

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

2. That West Side Hospital, hereinafter referred to as the Respondent, is a private, not for profit, hospital having its principal offices at 3330 W. Wells Street, Milwaukee, Wisconsin.

at Milwaukee, Wisconsin; and that the Complainant and Respondent are parties to a collective bargaining agreement entered into and effective for the period from October 26, 1970 through and including October 26, 1971.

4. That the collective bargaining agreement in effect between the parties contains the following provisions material herein:

"ARTICLE IV

Seniority

4.01 Seniority is defined as the length of time that an employee has been hired by the Hospital, computed from the most recent hiring date, excluding unpaid leaves and other unpaid absences of more than two weeks. Promotions, layoffs and recall after layoffs will be determined upon the basis of the Hospital's record of the appraisal of the individual employee's skill and ability but where these are relatively equal, the employee with the greatest seniority will be given preference over those with less seniority.

. . .

4.04 The Hospital will keep and maintain a seniority list of all employees having seniority rights. This list will be open for inspection by a union representative at all reasonable times.

. . .

ARTICLE XII

Grievance Procedure

12.01 The Hospital agrees to meet with duly accredited officers and committees of the Union upon grievance matters pertaining to the meaning or application of this contract. Grievances shall be dealt with (sic) with first through the immediate supervisor, then through the head of the department, and in case of failure to resolve the grievance within five (5) working days thereafter, then the grievance shall, within the next succeeding three (3) working days be put in writing and promptly submitted to the Administrator or, in her absence, the Assistant Administrator. If the matter is not satisfactorily adjusted at this level within seven (7) days from the time that it is presented to the Administrator or Assistant Administrator, then the party wishing to carry the matter further may present the matter to the Wisconsin Employment Relations Board as an unfair labor practice for violating the terms of a collective bargaining agreement pursuant to the provisions of Chapter lll of the Wisconsin Statutes, and this shall be the sole and final remedy of the aggrieved party.

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ARTICLE XIV

Seniority List

14.01 The Employer, upon request, shall furnish the Union a complete list of all its employees including their current classifications. This list shall be used for Union-Management reasons or activities.

. . .

ARTICLE XVII

Management

17.01 The Hospital has the sole and exclusive right to determine the number of employees to be employed, the duties of each and the nature and place of their work, whether or not any of the work will be contracted out, and all other matters pertaining to the management and operation of the Hospital."

5. That Genevieve Jenkins has been employed by the Respondent as a nurses aide since 1969; that Ethel Seibert has been employed by the Respondent as a nurses aide since 1969; that Jeff Maritz has been employed by the Respondent as an orderly since July, 1970; that Paul Buda has been employed by the Respondent as an orderly since February, 1971; that during the month of August, 1971 the Respondent laid off eleven employees including Jenkins and Seibert; that during the layoff which began during the month of August, 1971 the Respondent retained Maritz and Buda on its payroll and did not lay off Maritz or Buda; and that the Complainant lodged a grievance with the Respondent alleging that the Respondent had violated the collective bargaining agreement by laying off employees out of the order of their seniority.

6. That Maritz and Buda were interviewed for and hired for work involving both patient care and security; that Maritz and Buda are scheduled in such a manner that one of them is on duty every day on a 3:00 p.m. to 11:30 p.m. shift; that Maritz and Buda are assigned a patient load and care for the patients so assigned in the same manner as nurses aides care for patients assigned to them, but that Maritz and Buda are assigned a smaller patient load than is assigned to nurses aides; that, in addition to patient care, Maritz and Buda are assigned responsibility for locking and checking doors on the Respondent's premises and are instructed to handle any security problems involving visitors on the Respondent's premises; that Maritz and Buda have received training in the administration of certain treatments to patients; that since July 1, 1971 Maritz and Buda have been assigned exclusive responsibility for administration of such treatments to patients; and that since July 1, 1971 nurses aides who formerly administered treatments have ceased to do so.

7. That the decision to lay off nurses aides Jenkins and Seibert and to retain orderlies Maritz and Buda was made by the Respondent upon the basis of the Respondent's record of the appraisal of the individual employee's skill and ability; and that the skill and ability of employees in the two classifications are not relatively equal.

Based upon the above and foregoing Findings of Fact the Examiner makes the following

CONCLUSION OF LAW

That West Side Hospital by laying off nurses aides while retaining on its payroll orderlies with less seniority has not violated the collective bargaining agreement between it and Local 150, Service & Hospital Employees' International Union, AFL-CIO.

