

Evaluation Committee, at pay range 59. The approximately 13 O.R. Aides in this classification report to the O.R. Nurse and are primarily responsible for cleaning and "turning over" the operating room, transporting patients, running errands, stocking supplies, and discarding waste.

Prior to the reorganization, Union and Employer representatives discussed its impact on bargaining unit personnel and agreed that the former Sterile Room Aides 1/ and Transporter Aides would be the only ones who initially could bid on these slots and that they initially would be posted department-wide, rather than house-wide. They further agreed that once the positions were filled, the O.R. Aides would not undergo either the probationary period or the orientation/training period which is otherwise provided for in Article VI, Section 1, of the contract.

In addition, the O.R. Aides worked out among themselves vacation and scheduling issues and the number of hours that each would work. Furthermore, since there were more positions than people applying, the Employer waived its qualifications-based bidding procedure and accepted all former O.R. Transporters and O.R. Sterile Room Aides who bid for the O.R. Aide slots. But for several individuals who were red-circled because they had been at pay grade 62, all of the other O.R. Aides were raised from their former pay grade 56 to pay grade 59.

The Union filed a grievance over the reclassification, claiming that "The duties of a job title have changed significantly. Promotion language as proposed is not relevant to this situation."

In support thereof, the Union mainly argues that the former O.R. Transporters were effectively reclassified to the O.R. Aide classification and that the reclassification language of Article VI, Section 2(C), thus governs because it "addresses situations that impact on the job title while the promotion provision addresses situations involving the transfer of individual employes" and because a reclassification occurs "when the employees in a job title are required to perform a new duty in addition to their current duties". The Union also claims that a past practice supports its position; that the Employer's interpretation seeks to render Article IV, Section 2(C), "meaningless" and to give the Employer an "unjust advantage"; that the Employer's failure to comply with the contractual promotion procedures "indicates that O.R. Transporter/O.R. Aide Transition was not a promotion", and that the Employer relies upon "irrelevant factors" when attempting to prove that the

1/ The Employer at that time also eliminated the Sterile Room Aide classification and created a new O.R. Materials Aide classification. That matter is not covered by the instant grievance.

reorganization resulted in the creation of new O.R. Aides' position. As a remedy, the Union requests that the Employer be required to comply with Article VI, Section 2(C), retroactive to August 31, 1992.

The Employer, in turn, primarily asserts that all of the factors herein "militate in favor of a finding that this was a new job position, and therefore the promotion language set forth in Article VI, Section 1(A), was properly followed."; that bargaining history supports its position; and that the Union itself in the past has acknowledged that "the promotion and transfer language set forth in Article VI, Sections 2A and 2B, to be the operative language." As further support that a new position has been created, the Employer points out that there are several more O.R. Aides than there were O.R. Transporters; that the O.R. Aides are in a different department and report to a different supervisor; and that the day shift and p.m. O.R. Aides spend about 35-40 percent of their time on cleaning duties which were never performed by the O.R. Transporters.

The resolution of this issue turns on Article VI of the contract which provides in pertinent part:

ARTICLE VI. EMPLOYMENT STATUS

. . .

Section 2. Promotions and Transfers Within the Bargaining Unit.

Promotions and transfers shall be based on education, training, work experience, attendance and current job performance as reflected in the personnel records of the Hospital and the appropriate department. Where these qualifications are equal, bargaining unit seniority shall become the determining factor. Attendance shall not be used unless it has gone to the verbal counseling stage or above within the past twelve (12) months.

A. Promotions.

When an employee is promoted, he/she will receive the beginning rate of the classification of the new job or the pay step higher than the employee's prior rate, whichever is higher, effective on the date of promotion. Any exception to this process will be in accordance with Section 6, Starting Rates and Probation, Article V.

B. Transfers to Lower Classifications.

An employee who, at his/her request, transfers to a lower job classification will receive the applicable wages of the new classification providing there is a position available and the employees can do the job. In the case of bona fide physical or health limitations which render an employee unable to perform any essential functions of his/her job, the Hospital will, when an employee has ten (10) or more years' service, effect such a transfer without a corresponding reduction in pay, by "red circling" such rate until such time that the actual job rate has caught up with the "red circled" rate.

An employee who is transferred to a lower job classification due to inability to perform the job will normally receive a reduction in pay to the starting rate of the lower job classification or to the rate he/she held just prior to the promotion, assuming an opening is available. Any exceptions to a reduction to the starting rate will be at the discretion of the Hospital, and will be discussed with the Union prior to implementation. Should an appropriate opening not be available, the employee will be laid off but shall have priority for reinstatement when an opening occurs.

