

**BEFORE  
SEAN J. ROGERS  
ARBITRATOR**

In the Matter of Arbitration between:

**DISTRICT OF COLUMBIA NURSES  
ASSOCIATION,**

*Union*

**and**

**DISTRICT COLUMBIA DEPARTMENT  
OF MENTAL HEALTH,**

*Employer.*

***(Interest Arbitration)***

DC PERB Case 12-I-01

**OPINION AND AWARD**

**APPEARANCES**

**On behalf of the District of Columbia Nurses Association:**

Edward J. Smith, Esq., Staff Attorney, DCNA – *representing the Union.*

**On behalf of the City of District of Columbia Department of Mental Health:**

Dean S. Aqui, Esq., District of Columbia Office of Labor Relations and Collective Bargaining – *representing the Employer.*

**PROCEDURAL BACKGROUND OF THE ARBITRATION**

This interest arbitration arises out of a compensation bargaining impasse between the District of Columbia Nurses Association (DCNA or Union) and the District of Columbia Department of Mental Health (DMH or Employer) (Collectively, the Parties). This interest arbitration takes place pursuant to the District of Columbia (DC) Code § 1-617.17. (Statute).

On November 13 and 14, 2012, pursuant to the Statute, a hearing was held at the DCNA, 5100 Wisconsin Avenue, NW Washington, DC. At the hearing, the Parties were afforded a full opportunity: to present testimony, documents and other evidence; to examine and cross-examine witnesses; and to challenge documents and other evidence offered by the other Party.

DCNA's witnesses were: Laverne Plater, DMH Nurse Consultant/Educator; Shirley Jackson, DMH Nurse, Comprehensive Psychiatric Emergency Program; Herman Brown, DCNA Executive Director; Frankie T. Wheeler, DMH Director Office of Human Resources; and Clotilde Vidoni-Clark, DMH Chief Nursing Executive. Since Wheeler and Vidoni-Clark are DMH management witnesses, DCNA called them as adverse witnesses. They were questioned by DCNA's counsel as if on cross-examination.

DMH's witnesses were: Eric Goulet, Mayor's Deputy Chief of Staff and Budget Director and Michael Rumberg, Human Resources Specialist, Compensation and Classification Administration.

The witnesses were sworn and sequestered, and a transcript (Tr) was taken. Joint Exhibits (Jx) 1-4, Employer Exhibits (Ex) 1-6 and Union Exhibits (Ux) 1-26 were offered and received into the record. At the conclusion of the hearing, the evidentiary record was closed. The Parties elected to submit post-hearing briefs. The last brief was received on or about March 1, 2013. The Parties agreed that there are no issues of timeliness or arbitrability, and the bargaining impasse is ripe for resolution by the Panel pursuant to the Statute.

This Opinion and Award interprets and applies the Statute to the Parties' last best offers (LBO) and is based on the record developed by the Parties.

## **STATEMENT OF THE ISSUE**

The issue for resolution by the Arbitrator is as follows:

Pursuant to the principles in DC Code § 1-611.03 and 1-617.17, which last best offer achieves a prompt and fair settlement of the dispute between the District of Columbia Nurses Association and the District of Columbia Department of Mental Health?

## RELEVANT STATUTORY PROVISIONS

From the DC Code:

### § 1-611.03(a)

(a) Compensation for all employees in the Career, Educational, Legal, Excepted, and the Management Supervisory Services shall be fixed in accordance with the following policy:

(1) Compensation shall be competitive with that provided to other public sector employees having comparable duties, responsibilities, qualifications, and working conditions by occupational groups. For the purpose of this paragraph, compensation shall be deemed to be competitive if it falls reasonably within the range of compensation prevailing in the Washington, D.C., Standard Metropolitan Statistical Area (SMSA); provided, that compensation levels may be examined for public and/or private employees outside the area and/or for federal government employees when necessary to establish a reasonably representative statistical basis for compensation comparisons, or when conditions in the local labor market require a larger sampling of prevailing compensation levels.

(2) Pay for the various occupations and groups of employees shall be, to the maximum extent practicable, interrelated and equal for substantially equal work in accordance with this principle, dental officers shall be paid on the same schedule as medical officers having comparable qualifications and experiences.

(3) Differences in pay shall be maintained in keeping with differences in level of work and quality of performance.

### § 1-617.17. Collective bargaining concerning compensation.

(a) Collective bargaining concerning compensation is authorized as provided in §§ 1-602.06 and 1-617.16. Such compensation bargaining shall preempt other provisions of this subchapter except as provided in this section. The principles of § 1-611.03 shall apply to compensation set under the provisions of this section.

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(3) . . . If the mediator does not resolve the impasse within 30 days, or any shorter period designated by the mediator, or before the automatic impasse

date, the Executive Director, upon the request of any party, shall appoint an impartial Board of Arbitration to investigate the labor-management issues involved in the dispute, conduct whatever hearing it deems necessary, and issue a written award to the parties with the object of achieving a prompt and fair settlement of the dispute. The last best offer of each party shall be the basis for this impasse arbitration. The award shall be issued within 45 days after the Board has been established. The award shall contain findings of fact and a statement of reasons. The award shall be final and binding upon the parties to the dispute.

(3A) If requested by both parties or ordered by the Executive Director of the Public Employee Relations Board, a mediator or Board of Arbitration appointed pursuant to paragraphs (2) or (3) of this subsection shall consider non-compensation matters at impasse at the same time it considers compensation matters at impasse.

## **THE PARTIES**

The District of Columbia Department of Mental Health (DMH) provides emergency care and comprehensive mental health services and support to DC residents in need of the public mental health system.

The District of Columbia Nurses Association (DCNA) is the professional organization for registered nurses (RN) who live and/or work in DC. DCNA represents approximately 2000 RNs in DC and is the certified exclusive bargaining representative of bargaining unit nurses employed by DMH.

## **INTRODUCTION**

This Award considers which Party's LBO submitted in this impasse arbitration achieves a prompt and fair settlement of the dispute pursuant to *DC Code* § 1-611.03(a) and § 1-617.17. The Arbitrator's selection of the more reasonable LBOs at impasse are discussed and resolved below issue-by-issue.

The Parties submitted LBOs on eight issues at impasse: Article 1, Wages; Article 8, In-House Pools; Article 18, Duration; Article 19, Additional Degrees; Article 20, Step Movement; Article 21, New Hires; Article 25, Employee Affordable Housing Assistance; and Article 26, Preceptor Pay. (Jx 1 and 2).

The DCNA's LBO Article 1, Wages, would result in a collective bargaining agreement (CBA) through September 30, 2014. The DMH's LBO Article 1, Wages, would result in a CBA through September 30, 2015. Thus, the Parties have linked wages and duration. The CBA duration will be determined by to whichever wage proposal the Arbitrator finds achieves a prompt and fair settlement of the dispute. For this reason, wage and duration LBO's are discussed together. (Jx 1 and 2).

## **LAST BEST OFFERS AND AWARDS**

### **ISSUE ONE**

#### **ARTICLE 1, WAGES and ARTICLE 18, DURATION**

**DCNA's LBO states:**

##### **ARTICLE 1: WAGES**

###### **SECTION A: FISCAL YEAR 2011**

The pay schedules in effect as of September 30, 2010 shall not be adjusted.

###### **SECTION B: FISCAL YEAR 2012**

The pay schedules in effect as of September 30, 2011 shall not be adjusted.

###### **SECTION C: FISCAL YEAR 2013**

Effective the first day of the first full pay period beginning on or after October 1, 2012, bargaining unit employees actively on the payroll as of the date of approval of this Compensation Agreement by D.C. Council, shall receive a two percent (2.0 %) increase.

###### **SECTION D: FISCAL YEAR 2014**

Effective the first day of the first full pay period beginning on or after October 1, 2013, bargaining unit employees actively on the payroll as of the date of approval of this Compensation Agreement by D.C. Council, shall receive a three percent (3.0 %) increase.