Based upon the above and foregoing Findings of Fact and Conclusion of Law the Examiner makes the following

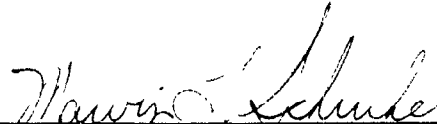
ORDER

That the complaint filed in the instant matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 23rd day of February, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Marvin L. Schurke, Examiner

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

No. 10534-A

was discussed. This evidence is credible, and it certainly indicates that the Hospital had notice of the grievance and the nature of the issue raised prior to the initiation of the instant proceedings. The Examiner does not find that impossibility of compliance with the initial and first intermediate steps of the grievance procedure constitutes a bar or impediment to successful presentation of the grievance directly to the Administrator. The Hospital is equally a party to the language calling for intermediate steps in the grievance procedure, and it cannot frustrate the intent of the grievance system by failing to designate intermediate supervisors or by failing to maintain full and complete records of documents presented and discussions had concerning grievances of employees.

COMPLIANCE WITH SENIORITY PROVISIONS FOR LAYOFF

It is the position of the Union that the evidence it presented during the hearing in this matter established that certain layoffs implemented by West Side Hospital during the month of August, 1971, were in violation of the seniority provision, Section 4.01, of the collective bargaining agreement between the parties.

It is the position of the Hospital that the two "nursing and security" employees retained on its payroll during a layoff of nurses aides with greater seniority are employed in a different classification than the employees laid off, and that those two employees were not considered in the same category with the employees laid off. The Hospital asserts that it did comply with the agreement by implementing its layoff of nurses aides according to their seniority.

Approximately eleven employees were laid off during the month of August, 1971. It appears that all of the employees laid off were female employees in the nurses aide classification. Two male employees were retained on the Hospital's payroll, despite the fact that they had less seniority than at least two of the nurses aides who were laid off. The two male employees are classified as orderlies, and their assigned duties overlap the duties of nurses aides to some extent. Although the issues in these proceedings are not clearly articulated by either party, the Union apparently anticipated a defense which the Hospital might interpose before the Examiner, and much of the evidence offered by the Union is directed to an attempt to prove that there was no difference between the work of the nurses aides who were laid off and the orderlies who were retained.

Under the language of Section 4.01 of the collective bargaining agreement herein, promotion, layoff and recall from layoff are not determined strictly by seniority, but are determined by seniority preference only where the skill and ability of the employees involved is relatively equal in the eyes of the Hospital. The seniority provisions in this agreement are not structured as strictly as seniority provisions found in some other collective bargaining agreements, nor do they provide as much employment security as the Union contends. The language of this agreement does not define whether seniority is to be applied by classification, by department or on a unit-wide basis for purposes of determining the order of layoff and recall. The position taken by the Union would tend to impose seniority by department, while the position taken by the Hospital would tend to impose seniority by classification. The Examiner has not attempted to determine whether seniority is to be imposed by classification or by department, and has


regarded the question of whether or not, "on the basis of the Hospital's record of the appraisal of the individual employee's skill and ability", the skill and ability of the nurses aides and orderlies "are relatively equal", as the determinative issue in the case.

The wage schedule attached to and made a part of the collective bargaining agreement sets out separate classifications of "nurses aide" and "orderly". The classification of employees is relied upon by the parties in other provisions of the agreement as a basis for determining rights. In Section 3.01 classification is relied upon as a basis for the distribution of weekend time off. In Section 11.06 classification is relied upon in conjunction with seniority as a basis for the selection of vacation dates. Both nurses aides and orderlies are assigned a patient load, and when so assigned both classifications require the employees to perform similar functions such as making beds, giving out water and taking temperatures. Any other duties required of nurses aides are not established in this record, but the record reveals certain activities which are part of the orderlies' regular job and are not assigned to nurses aides. The two orderlies in dispute are employed on the afternoon shift and are scheduled so that one or the other of them is on duty every day. These orderlies were specifically hired by the Hospital for nursing and security work, and a part of their daily routine includes the locking and checking of entrance and office doors on the Hospital premises. There is further testimony that the orderlies have been instructed to handle any problems of a security nature which may occur involving visitors on the premises. The orderlies administer treatments such as inhalation therapy and diathermy as a part of their assigned duties, and are assigned a smaller patient load than nurses aides. The administration of treatments was formerly performed by both nurses aides and orderlies, but that practice has been discontinued, and since approximately July 1, 1971 all treatments have been administered by the orderlies. The orderlies have received training from a physical therapist in connection with their assignment to administer treatments. There are substantial differences between the skills and abilities required of the classifications of nurses aide and orderly, and the classifications are more than a mere indicator of the sex of an employee whose duties include making beds, giving out water and taking temperatures. The skills and abilities required by the classifications do not appear to be "relatively equal", and the Examiner is not persuaded that the Hospital's decision in this regard was arbitrary or unsupported by the facts. The decision to lay off the nurses aides while retaining the two orderlies flows from the Hospital's decision as to skill and ability, and is not inconsistent with the seniority provisions of the collective bargaining agreement. The Union failed to show that junior employees were retained elsewhere in the bargaining unit in assignments where the skill and ability of such junior employees was relatively equal to that of the laid off nurses aides.

Dated at Madison, Wisconsin, this 23rd day of February, 1972.

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By



Marvin L. Schurke, Examiner