C. Reclassification.

If the duties of a job title have changed sufficiently such that upon review of the Job Evaluation Committee, the position is reclassified into a higher payclass, the incumbents in that job title will be moved into the new payclass at their current years of service step. If the position is reclassified into a lower payclass, the incumbents will be slotted into their new payclass at the longevity step closest to their rate of pay. However, if the decrease would be substantial, pay will be red circled.

By virtue of this language, the key question here is whether the creation and filling of the O.R. Aides' classification represents a new job and a promotion as urged by the Employer, or a reclassification of the prior O.R. Transporters' classification

as argued by the Union. If it is the former, the grievance must be denied; if the latter, the grievance must be sustained. The practical difference here between creation of a new job and a reclassification is about 30-40 cents an hour, as reclassified employes must be given seniority credit, whereas employes in a new job are not.

In this connection, there is no merit to the Union's claim that the promotion language of Article VI, Section 2(A), is inapplicable because the Employer "failed to adhere to several of the steps that the Agreement states must be followed when implementing a promotion." For while it is true that there was no house-wide posting, no probationary period, no orientation/training period, and no evaluation of individual employe qualifications - all of which are normally required for employes in a new job - the record establishes that the Employer did what it did with the full knowledge of the Union. Thus, I credit the testimony of then-Labor Relations Manager Judy Peirick who testified that the Union at the time agreed that these requirements did not have to be followed so that the former O.R. Transporters and O.R. Sterile Room Aides could get first crack at the O.R. Aides position - which is exactly what subsequently happened. The Union therefore cannot be permitted to bootstrap its argument by relying on certain factors which it itself had previously tacitly agreed to in order to accommodate the wishes of its own members.

Contrary to the Union, past practice also is of little help in resolving this question since there have only been two prior reclassifications, one of which involved a non-binding settlement of a grievance filed by employes in the Engineering Department and thus cannot be considered. 2/ The second situation involved the reclassification of Seamstresses after the Job Evaluation Committee determined that there had been a change in duties. The details of that reclassification, however, are not at all clear and there is no basis for assuming that the facts there are similar to those found here. 3/

The Union is more on the mark when it points out that Article VI, Section 2(A), is in the singular because it refers to "When an employe is promoted. . .", thereby indicating that this promotion language covers individual promotions, rather than the kind of

2/ I credit Peirick's undisputed testimony that this grievance was settled in 1990 on a non-precedential basis.

3/ Thus, we do not know whether there was any change in the reporting relationship; whether there were any changes in hours and shifts; whether there were any new job classifications; or even just how large any such changed duties were.

mass promotions claimed here by the Employer. At the same time, however, there is nothing in this language expressly prohibiting a group of employes from being promoted.

What is most significant here is the fact that the day shift and p.m. O.R. Aides are now spending about 35-40 percent of their time performing a duty which the O.R. Transporters never before performed - i.e., cleaning or "turning over" the operating rooms, a task formerly performed by Registered Nurses. This, then, is a new task.

This new work was accompanied by the kind of indicia normally found when a new job has been created, i.e., reporting to a different department head; new hours and shifts; a new job description; and creation of more O.R. Aides slots than O.R. Transporter slots. Concomitant with all of that is elimination of the O.R. Transporter position. As a result, there are no "incumbents" in that job title who can be reclassified under Article VI, Section 2(C).

In light of all of these factors, I therefore find that a new job has been created and that the Employer properly followed Article VI, Section 2(A).

In so finding, I am aware of the Union's concerns that sustaining the grievance may enable the Employer to "increase a worker's duties without providing a corresponding increase in pay." In fact, however, the Employer here has done far more than merely adding duties and changing a job title; it also altered shifts, hours, and reporting requirements and it created more O.R. Aide positions than O.R. Transporter positions to handle the new cleaning duties. Moreover, most of the O.R. Aides did receive added compensation when they were upgraded to pay grade 59, even though it was not as great as the Union may have liked. 4/ Hence, the Union's concerns are not justified based upon the facts of this case.

In light of the foregoing, it is my

AWARD

That the Employer did not violate the contract when it paid its Operating Room Aides pursuant to Article VI, Section 2(A), rather than Article VI, Section 2(C); the grievance is therefore denied.

4/ Moreover, the Union in any event has an adequate remedy to challenge this or any other pay grade, as I have recently ruled that the O.R. Aides should be classified in pay grade 62. See, Service Employees International Union, Local 150, AFL-CIO, and Meriter Hospital, Case 49, No. 48036, A-4977; Case 50, No. 48037, A-4978 (7/1993).

Dated at Madison, Wisconsin this 22nd day of October, 1993.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator