendation unless both parties agreed to present it to the Fact Finder. Since both parties do not agree to submit this issue to the Fact Finder the proposal by the Union to modify Article 1.01 will not be addressed in this report.

Remaining issues presented by the parties to be addressed by the Fact Finder in this report and the order in which they will be addressed are:

1. **Article 8.02**—Bargaining Committee (Employer proposal) pg. 14
2. **Article 10.02A**—Discipline (Employer proposal) pg. 16
3. **Article 11.16** (new sec.)—Grievance procedure—election of remedies (Employer proposal) pg. 19
4. **Article 12.04**—Seniority for supervisory positions (Union proposal) pg. 20
5. **Article 13.01** (new sec.)—Job posting and advancement (Union proposal) pg. 22
6. **Article 18.01**—Full time RN definition (Union proposal) pg. 25
7. **Article 18.02**—Part time RN definition, delete (Employer proposal) pg. 26
8. **Article 19.01 C, D** (new sec's)—Consent for schedule change (Union proposal) pg. 27
9. **Article 19.02 C** (replace with new language & re-letter secs)—Weekends off (Union proposal) pg. 31
10. **Article 19.03 G** (new sec)—Outpatient pay for after work hours (Union proposal) pg. 32
11. **Article 19.03** (new sec)—Make overtime mandatory (Employer proposal) pg. 33
12. **Article 20.01**—Wages (Union & Employer proposals) pg. 35
13. **Article 20.04**—Call in premium rate, delete right to refuse call in (Employer proposal) pg. 38
14. **Article 20.06**—Shift differential rate of pay (Union proposal) pg. 38
15. **Article 20.07 A, B**—Specialty Certification supplemental pay (Union proposal) pg. 39
16. **Article 20.07 C**— RN compensation for NAACOG, delete (Employer proposal) pg. 40
17. **Article 20.08 & 27.01 B (1)—Holiday Pay (Employer proposal)** pg. 40
18. **Article 20.09**—Eliminate daily overtime (Employer proposal) pg. 42

19. **Article 22.01 C, D**—Employer share in retiree health INS cost (Union proposal) pg. 43

20. **Article 23.01**—Health Insurance, employee share in premium payment (Employer proposal) pg. 44

21. **Article 26.03 and 26.04 – Maximum paid time off accrual and accrual rate revisions (Employer Proposal)** pg. 46

22. **Article 26.07 E and H—Scheduling of PTO, E—Procedure for late requests, H—criteria for approval of PTO with 24 hour or less advance notice. (Employer proposal)** pg. 49

23. **Article 29.03 C**—Seniority for attendance for certifications, delete (Employer proposal) pg. 50

24. **Article 31.08**—Mandatory meetings, delete (Employer proposal) pg. 51

25. **Article 31.10 A**—Scrubs/cover up clothing allowance (Union proposal) pg. 52

26. **New Article not ID**—Ambulance runs (Mandatory/non-mandatory & pay (Union proposal) pg. 53

27. **New Article not ID**—Longevity pay (Union proposal) pg. 55

28. **New Article not ID**—Flex Scheduling (Union proposal) pg. 56

29. **New Article not ID**—Minimum staffing guidelines (Union proposal) pg. 57

30. **New Article not ID**—Employee discount for services (Union proposal) pg. 58

31. **New Article not ID**—Inconvenience pay for work on short notice (Union proposal) pg. 60

32. **Letter of Understanding**—Random Drug testing (Employer proposal) pg. 61

GENERAL BACKGROUND

Schoolcraft Memorial Hospital is located in the city of Manistique, which is within Schoolcraft County in Michigan's Upper Peninsula. Manistique has a population of about 3500 and Schoolcraft County a population of about 8800. Schoolcraft Hospital is one of several Hospitals and Health Care Systems in the Upper Peninsula that provide short term basic inpatient care, transitioning to and from acute care settings, and outpatient care services in their communities. Some of these hospitals, like Schoolcraft, are publicly owned and operated and some are privately owned and

operated. Schoolcraft Hospital patient bed capacity is 25 and the nursing staff represented by the Michigan Nurses Association (MNA) is about 26 registered nurses.

The MNA has represented the registered nurses employed by Schoolcraft Hospital for a number of years. Most contract negotiations over those years did not result in the need for mediation or fact finding services. The parties indicated during fact finding that the agreement on the current contract, covering the period November 1, 2002 to October 31, 2005, was not arrived at easily. Evidence presented at the Fact Finding hearing revealed factors present in the last several years that have apparently resulted in increased tensions between the Employer and the Union. Among those factors were:

1) While both revenue and expenses increased for the fiscal years ending December 2004 and 2005, the excess revenue over expenses declined by 11.8% in fiscal year 2005 from fiscal year 2004 (E-9, E-10). Another financial revenue source changed in June 2005 when the Medical Care Facility stopped purchasing dietary services, medical supplies and other medical and non-medical services from the Hospital. This resulted in a decrease in 2005 revenue of $322,225 (E-10). Near the end of 2005 and through the much of 2006 the Hospital experienced a significant decline in anticipated use of inpatient and outpatient services resulting in revenue below that anticipated in the budget for calendar and fiscal year 2006 of approximately $700,000 less in inpatient revenue and nearly $500,000 less in anticipated outpatient revenue (E-11). The Hospital management, in response to this lower demand for service, took action by the spring of 2006 to begin to reduce costs. Cost reduction steps included: mandatory time off for non union and management staff, no overtime, reduction in staff on shifts, travel and purchasing restrictions and reductions in paid time off accrual rates and increases in employee contributions to health insurance premiums for non-union personnel (E-14, E-15, and E-16). The end result was that staff salaries, wages and fringe benefits, which comprise about 60-61% of total costs, were reduced by $826,000 during 2006. These circumstances certainly didn't aid in promoting a congenial relationship between management and labor going into negotiations for a new contract.

2) A second factor was the Hospital Board's decision to proceed to plan for and build a new Hospital, which required additional administrative expenditures related to that action. The decision by the Board was a rational decision given that successive audits pointed out "The Hospital's current plant is old and inefficient to provide state-of-the-are health care services. In order to meet the long-range health care needs of the community, it will be imperative for the Hospital to eventually replace its current structure with a new facility" (E-9, E-10). Administration and Business office expenses have increased in fiscal year 2005 and 2006 in part as a result of planning and preparation for the new Hospital (U-17). This allocation of resources, while reasonable in the context of the future needs of the community, does not make it easier to understand or accept by employees who are experiencing cut backs in hours worked, training and other benefits.
3) A third, but perhaps less significant factor, is that there were some changes in management staff over the period of the current contract. Also, given the financial situation the Hospital was faced with in 2006, it sought representation at the bargaining table that would aggressively present its position.

Even though these factors lead to the request for Fact Finding, the Fact Finder was impressed with the cooperation and professionalism of those members of the Union and Management that participated in the Fact Finding hearings. While there is no exhibits to point to, based on the two days the Fact Finder spent with the parties, it is my opinion that when all is said and done, management recognizes the value and quality of the registered nurses they have on staff and the nurses recognize management's problems. There also is recognition of the value of Schoolcraft Hospital to the community and a desire on everyone's part to provide the best service possible. And there is no question that there is a recognition by the parties that regardless of the eventual outcome of negotiations, they will need to continue to work together, live and play together in this relatively small community. Hopefully this Fact Finding report can assist the parties in reaching agreement and enable them to continue a constructive relationship in both the work and community settings.

COMPARABLES

The Employer representative, in her post hearing brief, points out that the law pertaining to Fact Finding sets out no criteria that must be used in determining findings and recommendations. Article 25 of the Labor Relations and Mediation Act (MCL 423.25) merely states "When in the course of mediation – it shall become apparent to the commission that matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known, the commission may make written findings with respect to the matters in disagreement." The Employer representative recommends, however, that the Fact Finder use as a guide, the criteria established in Article 9 of the Act 312 of 1969, the Compulsory Arbitration of Labor Disputes in Police and Fire Departments. These criteria are commonly used in Fact Finding proceedings involving public employers and police and fire unions and this Fact Finder agrees they are a useful guide to assessing the issues presented by the parties in this proceeding. The applicable factors to be considered as set forth in Article 9 are as follows:

(a) The lawful authority of the employer.
(b) Stipulations of the parties.
(c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
  (i) In public employment in comparable communities.
  (ii) In private employment in comparable communities.
(e) The average consumer prices for goods and services, commonly known as the cost of living.
(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Subsection (d) of Article 9 sets out parameters for comparison of wages, hours and conditions of employment of the employees involved with other employees performing similar services and with other employees generally: (i) in public employment in comparable communities, (ii) in private employment in comparable

communities. In this case both parties submitted exhibits and supporting materials identifying other proposed hospitals for comparison purposes and the Employer submitted exhibits and urged comparisons with other employees of Schoolcraft Hospital.

The Employer proposed hospitals serving the following communities be used as external comparables: Baraga, Ontonagon, Mackinac Straits, Newberry and Munising. The Employer says these are appropriate for comparison because each is a "critical access" hospital as is Schoolcraft Hospital. A "critical access" hospital a hospital of a specified capacity that is certified by the Federal government to bill Medicaid for certain services at certain rates The Employer also says these hospitals are all located in Michigan's upper peninsula and have been used for comparison in previous negotiations.

The Union proposed hospitals serving the following communities be used as external comparables: Baraga, Ontonagon, Bay Area Hospital located in Marinette, Wisconsin, Grand View located in Gogebic/Iron Range in the U.P., Portage located in the Houghton/Hancock area of the U.P, Dickenson Co. Health Care System, Cheboygan Memorial Hospital located in the Northeast Lower Peninsula, OSF St. Francis Hospital located in Escanaba, Menominee County, and Iron County Hospital located in Iron County in the U.P. The Union says it chose these as comparable Hospitals/communities because each is represented by the MNA and covers registered nurses as this bargain unit does; each is in a rather rural area of the State and each provides services similar to Schoolcraft Hospital. The Union argues that Employer's proposed comparables should not be considered because in materials submitted by the Employer for comparison it was not consistent in presenting data from each proposed comparable on each issue. Additionally, the Union argues the Fact Finder should not consider the Employer's proposed internal comparables of the Schoolcraft Hospital employees in the bargaining unit represented by AFSME because that employee group is currently working under an expired contract and therefore their conditions of employment during a comparable period are unknown. The Union also argues the non-represented employees of the Hospital should not be considered because those employees share no community of interest with the RNs and are unable to bargain with the Employer, unlike the RN's.

The exhibits provided by the parties presented some information but not extensive information upon which to evaluate and select communities/hospitals for comparative purposes. The Fact Finder, drawing on experience from serving as an Arbitrator in Act 312 proceedings developed some general criteria thought to be relevant for comparison and then tried to obtain some of that information from the exhibits or other reliable sources. The criteria first identified included: 1) number of employees in the bargaining unit; 2) geographic proximity; 3) population of the community service area; 4) annual budget; 5) annual patient caseload; 6) critical access certification; 7) number of beds; 8) total number of employees. Much of this information was not to be found in the exhibits. For example there was no data on the number of members in the bargaining units (#1) or the budgets (#4) for any of the external comparables. The Fact Finder accessed the State of MI website to obtain the July 2005 census estimate populations for the Counties in which the Hospitals were located and their location to obtain data for #2 and #3 criteria. The Fact Finder also accessed the Upper Peninsula Health Care Network website to obtain what additional information could be gleaned but found annual patient caseload (#5) for only one comparable; critical access certification (#6) for seven of the comparables; number of beds (#7) for three of the comparables; and total number of employees (#8) for three of the comparables.

The Fact Finder recognizes that use of partial information of this nature is not the most ideal process of determining comparables but there is no precise way of doing so and some information is better than none and that information combined with common sense usually results in selection of a representative group of external comparables. Based on the data available and common sense the Fact Finder looked at the data to determine which, if any, proposed comparables should be eliminated. Based on the population of the communities (counties) served by the proposed comparables the Fact Finder eliminated Marquette General and Portage Hospital from consideration. Both of these Hospitals served communities more than 3 times the population of Schoolcraft. Additionally, Marquette General served 12,000 inpatients and 300,000 outpatients annually, which are significantly greater than the others. And from the extent of information obtained from the UP Health Care Network website it appeared Portage Hospital provided outpatient services only. The Fact Finder also eliminated the Bay Area Medical Center from consideration since it is located in Marinette Wisconsin. It is

recognized it likely serves citizens from Michigan but there was little means of gaining much information on it for comparison. The Fact Finder also eliminated Cheboygan Memorial Hospital because, even though it may serve a generally rural area, its service area in the Lower Peninsula.

It appears from the data obtained that Munising Memorial Hospital serves about the same population as Schoolcraft Hospital; is a critical access hospital with a reasonably similar number of beds and employees. However, the Fact Finder has chosen not to include it in the external comparables because there is no information in the exhibits presented through a personnel manual or other documents to reveal how the issues presented for findings and recommendations in this proceeding, other than the issue of wages, are addressed by the management and employees of Munising Memorial Hospital.

