

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL #150, AFL-CIO

and

MERITER HOSPITAL, INC.

Case 73
No. 51803
A-5306

Appearances:

Mr. Steven J. Cupery, 6427 West Capitol Drive, Milwaukee, Wisconsin, for the Union.
Axley, Byrnelson, by Atty. Michael J. Westcott, 2 East Mifflin Street, Madison,
Wisconsin, for the Hospital.

ARBITRATION AWARD

The Service Employees International Union (SEIU, or "the Union") and Meriter Hospital ("the Hospital") were signatories to a collective bargaining agreement covering the period March 21, 1994 through March 24, 1996. The agreement provided for final and binding arbitration of disputes. On September 15, 1994, the SEIU filed a grievance concerning the Hospital's interpretation and application of the terms of the agreement relating to reclassifications. On November 14, 1994, the SEIU submitted to the Wisconsin Employment Relations Commission a request to initiate grievance arbitration in this matter. On December 22, 1994, the Commission appointed Jane B. Buffett, a member of its staff, to serve as the impartial arbitrator to hear and decide the grievance. Hearings in the matter were held at Madison, Wisconsin, on August 29, October 18, October 19 and November 6, all 1995. Transcriptions of the proceedings were prepared by November 22, 1995. The parties filed written arguments on February 20, 1996, and waived the filing of reply briefs.

ISSUE

The Union submits as the issue the following:

Whether or not the Hospital's evaluation in subsequent classification of the NA position in 1994 was in violation of the collective bargaining agreement, and, if so, what is the appropriate remedy?

The Hospital submits as the issue the following:

Whether the Hospital's classification of the NA1 position as a pay class 56 is unreasonable, and if so, what is the appropriate remedy?

The arbitrator frames the issue:

Did the Hospital violate the collective bargaining agreement by continuing to place the position of Nursing Assistant I in pay class 56? If so, what is the remedy?

BACKGROUND

This grievance concerns the application and interpretation of provisions in the parties' collective bargaining agreement and the March 21, 1994 side letter relating to the classification of the position of Nursing Assistant I (NA I).

Pursuant to that collective bargaining agreement, the parties have established a process for defining positions through Job Descriptions and/or Position Questionnaires. The Hospital has the right to revise the descriptions/questionnaires after discussion with Union representatives, with the authority for final approval resting with management. The Union also retains the right to request that a new Job Description and/or Position Questionnaire be prepared to reflect substantive changes; if management determines such changes have been made such as to justify a rewritten description/questionnaire, that new document will be reviewed by the Job Evaluation Committee within thirty (30) days of its issuance. The classification for the accepted description/questionnaire is to be based on the systematic analysis the Hospital is to use in evaluating such jobs. Classifications not mutually agreed upon may be classified by the Hospital, subject to the grievance procedure.

The Job Rating Plan, or as referred to by the parties, "tool," provides for position evaluation in eleven categories; points are assigned for one of five grade levels in each category, with the total points determining the position's placement in one of the eleven pay classifications at the Hospital. The Plan sets pay grades by measuring the requirements of skill, effort, responsibilities and working conditions against the plan's definitions. The Plan states that, "it is essential to bear in mind that the objective is to rate jobs and not employes," and that the factors are "analyzed without regard to the background and abilities of the persons performing the work." (emphasis in original).

During negotiations for the agreement effective March 21, 1994-March 24, 1996, the parties agreed to a side letter which provided that, for the positions of Nursing Assistant I, II and Painters, "the Union may utilize the job evaluation process set forth in Article IV, Section 1 of the collective bargaining agreement" with any resulting reclassification (either increase or decrease) becoming effective on the first payroll period following a final determination. The letter also provided that the Union forego future efforts to negotiate reclassifications, and instead "resort to

the procedures" set by the agreement's job evaluation procedure.

On July 14, 1994, the Job Evaluation Committee considered the classification of the NA I position by reviewing the current Position Questionnaire and hearing presentations by an incumbent, a Union representative and a supervisor. Following the approximately two-hour meeting, the committee also discussed aspects of the evaluation criteria with other supervisors, which discussion was unknown to the Union.

On September 6, 1994, James S. Rothfuss, Acting Chairperson of the Evaluation Committee, wrote to Union Business Agent Todd Anderson to inform him that the Committee had decided to continue the NA I position in payclass 56. With comparisons to the findings which the Committee had reached in July, 1993, the ratings for selected categories were as follows:

FACTOR	July, 1993	September, 1994
Experience	1st - 22 points	1st -- 22 points
Mental/Visual Requirements	3rd - 15 points	2nd -- 10 points
Responsibility for Material or Product	3rd -- 15 points	2nd -- 10 points
Unavoidable Hazards	2nd -- 10 points	3rd -- 15 points
TOTALS (including other factors)	198 points	193 points

On September 15, 1994, the Union grieved this action, stating, "the Union feels this decision is inaccurate and that this group of workers should be assigned at least a payclass 59."

On November 1, 1994, Hospital Labor Relations Manager Cindy Meester denied the grievance. Her memo to the Union stated, in relevant part:

As a recap of practice, it has been and is the position of the committee to take a conservative approach and slot the positions in the degree that it clearly fits, rather than the degree that it might fit.

By using the tool in this manner the committee ensures parity and equity among all positions. This has been demonstrated through past application of the tool and arbitration findings. The tool, in addition, does not necessarily include every detailed activity or assignment that may be required to fulfilled during the course of

performing the job. The tool takes into account issues like the frequency of performing tasks, the probability of occurrences and the likelihood of events in assigning the appropriate rating. The committee along with the above referenced considerations needs to address the relationship of each job within the collective bargaining unit for parity purposes.

Taking all of the above mentioned factors into consideration, the following outcome could result. One, the pay class could be adjusted up. Two, the pay class could be adjusted down. Lastly, no change could result. For the reasons discussed above and upon review of the Evaluation Committee results, it is my opinion that the Job Evaluation Committee acted reasonably when it assigned a pay class 56 to the Nursing Assistant I.

Therefore, the proposed solution as outlined in the third step grievance is denied.

This dispute concerns the ratings for three factors: Experience; Mental and Visual Requirements, and Responsibility for Material and Product.

RELEVANT COLLECTIVE BARGAINING AGREEMENT PROVISIONS

ARTICLE III. EMPLOYER RIGHTS

Section 1. Scope

The parties recognize that this contract addresses the employer-employee relationship existing between the Hospital and its employees in the collective bargaining unit represented by the Union, and that the rights and duties between them in their relationship are those of employer and employee.

It is agreed that, except as otherwise expressly limited by this Agreement, the management of the Hospital and the direction of the work force including, by way of example and not by way of limitation, the right to select, hire and assign employees, promulgate and enforce reasonable rules and regulations it considers necessary or advisable for the safe, orderly and efficient operation of the Hospital, direct and assign work, determine work schedules, transfer employees between jobs or departments or sites, fairly evaluate relative skill, ability, performance or other job

qualifications, introduce new work methods, equipment and processes, determine and establish fair and equitable work standards, select and implement the manner by which the Hospital's goals and objectives are to be attained, and to discharge employees for just cause or relieve employees from duty for lack of work or other legitimate reasons are vested exclusively with the Hospital, but this provision shall be construed to harmonize with and not to violate other provisions of this Agreement.

It is further understood that all functions of management not otherwise herein relinquished or limited shall remain vested in the Hospital.