**DMH's LBO states:**

**ARTICLE 1: WAGES**

**SECTION A: FISCAL YEAR 2011**

The pay schedules in effect as of September 30, 2010 shall not be adjusted.

**SECTION B: FISCAL YEAR 2012**

The pay schedules in effect as of September 30, 2011 shall not be adjusted.

**SECTION C: FISCAL YEAR 2013**

The pay schedules in effect as of September 30, 2011 shall not be adjusted.

**SECTION D: FISCAL YEAR 2014**

Effective the first day of the first full pay period beginning on or after October 1, 2013, bargaining unit employees actively on the payroll as of the date of approval of this Compensation Agreement by D.C. Council, shall receive a two percent (2%) increase.

**SECTION D: FISCAL YEAR 2015**

Effective the first day of the first full pay period beginning on or after October 1, 2014, bargaining unit employees actively on the payroll as of the date of approval of this Compensation Agreement by D.C. Council, shall receive a two percent (2%) increase.

**CONTENTIONS**

**DCNA asserts** that from October 2010 to September 2012, DMH hired 100 RNs while 52 nurses separated, demonstrating a high attrition rate. In addition, DMH has numerous RN vacancies and is seeking nurses for grades 5, 7 and 9. DMH's July 3, 2012 Department of Justice (DOJ) compliance report states there is insufficient nurse staffing levels and ongoing delays in RN hiring which are negatively impacting patient health and safety.<sup>1</sup> As of October 2012, 31 RN positions remain vacant. DMH admits not meeting

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<sup>1</sup> In 2007, the Department of Justice and DC reached a settlement, known as the St. Elizabeths Modified Settlement Agreement (MSA), over allegations that the civil rights of patients housed at St. Elizabeths Hospital were violated by DC. Under the SMA, St. Elizabeths Hospital is subject to periodic compliance inspections and reports by the Department of Justice.

target time frames on RN hiring so there can be no question that DMH faces recruitment and retention challenges.

Regarding the cost of its LBO, DCNA argues that a 2% wage increase for FY13 costs \$277,591 and a 3% wage increase for FY14 \$425,372. DCNA calculates the total cost of RN salaries under its proposal for FY10 is \$13,901,488, and for FY14 is \$14,604,452 or a total increase of \$702,964. In contrast, DCNA calculates that DMH's 2% FY14 raise will cost \$277,591. Therefore, for FY14, DCNA says the cost difference between DCNA's and DMH's proposal is \$147,781 and the total cost difference between DMH's and DCNA's proposals for FY10 through FY14 is \$425,372.

Regarding comparators under DC Code § 1-611.03(a) in the DC RN market, DCNA asserts that the starting pay for DMH new graduates RNs is the lowest of the institutions surveyed by DCNA and nearly \$3,000.00 below new graduates salaries at the Department of Veterans Affairs, Medical Center, Washington, DC. DCNA says that the starting salary is \$2,000.00 below the lowest salaried RN the United Medical Center. DCNA argues that, absent an FY13 wage increase, DMH will lose ground to other DC unionized hospitals in recruiting newly graduated RNs.

DCNA's LBO will bring FY13 newly graduated RNs' salary a more competitive level of approximately \$52,000 and by FY14 to approximately \$53,500. Yet, these RNs' salary will still rank near the bottom, but will be far more competitive than DMH's LBO.

DCNA argues that DMH's pay comparison evidence is seriously flawed because it only included approximately 15 of 200 DMH RNs and DMH simply failed to compare Grade 9 or 11 RNs with other hospitals or facilities. In addition, the DMH Psychiatric Nurse, Grade 7 positions were mislabeled as Community Health Nurses while there are no Community Health Nurses employed at St. Elizabeths Hospital. Moreover, St. Elizabeths Hospital RNs do not work in the community but as direct-care hospital psychiatric nurses.

DCNA argues that DMH's comparability evidence is not reliable because it fails to compare the highest DMH Grade 11 RN salary, \$92,796, to Department of Veterans Affairs RNs, nearly \$10,000 more, and to senior RNs salaries at Children's Hospital, Howard University Hospital and United Medical Center.

DCNA argues that the RNs negotiated general pay increases at Children's Hospital amounted to 3% for 2012; 1% on July 1, 2013; and 2%, on January 1, 2014 and RNs

promoted to a higher grade receive 5% increases. DCNA asserts that it negotiated 3% pay raises at Children's School Service for DC school RNs for 2011 and 2012 while negotiations for 2013 are pending.

DCNA notes that the 2010 Consumer Price Index (CPI) for all urban consumers increased to 1.6% and for 2011 increased to 3.2% while the most recent CPI was up 2.0% for all items over the prior twelve months. DCNA also notes that the Washington-Baltimore, (DC-MD-VA-WV) CPI increased 1.6% for 2009; 1.6% for 2010 and 3.3% for 2011. DCNA concludes that these CPI increases support the modest wage increases in DCNA's LBO of 2% for FY13 and 3% for FY14. DCNA wants to reopen wage negotiation for FY15.

DCNA argues that DC's financial outlook is good and undermines the entirety of Eric Goulet's testimony based on the most recent report from Mayor Gray to DC Council Chairman Phil Mendelson in which Chief Financial Officer Dr. Natwar Gandhi certified that revenue estimates for the FY13 Budget and Financial Plan were revised upward by \$190 million and for FY14 by \$177.8 million. Furthermore, DC now enjoys an FY13 \$417 million surplus at a time when Mayor Gray has stated he desires to provide raises to public servants.

DCNA argues that other evidence demonstrated "a far rosier financial outlook than that presented" by Goulet including DC's unemployment rate decreased for seven consecutive months and DC now has the nation's third highest job growth. Additionally, DCNA notes in a September 28, 2012 statement, Natwar M. Gandhi, DC Chief Financial Officer, wrote that DC wages grew 3.6% in the March 2012 quarter. These financial revelations conclusively demonstrate that Goulet's testimony was conjectural and the evidence fully supports DCNA's LBO wage increases.

DCNA asserts that contractual DC's Human Care Agreements with several private nursing-care contractors include yearly salary increases for RN Is, RN IIs and Certified RN Practitioners. DCNA argues that these wage increases for contracted RNs support wage increases to attract and retain DC RNs at St, Elizabeths Hospital. DCNA says while these contractual wage increases do not control this impasse decision, the increases show that DC contemplated and provided for pay increases for contractor RNs recognizing that these are hard to fill positions. DCNA concludes that these contractor pay raises support an award holding for DCNA's LBO regarding FY13 and FY14 wage increases as reasonable and necessary.

DCNA asserts that on June 29, 2010, the DC Council approved compensation for FY13 and FY14 in a collective bargaining agreement between the DC Public Schools and the Washington Teachers' Union, American Federation of Teachers' Local No. 6, AFL-CIO, providing pay increases of 20% over five years commencing in 2007.

Since the Parties' wage LBO is linked to CBA duration, DCNA presented no argument on the duration issue.

**DMH asserts** its wage proposal meets the statutory, regulatory and operational requirements which require compensation to be competitive and reasonably within the range of compensation prevailing in the Washington, DC Standard Metropolitan Statistical Area. DMH argues that the most prevalent competitive pay policy is the market 50<sup>th</sup> percentile or median which satisfies the definition of being competitive.

DMH argues that at hearing Michael Rumberg, DC HR Specialist, presented a November 14, 2012 nurses' compensation survey, using the 50<sup>th</sup> percentile or market median which accurately compared three nursing classes, Clinical Nurse 1 (Registered Nurse), Nurse Practitioner and Clinical Nurse II (Community Health Nurse). Rumberg's data was collected from 11 surrounding jurisdictions and the Healthcare Council National Capital Area Survey.

DMH says that Rumberg's survey established that each class fell within the definition of competitive as being within 10% of the target market median. DMH argues this data indicates that no changes in pay for RNs are needed at this time. DMH argues that, with regard to Clinical Nurse 1, the survey reflects primarily private sector compensation which typically leads similar public sector compensation.

DMH argues its pay practice shows Clinical Nurse I position at 93% at the entry level; at 96% at midpoint; and at 98% at maximum of median thereby meeting the definition of competitive. DMH argues that for the Nurse Practitioner position the comparison to the median is even more favorable: at entry level at 121%; at midpoint 108% and at maximum 101% of median. Finally, DMH argues that the same is true for the Clinical Nurse II position as follows: at entry level at 128%; at midpoint 113%; and at maximum 104% of median.

DMH asserts that recruitment and retention bear on whether wages are competitive. DMH argues that Frankie Wheeler's, DMH Director, Office of Human Resources, testimony

on recruitment and retention over the last two years shows DMH has not experienced much difficulty in recruiting hiring 65 nurses in 2011 and about 70 in 2012. Wheeler also testified that DMH retention rate was “not out of whack with the national norm.” (Tr 164-166). DMH argues that Wheeler’s testimony establishes DMH has no recruitment and retention problems and is in line with the industry. Therefore, DMH concludes the current compensation is competitive.

DMH notes that Vidoni-Clark testified training to bring the nursing staff up to an acceptable level of performance was needed. DMH argues this substandard level of performance establishes there should be no FY13 wage increase since performance is a factor in determining pay pursuant to DC Code § 1611.03(3). DMH argues an FY13 wage increase is inappropriate when there is no revenue projected to support increases for DCNA or any other unions.

DMH asserts that DC's budget or General Fund Balance funds allocated for wage increases are limited by law, and by practical, economic and market considerations. DMH argues that Goulet’s testimony, based on FY11 composition of the General Fund, explained DC’s Surplus, Bond Rating History and the General Fund Balance, and addressed the practical and legal limitations of the General Fund Balance. DMH argues, based on Goulet’s testimony, that money reserved for debt service or bond escrow must be set aside for to protect DC’s bonds and borrowing. DMH says his testimony established that it is a violation of law, including the Federal Antideficiency Act, to use bond escrow money for pay raises. Furthermore, DMH argues emergency and contingency cash reserves, or rainy day funds, are not available for pay raises and this money is subject to very tight federal restrictions requiring very quick paybacks. DMH says these funds can be used for one-time purposes, but must be paid back in two years.

DMH says that Goulet’s testimony established that \$194.2 million in the General Fund is a cash flow reserve for Wall Street borrowing at low rates to save debt service cost. In addition, some of this money is a fiscal stabilization reserve designed to avoid another Great Recession.

Finally, DMH argues, based on the FY11 composition of the General Fund Balance, Goulet’s testimony established that the remaining categories are restricted by local law including special purpose revenue funds for specific purposes and cannot be touched.

In conclusion, DMH argues that the revenue projection for FY13 is 0% and for FY14 is 1.6% which shows DCNA's proposal for those years, at 2.0% and 3%, cannot be supported and should be rejected. DMH concludes, its LBO of 0% for FY13; 2% for FY14 and 2% for FY15 is the more reasonable and extends the CBA while providing DCNA affordable pay raises.

## **DISCUSSION**

The Parties' LBOs agree on no raise, or 0%, for FY11 and FY12. Their LBOs differ in that DCNA proposes a 2% FY13 raise and DMH proposes no raise, or 0%, for FY13. Additional differences are found for FY14, DCNA proposes a 3% raise while DMH proposes a 2% raise. Finally, DCNA's LBO would result in a reopening of negotiation for FY15, while DMH's LBO would extend the CBA for another year until FY16 with another 2% raise for FY15.

Making an initial comparison of the LBOs, and setting aside the issue of duration for this purpose, the Parties are separated by 2% in FY13 and only 1% in FY14. Put another way, the impact of each Parties' LBO regarding duration is that in FY15, DCNA wants to bargain again, while DMH proposes another CBA year with a 2% raise for FY16. If DCNA's proposal for an FY13 pay raise of 2% is warranted, then the Parties' LBOs are separated by only 1% in FY14 as regards funding the CBA. For this reason, the competing offers for an FY13 pay raise, 2% or 0%, are the axis on which the resolution of the impasse turns when determining which LBO achieves a prompt and fair resolution of the dispute.

Turning to an analysis of the facts presented at hearing, the testimony of Dr. Clotilde Vidoni-Clark, DMH, Chief Nursing Executive, revealed serious RN recruitment problems at DMH. She testified,

. . . to meet requirements, staffing requirements, we have received additional positions and our full authorized ceiling for RNs is 199.

Since I've come on board, we've hired – I think we started at 120 last October and, currently, we have approximately 170-something nurses. We're needing to hire 20 more, and that's an awful lot of staff to hire. (Tr 208).

DMH's data on RN separations from October 1, 2010 through September 14, 2012 reveals 52 separations including 33 RNs who resigned or retired. (Ux 1). The record shows that DMH is advertising vacancies in RN Grades 5, 7 and 9. (Ux 8). On July 3,

2012, Jonathan M. Smith, Department of Justice Chief, Special Litigation Section reported in a St. Elizabeths Hospital compliance assessment to Ellen A. Efros, Esq., DC Deputy Attorney General, regarding staffing as follows,

Insufficient nurse staffing levels continue to prevent great strides in the provision of nursing care. Ongoing delays in nursing hiring have a continuing negative impact on outcomes associated with patient health and safety.

While reports indicate that SEH's staffing levels are moving in the right direction, hiring has been uneven and slow, which has prevented SEH from taking advantage of peak recruitment periods due to the lack of available funds. We understand that SEH aimed to achieve the required 50% RN mix by the end of June 2012, with funding secured through FY2013. We also understand that SEH plans to fill 29 other vacant positions, prioritizing nursing, by July 2012. (Ux 24, See: fn. 1).

At hearing, Frankie Wheeler, DMH Director, Office of Human Resources, testified "I have, approximately, 17 positions that I am currently recruiting for as of this date." (Tr 162). Wheeler's testimony also established that DMH was recruiting for all RN grades.

These facts and circumstances establish that DMH faces a serious, arguably chronic, recruitment and retention problem with RN positions at all grades. Under either LBO, the DCNA bargaining unit RNs will receive no pay raises for FY11 or FY12 which is a recognition by both Parties that retroactive pay is not appropriate based on DC's economic condition.

It is significant therefore in analyzing the LBOs that DMH's LBO would result in a third year of 0% RN pay raises doing little to mitigate DMH's recruiting and retention problems. Conversely, DCNA's LBO of a modest 2% raise improves the competitive position of DMH's RN vacancies in the job market while giving incumbents reason to remain employed at DMH. For this reason, the Arbitrator finds that DCNA's LBO for a 2% raise in FY13 is more reasonable than DMH's LBO for another 0% based on DMH's recruitment and retention problems.

But the analysis cannot end here, DMH's argument in support of its LBO relies on the November 14, 2012 Nursing Classes Market Study (Market Study) prepared by Michael Rumberg, DMH Human Resources Specialist. (Ax 3). Rumberg wrote, in pertinent part:

[f]or a variety of reasons obtaining data for nursing positions poses significant challenges . . . [including] [m]ost nurses in the region are employed by private

sector organizations which tend to keep their salary and practice information very close to their chest for competitive reasons . . . [m]ental health facilities, where the largest group of DMH nurses are [sic] employed as Psychiatric Nurses, are often run by private sector organizations. (Ax 3).

The Market Survey's charts reveal comparisons with nurse positions in surrounding jurisdictions of the salaries of only DMH RNs in Grades 7, 9 and 12, about 134 employees, leaving out Grades 5 and 11, about 63 employees. (Ax 3 and Ux 15). In this regard, the Market Survey is arguably less reliable than DMH would have the Arbitrator believe. For the DMH Grade 7 RN position, out of 13 comparators, there were only 2 employers identified with a matching position; for Grade 9 there were only 8 out of 13 employers identified with a matching position; and for Grade 12 there were only 7 out of 13 employers identified with a matching position. (Ax 3). The Survey's reliability is brought into question for these, arguably, incomplete comparisons. Finally, the Market Survey compares DMH's Grade 7 Psychiatric Nurse position to the Community Health Nurse positions in surrounding jurisdictions. (Ax 3). Based on the testimony of DMH witnesses and DCNA witnesses, this comparison of DMH's Psychiatric Nurse position to the Community Health Nurse position is not an optimal comparison and arguably inappropriate. (See: Testimony of Dr. Clotilde Vidoni-Clark Tr 203-214). For all these reasons, the Survey lacks sufficient material weight to support DMH's LBO.

The Arbitrator finds that the distilled essence of the Market Study is that comparative compensation data collection on the Psychiatric Nurse class is challenging; the data does not consider DMH RN Grade 5 and 11; RN Grade 7 has nearly no class matches which compare a DMH Psychiatric Nurse to a Community Health Nurse; and the RN Grade 9 and 12 had 8 and 7 comparators out of 13 jurisdictions. This record establishes serious flaws in the Market Study analysis. Despite, the serious flaws, Rumberg recommends "[t]he data indicates that no changes are needed [in compensation] at this time" for DMH RNs. (Ax 3). The Arbitrator is unable to agree with this recommendation based on the Survey's flaws.

Based on the record, the Arbitrator finds that the Market Study lacks sufficient reliable analysis of the material and relevant compensation of RN positions in surrounding jurisdictions to constitute valid comparators with DMH RNs' as required by DC Code § 1-611.03.

Other record evidence establishes that DMH RN compensation at top-of-grade is significantly below the top of grade wages of nurses at the Department of Veterans Affairs,

Children's Hospital, Howard University Hospital and Washington Medical Center. (Ux 14). In addition, testimony established that Children's Hospital has negotiated wage increases of 3% effective July 1, 2012; 1% effective July 1, 2013; and 2% effective January 1, 2014 or an overall 6% from 2012 through 2013. (Ux 14). In addition, DC has negotiated Human Care Agreements with contractors for RN services at hourly rates with significant compensation increases over each contract option year. (Ux 16, 17 and 18). Based on this record, after 0% raises in FY11 and FY12 for DMH RNs, DCNA's LBO of a modest 2% raise in FY 13 is the more reasonable in terms of achieving a prompt and fair resolution of the dispute. As regards the FY14 pay raise, DCNA's 3% LBO is only 1% above DMH's 2% LBO and DCNA's LBO results in a renegotiation of compensation at that time as well. If economic conditions have not improved for DC, a shorter CBA duration allows DMH to negotiate on pay raises and potentially dial back through bargaining its labor costs for FY15.

Concerning DC economic conditions, DMH presented testimony from Eric Goulet, Mayor's Deputy Chief of Staff and Budget Director, on the details of DC finances. Goulet's testimony on direct examination was wide-ranging, describing the operation of the Control Board; DC right-sizing; Wall Street ratings and potential down-grades; DC bond ratings; the possible impact of Federal sequestration; sales tax revenues; interest rates and borrowing. (Tr 227-234). He testified as well on why certain DC fund balances and other budget constraints may eliminate or constrain the availability of money for pay raises.

Initially, on cross-examination, he testified, regarding an impending pay raise agreement involving the DC teachers' union as follows,

Q. The teachers haven't reached an agreement dealing with . . . [FY13]?

A. No, we can't, because we have no money at this point in '13.

Q. You can't pay it? You have an inability to pay?

A. Unless the agency comes up with a way to get savings, that's correct. We have no money in the workforce investment line for '13.

Q. That's the first time I've heard that.

A. Zero.

Q. The District has not made an argument that it had an inability to pay.  
I question –

MR. AQUI: The witness did not say that. He said he has no money in the –

THE WITNESS: The workforce investment account –

MR. AQUI: – workforce investment.

THE WITNESS: – to pay money.

MR. AQUI: He didn't say the District cannot pay. There's a difference.

MR. SMITH: Well, I asked inability, but okay. (Tr 269-270).

Goulet's testimony establishes that DC is **not** claiming an inability to pay a raise in FY13 to DMH RNs, but only that DC has "no money in the workforce investment line for '13." (Tr 269). Goulet also testified that he did know DCNA's FY13 pay raise proposal. (Tr 291). He testified that he did no costing of the DCNA proposal. (Tr 292). Overall, Goulet's testimony was informative regarding the history of DC financial problems since 2005, but did not provide relevant and material support for DMH's LBO. His testimony that there was "no money in the workforce investment line" reveals a choice that the DC government has made in drafting its budget submission for FY13 and not that there is an inability to pay FY13 raises to the DCNA bargaining unit at St. Elizabeths Hospital.

Concerning DC's ability to find money for the "workforce investment line" in its FY13 budget, a September 28, 2012 letter from Natwar Gandhi, DC Chief Financial Officer, to Mayor Vincent C. Gray reveals DC's revenue projection for FY12 "is revised upward by \$139.5 million to reflect a stronger than expected revenue collections through August." (Ux 26). Gandhi comments that the DC unemployment rate declined to 8.8%, down from 10.5%. (Ux 26). Gandhi states "[w]ages earned in the District of Columbia grew 3.6 percent in the March 2012 quarter" compared to a year ago and "Personal Income was 4.9 percent higher." (Ux 26). Gandhi states "[t]ax collections for fiscal year 2012 have been quite strong, with individual income, sales and business showing significant growth." (Ux 26).

DCNA asserts that the cost of a 2% FY13 raise is \$277,591 and a 3% FY14 raise is \$425,372. DMH presented no costing of its LBO at hearing or in its Post-hearing Brief.

For all these reasons and based on the record developed by the Parties, the Arbitrator concludes that DCNA's LBO is the more reasonable and achieves a prompt and fair settlement of the dispute.

## **AWARD**

The DCNA's LBO Article 1, Wages and Article 18, Duration must appear in the CBA.

### **ISSUE TWO ARTICLE 8, ALTERNATE WORK SCHEDULES, SECTION A, IN-HOUSE POOLS**

#### **DCNA's LBO states:**

##### **ARTICLE 8: IN-HOUSE POOLS**

Management shall determine and, if indicated, may develop and implement provisions for in-house pools. Management shall retain the right to determine the specific elements and application of any internal nurse pool programs. The process, procedures, impact and effects, or any other negotiable issue related to bargaining unit employees' participation in any in-house pool program will be negotiated separately.

#### **DMH's LBO states:**

DMH proposes no change to this article.

## **CONTENTIONS**

**DCNA asserts** that this language is agreed. DCNA says that the Parties are addressing this issue in noncompensation bargaining.

**DMH asserts** that this interest arbitration solely concerns compensation disputes including wages and benefits. DMH argues, based on DC Public Employee Relations Board (PERB) precedent *District of Columbia Fire and Emergency Services Department and American Federation of Government Employees, Local 3721*, PERB Case No.06-N-01, Op. No. 874 (*Local 3721*), establishes that non-compensation issues are not appropriate

for compensation bargaining. For this reason, DMH says, the Arbitrator should reject DCNA's proposal.

## DISCUSSION

The PERB's *Local 3721* Decision and Order on Negotiability Appeal, relevant to this dispute, concerns a union proposal during bargaining which the union believed involved working conditions, not compensation. The PERB found that the union's proposal concerning non-discrimination, requiring "that the compensation provided to unit employees shall be no different than any other employee performing the same work . . . [was] . . . **nonnegotiable** as a working condition and should be addressed in the compensation negotiations because it concerns wages."<sup>2</sup> (*Emphasis in original*). Thus, the PERB precedent establishes compensation issues cannot be negotiated in noncompensation bargaining.

However, DMH's analysis of DCNA's proposal turns the PERB's reasoning on its head. For this reason, the Arbitrator cannot conclude, in the absence of PERB precedent supporting DMH's assertion that noncompensation issues cannot be negotiated in compensation bargaining, that DCNA's LBO must be rejected.<sup>3</sup>

Yet, DCNA asserts the language is not only agreed, but also will be addressed in noncompensation bargaining. For this reason, the Arbitrator finds this issue is resolved and not subject to these impasse proceedings.

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<sup>2</sup> *District of Columbia Fire and Emergency Services Department and American Federation of Government Employees, Local 3721*, PERB Case No.06-N-01, Op. No. 874, p. 22-23.

<sup>3</sup> *See for example*: DC Code § 1-617.17 (f)(1)(iii) which concurrent negotiations of compensation and "any working conditions, other non-compensation matters, and coverage of the compensation agreement" in a newly certified collective bargaining unit.

## **ISSUE THREE**

### **ARTICLE 1 or 19, ADDITIONAL DEGREES**

There is no dispute over the substance of this CBA provision. The record establishes that Parties have agreed upon new language for a CBA provision concerning Additional Degrees.

DMH proposes that the Additional Degrees language appear in Article 1, Section H. DCNA proposes to place the language in the CBA as a new, separate Article 19.

### **CONTENTIONS**

**DCNA asserts** that, just as Preceptor Pay, Overtime Pay, Uniform Allowance and other compensation provisions are found in separate CBA articles, it is appropriate for the Additional Degrees language to appear in a separate article which would be a new Article 19.

**DMH asserts** DCNA bears the burden of persuasion to support its assertion that this new CBA language should be carved out as a separate article. DMH argues that there is no rational basis for DCNA's approach to contract drafting. For these reasons, DMH argues this new CBA language should appear in Article 1 as Section H.

### **DISCUSSION**

Arguably, this impasse dispute is the triumph of form over substance. This dispute concerns drafting and wordsmithing, not compensation. Moreover, nothing in DC Code § 1-611.03(a) guides the Arbitrator's selection of the more reasonable proposal. However, DC Code § 1-617.03(a) states that the Arbitrator's Award has "the object of achieving a prompt and fair settlement of the dispute." Based on this statutory guidance and DMH's assertion, that DCNA has not met its burden of persuasion to support a rational basis for creating a separate CBA article for the Additional Degrees language, the Arbitrator finds that DMH's proposal is more reasonable.

### **AWARD**

The Additional Degrees language must appear as CBA Article 1, Section H.

**ISSUE FOUR**  
**ARTICLE 20, STEP MOVEMENT**  
**(Formerly Article 1, Wages, Section F)**

**DCNA's LBO states:**

All bargaining unit employees shall be eligible for step increases based on following schedule, provided the employee's last performance rating was at least at the "Satisfactory" or a comparable level.

Employees at Steps 1-5 – One (1) year at the current step; and

Employees at Steps 6-10 – Two (2) years at the current step.

The effective date of promotion to a higher grade will result in the establishment of a new waiting period for step increases (e.g. last equivalent increase date).

**DMH's LBO states:**

Management rejects DCNA's proposal. Management proposes retention of the current language as part of Article 1 – Wages.

**CONTENTIONS**

**DCNA asserts** that its proposal adds Step 11 to the wage chart to provide for additional movement for the most RNs which supports retaining experienced RNs and provides recruitment incentive. DCNA estimates the cost of this proposal in FY13 at \$10,932 to \$16,935. (Jx 3).

DCNA says the positive impact of its LBO on recruitment and retention far outweighs the minimal cost. DCNA argues a Grade 11 RN, with earning potential to Step 11, will have a potential salary of more than \$100,000 and this top-salary will attract new graduates and experienced RNs. DCNA argues experienced nurses ensure the delivery of safe patient care and assist in training and development of new hires who lack psychiatric nursing experience.

**DMH asserts** first that DCNA's LBO unnecessarily "carves out this language" from CBA Article 1, Section I. DMH opposes this carve out as an irrational approach to contract

drafting.

DMH asserts second that, while the CBA has one-year waiting periods between Steps 1-4, DCNA's LBO would extend the one-year waiting period through Steps 1-5 and add Step 11 to the wage chart, when the current CBA wage chart stops at Step 10.<sup>4</sup> DMH also argues that the DCNA LBO "is fatally flawed" since there is no effective date or employee population to which it would apply. For example, DMH rhetorically asks, "Does the LBO apply to new hires only or will the Agency be required to retroactively apply the wage scale change?"

DMH argues that if this LBO is applied retroactively, then the Agency would have to find additional FY11, FY12 and FY13 funding which are the very years of the Great Recession when no economic improvements were negotiated with any DC Unions. DMH argues that the DC Code contemplates compensation negotiations take place in advance of the budget year to allow negotiated increases to be included in the budget submission. For this reason as well, DCNA's LBO should be rejected and the current CBA language should remain in place.

## DISCUSSION

In response to DMH's assertion that DCNA's proposal might result in retroactive pay, the Arbitrator discusses why retroactivity is not grounds to find a LOB unreasonable under Issue Five concerning LBO, Article 21, New Hires, below, where the issue is more relevant.

The record establishes that this DCNA LBO must be read with Jx 3, *DCNA Proposal – May 14, 2012*, which presents RN wage charts for FY12 through FY14. The chart shows Step 11 added to the wage scale in FY13 noting as well, "[a]ddition of Step 11 occurs effective October 1, 2012." Therefore the Arbitrator finds that DMH's assertion that this LBO is "fatally flawed" is without merit.

That being said, there are a number of problems which flaw DCNA's LBO and support DMH's LBO to maintain the CBA *status quo*.

DCNA's LBO would reduce the waiting period for RNs moving from Step 4 to Step

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<sup>4</sup> DMH's Brief states, ". . . the Union's proposal would add a Step 10 [to the wage chart] while currently it stops at Step 9." However, the DMH wage chart has 10 within-grade steps, not 9. (Jx 3; see also: Ax 5). The Arbitrator concludes that this DMH statement is a typographical error.

5 from two years to one year and add Step 11 for RNs with more than 24 years of DMH service. There is no evidence of how many RNs would receive pay increases as the result of reducing the Step 4 to Step 5 waiting period. As regards the addition of Step 11 to the wage scale, the record shows that there are two DMH RNs at Grade 9, Step 10; three at Grade 11, Step 10 and one at Grade 12, Step 10. (Ux 15). The record evidence is dated November 6, 2012 and therefore, represents only a “snap shot” of DMH service of bargaining unit RNs. In addition, there is no evidence of when these DMH RNs at top of grade received their last step increase. For these reasons, there is no reliable costing evidence for DCNA’s proposal to add Step 11 to the wage chart.

Furthermore, DCNA has not identified a need or compensation problem as regards recruiting and retention which the Union’s LBO would cure or ameliorate as opposed to the current within-grade step scheme with a top-of-grade at Step 10. The Arbitrator is left wondering, “Why must the waiting period between Grade 4 and Grade 5 be reduced and Step 11 added?” There is no adequate answer to this pivotal question in the record.

Finally, DCNA has presented no material evidence regarding how the RN compensation under the present wage scale is not competitive with other public sector RNs “having comparable duties, responsibilities, qualifications, and working conditions.” (DC Code 1-611.03(a)).

For all these reasons, the Arbitrator finds that DMH is the more reasonable LBO.

### **AWARD**

DMH’s LBO proposal retaining current CBA language achieves a prompt and fair settlement of the dispute.

**ISSUE FIVE**  
**ARTICLE 21, NEW HIRES**

**DCNA's LBO states:**

Effective October 1, 2011, the Employer shall place new bargaining unit hires as follows:

Grade 5, Step 1 - Registered Nurses with less than 1 year experience with an Associate's Degree in Nursing.

Grade 7, Step 1 – Registered Nurses with less than 1 year experience with a Bachelor's of Science Degree in Nursing.