It also appears that OSF St. Francis Hospital is owned and operated by Sisters of the Order of St. Francis, a not for profit private corporation, but as indicated in Article 9(d) of Act 312, it is acceptable to compare employees in private employment in comparable communities performing similar services. Also, it is appropriate to compare the AFSME, management and non-union employees of Schoolcraft Hospital, as proposed by the Employer, because they are "other employees generally" in public employment within the Schoolcraft Hospital, and therefore within a comparable community.

Based on the above identified data and conclusions the Fact Finder determines that the internal comparables proposed by the Employer and the following external comparable communities/hospitals will be used for comparative purposes in assessing the issues presented by the parties: Baraga County Memorial Hospital, Ontonagon Memorial Hospital, Mackinaw Straights Hospital and Health Center, Helen Newberry Joy Hospital and Health Center, Grand View Hospital, Dickinson County Healthcare System, OSF St. Francis Hospital and Iron County Community Hospital.

FINANCIAL SITUATION

The General Background section of this report described some of the most recent financial circumstances faced by the Hospital and its employees. Article 9(c) of Act 312 provides guidance in considering the financial situation of the Employer when it states

one of the factors to be considered is "the interests and welfare of the public and the financial ability of the unit of government to meet those costs". The Employer, in its post hearing brief, urges the Fact Finder to heavily consider this factor in reaching his recommendations. The Union, in its post hearing brief, acknowledges that the Hospital went through a period of reduced revenue in 2006 but points out that cost reduction measures taken by the Hospital in response to that revenue reduction fell mostly on the employees. The Union also says the Hospital's decision to invest in a new building is resulting in fewer funds available for compensation to bargaining unit members.
The Union notes that the Employer has not indicated an inability to pay and argues that the Hospital's economic status is currently supple, partly due to the cost cutting measures the RNs and other employees were forced to endure in 2006.

Both parties provided exhibits on this subject. Employer exhibits E-9 and E-10 contained the consolidated financial statements for the fiscal years ending '03,'04,'05. Exhibit E-11 provided a summary of expenses year to date through December 2006. Exhibit E-12 is a projected capital budget summary for '07 through '09 and E-13 is a projected income/expense analysis for '06 and '07. The Employer also provided exhibits E-14 through E-18 which are a series of memos from management describing the cost cutting measures instituted by management during 2006 in response to lost revenue due to low census patient demand. The Union presented an analysis from a financial analyst of revenues and expenditures over the period 2001 through 2005 as part of U-17. These exhibits were all helpful developing a general picture of the Hospital's financial situation.

The exhibits reveal that total revenue increased by 9.1% in 2005 from 2004 with total net service revenue increasing 11.3 % for that time period. Total expenses increased 9.6% over that time period. However excess revenue over expenses over that time period declined by 11.8 %, a drop of $64,219, from $541,986 to $477,767. (E-10). This appears to be due in part because in June 2005 the Medical Care Facility stopped purchasing services from the Hospital resulting in a decrease in "other revenue" of $322,225. The situation involving lower than estimated inpatient and outpatient service demand during 2006, even with the expenditure reduction measures, resulted in an estimated revenue v expenditure (loss) of between $305,149 (E-11) and $204,786 (E-13). Proposed income and expenditures for 2007 project total revenue to be $18,853,556 and total expenses to be $18,553,556 leaving a net income for 2007 of $300,000. (E-13). The

projected increase in revenue for 2007 is about a 4% increase over the 2005 actual total income and the projected increase in total expenses for 2007 is about a 4.9% increase over 2005 actual total expenses. Using 2005 as a comparison to estimate 2007 appears reasonable if one considers that 2006 was an unusual year. The Hospital attributed the decline in patient service demand in 2006 primarily to a reduction in incidences of flu.

Comparing actual 2006 total operating income and expenses (E-11) to projected total revenue and expenses for 2007 (E-13) reveals 2007 projected income to be an 8.7% increase over 2006 and 2007 projected expenditures to be a 4.3% increase over 2006.

Assets limited to use and investments increased 7.5% from 2004 to 2005 to $1,226,879. (E-10) .It is noted at note 1 of the auditor's report (E-10) that "assets limited as to use include assets set aside by the Board of Directors for future capital improvements and risk management, over which the Board retains control and may at its discretion subsequently use for other purposes." Employer exhibit E-12 presents a projected need for capital expenditures for 2007, 2008 and 2009. These projected expenditures (excluding the actual construction of the new hospital which is expected to be supported by bond sales) are substantial as new equipment will be needed in the new hospital. It is unclear however how much of this capital expenditure for equipment can be included in the financing included in the bonding for the facility.

This information, taken as a whole, from the Fact Finder's perspective, reveals an Employer with a Board and Management that recognizes they need to move ahead on a new, more efficient and up to date facility, with fewer beds but improved services in order to remain viable and serve the community needs. At the same time, they must recognize that the quality of services provided will depend heavily on the quality of staff they have, particularly RNs, and the satisfaction and therefore retention of those staff. The Employer experienced a major decline in demand for services in 2006 but took measures to reduce costs to compensate for that loss of revenue. Those cost reduction measures were not easy on anyone but projected revenue and expenditures appear to be more balanced going in to 2007. The Hospital management and Board does need to consider the proper balance in allocating financial resources to its labor force and its expenditures necessary to move ahead with its new facility. As noted above, the Board does have some discretion to draw from its assets and to review its projections for total expenses and revenue for 2007 and 2008 in making these decisions.

The Fact Finder concludes that the Employer does have ability to pay "some" increases in compensation to bargaining unit members. The Fact Finder also concludes the extent of that compensation must be considered in the context of the financial situation outlined above. The recommendations contained in this report attempt to do that.

ISSUES

1. Article 8.02—Bargaining Committee (Employer issue)

Finding of facts and conclusions

The current contract provides for grievance committee representation by the Union in Article 8.01. That language states:

A. "RNs employed by the Hospital and covered by this Agreement shall be represented by a grievance committee comprised of three (3) RN's and their alternates who shall be employees of the Hospital and their selection shall be determined by the RNs.
B. The MNA will inform the employer in writing of the names of members and alternates of this committee.
C. The Hospital will recognize Grievance Committee members and non-RN representatives of the MNA in the processing of grievances."

Articles 8.02 through 8.04 address other matters. The Employer proposed adding language to this Article, which would take the place of the current language of 8.02 but retain the current language in 8.02 and renumber the Articles. The new language the Employer proposes would address the composition and formation of Union representation on a collective bargaining committee similar to the language in Article 8.01. The Employer's position is that it merely wants to formalize the practice that has been used between the Union and the Employer, be clear on the identity of the bargaining team members, and specify the number of Union members on the bargaining team and the number the Employer would pay for participation during bargaining. The Employer noted in its post hearing brief that during negotiations it was willing to recognize a maximum of 4 RNs for negotiation but was only willing to pay for 3. The Employer also points out that it is also concerned with the scheduling of bargaining as it relates to payment of RNs. The Employer notes that when it is paying for a RN during bargaining it may also have to pay overtime for a RN to replace the RN at the bargaining table, resulting in payment of 2 and ½ times normal pay.

The Union, in its post hearing brief, points out that even though there has been no language in the current agreement, the Union has never had an unreasonable number of members participate in bargaining and usually has a team of 4 that they elect to represent the Union in bargaining. The Union also points out that the practice has been that the Hospital has paid for RNs representing the Union in bargaining who would otherwise be working during negotiation sessions. The Union says since some negotiating team members are volunteering their time during negotiations it is inappropriate for the Employer to dictate how many can attend. The Union, in its post hearing brief did however, indicate it would be willing to limit the committee to 4 persons providing the Employer would be willing to pay all bargaining committee RNs their base hourly rate of pay for their time in negotiations, regardless of whether they are scheduled to work during negotiation time.

A review of the Comparable contracts reveals that 6 of the 8 comparable communities/hospitals do have provisions addressing this issue. Of those 6, all have the Employer paying for some or all of the RN Union representation during bargaining. Four of the six contracts specify a set number of representatives ranging from 3 to 5. One (Dickinson Co.) specifies up to 4 at the bargaining table with the Hospital paying for 3 and the Union agreeing to reimburse the Hospital for the gross wages of one. That number is increased to 5 at the bargaining table with the Hospital being reimbursed for one during "interest based bargaining".

The evidence supports insertion of language in the agreement on this issue. The parties are close to agreement but differ on the specified number and payment for RNs during negotiations.

Recommendation

The Fact Finder recommends the following language for Article 8.02:

A. RNs shall be represented by a collective bargaining committee comprised of 4 RNs and their alternates who shall be employees of the Hospital and their selection shall be determined by the RNs.

B. The MNA will inform the employer in writing of the names of members and alternates of this committee.

C. The employer will recognize committee members and business representatives of the MNA in the collective bargaining process.

D. The Employer shall pay up to 4 RNs at their regular hourly rate, i.e. no overtime, for any time lost from scheduled work due to negotiating functions. It is also agreed negotiating sessions, as much as possible, will be conducted during the hours customary to administrative functions of

the Hospital. RNs shall be scheduled, as much as possible, to accommodate the agreed upon negotiations schedule. (This provision to take effect upon ratification of the contract).

Rational

The majority of comparable contracts have a provision clarifying this process. Even though the parties have had some basic agreement on the process in practice, since it became a subject of negotiation, it is constructive to try to clarify the process in the contract. The majority of comparable contracts do require the Employer to pay for RNs during negotiations and the average number paid for is 4. None of the comparable contacts had the employer paying a rate greater than the regularly hourly rate and the Union acknowledged in its post hearing brief that the practice has been that the Hospital only pays for RNs who would otherwise be working during negotiation sessions. The recommended language in subparagraph D, which is taken from the Ontonagon and Grand View contracts, is intended to encourage the parties to plan for and schedule negotiating sessions to avoid having the Employer have to schedule an RN for overtime to replace an RN at the negotiating table.

2. Article 10.02 A—Discipline (Employer proposal)

Finding of facts and conclusions

The Employer proposes deleting language of subsection A of Article 10.02. The Article addresses "Reasons for Which Discipline Cannot Be Imposed" and states, "No RN shall be subject to disciplinary action for:

A. The failure of the RN to follow the direction of a supervisor when such failure is based upon the reasonable belief of the RN that the person or property of the RN would be subject to a high probability of danger for a specific reason (giving consideration to the normal risks regularly inherent in the work assignments of RNs) by carrying out of such assignment(s), and the RN has so notified the supervisor prior to such refusal."

The Employer argues that the normal procedure in Hospital settings, consistent with the management rights provisions in agreements, is that an employee must carry out an order or an assignment and then grieve the Employer's action on the basis that it placed the employee in an unreasonably dangerous situation by carrying out the assignment. In its post hearing brief the Employer points out that the nursing director testified that the American Nurses Association code of ethics forbids a RNs refusal to provide care. The Employer also argues that the provision could enable a RN to object

to caring for a patient with HIV, bird flu or smallpox for example because of the high probability of danger in carrying out such an assignment. The Employer says the current contract language is not workable and notes that the Union did not put forth any comparable language in comparable community/hospital contracts.

The Union argues that if this language is removed an RN, faced with a directive to perform a specific task that the RN reasonably believed would place the RN in a high probability of danger, would be left with the choice of either a) going ahead with the task and taking the risk and then later grieving, or b) refusing the directive and defending disciplinary actions in a grievance procedure. The Union points out in its post hearing brief that arbitration decisions have held that health and safety of the employee is a recognized defense to insubordination. The Union also argues that the Employer presented no testimony or exhibits demonstrating that this language has presented a problem in the past and says that it has been in the parties' agreement for a significant period of time. The Union says this is another example of the Employer attempting to take something out of the current agreement for no justifiable reason where there was a fair exchange of compromise to reach agreement on that language.

Recommendation

The Fact Finder recommends retention of subsection A within Article 10.02 of the current agreement.

Rational

This was not an easy issue to address. A review of the comparable community/hospital contracts reveals the language in 10.02A is unique and not contained within any of the comparables. This would support the Employers position. Language in those contracts relating to situations which this language tries to address is however addressed to some degree in those contracts. For example Baraga's contract addressing its no strike clause says no employee shall "refuse to do *reasonably assigned work*" etc. On the other hand the Helen Newbery Joy Hospital contract makes it very clear in Article 8.1 addressing discipline that "an employee who -- fails to perform any duties assigned shall be subject to disciplinary action". Grand View Hospital contract language Article IX addressing strikes and work interruptions states "It is, therefore, agreed that since this Agreement provides for settlement of any and all disputes and grievances arising from the condition of the Agreement that there will be no suspension

of work through—refusal to handle or care for any patients—which interfere with or limit the Hospital in fulfilling its obligation to the community. The Hospital shall have the right to discipline or discharge any nurse participating in—refusal to handle or care for any patients, and the Association agrees not to oppose such action. It is understood, however, that the Association shall have recourse to the grievance procedure."

One might conclude, based only on the comparables, that this language should be removed. The difficulty is how will the parties address this issue with the language removed? Article 7.00 of the current contract addresses the role of the RN and provides some guidance but doesn't address specifically what happens when there is a question of employee safety.

Article 16.00 of the contract addresses management rights but subsection B-7 says management rights include the right to "carry out the ordinary and customary functions of management, *subject only to such restrictions governing the exercise of these rights as are expressly specified in this Agreement* or by law." Of course the language of Article 10.02A does expressly specify conditions involving imposing discipline. A careful reading of that language leads the Fact Finder to believe it was not developed without deliberation and in the context of other provisions in the agreement. If it is to be removed or modified it should be done through further negotiations and agreement by the parties and in the context of other related provisions in the agreement.

The Fact Finder believes it is important not to recommend changes in contract language that may lead to more, not less, disagreement on interpretation and application. There was no evidence that the current language is resulting in management problems or grievances over interpretation or application. Under the current language it appears the Employer could impose discipline on the basis that the RNs refusal to follow a directive was not based on a "reasonable" belief of a high probability of danger. The language does require the RN to notify the supervisor prior to such a refusal so the Hospital can take other action to fulfill its obligations to the patient and the community. Additionally, the Employer argues strenuously in its post hearing brief for the premise that the party advancing a proposal has the burden of establishing why its proposal should be adopted. Following the Employers argument would require the Employer to provide more evidence on the issues it raises than the union to persuade the Fact Finder that its position should be recommended. The Employer has not done so on this issue.

3. Article 11.16 (new sec)—Grievance procedure—election of remedies (Employer Proposal)

Finding of facts and conclusions

The Employer proposes a subsection be added to Article 11 – Grievance and Arbitration procedure. The proposed subsection would address election of remedies and would specify if an employee uses the grievance procedure provided for in this agreement and, subsequently chooses to use a separate statutory or administrative remedy that may be available through any other administrative or statutory procedure, then the grievance procedure in this agreement would not be used and be deemed to have been withdrawn and any relief that might have been obtained had the grievance procedure been advanced would be forfeited. An exception would be made to this provision if criminal charges were brought against an employee.

The Employer urges its inclusion in the agreement so that in the event an employee pursues an issue in multiple forums the Employer will avoid the time and expense of litigating or challenging the action in multiple forums. The Employer presented testimony on a recent example where an employee filed both a grievance and a wage hour complaint over the same issue. Both were withdrawn but the Employer sites this as an example, which leads to its concern and proposal.

The Union, in its post hearing brief, questions the legality of the Employers proposal and sites several legal cases and arguments in support of its position. Additionally, the Union points out the Employers proposal would require the Employee to be limited to one forum but retain the ability of the Employer to use both the grievance forum and the courts involving an alleged criminal action.

Recommendation

The Fact Finder recommends the proposed new language in Article 11 pertaining to election of remedies NOT be included in the agreement.

Rational

A review of the comparable communities/hospitals contracts reveals none of them have language in their contracts, within the grievance procedure or elsewhere, like this. The Employer did not site any other precedent for this language. Neither was there substantial testimony or evidence presented that there has been extensive use of

multiple forums for settling issues being pursued by members of the bargain unit. The Fact Finder did not research the legal arguments put forth by the Union but it is quite likely that if this language were to be adopted in the agreement and a situation developed where an employee chose to pursue multiple forums for resolution there would be extensive litigation and cost involved just over the issue of whether the language was enforceable or not. Again, on this issue, the rational for the recommendation is: there doesn't appear to be a major problem, why insert language that may create even more problems?

4. Article 12.04—Seniority for supervisory positions (Union Proposal)

Finding of facts and conclusions

The Union proposes a revision to Article 12.04 of the current agreement. That language currently reads, "If a staff RN is promoted to a supervisory position his/her staff seniority shall freeze at the time of promotion." With the change proposed by the Union the language would read, "If a staff RN is promoted to a supervisory position his/her staff seniority shall freeze *for a period of one (1) year. After a period of one (1) year, all staff seniority shall be lost."* Staff seniority is defined as the length of time worked as a staff RN in the Hospital since the last date of hire as opposed to "Hospital Seniority" which is the length of time a RN has been continuously employed in any capacity in the Hospital.

The Union says it seeks this change because the current language allows an RN to move to a supervisory position for an indefinite period of time and then return to the bargaining unit using the seniority established before leaving to displace bargaining unit RN's. The Union says its proposal is reasonable because it gives the RN who moves to a supervisory position a sufficient amount of time to decide whether to remain in that position or return to the bargaining unit without loss of seniority. The Union argues this issue involves the Union more than the Hospital and would have little consequence to the Hospital.

The Employer objects to the change on the basis that it can act as a disincentive for an employee to pursue a transfer or promotion outside the bargaining unit. The Employer says the consequence of loss of seniority after one year in the new position may chill an employee's interest in applying for a promotion. The Employer says if that

is the case then bargaining unit members turn down promotional opportunities and the Employer loses the benefit of the skills of RNs with potential for advancement.

Recommendation

The Fact Finder recommends the language in Article 12.04 be modified to read:

> "If a staff RN is promoted to a supervisory position, his/her staff seniority shall freeze for a period of eighteen (18) months. After a period of eighteen (18) months all staff seniority shall be lost." (Effective upon ratification of the contract).

Rational

A review of the external comparables reveals that five of the eight comparables do not address the issue directly. One (Ontonagon), freezes seniority when a RN transfers out of the bargaining unit and begins it again upon return similar to Schoolcraft Hospitals current provision. One (Helen Newberry), allows seniority to be frozen up to 3 months with no loss of seniority but if the RN is out of the bargaining unit longer than 3 months seniority is lost. One (OSF St. Francis), provides that if an RN leaves for another position out of the bargaining unit seniority will be lost after 45 days. While external comparables don't provide overwhelming support for change they do demonstrate that some Employers and Unions have addressed the issue and for those that have, a set time for seniority to expire has been established. In at least two of the three contracts addressing the issue a time period shorter than 12 months has been established.

A review of Employer exhibit E-8, the Employee Handbook, also is of assistance in formulating a recommendation. On page 9 of that exhibit a time for performance evaluation is established. That time is at the end of the first 60 days in the position and annually thereafter. That would mean if a RN took a supervisory position the Employer and the employee would have the opportunity to review performance and evaluate whether the job "fits" two months and again at 14 months after taking the position. This time period seems likely to allow both the Employer and the employee to determine if the Employee would likely return to the bargaining unit. This recommended time period of 18 months in the Fact Finders recommendation is made in the interest of responding to what is generally viewed as a more internal preference for how to address the staff seniority by the bargaining unit members balanced with the

point the Employer makes about not wanting to discourage employees from seeking supervisory positions. The 18 month period should give both Employer and employee time for a realistic assessment of the permanency of that change.

5. Article 13.01 (new subsection)—Job posting and advancement (Union Proposal) —Deletion and amendments to subsections (Employer Proposals)

Finding of facts and conclusions

Both parties propose revisions to this Article. The Union proposes a new subsection be added that would address notification of job postings to RNs who may be off for extended periods during the time the job is posted. The proposed new language would state: "The nursing supervisor shall make every effort to contact nurses that are off work during the posting period."

The Employer proposes to 1) delete subsection F which states: "If no qualified RN employed by the Hospital applies for such opening the Hospital may fill the opening by hiring a new qualified RN;" 2) modify language in subsection H by deleting reference to minimum qualifications based on criteria "for the position;" 3) modify language in subsection I which describes the selection process among two or more candidates who meet minimal qualifications for a position by changing the wording addressing the criteria upon which minimal qualifications would be determined from " work record, education, experience, ability and other criteria *which is valid for the position* to " work record, education, experience, ability and other *relevant* criteria;" 4) modify language in subsection J by inserting the term "equally" in front of the word "qualified" when referring to the process of awarding a position based on seniority to one of two or more applicants.

Addressing the Union's proposed new subsection, the Employer objects on the basis that this places an additional responsibility and burden on the Employer which is appropriately the Employee's responsibility. The Employer says no other comparable community/hospital contracts require this of the Employer. The Union, in support of its proposal, says since the number of nurses in the bargaining unit is relatively small it is unlikely many RNs would be off during the entire posting period and this procedure is not too much to ask of the Employer.

Addressing the Employer's proposed revisions; the Union argues 1) the Employer should be required to award positions from within provided candidates currently employed by the Hospital qualify for the position, as subsection F currently requires. The Union says the Employer's proposal is inconsistent with the intent of the seniority provisions elsewhere in the contract relating to job postings and therefore the Union objects to the deletion of subsection F. The Union also objects to the Employer's proposed language revisions in subsection H, arguing that the insertion of the term "relevant" and the deletion of the term "for the position" leaves the language too broad and allows the Hospital to be too subjective in selecting the candidate for the position. The Union argues the change would mean the criteria used by the Hospital for selection would not have to be related to the position at all, which is not appropriate. The Union also objects to the Employer's proposed language changes in subsections I and J which would apply the seniority test if two or more applicants have "equal" qualifications. The Union argues it is difficult to imagine that two applicants would have "equal" qualifications and if this is applied narrowly by the Hospital then seniority would never be a factor. The Union says an RN who meets the "minimum" qualifications (as stated in the current language) and is more senior, should be offered the position.

Recommendation

The Fact Finder will address the Employer's proposals first and then the Union's proposal. **With respect to the Employer's proposals the Fact Finder recommends:**

- The Employer's proposal to delete subsection F should be rejected. Subsection F should be retained in the agreement.
- The Employer's proposal to modify subsection H should be revised slightly. Language of subsection H should read: "The Employer shall determine who meets minimum qualifications based on the following criteria: work record, education, experience, ability and other relevant criteria for the position."
- The Employer's proposal to modify subsection I should be accepted. The last sentence of the proposal should read: "Chance shall be defined as flipping a coin".
- The Employer's proposal to modify subsection J should be accepted.

With respect to the Union's proposal the Fact Finder recommends:

The Union's proposed language should not be accepted but a new subsection be included to read:

> "The Hospital shall submit to the Staff Council Chairperson (or his or her designee in the Chairperson's absence) a copy of all Postings for bargaining unit positions on or before the first day of such postings. The

nurse who expects to be unavailable during the posting/awarding process should communicate his or her interest in being notified of the postings to the Staff Council Chairperson. Upon selection of a candidate for such a posted position the Hospital shall, within three (3) days of the date the successful candidate is awarded the position, notify the Staff Council Chairperson (or his or her designee in the Chairperson's absence), in writing, of the applicant selected, and of all bargaining unit applicants who were not selected for the posted position."(All of these provisions to become effective upon ratification of the contract).

Rational

The Fact Finder's review of the comparable community/hospital contracts revealed that 7 of the 8 contracts had provisions that gave preference in filling positions to RN's currently employed by the Hospital and/or in the bargaining unit before offering positions to others. The comparables do not support the Employer's position to delete subsection F and the Employer has not demonstrated a basis for doing so. The Employer argues in its supplemental brief that allowing competition from outside benefits both parties because it will strengthen employees over time. There is no evidence to support this statement whereas the evidence in the comparables supports retention of this language. With respect to the Employer's proposed changes to subsection H, the comparables reveal that language varies but that nearly all of the contracts relate the criteria for selection to the qualifications needed for the *position.* Therefore the Fact Finder has recommended retaining reference to the position in this language.

A review of the Comparables reveals, with respect to the Employer's proposed changes to subsections I and J, six of the eight comparables contain language referring to RNs who have "equal" qualifications and two refer to "minimum" qualifications. The language describing the criteria, while varying, is similar in most of the contracts to the language in the Schoolcraft current contract. The comparable communities/hospitals must not be experiencing the problems envisioned by the Union through application of this language.

The language revision recommended by the Fact Finder in place of the Union's proposed language is an attempt to accomplish what the Union is seeking with minimal additional effort by the Employer. A review of the comparables revealed none had language that compared with the language the Union proposed. Several had language similar to that crafted by the Fact Finder. In fact the Fact Finder's proposed language is

taken from a combination of approaches found in the Dickenson County and Grandview Hospital Contracts.

6. Article 18.01 and 18.02—Fulltime and part time RN definition (Union Proposal)

Finding of facts and conclusions

Article 18.01 in the current contract defines full time RN's as those regularly scheduled to work eighty hours of more per two week period. Article 18.02 defines part time RN's as those who are regularly scheduled to work less than eighty hours in a two week period. The Union proposes to change the language so that a nurse who regularly works seventy-two or more hours in a two week period would be defined as a full time nurse and those who regularly worked less than seventy-two hours in a two week period would be considered part time.

The Union argues that this change will allow nurses who work 12 hour shifts three shifts per week to be recognized as full time. The Union notes that the current AFSCME contract with the Employer recognizes employees who regularly work nine or twelve hour shifts and seventy-two hours in a two week pay period as full time employees. The Union says it is common in the nursing field to consider those employees working seventy-two hours in a two week period as full time employees. The Union says there is no economic impact resulting from this change because benefits are based on hours worked, not the designation of full time or part time.

The Employer opposes this change noting that the comparables do not support it. The Employer agrees it will have little if any economic impact but says the current language defining full time at eighty hours per two week period was established during negotiations resulting in the most recent, current, contract and the Union has failed to justify why this change is needed.

A review of the comparable contracts reveals that five of the eight comparable contracts use language similar to the current contract language, i.e. defining full time RN's as those regularly working 80 or more hours a week per two week period. Two of the comparable contracts use 72 hours or more as the definition of full time and one is silent but it appears those nurses work 24 hour shifts. It is also noted that the AFSCME contract retains the requirement of 80 hours or more per two week period for

employees working eight hour shifts and applies the 72 hour per two week period requirement for those regularly scheduled to work 9 to 12 hour shifts.

Recommendation

The Fact Finder recommends no change in Article 18.01 and 18.02 pertaining to the definition of full time and part time RN's as proposed by the Union.

Rational

There is insufficient evidence to support this change. The majority of the comparables have language similar to the current contract language. While it is true that the definition recognizing employees regularly working 72 hours per two week period is specified in the AFSCME contract it is noted that it only applies to those employees regularly working shifts longer than eight hour shifts. That is not what the Union is proposing in its proposed language change.

7. Article 18.02—Part time RN Definition (Employer proposal)

Finding of facts and conclusions

The Current Contract contains language in Article 18.02, in addition to specifying the definition of a part time RN as one who is regularly scheduled to work less than eighty hours per two week pay period. The additional language is contained in sub-paragraphs A and B and states, in effect, that a part time RN who works full-time hours (6) months out of (12) calendar months is eligible to reclassify as a full-time RN or remain a part time RN. Excluded from the calculation of hours worked are hours to fill in for sick, vacation or leave of absence coverage.

The Employer proposes to delete the language contained in sub-paragraphs A and B. The Employer argues that the language is confusing and misleading and could result in grievances over interpretation or application. The Employer argues that full time positions are created by the Employer when the need and budget support establishing such a position and a part time employee, or a part time employee who has met the eligibility to be designated a full time employee under the criteria established in sub-paragraphs A and B, could apply for the position. The Employer says the language is meaningless or at least illusory.

The Union opposes deletion of the language, arguing that it is important for the RN's to be properly recognized for the amount of work they perform. The Union says

recognizing employees as full time costs the Employer nothing and the Employer has not demonstrated a sufficient reason to "takeaway" this language, which was accomplished through prior negotiations. Neither party pointed to language in comparable community contracts to support their position and a cursory review by the Fact Finder provided little evidence of similar language in comparable contracts.

Recommendation

The Fact Finder recommends the language in sub-paragraphs A and B of Article 18.02 remain in the contract.

Rational

The Employer makes a valid point that the current language in paragraphs A and B could be improved for clarity and intent. However, the language is language the parties developed through the negotiation process. The Employer's position is to delete the language entirely rather than to offer clarifying language. The Fact finder concludes the language must have had some meaning to the Union and the Employer when initially offered and agreed to by the parties. While the Employer argues that leaving it in could lead to interpretation disputes, there is no evidence that has occurred to date. If that were to occur in the future that may result in some clarifying interpretation. Until that occurs, particularly since there has been no evidence of problems resulting from the current language, the Fact Finder is reluctant to recommend that language that was apparently quite recently agreed to by the parties, be totally deleted. Of course the parties, in further negotiations, have the opportunity to clarify the language if, as the Employer suggests, they find it confusing.

8. Article 19.01 C, D (new sec's)—Consent for schedule change (Union proposal)

Finding of facts and conclusions

Article 19 of the Current contract deals with scheduling. Article 19.01 A provides for the Nursing Director or his/her designated representative to prepare a work schedule (covering a four week period, two weeks in advance of the beginning of the schedule. Paragraph B permits the Staff Council and the Employer to try a pilot project in self scheduling. The Union proposes adding two new paragraphs to Article 19.

Paragraph C would state:

> "Once a completed schedule is posted, it may not be changed by management without the affected RN's consent."

Paragraph D would state:

> "Part time RN's will be scheduled by seniority, with the higher senior nurses receiving more scheduled hours than the less senior nurses."

Proposed paragraph C will be addressed first. The Union states, in support of its proposed addition of paragraph C, that there has not been a problem with RN's accommodating a change in schedule but there has been a problem with management changing the schedules without informing the affected nurses and some nurses then being unaware of the change in schedule. This presents problems for nurses who may become aware of the schedule change on short notice and have problems making last minute adjustments for day care or other matters. The Union argues that it is not the intent of its proposal to allow RN's to refuse any proposed change but rather to allow the opportunity for refusal when extreme circumstances require it.

The Union also notes, in its supplemental brief, that the Employer, in its final brief, cites an incident which occurred on February 28, 2007, after the fact finding took place, in support of its position on this issue. The Union objects to the Employer's reference to this alleged incident on the basis that it was not part of this record and therefore the Union has no way of verifying its truthfulness or rebutting the Employer's statements. The Union asks that the Fact Finder give no weight to the Employer's reference to this incident on this issue or any other issue before the Fact Finder.

The Employer opposes the addition of Paragraph C arguing that scheduling is a dynamic and continuously evolving process and since the schedule must be posted two to six weeks in advance it is quite frequently necessary to make changes from the original posting. The Employer says provisions in Section 19.02 set out procedures for coverage of shifts including, if all efforts to obtain volunteers to fill the shifts fail, convening a special conference to facilitate a mutually acceptable solution. The Employer says the Union's proposed language is unnecessary and unworkable. The Employer says it has the responsibility to provide nursing services and it could not meet that responsibility in the event one of the RN's scheduled was injured or ill and no RN consented to a change in schedule.

A review of the contracts of the comparable communities reveals that the majority of contracts have language that permit the employees to change shifts if they

can find a replacement and the replacement doesn't result in overtime. These changes must be approved by management. Others have language that specifies the shift schedule can be changed "by mutual consent between management and the nurses affected". The majority of contracts have language which provides a method for the schedule to change with both management and the nurses affected having to agree to the change. The current contract language, favored by the Employer, provides little, if any voice or role for the nurses affected in the change. The language proposed by the Union would, theoretically, permit the nurses to refuse to change. Neither of these approaches is consistent with the manner in which the majority of comparable community contracts address this issue.

Recommendation

The Fact Finder recommends the parties adopt language similar to one of the following paragraphs to address procedures when it becomes necessary to make schedule changes following the posting of the schedule:

1. Any schedule changes made within two (2) weeks of the assigned hours of duty shall only be made after notifying the employee of such changes. The employee has the right to mutually agree or disagree with such changes within the two (2) week period, and if the employee disagrees the changes will not be in effect except in cases of special circumstances beyond the control of the Hospital. [See Baraga contract, Article 30.04]
2. Posted schedules may be changed by the V.P. of Patient Care Services or their designee in consultation with the nurses involved. It is the responsibility of the nurse to find a replacement for a scheduled shift once the schedule has been posted, except in an emergency. All changes must be put in writing using the "Change of Shift" form, signed by both nurses, and submitted to the nursing supervisor or manager for approval. [See Grand View contract, letter of agreement re: scheduling]
3. Once a schedule has been posted it shall not be changed except with the mutual agreement between the Employer and nurse(s) affected or Article XXVII of this agreement. [See Dickenson Co. contract, sec. 11.104]
4. Changes to the posted schedule may be made by mutual agreement between the manager and the affected employee(s), and agreement by the affected employee(s) will not be unreasonably withheld. [See St Francis contract, sec 18,3]. (Effective upon ratification of the contract).

Rational

The majority of the comparable community contracts establish a process that involves timely notice of changes and an opportunity for those affected to mutually agree to changes unless in cases of emergency or out of the control of the Hospital. The Fact Finder believes this to be the more appropriate approach rather than to have a

unilateral decision made by either the Employer or the nurses affected. The parties are urged to refer to the recommended language as a guide to fashioning language acceptable to both parties. The Fact Finder also notes that in reaching this recommendation he gave no consideration to the Employers reference in its post hearing brief to any alleged incidents occurring after the Fact Finding hearing was concluded.

The Union's proposal to add paragraph D will now be addressed. The Union seeks to have the Hospital schedule part time RN's for available hours based on seniority. The Union says this does not affect the Hospital and this proposal provides the RN's some permanence to their schedules.

The Employer opposes the inclusion of proposed paragraph D arguing that it decreases the flexibility the Employer needs to contain costs and increases the complexity of scheduling.

A review of the contracts of the comparable communities provides little guidance on this issue. The majority of the contracts do not specifically address scheduling of part time nurses and where they do address adding nurses to the schedule they generally use a rotating system rather than seniority system. The Fact Finder does note that Article 19.03 C of the current contract, which addresses a change in scheduling, specifies that if more part time RN's than are needed have volunteered to work additional days, they shall be called in the order of the greatest seniority. Paragraph D, on the other hand, states that if there is an insufficient number of part time RN's volunteering to work extra days, the least senior RN will be called first.

Recommendation

The Fact Finder recommends the Union's proposed addition of paragraph D in Article 19.01 NOT be included in the contract.

Rational

A review of the comparable contracts does not support inclusion of this language. Additionally, the Employer may be right that scheduling part time RN's based on seniority, rather than a rotating basis or some other basis, could result in some additional costs to the Employer if more senior part time employees earn more than less senior employees. The contract might be improved by specifying some criteria for the regular scheduling of part time employees, either most senior, least senior or on a

rotating basis, but the Fact Finder is reluctant to recommend the Union's proposal without further evidence to support it, particularly in light of the absence of similar approaches in comparable contracts.

9. Article 19.02 C (replace with new language & re-letter sec's)—Weekends off (Union Proposal)

Finding of facts and conclusions

The Union proposes new language be added to Article 19.02 at paragraph C and re-lettering the current paragraph C to D and re-lettering subsequent paragraphs. The new language proposed by the Union is:

> RN's will not be scheduled to work more than two (2) weekends per calendar month. The nurse must be contacted by management for any additional weekend shifts. For purposes of this article, weekends are defined as Saturday and Sunday for day shift, and Friday and Saturday for night shift.

The Union argues that its proposed language is common in the nursing field. The Union also states in its post-hearing and supplemental briefs that it is trying to propose a reasonable approach and recognizes two weekends off in a calendar month may not be able to be strictly adhered to and that is why it included language indicating the nurse must be contacted by management for any additional weekend shifts.

The Employer opposes the inclusion of this language and argues it would place an extra and unrealistic burden on the Employer to ensure adequate staffing. The Employer says the comparable community contracts do not support inclusion of this language in the contract.

A review of the comparable community contracts reveals that with the exception of one, Helen Newberry, all speak to the issue in some way. The Baraga Contract provides that any RN that works an extra Saturday or Sunday over her normally scheduled every other weekend will be paid an additional $2.25 per hour for all hours worked during the extra Saturday or Sunday (sec. 30.12). The Iron Co. contract also provides extra money when an extra weekend shift is worked (sec. 53.1). Mackinac Straits and Grandview contracts provide a weekend differential pay. Those contracts that do not provide additional pay acknowledge that the general goal is to provide two weekends off per four week period.

Recommendation

The Fact Finder recommends the parties adopt language similar to one of the following paragraphs to address the issue of weekends off:

1. Generally nurses shall be scheduled off two (2) weekends out of each four (4) unless the nurse requests or agrees otherwise. To the extent possible, holidays will be rotated evenly among the employees. To clarify, part-time or full-time staff may volunteer to be scheduled to work more than two weekends per posted schedule [Ontonagon Contract, sec. 5].
2. The Hospital will schedule nurses so they will have an annual average of two (2) weekends off in each four (4) calendar weeks, unless the nurse waives this privilege. For purposes of this section, "weekend" is defined as Saturday and Sunday for the day and evening shifts and Friday night and Saturday night for the night shift unless otherwise defined in a nursing unit [St Francis contract, sec. 18.4].
3. With the exception of Home Health, the OR, Dialysis, and Diabetic Education, the Hospital will schedule nurses off every other weekend unless mutually agreed between those affected and management. Weekends are defined as Saturday and Sunday for the 7-3 and 3-11 shift and Friday and Saturday for the 11-7 shift [Iron Co. contract, sec. 12.10]. (Effective upon ratification of the contract).

Rational

The majority of the comparable community contracts address this issue similar to the language proposed for consideration by the Fact Finder. This fact supports the Unions position that addressing this issue through language of this nature is common in the field. It is apparent that other Hospital Employers have been able to fulfill their responsibilities to patients and still generally schedule their RN's off two weekends in a four week period. The Fact Finder urges the parties to develop language to address this issue using the examples provided in the recommendation.

10. Article 19.03 G (new sec)— Outpatient pay for after work hours (Union Proposal)

Finding of facts and conclusions

The Union proposes a new paragraph G be added to article 19.03 that would require payment of double time for a minimum of two hours or for actual time worked if in excess of two hours for outpatient nurses who come in after work hours to perform outpatient procedures. The current contract does not specifically address this but does call for pay at time and one half for any RN called in to perform outpatient procedure. The Union says this would merely put in to the contract a practice that has been in place for several years. Testimony revealed that this issue was recently focused on in a

grievance filed when a nurse was denied double time. The Union argues that the nurses have relied on this level of payment and without this language in the contract those nurses affected would have a decrease in income, while on the other hand it would not result in a significant increase to the Hospital.

The Employer opposes adding this language to the Contract and presented witnesses testifying that payment of double time was not past practice and if double time payment occurred on occasions it was done in error. The Employer argues that the Union has offered no evidence that the current time and one half payment is not comparable to that paid by other Hospital employers.