Section 2. Procedure in Case of Disagreement in Interpretation

In the practical administration of this contract, it will be necessary for supervisors and administrators to interpret its applicability to certain situations that may arise. For the sake of the vital and safe conduct of the Hospital's business, it is imperative and agreed that every employee shall follow the instructions of his/her supervisor. In cases where he/she disagrees with his/her supervisor on the interpretation of the applicable part of the contract or feels that a directive given is unfair to him/her, he/she shall have the right to question the interpretation or direction through the grievance procedure outlined in Article XXIV, Section 7. It is agreed that the failure of an employee to follow the reasonable instructions of his/her supervisor constitutes possible cause for disciplinary action including discharge.

ARTICLE IV. JOB CLASSIFICATIONS AND JOB DESCRIPTIONS

Section 1. Description Revisions and Establishing New Jobs

The jobs of Hospital employees are presently defined in existing job descriptions and/or position questionnaires. It is agreed that in order to maintain the flexibility of the health care delivery function, such jobs may be revised by the Hospital to conform to current operating conditions. Such changes, however, will be discussed prior to implementation, with a representative of the union or the union segment president and one chief steward and at least one person selected by the union from the affected classification. Final approval of job descriptions and/or position questionnaires rest

with management. Job descriptions and position questionnaires shall accurately describe the work performed. However, the right to final approval shall not be used to unilaterally develop job descriptions without conferring with the union.

The Union may also request that a new job description and/or position questionnaire be prepared if substantive changes have occurred within the job during the term of this Agreement. Nothing shall prevent the Union and Management from mutually agreeing to review substantive changes occurring outside of the term of this Agreement. Union requests must be submitted in writing to the Personnel department, stating the reasons which, in the Union's opinion, warrant the change(s) within thirty (30) calendar days from the date that the substantive changes have been incorporated into the expectations of the job or the time the Union knew or should have known of the changes. If Personnel determines that the job changes are substantive, the appropriate department will, within sixty (60) calendar days, rewrite the job description/position questionnaire. (Disputes arising as to whether substantive change(s) have occurred may be submitted to the grievance procedure of this Agreement). The rewritten Position Questionnaire will be reviewed by Meriter's Job Evaluation Committee within thirty (30) calendar days from the date that the newly revised Position Questionnaire is completed by the Department. The results of the Job Evaluation Committee will be communicated to the employees in the reevaluated position and the Union Segment President, and any appropriate wage adjustments will be implemented within thirty (30) calendar days from the reclassification by the Job Evaluation Committee (per Article VI, Section 3. C. of this Agreement).

The classification for the accepted job description and/or position questionnaire will be based on the systematic analysis used by the Hospital in the evaluation of such jobs. One employee selected by the Union from the affected job title and an unpaid Union representative may participate in presenting the revised job description and/or position questionnaire to the Job Evaluation Committee. Jobs and classifications, when agreed upon by both parties, will be recognized as a part of the contract.

Job classifications that are not mutually agreed upon will be classified by the Hospital with the provision that any grievance with respect to their classification may be taken up through the regular

grievance procedure hereinafter established.

Wage grades for job classifications in effect upon completion of this Agreement shall remain through the life of this contract subject to change only where significant alteration of duties warrants such grade change through the procedure outlined above.

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ARTICLE VI. EMPLOYMENT STATUS

Section 3. Promotions and Transfer Within the Bargaining Unit

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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.

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OTHER PERTINENT DOCUMENTS

The Parties' Side Letter

Side Letter
3/21/94 @8:00 p.m.

The Hospital and Union agree that the Union may utilize the job evaluation process set forth in Article IV, Section 1 of the collective bargaining agreement with respect to the following positions:

Nursing Assistant I
Nursing Assistant II

Painters

Any reclassification that results (be it an increase or a decrease) will be effective on the first payroll period following the final determination of the evaluation committee. The Union will not, in the future, negotiate reclassifications of positions but rather will resort to the procedures set forth in Article IV, Section 1 of the collective bargaining agreement.

Position Description Questionnaire for Nursing Assistant I (Excerpts)

The Position Questionnaire for Nursing Assistants which the Committee reviewed states, in relevant part, as follows:

Experience:

Estimate the training period required to enable an average employee with the necessary education to become proficient in the job.

Minimum Prior Experience Required: None

Prior Experience Preferred: Acute care nursing assistant experience: 6 months
Some units prefer Code Guardway and/or CPR.

"Break-In" Time: 3 months.

Mental and Visual Requirements:

Application of mental and visual attention. Please indicate the frequency, duration and items by percent of time spent on the mental and visual requirements.

Observes and compares and reports to the RN patient status changes on a regular and interval basis.

Records patient data in chart and notes changes from previous recordings.

Observes patient equipment for proper function at regular intervals.

Communicates patient information to the RN at to the patient's status demands.

Responsibility for Material or Product

Employee's responsibility to exercise care in preventing damage to items which are transported, handled, processed, inspected, tested or maintained.

Material or Product

- * Keeps unit supplies at level that avoids special ordering or product outdating
- * Reports equipment defects to management or BioMedical Engineering
- * In some units, assembles equipment, e.g. wheelchairs, walkers, crutches, splints

\$ Value	
\$ 100.00 - 1,000.00/month	
K Pads	75.00
Hoyer lifts	900.00
Wheelchairs	300.00
Walkers	200.00

Job Rating Plan (Excerpts)

1. EXPERIENCE

This factor appraises the length of time typically required by an individual, with the specified educational qualifications, to learn to perform the work acceptably; that is, to meet minimum job standards. The amount of experience is in addition to the time needed to acquire trade knowledge or similar specialized training which is covered under the Education Factor.

The factor includes any necessary previous experience on related work, either within the organization or outside, together with the

"breaking-in time" or period of adjustment and adaptation on the specific job itself. "Breaking-in time" is considered as time spent under competent supervision in continuous and intensive training on the job.

The points for this factor are as follows:

- First Degree (22): Up to three (3) months
- Second Degree (44): Over three (3) months up to one (1) year
- Third Degree (66): Over one (1) year up to three (3) years
- Fourth Degree (88): Over three (3) years up to five (5) years
- Fifth Degree (110): Over five (5) years

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5. MENTAL AND VISUAL REQUIREMENTS

This factor appraises the requirements of the work for the application of mental and visual attention in terms of the duration and intensity of such application. It does not measure the degree of mental development or skill, but rather the extent of the mental and visual application or attention required.

...

Consideration is given to both the intensity and duration of the mental aspect of this factor. The intensity of such application varies in different jobs depending upon the work requirements. For example, simple work with few variations becomes practically automatic through repetition requiring little thought, while complicated work may require mental concentration in solving complex problems or meeting changing situations. Similarly, consideration is given to the duration and continuity of the alertness, attention or thought required. The visual aspect of the factor varies chiefly with regard to the duration of elements on jobs requiring unusually close and exacting visual attention and the exercise of a high degree of manual dexterity in performing fine and delicate work.

...

SECOND DEGREE (10): This degree covers duties which

required frequent focusing of mental and visual attention of which require continuous visual attention with little mental application. It includes duties involving an intermittent flow of work, or relatively short work assignments with frequent intervals between assignments, or work in which the employee is intermittently required to perform duties, issue or receive materials or tools. It also includes the operation of a machine or process which requires attention at the beginning and toward the end of the operation cycle, but during which there is a substantial waiting period requiring watchfulness only at intervals.

It includes simple tasks such as walking, cleaning, handling materials, using simple tools for rough work in which the visual requirements may be continuous but because of the simplicity of the work itself, little mental application is required.

THIRD DEGREE (15): This degree covers duties which require constant alertness or continuous application of mental and visual attention.

It includes short cycle repetitive operations requiring continuous attention and the use of coordination to operate office machines or other equipment and to perform manual operations involving the use of various types of equipment.

It also includes longer cycle operations during which continuous mental and visual attention is required for the entire work cycle or constant alertness is necessary to take prompt action in the event of certain contingencies or to properly time and carry out the various steps in the operation sequence.