Registered Nurses hired as a Grade 5 shall be eligible for promotion to Grade 7 upon completion of 1 year of service at Grade 5 and satisfactory demonstration of the ability to perform the duties of Grade 7. Registered Nurses in Grade 7 shall be eligible for promotion to Grade 9 upon completion of 1 year of service at Grade 7 and satisfactory demonstration of the ability to perform the duties of Grade 9. Promotion to Grades 11 and 12 require competitive promotion.

Newly hired Registered Nurses shall be placed at a Step in the appropriate Grade in accordance with the following years of experience in Mental Health/Psychiatric Nursing:

0 - <1	Step 1
1 - <3	Step 2
3 - <5	Step 3
5 - <7	Step 4
7 - <9	Step 5
9 - <12	Step 6
12 - <15	Step 7
15 - <18	Step 8
18 - <21	Step 9
21 - <24	Step 10
24 +	Step 11

**DMH provided no LBO.**

DMH declared this proposal non-negotiable pursuant to DC Code § 1-617.08.

## CONTENTIONS

### Negotiability

At hearing, DMH asserted that DCNA's proposal was "subject to a negotiability appeal that's still pending." (Tr 7). DCNA responded that the Union's proposal was ruled negotiable by the DC Public Employee Relations Board (PERB) on June 12, 2012 and that DMH has not requested reconsideration of or appealed the PERB's ruling.<sup>5</sup> Therefore, DCNA asserts the proposal is negotiable.

The record establishes that on November 21, 2011, DMH notified DCNA that its Article 21, New Hires proposal violated management rights and therefore was non-negotiable. On December 21, 2011, DCNA filed an appeal to DMH's non-negotiability assertion. On June 12, 2012, the PERB found "the Union's proposed Article 21 negotiable."<sup>6</sup> There is no evidence that DMH requested reconsideration of the PERB's negotiability ruling or appealed in any other way. (DCNA Brief, Attachment 7).

DMH did not assert that this DCNA LBO was non-negotiable in its Brief. Therefore, the Arbitrator finds, consistent with the PERB's negotiability ruling, that he has jurisdiction to decide which of the Parties' LBO on Article 21, New Hires, is the more reasonable pursuant to DC Code 1-611.03(a) and 1-617.17.

### Merits

**DCNA asserts** that its proposal leaves management's right intact except that new graduates with no experience are to be hired at Grade 5 and RNs with one year of experience or a Bachelor of Science degree are to be hired at Grade 7.

DCNA argues that Dr. Clotilde Vidoni-Clark, DMH Chief Nursing Executive and Frankie Wheeler, DMH Director of Human Resources, testified in support of the proposal. (Tr 193 and 206). Moreover, DCNA argues, this is DMH's current practice. Thereafter, the proposal allows yearly non-competitive advances to Grade 9 based on satisfactory demonstration of the ability to perform the duties of the higher grade. DCNA says DMH did

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<sup>5</sup> *District of Columbia Nurses Association v. Government of the District of Columbia Department of Mental Health*, PERB Case No. 12-N-01, Op. No. 1285.

<sup>6</sup> *Ibid*, p. 5.

not produce “a scintilla of evidence why this common sense, career ladder proposal should not be adopted.” (DCNA Post-hearing Brief, p. 16).

DCNA’s proposal requires DMH to place new hire RNs on a pay scale step dependent on the employee’s years of psychiatric nursing experience. DCNA says that DMH’s current practice in determining the step placement for new hires “is all over the map.” (Ux 22). DMH hiring practices show DMH “simply tries to individually negotiate the lowest salary an applicant will take in order to become employed.” (Tr 194-95).

The Union says, DCNA’s proposal brings clarity to what salary the new hires can expect and “will positively impact recruitment” while also ensuring retention. (Tr 64-66 and 97-99). For these reasons, DCNA’s proposal is more reasonable.

**DMH asserts** that DCNA’s LBO is effective October 1, 2011. DMH argues that since the LBO would be retroactive, retroactive pay would occur during the Great Recession. DMH says this was a time “when no economic improvements were negotiated with any District Unions because of the lack of projected revenues.” DMH argues the DC Code contemplates compensation negotiations “take place in advance of the budget year(s) that the contract would cover so as to allow any negotiated increases to be part of the budget submission.” (See: DC Code § 1-617.17(b)). Therefore, DMH argues, the proposal should be rejected as violating the law.

DMH asserts the proposal is a “rigid and inflexible approach” to placement of new hires on steps which was rejected in prior negotiations as an impediment to recruitment. (Tr 175). DMH argues that the proposal includes a Step 11 while the current CBA and DCNA’s LBO Article 20, Step Movement, ends at Step 10. DMH argues, the two LBOs are conflicting and both should be rejected.

## **DISCUSSION**

The Arbitrator’s analysis will start with DMH’s assertion that DCNA’s LBO should be rejected because it is retroactive and therefore violates DC Code § 1-617.17(b).

The record establishes that DCNA’s new hire proposal was first submitted to DMH in the 2011-bargaining cycle so that the October 1, 2011 effective date would have been timely and not retroactive at that time. DMH’s assertion that DCNA’s proposal was non-negotiable followed by DCNA’s PERB negotiability appeal and adjudication delayed

negotiations on the proposal until this bargaining cycle. Indeed, despite the PERB's final ruling, that DCNA's proposal was negotiable, DMH continued to challenge the proposal's negotiability even at the hearing in this impasse proceeding.

These facts and circumstances establish that the delay in negotiating over this proposal which, if the LBO is found to be the more reasonable may require *possible* retroactive pay, was the result of DMH's actions. To conclude that the *possibility* of retroactive pay under DCNA's LBO constitutes grounds for the Arbitrator to reject the proposal would reward, and arguably encourage, delaying negotiations. For example, arguably, to reject DCNA's proposal for this reason would encourage the Employer to delay negotiations whenever the Union's compensation proposals were unacceptable to DMH so as to render the proposal unacceptable by the Arbitrator at impasse resolution based on retroactivity alone. This outcome is inconsistent with the requirement of § 1-617.17(f)(3) that Arbitrator's Award have "the object of achieving a prompt and fair settlement of the dispute" because the Award would be based on a lack of promptness and reward unfair behavior. Furthermore, there is no specific statutory language which prohibits the selection of an LBO based on retroactive pay or even, possible retroactive pay as in this impasse, in § 1-617.17(b), or any DC Code other provision, as claimed by DMH.

For all these reasons, DMH's assertion, that DCNA's LBO should be rejected because of the *possibility* of retroactive pay, is without merit.

DCNA maintains that its LBO is reasonable because it would only subsume current DMH hiring practices regarding the placement on the DMH wage scale by grade and step into the CBA. However, it appears that DCNA's LBO would add a new Step 11 to the DMH pay chart for employees with 24 years or more DMH credited service.

DMH's current salary chart ends at Step 10. DMH argues the additional Step 11 in DCNA's LBO could be inconsistent and conflict with the Union's LBO for Article 20, Step Movement if that proposal is rejected. DMH argues this possible conflict is grounds to reject the Union's LBO. In response, DCNA states,

. . . In the event that the arbitrator adopts the Agency's proposal on Step Movement, DCNA recognizes that new hires cannot be placed at Step 11 and makes clear here that new hires with 21+ years of psychiatric nursing experience will be placed at Step 10. (DCNA Brief, p. 18, fn. 9).

The Arbitrator finds that DCNA reconciled its LBO Article 21, New Hire, to its LBO Article 20, Step Movement. Specifically, DCNA's Brief, p. 18, fn. 9 establishes that if a conflict arises from the Arbitrator's Award on these LBOs, then the conflict is to be resolved by the Arbitrator's Award under Issue Four, LBO, Article 20, Step Movement. Therefore, the Arbitrator finds based on DCNA's clarification of this LBO that DCNA's Issue Five wage chart, showing 11 steps, is merely an effort to conform this Issue Five with Issue Four, LBO Article 20, Step Movement. For this reason the Arbitrator finds Step 11 in LBO, Article 21, New Hires, is not to be read as *substantive language* but only as potentially *conforming language*. Therefore, the Arbitrator finds since DCNA did not prevail on Issue Four, LBO Article 20, Step Movement, the top-of-grade step in DCNA's LBO, Article 21, New Hires, will be Step 10.