Recommendation

The Fact Finder recommends the addition of paragraph G in Article 19.03 as proposed by the Union NOT be placed in the contract.

Rational

There was conflicting testimony by the parties on this issue. The Union testified that payment of double time was past practice. The Employer testified that it was not past practice and double time payments that occurred should not have occurred. The Fact Finder believes there is likely truth in both statements. Perhaps following fairly recent changes in management and in light of the fiscal conditions experienced by the Hospital the past 18 to 24 months the current administration realized it was not required to pay double time and chose not to. A review of the comparable community contracts by the Fact Finder could find no specific provisions specifying double time payment for after hours work for outpatient cases as proposed by the Union. The Fact Finder does not believe the Union has provided sufficient evidence to support its proposal.

11. Article 19.03 (new sec)—Make overtime mandatory (employer proposal)

Finding of facts and conclusions

The Employer proposes to modify the language in article 19.03 by adding a new paragraph A to read, "Overtime is mandatory, not optional" and re-letter the remaining paragraphs. In the new paragraph B the Employer proposes to strike the following language: "Full time and 36 hour RN's retain the right to refuse to come in on a scheduled day off."

The Employer argues that it needs the authority to mandate overtime to fulfill its first priority to provide sufficient care to its patients. The Employer notes that unexpected illnesses, family emergencies and patient needs arise between the time the staffing schedule is posted and when changed circumstances arise which necessitate calling nurses to fill in for unforeseen vacancies. The current contract requires the Employer to call Nurses to request they come in and to do so in a prescribed manner so as to avoid paying overtime if possible (Sec 19.03). The Employer says this is burdensome and time consuming for staff. In its post hearing brief the Employer says it has proposed concepts of "on call" assignment or a scheduled "back up" status to provide coverage and has encouraged the Union to present proposal(s) of this nature for the Employers consideration.

The Union opposes this change and argues the Employer did not produce any evidence showing there has been an inability to obtain sufficient volunteers to work extra hours or unscheduled shifts. The Union, in its post hearing brief, sites studies which indicate reduced use of overtime has a relationship to better quality of service and notes in Exhibit 16 that adding this language might result in some Employers using this as a regular scheduling tool without regard to an RN's personal life, commitments, obligations and fitness for duty.

The Union also points out, in its supplemental brief, that while the Employers post hearing brief states that the Employer needs this provision "if all other attempts to provide coverage fail" there is nothing in the Employer's proposal to indicate that it will only be used as a last resort. The Union also notes that the Employers post hearing brief addressing this issue sited, as it did on a previous issue, an incident which occurred on February 28, 2007, after the fact finding took place. The Union objects to the Employer's reference to this alleged incident on the basis that it was not part of this record and therefore the Union has no way of verifying its truthfulness or rebutting the Employer's statements. As stated on the previous issue, the Fact Finder gave no consideration when developing a recommendation on this issue to the Employers reference in its post hearing brief to any alleged incidents occurring after the Fact Finding hearing was concluded.

Recommendation

The Fact Finder recommends the language proposed by the Employer to modify Article 19.03 to permit the Employer to mandate overtime NOT be included in the contract.

Rational

A review of the eight comparable community contracts reveals that five of them address this issue by instituting some type of "on call" or "standby" system with some reimbursement for that status (Baraga, Newberry, Grandview, Dickenson, Iron). One contract (Mackinac Straits) appears to prohibit mandated overtime and two (Ontonagon, St. Francis) appear to allow mandated overtime. The Fact Finder recognizes the positions and valid concerns of both parties but views the Employers proposal as an inappropriate way to address the issue. The majority of comparable communities have found other ways to accommodate the needs of the Employer while recognizing the imposition placed on the Employees when being asked or required to work and unscheduled period. The "on call" approach seems to be a method most used and the Fact Finder recommends the parties review those comparable contracts using this approach for potential agreement. If the "on call" approach is not acceptable a review of the language in the St. Francis contract at Article 8.6 may provide some guidance for clarifying language to supplement the existing or any proposed procedure.

12. Article 20.01—wages (Union and Employer proposal)

Finding of facts and conclusions

Both parties propose changes in Wages. The Union's last proposal is to add a 25 year step at the following rate: RN = $24.21 and OR RN = $27.70. The Union also proposes to add a 50 cent per hour adjustment for steps 5 years and up and then provide the following across the board increases:

8% retroactive effective Nov. 1, 2005 to Nov. 1 2006.

6% retroactive effective Nov. 1, 2006 to Nov. 1, 2007

6% effective Nov. 1, 2007 to Nov. 1, 2008

The Employers last proposal on wages proposes across the board increases to the current wages as follows:

2% non-retroactive for the period Nov. 1, 2005 to Nov 1, 2006

2% retroactive effective Nov. 1, 2006 to Nov. 1 2007

2% effective Nov. 1, 2007 to Nov. 1, 2008

Both parties presented evidence and testimony during the hearing and arguments in their respective briefs to support their positions. The Fact Finder is appreciative of the information and exhibits provided but also did a fairly extensive independent review and analysis of the comparable community contracts on the wages and benefits. The Fact Finder wants the parties to know that as I addressed the issue of wages, I did so after reviewing other principal economic issues presented for recommendation in this proceeding. I reviewed how comparable community contracts addressed those issues along with wages and have reached my recommendation on wages in the context of recommendations on other economic issues such as 1) shift differential, 2) specialty certifications, 3) daily overtime, 4) retiree health, 5) health insurance, 6) paid time off revisions, 7) holiday pay, 8) uniform allowance, 9) longevity pay, 10) employee discount for services, 11) incentive pay for short notice call in, and the Employers overall fiscal situation and projected plans. The result of that review on wages will be spoken to in the rational Article below but it should be recognized that the recommendation on wages, as well as the recommendation on other economic issues, was done in the context of the overall package of wages and benefits.

Recommendation

The Fact Finder recommends the following with regard to wages:

- That a 25 year step increase be included in the wage scale at the following rate: RN = $23.75 and OR RN = $26.24. (Effective upon ratification of the contract).
- That a 50 cent per hour adjustment for steps 5 years and up NOT be added to the wage scale
- That across the board increases to the current wages be as follows:
  2% retroactive effective Nov. 1, 2005 to Nov. 1, 2006
  4% retroactive effective Nov. 1, 2006 to Nov. 1, 2007
  4% effective Nov. 1, 2007 to Nov. 1, 2008

Rational

A review of the comparable community contracts reveals that four have a 25 year step increase and a fifth one, St Francis, will institute it in '08-'09. Employer exhibit E-20 reveals that currently there are only two nurses who would qualify for this step and six that fall within the 20 plus years category. This is not an uncommon provision in Contracts and encourages a stable, experienced and mature workforce. The Fact Finder arrived at his recommended amount of 25 year step level by reviewing the incremental increases at the 10, 15 and 20 year levels in the current contract. Adding 44 cents to the

20 year level results in the 25 year figure recommended. Adding 44 cents is generally consistent with the incremental increases at the 10, 15, and 20 year levels.

The Union argues that its members beginning wages are 10 % below the average and 20% below the average at the 25 year mark. A review of the eight comparable community contracts chosen in this proceeding does reveal that RN's wages at Schoolcraft Hospital appear to fall behind those of comparable communities as seniority increases while the beginning wage seems to be quite competitive. A review of the comparable community contracts that do have a step increase at the 25 year mark reveals the average pay rate at the 25 year level for '05 – '06 is approximately $26.67. Nevertheless, the Fact Finder believes readjusting the wage rate increases needs more thought and calculation involving both parties than merely adding a flat 50 cents for all RN's with 5 or more years seniority. Adding a 25 year step partially addresses this but the Fact Finder encourages the parties to readdress and perhaps adjust the wage scale increases based on seniority in a future contract if they can accept the Fact Finder's proposed changes for this contract.

The Fact Finder has arrived at his proposed across the board increases based on an analysis of the comparable communities, cost of living, and factors involving the entire cost – benefits analysis. A review of the comparables reveals that the average wage increases among seven of the eight comparables for '05-'06 (information was not available for one) was 3.8%; for all eight for '06-'07 it was 3%; and for all eight for '07-'08 it was 2.8%. This results in a 3.2% average annual increase for the three year period. The proposed increase recommended by the Fact Finder results in a 3.3% average annual increase for the three year period. Also, actual wages paid, under the proposal recommended by the Fact Finder will result in the beginning wage being just slightly above the average and the twenty year rate being about 2% below and the twenty-five year rate about 6% below the average comparables in '07-'08. For years '06-'07 and '07-'08 five of the comparables would have higher and four of the comparables would have lower beginning and 20 year level wages than Schoolcraft RN's if the Fact Finders recommendation is adopted. Based on all the factors considered in this proceeding the Fact Finder believes his recommendations on wages are reasonable and urges the parties to adopt them.

13. Article 20.04—Call in premium rate, delete right to refuse call in (Employer Proposal)

Finding of facts and conclusions

This issue is directly related to the Employer proposed revision in Article 19.03 to authorize the Employer to mandate overtime. The Employer proposes to delete language in 20.04 A that would retain the right of RN's to refuse to come in on his/her scheduled day off.

Recommendation

The Fact Finder recommends Article 20.04 A proposed by the Employer for deletion NOT be deleted and remain in the contract.

Rational

This recommendation is consistent with the recommendation on Article 19.03. The rational is the same as stated for the recommendation on Article 19.03

14. Article 20.06—Shift differential rate of pay (Union proposal)

Finding of facts and conclusions

The Union proposes to increase the shift differential for the night shift from the current 60 cents per hour to $2.25 per hour. The Union argues that it is not being compensated for night shift differential comparable to other RN's in other comparable Hospitals.

The Employer opposes any change in this level of compensation. The Employer says other employees in Schoolcraft Hospital are compensated at 45 cents per hour for working the night shift and the Union's proposal exceeds any other comparable hospitals.

Recommendation

The Fact Finder recommends the night shift differential rate be increased from the current 60 cents per hour to $1.25 per hour effective upon ratification of the new contract.

Rational

The Fact finder reviewed the other eight comparable community contracts on this issue and found the following night shift differential rates per hour being paid: Baraga = $0.90; Ontonagon = $1.00; Mackinac = $1.25; Newberry is paying something but I couldn't determine the amount; Grandview = $1.75; Dickenson = $1.50; St. Francis

= $1.25 now and $1.45 beginning May 2008; Iron = $1.00 in 2006 and $1.25 beginning '07. This evidence supports the Fact Finders recommendation as reasonable, particularly since it would not take effect until the contract is ratified.

15. Article 20.07 A, B—Specialty Certification supplemental pay (Union proposal)

Finding of facts and conclusions

The Union has proposed payment of nurses with a BSN certification 50 cents per hour separately from other specialty certifications and the Employer, in its supplemental brief has agreed to do this. The Union also proposed to increase the number of non-BSN specialty certifications from the current two to three. Those RN's with specialty certifications would be paid an additional 50 cents per hour for each certification. The Employer proposes leaving the maximum certifications in addition to the BSN at two. The Union also proposed RN's certified to perform conscious sedation be paid at the OR-RN wage rate. The Employer proposed paying RN's who are certified for conscious sedation and actually performing conscious sedation an additional 50 cents per hour.

Recommendation

The Fact Finder recommends the proposed revision by the Union to Article 20.07 B to increase the current two specialty certifications maximum to three NOT be adopted in the new contract. The language might be clarified to read:

> "A maximum of two specialty certifications *separate from the BSW degree* per RN will be compensated."

The Fact Finder also recommends the parties adopt in the contract language identified in the Employers supplemental brief at page 8 requiring the Employer to pay RN's with a conscious sedation certification a premium of 50 cents per hour while working in OR, ER, OP. (Effective upon ratification of the contract).

Rational

A review of the comparable community contracts reveals that there is not a uniform standard in how other Hospitals address this issue. Some don't address it at all; others pay premium rates for a limited number or unlimited number of certifications or for a BSN ranging from 5 cents to 75 cents per hour. The proposal put forth by the Employer in its supplemental brief appears reasonable and generally consistent with other comparable community contracts.

16. Article 20.07 C—RN compensation for NAACOG, delete (Employer Proposal)

Finding of facts and conclusions

The Employer proposes deleting language in Article 20.07C which permits RN's who were receiving compensation for NAACOG (OB-GYN) certification on the date the current contract was ratified to continue to receive it. The Employer, at the hearing and in its post-hearing briefs, pointed out that it no longer needs Nurses with this certification because it no longer performs deliveries at this hospital, except in an exceptional situation and in those situations RN's without this certification can, and sometimes do, assist with the delivery. The Employer says it no longer benefits from RN's having this certification and therefore should not have to pay a premium of 50 cents per hour to those nurses who have it.

The Union says this only impacts three RN's and they have come to rely on this compensation. The Union argues that their OB specialty knowledge does benefit the Employer when patients in labor come to the Hospital and by educating other RN's in the treatment of newborns or OB patients.

Recommendation

The Fact Finder recommends the language in Article 20.07 C proposed by the Employer to be stricken BE stricken.

Rational

A review of the other comparable community contracts revealed little evidence on this issue. It does not appear there is a specific pattern that other Hospitals use on this issue and no grandfather clauses regarding certification were found. The recommendations on wages and other economic matters in some degree will moderate the financial impact on the three RN's that this applies to. There was not sufficient evidence presented to demonstrate that this specialty was necessary or resulting in significant benefit to patients of the Hospital to justify its cost.

17. Article 20.08 & 27.01 B (1)—Holiday Pay

Finding of facts and conclusions

The Union proposes a revision of these two articles to provide that RN's who work on holidays be paid triple time. The current contract provides a rate of time and one-half for all hours worked on a holiday. The Union says its proposal is to make up

for a revision agreed to in negotiations for the current contract which resulted in a reduction of pay for a holiday because while RN's receive time and one half pay for working the holiday, the 8 hours of holiday pay (bringing total pay at two and one half times regular pay) comes from their paid time off bank.

The Employer opposes this change and points out that the change in the current contract reducing holiday pay was directly related to the agreement to convert to a PTO plan. The Employer says it was and is clear that an employee has the "option" to draw on the employee's PTO bank for a holiday worked and thereby earn two and one half times regular pay. The Employer argues adopting the Unions proposal would be costly and that the Union has not shown the current provision is inconsistent with comparable community contracts.

A review of the comparable community contracts reveals that no comparable contract provides triple time for working a holiday. Four provide two and one half times the regular pay and four provide time and one half for all hours worked on a holiday similar to the current Schoolcraft contract.

Recommendation

The Fact Finder recommends the Union's proposed revision of Articles 20.08 A and 27.01 B (1) to pay RN's who work a holiday three times their straight time hourly rate of pay for all hours worked on a holiday NOT be adopted in this contract.

Rational

The Fact Finder is reluctant to recommend the change proposed by the Union because: 1) it was just negotiated in the most recent negotiated contract, 2) the comparable community contracts do not demonstrate support for triple time pay, 3) while one half of the comparable community contracts pay two and one half times regular pay for working a holiday the other half have provisions similar to the current contract and I am not certain whether those contracts provide the opportunity to the employee to draw from the PTO pool for the extra 8 hours pay. The Fact Finder acknowledges he did not review the relationship of holiday pay to the PTO plans in the comparable community contracts but even without that review, on balance, I conclude it is better to retain the status quo on this issue than make this proposed revision at this time.

18. Article 20.09—Eliminate daily overtime (Employer Proposal)

Finding of facts and conclusions

The Employer proposes amendments to Article 20.09, which applies to overtime. Current Contract language provides that overtime will be paid for all hours worked in excess of the normal shift hours in a work day or forty hours in a scheduled seven day period. The Employer proposes to omit the provision for overtime pay when hours are worked in excess of the normal shift hours and only pay overtime for hours worked in excess of forty in a scheduled seven day period. The Employer also proposes clarifying language in paragraph C which would specify who can authorize overtime. The Employer argues that this change would help the Employer reduce costs at a time that it is in poor financial health. The Employer points out that this would impact only those RN's who work 36 hours a week and part time and the current language requiring the Employer to pay overtime to these employees who work less than forty hours a week is an unnecessary burden.

The Union opposes this change and says the Employer has not shown that it is in such financial peril to justify this reduction in benefits. Union exhibit 22 shows that overtime for some nurses per year can be as high as 400 hours and as low as zero. The exhibit does not reveal the extent to which those who work less than a forty hour work schedule receive overtime. A review of the comparable community contracts reveals that every other comparable community contract pays overtime for work in excess of the daily shift hours.

Recommendation

The Fact Finder recommends the Employer proposal to revise Article 20.09 by eliminating payment of overtime for hours worked in excess of normal daily scheduled shift hours NOT be incorporated into this Contract. The Fact Finder recommends the language proposed by the Employer in Article 20.09C clarifying who may authorize overtime BE ACCEPTED and incorporated in this contract. (Effective upon ratification of the contract).

Rational

The external comparable community contracts and the internal comparables do not support the Employers proposal. All of the comparables pay overtime pay for hours worked beyond an eight hour shift. The Employers argument that this is needed because of the fiscal constraints the Hospital is facing is not convincing. The Fact Finder addressed the economic analysis previously in this report and does not find that the

Employer needs to institute this rather extreme cost cutting measure. Additionally, use of overtime is to some extent in the Employers control and the Employer may consider pushing harder for instituting some type of "on call" system or some other approach to scheduling that could address the need for coverage without costing as much.

The Fact Finder does believe the Employers proposed clarifying language in sub-paragraph C of this Article is of help in avoiding confusion or questions on who has authority within management to authorize overtime and would be helpful to incorporate in the contract.

19. Article 22.01 C, D—Employer share in retiree health Ins cost (Union Proposal)

Finding of facts and conclusions

The Union proposes a revision to Article 22.01. Paragraph C of the Article currently states that upon retirement, the Employer will make retiree health insurance available to the retiree under its group plan at the retiree's expense. The Union proposes to revise paragraph C to state retiree health insurance would be available to the retiree under the group plan *at a 50% discount* and add a paragraph D to say that this provision would only apply to employees who participate in the health plan at the time of retirement. The Union urges this change because it notes the difficulty of RN's maintaining the cost of health insurance upon retirement with retirement income.

The Employer opposes this change and says the Union could point to no other internal or external comparable community contract where the Employer pays any portion of a retiree's health insurance. The Employer also points out that health insurance costs are rising and the Employer is in no position to assume this additional cost.

A review of the comparable community contracts reveals that no other comparable community contract has a provision that requires the Employer to share in the health insurance premium cost for retirees.

Recommendation

The Fact Finder recommends the Union proposal to revise Article 22.01 C, D to require the Employer to pay 50% of retiree health insurance premium NOT be adopted in the Contract.

Rational

None of the comparable community contracts contain this provision. This does not appear to be a benefit customarily provided by community hospital Employers and adding this as an Employer responsibility at this time, given it is not flush with excess revenue, would not be practical.

20. Article 23.01—Health Insurance, employee share in premium payment (Employer Proposal)

Finding of facts and conclusions

The Employer has proposed a change in the health insurance plan provided by the Employer - from BC/BS plan 3 to BC/BS Community Blue PPO Plan 12 and, in its post-hearing brief, indicates it proposes that the Employee would not have to pay any portion of the premium for plan 12 health coverage and dental and visual for the employee. The employee would have to pay the difference for family coverage for vision and dental. The Employer would provide the Employee the option of retaining coverage under plan 3 and plan 4 but if the employee chose either of those plans the employee would have to pay the difference between the premium cost for plans 3 or 4 and the Employers cost for plan 12. The Employer notes that Article 23.01C of the contract allows the Employer to change the plan benefits so long as the benefits remain identical as changes to benefits provided to Hospital administrative employees. Subsection G 1 of Article 23.01 currently says "The Employer will pay the full health insurance premium for full-time and 36 hour RN's.

The Employer acknowledges this change in health plan benefits will shift a little more cost to employees for co pays but notes that the extent of that cost varies dependent upon usage and that the employee still has the option of choosing plan 3 or 4 which shifts a little more cost to the employee for the premium but less co pay. The Employer also points out that plan 12 is the identical plan provided to hospital administrative employees and other non represented employees effective 01/10/07. The Employer says this plan is similar to comparable communities and is necessary to contain costs and allocate financial resources to wages and other benefits.

The Union argues that the Employer offered this proposal late in the negotiation process and violated its own proposed ground rules and committed an unfair labor practice in offering it at the last negotiating session and at the fact finding hearing. The

Union says at one point in the negotiations the parties reached a tentative agreement whereby the Employer would continue to pay 100% of the premium for plan 3, not plan 12, and that it would be improper to recognize this proposal that effectively negates the tentative agreement. The Union acknowledges that the Employer can make health plan changes it has made and the Union accepts those changes but says the Employer should abide by its tentative agreement during negotiations to pay 100% of the premiums for at least plan 3 coverage.

There is no dispute over the fact that the Employer has properly exercised its authority under the current contract to change plan benefits as it has done and that those same benefits shall be the coverage provided for the union members. The question is whether the payment by the Employer of 100% of the premium for an employee who chooses to receive plan 3 coverage should be continued as opposed to the Employers proposal to have the employee pay the difference between the cost of the premium for plan 3 and plan 12.

During the hearing the Fact Finder discussed with the parties that it was his opinion he had no authority to address the unfair labor practice issue and the parties agreed. However the Fact Finder does have the authority to review the evidence placed in the record and make a recommendation.

Recommendation

The Fact Finder recommends the proposal put forth by the Employer whereby the Employer will pay 100% of the premium for employees who choose health coverage under plan 12 and that employees who choose health coverage under plans 3 or 4 will be required to pay the difference between the premium cost for the plan chosen and the Employers cost for plan 12 BE adopted in this contract. (Effective upon ratification of the contract).

Rational

The Fact Finder has reviewed the health plan coverage provided by the comparable community Employers and finds that the majority of those Employers provide health benefits similar to that proposed by the Employer. Several require the employees to pay a portion of the premium, with some applicable to a PPO plan. The actual plans vary but employee payment of co pays or some portion of the premium is the norm, not the exception and the Health Plan coverage and proposed premium cost sharing put forth by the Employer in this proposal is consistent with both the external and internal comparables.

With respect to the Unions' procedural argument the Fact Finder recognizes the nature of bargaining requires good faith bargaining and holding to agreements made during negotiations to aid progress but also notes that item 16 of the "ground rules" for negotiations (Exhibit U-39A) that were apparently agreed to 10/13/05 states: " All TA's are subject to ratification by Union and Employer. Management will ratify or reject within 30 days of Union notice of ratification. All TA's are tentative pending achievement of TA's and ratification on all issues." The Fact Finder interprets this language as binding the parties to TA's agreed to during negotiations *conditioned upon* the parties' agreement on all issues. At this stage of negotiations the parties have not agreed on all issues. Additionally, it is noted that the tentative agreement entered into on 2/23/06 involved employer paid premium amounts for part time employees, not full time employees. In fact this may need to be an issue the parties need to address in further negotiations even if the parties accept the Fact Finders recommendation. The Fact Finder believes the parties will achieve a more equitable balancing of employee benefits and Employer cost control measures by adoption of the Employers proposal rather than the Unions' proposal on this issue.

21. Article 26.03 and 26.04 – Maximum paid time off accrual and accrual rate revisions (Employer Proposal)

Finding of facts and conclusions

The Employer proposes revisions to the Article of the Contract addressing paid time off (PTO) in two ways: 1) The Employer proposes to amend Article 26.03 involving the maximum accrual by lowering the maximum hours that could be accrued from the current 400 hours to 320 hours; 2) The Employer proposes to amend Article 26.04 involving the accrual rate by reducing the rate at which days would accrue per hours worked (E-17, pg 2).

The Employer pointed out at the hearing and in its post-hearing brief that during its period of fiscal constraint in 2006 it instituted a change in the Maximum accrual and the accrual rate for all non-union employees (E-17, pg 1). The Employer, in a memo dated 9/28/06, advised non-union employees that effective April 1, 2007 the maximum accrual was capped at 320 hours and the accrual rate was readjusted downward for all non-union employees. The communication to Employees at that time advised that they

would have the opportunity to use their current PTO bank between September '06 and April '07 to bring the number of accrued hours down to the 320 number. The Employer says it merely wants to bring the union employees provisions involving maximum and rate of accrual for PTO in line with the non-union employees. The Employer also says it must make these changes to keep expenses in line with anticipated revenues and that the changes it proposes are generally consistent with what other comparable community contracts provide.

The Union initially had a proposal to add language to Article 26.03 that would allow a department manager to grant an exception to the maximum accrual if a request for PTO was denied due to circumstances beyond the nurse's control. The Union withdrew that proposal prior to the close of the hearing in this matter.

The Union objects to the Employer proposals and urges the Fact Finder to not adopt them both on procedural and substantive grounds. The Union, similar to its argument on the issue involving health care premium payments, says the Employer did not timely present its proposals consistent with the "ground rules" the parties agreed upon. The Union says it received nothing in writing from the Employer providing details of its proposal to reduce the rate of accrual prior to the fact finding hearing. The Union argues that consideration of the Employers proposal in this Fact Finding proceeding would violate the parties' ground rules and be contrary to the PERA by not encouraging the parties to engage in negotiations on issues prior to fact finding. On the substance of the proposals, the Union argues the accrual rates the Employer is proposing are significantly less than the rate currently established for the non union employees and that the Employers proposal does not address how the Employees' accrued hours above the proposed 320 hour maximum would be addressed.

The Employer, in its post hearing supplemental brief, argues that procedurally the issue was addressed timely by the parties and points to the Union's proposal to add language to Article 26.03 as justification for presenting proposals later in negotiations and at the fact finding hearing on other matters in Article 26 generally, essentially arguing that once a party offers a proposal in a general section then all Articles within that general section are open for proposals.

Recommendation

The Fact Finder recommends the Employers' proposed revisions to the maximum accrual and the accrual rate NOT be incorporated in the contract.

Rational

Testimony revealed that the method the parties have chosen in the current contract addressing vacation and sick time accrual was completely revised and a PTO approach developed during negotiations for the most recent/current contract. A review of the comparable community contracts and the AFSCME Schoolcraft Hospital contract reveals that while many of these contracts have established a PTO approach similar to that in the current contract, they frequently differ in the actual formula used for the rate of accrual and differ somewhat in the maximum accrual. With respect to the formula for accrual rate it is suspected that the actual composition and longevity of the workforce can have a bearing on what the parties devise and this is an area of bargaining and negotiations that is best achieved by the parties directly. Additionally, in this instance, the Fact Finder is aware that the Employer did not present the actual formula for the proposed accrual rate until the fact finding hearing and there is no indication that the parties have had further negotiations on this matter. A review of the comparable community contracts reveals that maximum accrual limits in hours are, for example, 480 – Baraga, 320 – Ontonagon, 344 – Mackinac, 312 – Newberry, 320 – Grandview, 360 for those hired after 9/1/99 and 384 for those hired before 9/1/99 – Dickenson, 608 – St Francis, 372 – Iron. This demonstrates, on the one hand, that the Employers proposal on accrual limits is not out of the norm but, on the other hand, that it can vary within a range and that the issue of how to transition from a higher number to a lower number is important. That transition was spoken to in the Employers post-hearing brief but was not clearly addressed in its proposal and is best left to the parties to address. Certainly it might be addressed by the parties by agreeing to make the transition over the life of this contract so that the maximum could be adjusted downward at an agreed upon level near the end of this contract period. The Fact Finder believes both of these issues need to be discussed be the parties in more detail and is reluctant to recommend the Employers proposal or recommend an alternative arbitrarily. Also, the Employer did not present information on how much cost savings it expected to achieve as a result of these changes or over what time period. The nature of this proposal would lead one to conclude that it will result in cost savings over time but not significant cost savings initially. Therefore the parties have time to address this

issue in the course of future negotiations on this or a future contract without significantly impacting the short term fiscal issues.

22. Article 26.07 E and H—Scheduling of PTO, E—Procedure for late requests, H—criteria for approval of PTO with 24 hour or less advance notice. (Employer proposal).

Finding of facts and conclusions

The Employer proposes adding language to paragraph E of Article 26.07. The current language says, "The employee will be responsible for finding his/her own coverage for late requests etc. " The Employer would add: *"so long as the coverage does not result in overtime."* The Employer also proposes additional language in paragraph H of Article 26.07 which allows Employees to use up to 36 hours of PTO per year with a twenty-four hour advance notice for personal reasons. The last sentence of that paragraph currently states: "In the case of circumstances outside the employee's control, less than twenty-four hours advance notice is acceptable". The Employer would add: *"only for personal reasons that include circumstances outside the employee's control."* The Employer did not provide much testimony or evidence in support of its proposal. The Union, in its post hearing brief, says there was a grievance filed over this language which was resolved but it says that it drew attention to the application of this language. The Union says it proposes the language remain as is which allows up to 36 hours for personal reasons with 24 hour advance notice, not to be used when the RN is sick, or increase the short notice PTO to 72 hours per year if the hours could be applied when the RN is sick.

Recommendation

The Fact Finder recommends the language proposed by the Employer for modifications to Articles 26.07 paragraphs E and H NOT be adopted in this contract.

Rational

The Fact Finder believes the proposed changes are matters best left to the parties to resolve. There has not been sufficient evidence presented by either party which the Fact Finder can rely on to make an informed recommendation. A review of the comparable community contracts does reveal that some, but not all contracts include the language proposed by the Employer for paragraph E. But the Fact Finder believes, as stated in the Rational for the recommendation on the previous issues involving PTO

that these issues are inter-related and should be addressed as such by the parties during further negotiations. In the meantime I believe not recommending the Employers proposal or devising an alternative without more information is the best course.

23. Article 29.03 C—Seniority for attendance for certifications, delete (Employer Proposal)

Finding of facts and conclusions

The Employer has proposed deletion of paragraph C in Article 29.03. This Article is titled "miscellaneous" but refers to the issue of certification and/or recertification. Paragraph C states: "Seniority will be used to determine which RNs attend if there are scheduling or financial concerns." The Employer says its purpose in eliminating the seniority provision is to permit it to authorize less senior employees to attend certification or recertification trainings if it feels less senior nurses and/or the Hospital would most benefit from attending. The Fact Finder notes that in the Employers post hearing supplemental brief the Employer makes this argument in reference to attending seminars. The fact is that Article 29.02 addresses seminars and conferences and paragraph B of that article contains language identical to paragraph C of Article 29.03. However the Employer has not proposed deletion of paragraph B of Article 29.02.

The Union says the Employer has not identified any problems incurred with inclusion of this language and that seniority in unionized workforces is commonly used and should be maintained in this Article. The Union opposes elimination of this language.

A review of the comparable community contracts provided little guidance on this issue.

Recommendation

The Fact Finder recommends the language in paragraph C of Article 29.03 NOT be deleted as proposed by the Employer.

Rational

The language proposed to be deleted applies to determining which nurses may attend certification or recertification training "if there are scheduling or financial concerns." Certifications are important to RN's and elimination of this language could potentially result in questions of whether the Employer was favoring one employee

over another in their ability to obtain certifications. Additionally, the Employer seems to be arguing for elimination of this language in paragraph B of Article 29.02 which applies to attendance at educational seminars and conferences, but that is not the language proposed to be eliminated here. Lastly, the language provides that seniority be considered only if there are scheduling or financial concerns. This situation is not likely to occur frequently but if it does, seniority is a reasonable means of determining who will be authorized to attend.

24. Article 31.08—Mandatory meetings, delete (Employer Proposal)

Finding of facts and conclusions

The Employer proposes to delete language Article 31.08. That language currently states: "The director of Nursing, Director of O.R. and Director of Outpatient may request up to three (3) mandatory nursing meetings per year." The Employer says it makes this proposal because it does not want to be limited in the number of meetings it can require the nurses attend in which it can and should provide information which directly impacts the performance of job duties. The Employer says there are a number of educational needs that occur throughout the year such as computerization changes, new medical techniques, new skills, new services, personnel policies, etc. that require meetings for updating and continual learning. Employer exhibit E-58 lists fifteen such trainings. The Employer says it is impossible to conduct all of these trainings in only 3 nursing meetings.

The Union says it recognizes the need for mandatory meetings but says many of them are held at times inconvenient for all RN's to attend and the more that are scheduled the more difficult it will be for all RN's to attend. Since they are mandatory the Union is concerned that failure to attend could result in disciplinary action. The Union, during negotiations made a counter proposal to raise the maximum number of mandatory meetings from 3 to 6 per year.

The comparable community contracts provided little guidance on this issue. It appears from review of the comparable community contracts the Employer is not limited in the number of nursing meetings it can require nurses attend. The Baraga contract does contain the following language: "The Hospital will attempt to schedule

such in-service programs at times convenient for Registered Nurses from all shifts to attend."

Recommendation

The Fact Finder recommends Article 39.01 be revised to read:

> "The Director of Nursing, Director of O.R. or the Director of Outpatient may request mandatory nursing meetings on topics which directly impact job performance provided that not more than a total of twelve (12) meetings per year may be mandatory meetings. The Hospital will attempt to schedule mandatory meetings at times convenient for RN's from all shifts to attend." (Effective upon ratification of the contract).

Rational

The recommended language is intended to accommodate, as much as possible, both parties' interests. The comparable community contracts would support the Employers' position in that most do not place a limit on the number of mandatory meetings that can be held. However, those that do speak to the issue seem to apply it to meetings impacting job performance and the Employers post-hearing brief uses this language in support of its proposal. The Fact Finder has chosen a maximum of 12 mandatory meetings and rephrased the language from the current contract because the language of the current contract might be construed to permit each of the three directors to request up to three mandatory meetings for a total of nine per year so if the language just changed the current 3 limit to 6 it could be interpreted as allowing each of the 3 directors to schedule six meetings for a total of 18 mandatory meetings per year. Also, exhibit E-58 identifies 15 meetings and a limit of 12 mandatory meetings would not necessarily impose a burden on the employer and would discipline the Employer to be thoughtful in its planning of meetings. An average of one such meeting a month seems a reasonable limit.

25. Article 31.10 A—Scrubs/cover up clothing allowance (Union Proposal)

Finding of facts and conclusions

Both parties have made proposals to revise Article 31.10, which addresses the manner in which Scrubs/cover ups will be supplied. The parties, during negotiations, agreed to delete paragraph C and either amend or delete paragraph E (see Union tab C). In post hearing briefs and supplemental briefs the parties have both indicated a

preference to add language to paragraph A that would permit RN's to choose not to use Employer provided uniforms and if they chose not to the Employer would provide each RN a cash payment per year and have the RN responsible for purchasing and maintaining this clothing. They differ on the issue of the amount of annual payment. The Union also proposes that those RN's who choose to use the Hospital provided scrubs receive a $100 annually to use for apparel other than scrubs needed for the job.

A review of the comparable community contracts gave little guidance on this issue. The Baraga County Contract does provide a $75.00 annual uniform allowance for each RN working in a department where uniforms are not provided by the Hospital.

Recommendation

The Fact Finder recommends that paragraph A of Article 32.01 be revised to state:

"The Employer will supply a maximum of three (3) scrub uniforms, or three (3) cover-ups per year to each RN. An RN may choose not to receive the Employer provided uniforms. Those RN's choosing not to receive Employer provided uniforms shall be provided $150.00 per year and shall be responsible for the purchase of appropriate scrub uniforms or cover-ups if those uniforms are required while on duty."(Effective upon ratification of the contract).

Rational

The Fact Finder essentially is recommending the parties adopt the Employers proposal offered in its supplemental brief on this issue. The Union's proposal for a higher amount of cash for those RN's choosing to purchase their own uniforms was not supported with evidence. Testimony at the hearing generally supported the $150.00 figure as reasonable. Also, there was insufficient evidence provided during the hearing or through exhibits or review of other comparable community contracts to support the Unions proposed $100.00 stipend for purchase of other apparel needed on the job.

26. New Article not ID—Ambulance runs, mandatory/non-mandatory & pay (Union Proposal)

Finding of facts and conclusions

Both parties, through negotiations, appear to agree that it would be helpful to include language in the contract on the procedure for availability and payment of RN's needed for ambulance runs or patient transfer. Testimony was provided that there is current policy on this matter and that the policy states that RN's may volunteer for this service but are not mandated to be available to provide it. The Union urges the current

policy be incorporated into the contract. The Employer is supportive of language on this issue in the contract but not the exact language of the current policy.

The Employer wants to have the authority to assign RN's to provide this service and thereby not be dependent upon RN's volunteering to do so. The Union's concern with mandating RN's to provide this service is based on its testimony that some RN's may not feel qualified to provide the service and some may have problems with motion sickness. The Employer, in its post-hearing brief, says it is willing to negotiate conditions involving assignment of RN's but it opposes making such assignments voluntary on the part of RN's.

The parties also disagree on whether there would be specified minimum hours for certain patient transfer runs. The Union wants specified minimums and the Employer wants payment based on actual time worked. Both agree to payment a 2x the hourly rate.

There was little guidance provided on this issue from a review of the comparable community contracts. Most did not address it. However, the Dickenson County Contract does address it in sections 9.22 and 9.23. Section 9.22 provides a flat sum payment for ambulance runs and section 9.23 provides a possible model for the parties to accommodate the concern by some RN's about being assigned this responsibility. The language in section 9.23 of the Dickenson Co. contract establishes an ambulance pool list which identifies those nurses who agree to provide this service. Nurses in this pool are called based on bargaining unit seniority.

Recommendation

The Fact Finder recommends the parties incorporate into the contract the following language:

A. Ambulance and Patient Transfer Runs
B. An Ambulance Run and Patient Transfer Pool list will be established to identify those nurses with the necessary qualifications who volunteer to provide this service.
C. RN's who have volunteered to be in the Ambulance Run and Patient Transfer Pool may be assigned to provide this service.
D. RN's performing this service will be paid based on the following:
    1. 2x hourly rate for actual time worked
    2. Personal detours not included in time worked
    3. Hours worked are included in benefit calculation – no pyramiding of OT or premium rates (Effective upon ratification of the contract).

Rational

The recommendation basically adopts the Employers last proposal during negotiations and reiterated in its post hearing supplemental brief but adds language in A that attempts to accommodate the Union's concern that not all RN's may wish to perform these services. Based on the testimony that there has always been enough RN's to volunteer for this work it is expected that the pool will provide sufficient personnel to make this feasible. Once the pool is established the Employer would have the ability to assign personnel without having to depend upon volunteers at that point. Certainly the parties might also want to consider using seniority for assignment, such as the Dickenson County contract does or perhaps consider establishing some type of "on call" method to have personnel available for this service when needed. The fact that the parties have already agreed that the pay for this service will be 2x the hourly rate should also help ensure an adequate pool. As for the minimum hours for certain patient transfer runs proposed by the Union, the Fact Finder does not believe that is necessary and such a policy would not be applicable to ambulance runs.

27. New Article not ID – Longevity pay (Union Proposal)

Finding of facts and conclusions

The Union proposes a new provision be placed in the contract to provide longevity pay based on years of service. The Union proposes that RN's be provided longevity pay according to the following formula:

5-9 years of service = 1% of annual wage
10-14 years of service = 2% of annual wage
15-20 years of service = 3% of annual wage
20+ years of service = 4% of annual wage

The Union says this proposal attempts to address the disparity of wage levels for RN's at the top half of the wage scale. The Union also argues this change would promote retention of highly experienced and skilled RN's. The Union notes that it does not propose that this pay be calculated into the base wage but rather be paid in a lump sum each year, therefore not adding to the base wage amount which might drive other costs up.

The Employer argues that there is no evidence that there is a retention problem and in fact points to Employer E-20 that reveals that 14 of the current 26 RN's have 10+ years of seniority. The Employer argues the Unions proposal is not supported by

comparison with comparable communities and that imposing the additional cost on the Employer that would result from adoption of this proposal cannot be justified at this time.

Recommendation

The Fact Finder recommends the proposal put forth by the Union to add language in the contract providing longevity pay NOT be incorporated in to the contract.

Rational

The proposal, while not calculated precisely, would result in quite a substantial additional cost to the Employer. The Fact Finder believes that imposing this cost on the Employer at this time is not practical. The wage and other adjustments to wages recommended, without the addition of this longevity proposal, are believed to provide a more reasonable balance between Employee and Employer interests. Additionally, a review of the comparable community contracts reveals that five of the eight do not provide a longevity bonus and the other three who do provide longevity pay at a much more modest amount than proposed here or only after longer years of service.

28. New Article not ID – Flex scheduling (Union Proposal)

Finding of facts and conclusions

The Union has proposed language be added to the contract that would specify which positions within the bargaining unit would be allowed flexible work schedules with a provision that other positions might be added to the list only by mutual agreement between the Union and the Employer. The Union notes in its post hearing brief that the underlying issue is not about flexible scheduling but from the Employer's counter proposal to use the term "Non-Patient Care RN's" in place of listing specific positions. The Union says this raised concern by the Union that the Employer might use this more general language as a basis to potentially exclude those positions from the bargaining unit.

The Employer, in its post hearing brief, says the Union's proposal should be rejected because the comparable community contracts do not support its adoption and because the practice of flexible scheduling is not workable. The Employer does not advocate for inclusion of its counter language in the contract.

A review of the comparable community contracts verifies the Employers statement that the comparable community contracts either do not address this issue or leave the scheduling responsibilities with the Employer or grandfather in a previous practice of flexible scheduling in specified departments (Newberry).

Recommendation

The Fact Finder recommends the language proposed by the Union to specify particular positions that may be permitted flexible scheduling NOT be incorporated in to the contract.

Rational

As noted above, the comparable community contracts did not support the Union's position. Since no change in the contract would be made as a result of this recommendation the Union's concern about potential use of more general language should be alleviated.

29. New Article not ID—Minimum staffing guidelines (Union Proposal)

Finding of facts and conclusions

The Union proposes new language be added to the contract that would specify minimum RN and total staffing levels for the medical-surgical unit and the Emergency Room and also specify that nursing aides would only be scheduled as support staff and not as replacements for licensed nurses, LPN's or RN's. The Union says its proposal addresses patient safety by insuring that there is adequate professional staff available to provide competent services. The Union acknowledges that current Hospital policy recognizes the need for minimum staffing but says it does not designate a specific number of RN's in the Med/Surg department for any particular shift and says without minimum guidelines as proposed by the Union the Hospital could require one RN to cover both ER and Med/Surg units on a particular shift, putting patient care and safety at risk. The Union says the Employers data on meeting minimum staff to patient ratios does not insure adequate RN staffing to permit RN's in particular units when needed.

The Employer says the Unions proposed language is unnecessary and impractical. The Employer notes its current policy, updated in 2004, bases staffing on several factors including the skill level of the nurse required to care for patients. The Employer provided evidence showing that it meets or exceeds policy standards for staff to patient ratios. The Employer says that staffing is a responsibility of management and

that its current policies addressing staffing requirements sufficiently assure safe patient care.

A review of the comparable community contracts reveals that six of the eight contracts do not have provisions specifying minimum staffing. The Ontonagon contract specifies a minimum of two RN's per shift for the acute care ER and the Dickenson contract specifies a minimum of two ICU RN's in the Hospital at any time. Those are the only two comparables that address the issue at all and none address the issue of support staff as replacements for RN's.

Recommendation

The Fact Finder recommends the language proposed by the Union to specify minimum staffing levels for RN's in specific units at specific times and specifying that support staff not be considered as replacements for RN's NOT be incorporated in to the contract.

Rational

The Union has failed to provide adequate evidence and justification for its proposal. The majority of comparable community contracts do not have similar provisions. There is no evidence to demonstrate that the Hospital has not been providing sufficient staff to ensure patient safety. As for the proposed language specifying that support staff not be considered as replacements for RN's, it would seem likely the Union should be able to challenge any alleged "replacements" based on professional licensing standards and other minimum standards established for adequate patient care.

30. New Art not ID—Employee discount for services (Union Proposal)

Finding of facts and conclusions

The Union proposes language be added to the contract that would require the Employer to offer a discount to Union members who receive outpatient or inpatient services at Schoolcraft hospital. The proposal is that the RN who uses outpatient services, excluding physicians' fees, would receive a 25% discount on the difference, if any, between the hospital's charges for such services and the amount paid by the nurse's insurance plan and a 50% discount on the difference, if any, between the hospital's charges for inpatient services, excluding physicians' fees, and the amount paid by the nurse's insurance plan. The Union says this proposal is mutually beneficial

because the RN receives some cost savings and the Employer potentially receives more business and positive community relations because its employees are using its services.

The Employer, in its post hearing brief, says the proposal is impossible to implement. The Employer argues that conditions placed on Medicare and Medicaid reimbursement require that the same charges be offered to everyone uniformly and the Hospital could not function without the 47% of its revenue from the Medicare program. The Employer also says no other comparable critical access hospital offers such discounts and notes that currently, drugs sold through its pharmacy to RN's are sold at cost plus 20% or cost plus $7 per prescription.

A review of the comparable community contracts reveals that four of the eight comparables do have some form of employee discount for services. Two, Baraga and Ontonagon, have a provision allowing purchase of pharmacy products for a price of 10% above the Hospital costs. Dickenson has a plan similar to that proposed here and Iron County will waive the deductible for certain services.

Recommendation

The Fact Finder recommends the additional language proposed by the Union to be added to the contract requiring the Hospital to offer an Employee discount for certain inpatient and outpatient services NOT be incorporated in to the contract.

Rational

The evidence and testimony at the hearing does not provide sufficient support for this specific proposal. The Fact Finder has had to rely primarily on arguments made in post hearing briefs. On the one hand, there is evidence to support the Unions position that Employee discounts of this nature can be offered, counter to the argument in the Employers post hearing brief. On the other hand, only one of the comparable community hospitals offers a plan similar to the proposed plan. There is also evidence that some Hospitals offer a pharmacy discount but that is not what is proposed here. Neither party has provided evidence addressing what the economic employee benefit or Hospital cost would be if this provision were incorporated in to the contract. The Fact Finder cannot, without more information, recommend its incorporation in to the contract. The Fact Finder does encourage the parties to consider the possibility of agreement for a price discount for pharmacy similar to the approach used by Baraga and Ontonagon County comparables.

31. New Art not ID—Inconvenience pay for work on short notice (Union Proposal)

Finding of facts and conclusions

The Union proposes new language be added to the contract which would require the Employer to pay a flat sum of forty dollars "inconvenience pay" to RN's who agree to work unscheduled hours with 24 hours or less notice and when the RN works 7.5 or more hours outside his/her posted schedule. Also, a RN would receive a flat sum of fifteen dollars "inconvenience pay" who agrees to work unscheduled hours with 24 hours or less notice when the RN works more than 2 but less than 7.5 hours outside his/her posted schedule. The Union points out this proposal is exactly the same as Dickenson County, one of the comparables has currently. The Union says provisions of this type are common in contracts with RN's and other hospitals have recognized the benefit in compensating RN's to provide nursing care when the hospital has short notice of a need.

The Employer opposes the inclusion of this language and points out that Article 20.04 B of the current contract states: "In the event an RN agrees to report to work on a scheduled day off the RN shall be paid 1-1/2x for all hours worked." The Employer says the Union's proposal would add additional pay, above the time and ½ pay an RN would already be receiving which is not the norm among the comparable community hospitals and would place an additional financial burden on the Employer. The Employer says it has repeatedly offered to discuss a "on call" approach with the Union but has been unsuccessful in developing such an approach.

A review of the comparable community hospital contracts reveals that only one, Dickenson County, has a provision like the one the Union proposes. Two of the comparables have an on call approach, two pay time and one half, as Schoolcraft currently does. One of those pays a minimum of two hours and one pays a minimum of one hour at time and ½. Others had no reference to any additional short notice premium pay.

Recommendation

The Fact Finder recommends the additional language proposed by the Union to address "inconvenience pay" NOT be included in the contract.

Rational

The comparable community hospital contracts do not support the Union's position. During the course of this proceeding and in its post hearing brief the Union has argued that there was no need to institute mandatory overtime because the RN's have had a history of voluntarily responding to requests to work overtime. The Fact Finder, in this report and recommendations, did not recommend mandatory overtime. The Fact Finder also recommended that payment of time and ½ regular time be retained for any hours worked beyond regular hours on a daily basis. These compensation provisions with respect to short notice requests to work unscheduled hours are equal to or better than similar provisions in the majority of comparable community hospital contracts. There has not been a demonstrated need to add this additional compensation for voluntary overtime at this time.

33. Letter of Understanding—Random Drug Testing (Employer Proposal)

Finding of facts and conclusions

The Employer has proposed a letter of understanding to address drug testing. The Employer's proposal contains language that would permit the Employer to subject the Employees to random drug testing on the job. The Union does not object to a letter of understanding addressing drug testing but does object to a random drug testing provision and made a counter proposal that would establish an "individualized reasonable suspicion of impairment during working hours" standard. In other words, if there was a reasonable suspicion of drug or alcohol abuse which was impairing the RN's ability to perform his/her duties the Employer could require the RN be subject to drug testing.

The Employer argues for random drug testing authority stating that it is necessary to serve as a deterrent before employees display objective evidence of a drug problem. The Employer says such a policy will provide the community with the confidence it needs that the Employer is taking all steps necessary to insure the safety of its patients and to address any potential substance abuse problems. The Employer provided testimony at the hearing that substance abuse problems had occurred in the recent passed and were known in the community. The Employer says such a policy can be instituted and not be in violation of any constitutional individual rights. The

Employer sites other professions subject to random drug testing such as CDL license holders, pilots, nuclear energy plant employees, and truck and bus drivers, and says nurses are in similar safety sensitive positions.

The Union says it subscribes to the American Nurses Association's position that random drug testing violates the constitutional principles of innocence until proven guilty and believes drug and alcohol testing of employees should only be done when there is a "reasonable suspicion and objective evidence that job performance is or has been impaired" by drug or alcohol usage. The Union points out that nurses are already required under the Michigan public health code to report another RN who is believed to be impaired. The Union says its counter proposal which establishes a "reasonable suspicion" standard on an individualized basis is the better approach.

A review of the comparable community contracts reveals that four of the eight do not appear to address the issue at all. Three appear to allow random testing and one has adopted the "where there is reasonable cause to believe" standard (Dickenson County).

Recommendation

The Fact Finder recommends that the parties agree to a letter of understanding on the issue of an alcohol and drug testing program, procedures and standards which is similar to the language specified in Article 32.01 of the agreement between the Dickenson County Healthcare System and the MNA.

Rational

This issue can be sensitive to both parties. For the Employees it becomes very personal if the Employee is the one subjected to testing. Random testing, unless clear objective guidelines are established, can be easily perceived as subjectively administered and can foster poor employee – employer relations. On the other hand, the Employer must be sensitive to protecting the health and safety of its patients and the community's confidence that the Employer is taking all necessary steps to insure that safety. Based on the evidence presented the Fact Finder believes random testing is not prohibited by law or Constitution but that it also is not required or necessary in this case. The comparable community contracts do not overwhelmingly support the

Employers' position. The Fact Finder understands, based on the testimony from the Employer relating recent incidences of employee problems which came to the communities attention, that it wants to demonstrate a strong policy on this issue, but the Fact Finder is not convinced that it cannot assure the public that it has a reasonable policy and protections by adoption of the "individual reasonable cause to believe" standard for instituting testing. The Employer points to other professions such as CDL license holders, pilots and truck and bus drivers where random testing is established but these positions differ from the RN's here in that they are mostly operating independently and removed from direct on the job supervision. That is not the case here. The other profession mentioned was nuclear plant employees but in that case the danger to the general public is a factor as well. The Fact Finder believes the language in Article 32.01 of the Dickenson County contract not only sets out a "reasonable cause to believe" standard but it also establishes a reasonable procedure for implementation of a drug and alcohol testing program. The parties are encouraged to use this language as a starting point for negotiations on this issue.

This concludes the Fact Finder's report and recommendations.

Date: 05/21/07

William E. Long, Fact Finder