It includes duties requiring continuous mental and visual attention to check quality of work, both visually and through the use of various types of gauges and equipment or to perform various clerical activities such as posting, checking and filing records.

It includes diversified work which requires continuous attention to carrying out various tasks and may require a moderate amount of planning before performing the details of the work.

It includes work in which mental and visual concentration on complex operations or problems is occasionally required, but the

majority of the duties require only continuous alertness or attention.

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7. RESPONSIBILITY FOR MATERIAL OR PRODUCT

This factor appraises the employee's responsibility to exercise care in preventing damage to items which are transported, handled, processed, assembled, inspected, tested, or maintained, in avoiding loss from clerical errors, or in care affecting patient's health or welfare. Secondary losses are not included in the estimate when prescribed quality control, shop practices, clerical procedures or regular practice would normally furnish adequate provision for detection or errors or prevention of damage. The monetary value assigned comprises the loss normally expected from an error, giving consideration to such items as the value of the typical material handled or worked on, the probable extent of the damage, the possibility of salvage and/or repair involved. The amount is based on the value of the purchased parts, materials, and/or labor required to repair or replace a specific item or items to the point of damage, or to rectify clerical errors, omitting any additional indirect charges which may be assigned for costing purposes.

. . .

SECOND DEGREE (10): Probable loss due to damage or scrapping of material or product is seldom over \$200 or where some discomfort to patient present but where employer's responsibility is limited.

THIRD DEGREE (15): Probable loss due to damage or scrapping of material or product is seldom over \$500 or where patient may experience discomfort of a moderate degree.

. . .

In addition, the plan discusses the Education or Trade Knowledge factor as follows:

This factor appraises the basic knowledge or "scholastic content" essential as background or training preliminary to learning the job. It refers to knowledge normally secured or achievable in a formal course in a public or private school, or in an organized training

course, preliminary to assignment to the job.

Consideration is given to such requirements as reading, writing, the use of mathematics, drawings, and measuring instruments, and formal trades or business training. Specialized knowledge pertaining only to procedures and practices in a particular department or company is usually learned through work experience and should be evaluated in the Experience Factor.

Education together with Experience represents the normal minimum requirements necessary for satisfactory performance of the job.

POSITIONS OF THE PARTIES

The Union

This dispute is properly in grievance arbitration, the Union states, because the clear intent of the side letter of March 21, 1994 was to allow the Union to bring this position to the evaluation committee regardless of whether there had been a significant change in duties.

The Hospital acted improperly, the Union continues, by having the evaluation committee chairperson discuss the issue with other management personnel outside the presence of Union representatives; by not providing a detailed response to the Union's request for information which the Hospital used to support the lowered rankings in two categories, and by deliberating in the absence of Union representatives.

The Union states that the Hospital has perverted the process by having the committee, after it reached its decision, compare the subject position's ranking to other, similar jobs to make sure no functions were overrated.

The Union states that the Hospital's exhibit purporting to be a Job Description is of a questionable nature due to testimony and evidence about the date of its creation.

The Hospital's committee erred, the Union asserts, in making its evaluation on the majority of workers in a position and not ranking extremes, a flawed process which would result in a minority of workers having a legitimate grievance in that the systematic analysis was not applied to them.

The Union contends that the experience factor is more appropriately rated at the second degree, rather than the first degree as ranked by the committee, in that, while there are some NA I positions which do not require previous experience, there are some NA I positions which do. Based on the personal history of position incumbents, and applying the standards found by

Arbitrator Amedeo Greco, testimony and evidence that NA I's have a *de facto* requirement of at least 21 months experience (the break in time of three months, plus the six month "experience preferred," plus the 12 month grandfather requirement to become a certified nursing assistant) effect was presented to the committee. The Union states that it has clearly met its burden of proof showing that the Hospital has at least required experience beyond three months for the subject position.

The Union further contends that the Mental/Visual Requirement is most appropriately and accurately rated not at the second degree, as rated by the Hospital, but at the third degree, where it has been rated by evaluation committees twice since 1990. Since the amount of alertness required of NA I's has increased since 1990 due to the reduction in the number of NA I's, the record shows that there are dozens of duties that require constant alertness or continuous application of mental and visual attention, as called for in the ranking of third degree.

Similarly, the Union contends, the record supports a finding that the NA I position meets the standard of third degree in the category of responsibility for material and product.

The Union concludes that its framing of the question should be selected as the issue to be decided as it is premised upon a violation of the contract, while the Hospital has premised its framing of the question upon the reasonableness of the evaluation committee. The collective bargaining agreement does not provide for a reasonableness test.

Accordingly, the Union states, the arbitrator should find that the Hospital violated the collective bargaining agreement when it failed to evaluate the NA I position through the agreed-upon systematic analysis appropriately; that the rankings in the category of experience, mental and visual requirements and responsibility for material and product should be changed to second degree, third degree and third degree, respectively, resulting in a total point score of 225; that the NA I personnel should be reclassified to pay class 62, effective September 12, 1994, and that the arbitrator retain jurisdiction for sixty days.

The Hospital

The Hospital argues that the grievance should be denied because the systematic analysis required by the contract has been followed, and that, even if the arbitrator were to substitute her judgment for that of the evaluation committee based on new evidence, the pay class of the NA I's could not increase because there has been no significant alteration of duties.

The Hospital argues that the standard of review should be whether the Hospital acted reasonably when it rated the NA I position as a pay class 56, and that, while the Union has the right to grieve over a particular job classification, it can do so only to the extent that the Hospital failed to use the "systematic evaluation" which is the job evaluation tool. For the arbitrator to do more than review whether the Hospital has acted in an unacceptably arbitrary unreasonable or

capricious manner in its review of jobs would be to exceed jurisdiction and, in effect, engage in prohibited interest arbitration.

The Hospital further argues that because there has been no significant alteration of duties in the NA I position, and the collective bargaining agreement language is clear and unambiguous in providing that the wage grades shall remain in effect unless there has been a significant alteration of duties, the current pay class 56 must remain.

Addressing the job evaluation factors in dispute, the Hospital states there can be no serious dispute that the NA I position requires no previous experience, in that the record demonstrates that only a couple of the 17 different units require the subject position to have any minimum required experience, while the vast majority have no such requirements. That the position questionnaire sets a three month break-in period is irrelevant, the Hospital states, because such documents are not always accurate and are prepared by persons not always familiar with the job evaluation tool.

The Union's reliance on a prior award by Arbitrator Amedeo Greco to support its calculation of the experience factor, the Hospital states, is misguided because Arbitrator Greco completely ignored or was unaware of aspects of the evaluation process, and his award was simply wrong.

To find for the Union and rate the experience factor as a second degree, the Hospital states, the arbitrator would have to rely on evidence not in the record, completely ignore contractual language, rate the position based on a minority of incumbents rather than the position itself, and thus effectively order the Hospital to begin applying a new and different systematic analysis -- something which should not and cannot be the case.

As to mental and visual skills, the Hospital asserts that the record supports the committee's evaluation of the duration and intensity of the skills in question as being of the second degree, that is, involving duties which require frequent focusing of mental and visual attention with continuous visual attention but little mental application.

The subject position was appropriately evaluated as second degree in the category of Responsibility for Material and Product, the Hospital asserts, because there is no evidence that the probable level of discomfort to a patient which could be caused by an NA I's failure to exercise reasonable care could exceed the level of some discomfort and reach the third-degree level of moderate discomfort. The Hospital also notes that, pursuant to statutory licensure requirements, the responsibility of NA I's for patient care is limited, with the responsibility for the outcome of a task or assessment resting with registered nurses.

There was a reasonable basis for the Committee's ranking pursuant to the systematic analysis, and no evidence of bad faith on its part, and no significant alteration of duties of the subject position, the Hospital concludes, and thus the grievance should be denied.

DISCUSSION

I. Procedural Issues

The first question to address is the threshold issue of whether or not the Nursing Assistant I position was properly before the evaluation committee in the absence of "significant alteration of duties" of the position.

The Hospital cites the language of Article IV, Section 1, which provides that wage grades in effect upon completion of the collective bargaining agreement "shall remain through the life of this contract," subject to change "only where significant alteration of duties warrants such grade change" through the Evaluation Committee process (emphasis added). Characterizing the record to reflect no substantial change in duties over the years, the Hospital maintains that the clear and unambiguous language of the agreement precludes reevaluation of the position. The Union cites instead the language of the side letter which the parties signed on the last evening of bargaining, by which they agreed that the Union "may utilize the job evaluation process" for certain positions, and waived future efforts at negotiating reclassifications in favor of the contractual evaluation procedure. This side letter, the Union asserts, supersedes the agreement's text, and authorized Evaluation Committee (and arbitral) review of the disputed positions even in the absence of "significant alteration of duties."

I agree with the Union. By itself, the language in the agreement already authorizes a process for future description revisions in all unit positions, subject only to the "significant alteration" criterion. For the side letter to have done no more than to restate that provision, and reincorporate the "significant alteration" provision would have meant the parties had agreed to a side letter of surplusage. It is presumed that language in side letters, as in the agreement, has meaning. The clear meaning of the side letter is that the Union waives future efforts to reclassify through negotiations, while the Hospital waives the "substantial alteration" standard and allows utilization of the job evaluation process.

Accordingly, during the time the side letter is in force, the final paragraph of Article IV, Section 1 does not act to bar Evaluation Committee review and arbitral review of the position of Nursing Assistant I.

The next question regards the appropriate scope of review. The Hospital has proposed a "reasonableness" standard, under which the Job Evaluation Committee's action should stand unless they are found to have been arbitrary, capricious, or otherwise unreasonable. The Union proposes a standard which seems to suggest that the arbitrator conducts a de novo review of the Committee's action.

The collective bargaining agreement provides that job classifications that "are not mutually

agreed upon" will be classified "by the Hospital," with allowance made that "any grievance with respect to their classification may be taken up through the regular grievance procedure" under the agreement.

Thus, there is a tension in the agreement itself, in that the base decision is reserved to management, with the ultimate review by the outside arbitrator.

A *de novo* review would have the effect of nullifying the Job Evaluation Committee's work. There is no basis in Article IV, which describes the work of the Committee, to conclude that its work becomes a nullity once a grievance is filed. I conclude that the arbitrator must conduct a review of the committee's action, not conduct a completely new procedure which makes the arbitrator a hearing examiner for reclassification requests. The collective bargaining agreement provides that the classification "will be based on the systematic analysis used by the Hospital in the evaluation of such jobs."

Under the circumstances of this case, I believe the proper scope of review is whether the committee fulfilled its obligation to base its decision on a "systematic analysis of the position."

II. Evaluation of Factors in the Nursing Assistant I Position

A. Factor 1 - Experience

The Hospital rated the NA I position at the first degree, meaning requiring only up to three months, and worth 22 points; the Union claims it should be considered as second degree, meaning over three months up to one year, and worth 44 points.

The Hospital argues in its brief that only a small percentage of NA I's have over three months' experience upon their hire, and quotes approvingly the Union's statement at hearing that the Position Questionnaires are not always accurate (a point supported by the acting chair of the Evaluation Committee, who testified that the persons who prepare the job descriptions are not always familiar with the evaluation tool).