The testimony of Vidoni-Clark and Wheeler supports the conclusion that, with a few exceptions, DCNA's LBO reflects DMH's current new hire salary setting practices. (Tr 159-202 and 202-214). Vidoni-Clark testified in detail about the nursing staff requirements and DMH's needs for new hires. Specifically, she said,

... to meet requirements, staffing requirements, we have received additional positions and our full authorized ceiling for RNs is 199.

Since I've come on board, we've hired – I think we started at 120 last October and, currently, we have approximately 170-something nurses. We're needing to hire 20 more, and that's an awful lot of staff to hire.

And most of our nurses are not psychiatric nurses, are either nurses who are just graduated or have worked maybe for one or two years. (Tr 208).

While DMH argues DCNA's LBO is "rigid and inflexible," Vidoni-Clark's testimony reveals the contrary need for a consistent, rational approach to recruitment-salary setting particularly when DMH needs to hire 20 or more RNs or, as Vidoni-Clark says, "an awful lot of staff."

DCNA's LBO would ensure a consistent and reliable approach to setting new hire salaries and that consistency and reliability will aid in attracting the qualified candidates DMH needs to meet its staffing up challenge.

For all these reasons, the Arbitrator finds the record establishes that DCNA's LBO is the more reasonable and will achieve a prompt and fair settlement of the dispute.

## **AWARD**

The DCNA's LBO Article 21, New Hires must appear in the CBA.

### **ISSUE SIX**

#### **ARTICLE 25, EMPLOYEE AFFORDABLE HOUSING ASSISTANCE**

##### **DCNA's LBO states:**

1. The Parties agree to include DCNA and DMH in the existing city-wide Joint Labor-management Affordable Housing Taskforce to facilitate the purchase and/or rental of homes in the District of Columbia by employees in bargaining units covered by this agreement. Pursuant to the DPM, Part 1, Chapter 3 Section 301, the District provides a preference for District residents in employment. In order to encourage employees to live and work in the District, the Joint Labor-Management Affordable Housing Task Force will strive to inform employees of the programs currently available for home ownership in the District of Columbia. Additionally, the Task Force shall work with other government agencies including the Department of Housing and Community Development and the District's Housing Finance Agency to further affordable housing opportunities for District employees, who have worked for the District government for at least one year.
2. The District will continue to provide financial assistance to bargaining unit employees to purchase a primary residence in the District of Columbia by continuing to fund the Employee Assistance Home Purchase Program (EAHPP).
3. Over the duration of this Agreement, the District shall fund the EAHPP with at least \$78,750.00. If the \$78,750.00 specifically designated for the EAHPP is depleted prior to the expiration of this Agreement, the parties agree to reopen this Article to provide additional funding for the EAHPP.

##### **DMH's LBO states:**

1. The Parties agree to include DCNA and **DMH** in the existing city-wide Joint Labor-management Affordable Housing Taskforce to facilitate the purchase and/or rental of homes in the District of Columbia by employees in bargaining units covered by this agreement. Pursuant to the DPM, Part 1, Chapter 3 Section 301, the District provides a preference for District residents in employment. In order to encourage employees to live and work in the District, the Joint Labor-Management Affordable Housing Task Force

will strive to inform employees of the programs currently available for home ownership in the District of Columbia. Additionally, the Task Force shall work with other government agencies including the Department of Housing and Community Development and the District's Housing Finance Agency to further affordable housing opportunities for District employees, who have worked for the District government for at least one year.

2. During fiscal year 2012, the District shall **make available, as needed, invest** the equivalent of a minimum of .25% of the aggregate salaries effective December 31, 2011, of bargaining unit employees at **DMH** toward affordable housing initiatives;

3. During fiscal year 2013, the District shall **make available, as needed, invest** the equivalent of a minimum of .25% of the aggregate salaries effective December 31, 2012, of **DCNA** bargaining unit employees at DMH toward affordable housing initiatives. (*Emphasis and strikeouts in original*).

## CONTENTIONS

**DCNA asserts** the language in its LBO is the same as the DC's collective bargaining agreements with other labor organizations. DCNA argues its LBO incorporates statutory provisions giving DC residents financial assistance in purchasing first homes. DCNA says this language in the CBA will educate the bargaining unit RNs and assist the recruitment of new RNs. DCNA argues its LBO provides incentive for DMH nurses to become DC residents. In support of its LBO, DCNA requests that the Arbitrator take arbitral notice of and review the CBA for Compensation Units 1 and 2 at Attachment 9 to the DCNA Brief.

**DMH asserts** that DCNA LBO would require DMH to fund the program with \$78,750.00 for the CBA duration forcing DC to set aside funds which would be out of the reach of DMH for other purposes.

DMH argues that its LBO obligates management to "make available as needed .25% of the aggregate salaries of the bargaining unit. . . . for affordable housing initiatives." (DMH Post-hearing Brief, p. 15). DMH says its LBO is superior to DCNA because it funds the affordable housing program flexibly so that money that is not needed for the program will not be out of reach of the DC government.

For example, DMH argues that under DCNA's LBO, if no bargaining unit employee took advantage of the program, then the \$78,750 would sit idle in a fund beyond the reach of DC government. DMH concludes that the Arbitrator should avoid this result and find that

DMH's LBO is the more reasonable.

## DISCUSSION

The Parties LBOs are substantively identical in paragraph 1. The differences arise in paragraphs 2. and 3. DCNA's paragraph 2. requires DC to continue the Employee Assistance Home Purchase Program (EAHPP). Then DCNA paragraph 3. requires DMH to contribute \$78,750.00 to the EAHPP "over the duration" of the CBA.

Therefore, Parties' impasse involves the language in paragraphs 2. and 3. DCNA asserts that its LBO is the same as language in other CBAs. In support of this assertion, DCNA offers the Compensation Collective Bargaining Agreement Between the *District of Columbia Government and Compensation Units 1 and 2* (CBA Comp 1 & 2). (DCNA LBO Attachment 9).

However, the language in CBA Comp 1 & 2, Article 5, *District of Columbia Employee Affordable Housing Taskforce*, is not the same as DCNA's LBO. It is DMH's LBO which is nearly identical to CBA Comp 1 & 2, Article 5, as regards the substance of the contract language. But, there are differences.

CBA Comp 1 & 2 provides that "the District shall invest the equivalent of a minimum of .25% of the aggregate salaries . . . of bargaining unit employees" each year. DMH's LBO provides "the District shall **make available, as needed**, invest the equivalent of a minimum of .25% of the aggregate salaries . . . of bargaining unit employees" each year. (*Emphasis and strikeouts in original*). The difference between "shall invest" and "**make available, as needed**" will be of no consequence if bargaining unit employees use the funds for affordable housing.

DC Code § 1-611.03(a) states:

[c]ompensation shall be competitive with that provided to other public sector employees having comparable duties, responsibilities, qualifications, and working conditions by occupational groups.

DMH's LBO will result in the compensation of the DMH nurses' bargaining unit, as regards the availability of funds for affordable housing, becoming competitive with the bargaining unit employees in Compensation Unit 1 and 2. In addition, DMH's LBO is

funded with “a minimum of .25% of the aggregate salaries of bargaining unit employees” each CBA fiscal year. This is the same funding formula as in the CBA Comp 1 & 2.

In contrast, DCNA’s LBO requires that DMH shall fund the affordable housing fund “with at least \$78,750.00” which if “depleted prior to the expiration” of the CBA triggers a reopener of the Article to provide additional funding for the affordable housing fund. DCNA’s approach is inflexible, since it is based on a dollar amount instead of a percent of salaries uncertain and since bargaining unit employees’ usage of the fund may vary over the CBA’s duration. In addition, DCNA’s LBO will unnecessarily tie-up DMH’s money without regard to usage of the affordable housing fund. Finally, DCNA’s LBO may result in an unnecessary CBA reopener when this compensation issue can be resolved for the CBA’s duration under DMH’s LBO.

The Arbitrator finds DCNA’s LBO does not achieve a prompt and fair settlement of the dispute while DMH’s LBO makes these bargaining unit employees compensation competitive with the compensation of Compensation Unit 1 and 2 bargaining unit employees. For all these reasons, DMH’s LBO is the more reasonable.

### **AWARD**

DMH’s LBO must appear as Article 25, Employee Affordable Housing Assistance.

### **ISSUE SEVEN ARTICLE 26, PRECEPTOR PAY**

#### **DCNA’s LBO states:**

Registered Nurses assigned by the Agency to serve as preceptors or resource nurses will be paid, in addition to their regular rate, two dollars (\$ 2.00) per hour while serving as a preceptor or resource nurse.

#### **DMH’s LBO states:**

Management rejects DCNA’s proposal.

## CONTENTIONS

**DCNA asserts** that Preceptorship involves a RN acting as a daily role model to newly hired RNs providing support, coaching and assisting in understanding policies and procedures.

DCNA argues that DMH and the Union recognize the benefits of and the need for a preceptor program because the program improves patient care and efficiency. DCNA notes that Vidoni-Clark testified that a preceptor can assist new RNs to become fully functional. DCNA argues that since a DMH preceptor program has not been implemented, the Parties disagree solely on whether DMH should pay experienced RNs for the additional duty of preceptor for newly hired RNs.

DCNA argues its witness, Laverne Plater, DMH Nurse Consultant/Educator, testified that she supports the additional \$2.00 per hour as an incentive to experienced RNs to take on additional duties. DCNA introduced evidence that several other health care institutions paid RNs preceptor pay including Howard University Hospital, Children's Hospital, United Medical Center, the Red Cross and Washington Hospital Center. DCNA asserts that Children's National Medical Center, United Medical Center and the Red Cross pay equal to or greater than DCNA's proposal while Howard University Hospital RNs with preceptor duties receive a higher rate of pay and Washington Hospital Center preceptor pay is to be negotiated.

DCNA argues that DMH has provided no evidence to support rejection of DCNA LBO. Finally, DCNA argues its LBO has no FY13 cost and perhaps no FY14 cost because, the intent is that if and when DMH implements a preceptor program, then the compensation would go into effect.

**DMH asserts** DCNA's LBO, while conditional, is premature and superfluous, and would only clutter the CBA. DMH argues that Vidoni-Clark acknowledged that the preceptor program was something she would like, but staff training was needed because, "we need to build the foundation." (Tr 212). Therefore, Vidoni-Clark testified, since the RN staff is not equipped to serve as preceptors, it makes no sense to have this CBA language and would serve no useful purpose.

## DISCUSSION

DCNA's preceptor LBO is a contingent proposal which would provide \$2.00 per hour premium pay to preceptor RNs "while serving as a preceptor or resource nurse" when DMH implements a preceptor program. (DCNA LBO Issue 7, Article 26, Preceptor Pay).

DCNA witness Plater described the preceptor role as follows,

Preceptorship is an individual, and in this case would be a registered nurse, whose primary duty would be a role model or a shadow. The person would be constantly always available.

It wouldn't be at anytime that the individual would have to, during orientation, guess what the decision was to be made. It would be somebody to provide the support, the coaching, that policy review, that resource. . . . This would be a daily relationship working there when they're on duty and availability for questions outside of that. . . . (Tr 47-50).

While Plater was fully supportive of a DMH preceptor program, the evidence established that DMH has not implemented a preceptor program and, at best, a DMH preceptor program is in the very early design phase. (Tr 62-63, Ux 2, 3, 4 and 5).

DCNA argues that while Dr. Vidoni-Clark, DMH Chief Nursing Executive, said that DMH's goal was to implement a preceptor program, she did not believe it was prudent to do so immediately. (Tr 211-213) However, Vidoni-Clark's testimony on implementing a preceptor program is more nuanced than DCNA's description would indicate. While examining the Union's exhibits regarding a preceptor program, Ux 2, 3, 4 and 5, Vidoni-Clark testified,

[b]ut this – once we get more into the weeds, it's like this is a program that we want to do.

But I personally don't think it would be advantageous to implement it immediately because we've got so much other stuff we need to do.

But this I see as a perfectly – all of our staff fully trained, it would make sense when new staff came on board that we would have a preceptor.

But we've got to get our current staff to the point of being good staff, good psych nurses. We've got new nurses who have the attitude of being good preceptors. They have – they're enthusiastic and they have leadership skills, but they don't have the psych nursing skills.

So what we need to do is train our nurses to be good psych nurses. (Tr 211-12).

Vidoni-Clark's testimony establishes that there are no DMH plans, in the near-term or mid-term, to implement a preceptor program. For this reason, DCNA's LBO is premature and arguably, in the absence of even a timetable for implementation of a DMH preceptor program, the LBO lacks currency and is therefore, speculative and attenuated.

DCNA presented evidence that other DC hospitals pay an hourly premium or higher wage for RN preceptors. (Ux 12). None of the comparator-hospitals that have working preceptor programs is a DC government or public-sector institution. There is no record evidence that DC government hospitals have preceptor programs or pay a premium or higher wage for RN preceptors.

DC Code § 1-611.03 provides, "compensation shall be competitive with that provided to other public sector employees having comparable duties, responsibilities, qualifications, and working conditions by occupational groups." The DC Code permits consideration of compensation levels outside the area and/or with federal government employees to establish a reasonably representative statistical basis for comparison or when local labor market conditions require a larger sampling. There is no record evidence that the consideration of compensation levels outside the area or with private or federal government hospitals is needed for a reasonably representative statistical or larger sample in this dispute.

For these reasons, the Arbitrator finds that DCNA's LBO does not achieve and prompt and fair settlement of the dispute.

## **AWARD**

DMH's LBO for no Preceptor Pay achieves a prompt and fair resolution of the dispute.

## AWARD SUMMARY

### Issue One

Article 1, Wages and Article 18, Duration:

DCNA's LBO Article 1, Wages and Article 18, Duration, achieves a prompt and fair settlement of the dispute.

### Issue Two

Article 8, Alternate Work Schedules, Section A, In-House Pools:

This issue is resolved and not subject to these impasse proceedings.

### Issue Three

Article 1 or 19, Additional Degrees:

DMH's LBO for the Additional Degrees language to appear as CBA Article 1, Section H achieves a prompt and fair settlement of the dispute.

### Issue Four

Article 20, Step Movement:

DMH's LBO, retaining current Article 20, Step Movement, CBA language achieves a prompt and fair settlement of the dispute.

### Issue Five

Article 21, New Hires:

DCNA's LBO, Article 21, New Hires, achieves a prompt and fair settlement of the dispute.<sup>7</sup>

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<sup>7</sup> Since DCNA did not prevail on Issue Four, the wage scale in Issue Five, Article 21, New Hires, must end at Step 10 based on DCNA's clarification that Step 11 appeared in the wage scale in Issue Five, Article 21, only as conforming language and not a substantive proposal.

## Issue Six

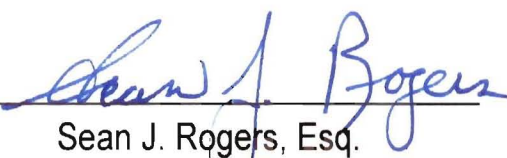
Article 25, Employee Affordable Housing Assistance:

DMH's LBO, Article 25, Employee Affordable Housing Assistance, achieves a prompt and fair settlement of the dispute.

## Issue Seven

Article 26, Preceptor Pay:

DMH's LBO for no Preceptor Pay achieves a prompt and fair resolution of the dispute.



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April 20, 2013