The Position Questionnaire and Job Description are accurate, however, in their noting of the requirement that applicants maintain state certification as a nursing assistant. Such certification can be attained either through completion of an instructional and competency program, or by a year's experience prior to October, 1990. As I interpret the evaluation tool's discussion of the relationship between the education and experience factors, certification based on the instructional program certified by the state is considered purely under education, while certification based on experience is considered under experience. Therefore, the year's experience prior to October, 1990 that some NA I's have submitted to become certified could not be considered as "experience."

At the review of the Position Questionnaire and ranking, incumbents and representative NA I's told the Evaluation Committee that NA I's were not hired without at least six months experience. Outside the presence of the Union, Rothfuss interviewed Sherry Burner, a nurse recruiter. Burner corroborated the Union claim, informing Rothfuss that it had been her practice, because of the job market, to hire persons with at least six months, and sometimes a years, experience. Following this interview with Burner, Rothfuss reviewed neither personnel records or nor job postings to adduce further information.

By rating the NA I's as first degree in experience and second degree education, the Hospital has, in effect, stated that, following a "short course of education," and with "a limited knowledge of a specialized field," an applicant with no other background or training could, within three months, "learn to perform the work acceptably." Considering the number of NA I positions for which experience in excess of three months is stated, the certification requirements, and the testimony, I conclude that a systematic analysis of the position would not lead the Committee to the conclusion that no experience is necessary. In reality, at least six month's experience is required and the NA I must be ranked as a second degree in experience.

B. Factor 5 - Mental and Visual Requirements

The Union challenges the conclusion reached by the Committee that NA I's work at the second degree. The record indicates the NA I must exercise visual and mental attention while observing patients and while performing such duties as taking vital signs and helping patients with personal cares. This attention must be deliberate and result in accurate reports. Clearly, the carefulness of attention is especially important in a hospital setting, but the mental and visual attention required of the NA I lacks the earmarks of the third degree, for it does not require the constant alertness or continuous application of mental and visual attention cited in the Job Rating Plan. The Committee could reasonably conclude that the NA II position involves, as stated for the second degree, "an intermittent flow of work and relatively short assignments with frequent intervals between assignments." A systematic analysis of the position could reasonably lead the Committee to the conclusion that the NA I was rated at the second degree in the factor of Mental and Visual Requirements.

C. Factor 7 - Responsibility for Material or Product

The Committee rated the position as a second degree in the factor of Responsibility for Material or Product, whereas the Union asserts it is a third degree.

The Position Questionnaire addresses this factor by referring to the NA I's responsibility for maintaining supplies, reporting equipment defects, and, in some units, assembling equipment such as wheelchairs, walkers, crutches and splints. The Committee could reasonably conclude that the probable loss due to damage of equipment is seldom over \$200 as is described at the second degree rather than over \$200 but seldom over \$500 as in the third degree advanced by the Union.

The Position Questionnaire does not address the matter of discomfort experienced by the patient. Testimony at the arbitration hearing referred to possible incidents of discomfort that could be caused by NA I's, primarily from problems with moving patients, but there was little evidence of actual incidents of NA I's causing the " moderate discomfort" described in the third degree rather than "some discomfort" described at the second degree. The Committee could reasonably conclude that the NA I position should be rated at the second degree for this factor.

III. Summary and Remedy

In summary, I find that the Evaluation Committee, after applying the systematic analysis, could not reasonably find that the NA I position is in the first degree as to Experience. In light of the evidence, the supportable conclusion is that the NA I is second degree as to the Experience factor. As to the Mental and Visual Requirement and Responsibility for Material and Product factors, the Committee's conclusion that they are in the second degree could be supported by a systematic analysis.

The remedy is stated in the Award, below. The Evaluation Committee rated the NA I position at 193 points. Since this award concludes that the Committee erred in determining the Experience factor to be first degree, instead of second degree, the position must be credited with the difference between the second degree and first degree, 22 points. Consequently, the new total is 215 points which puts the position at pay class 59. The Hospital is ordered to make employees whole by paying the employees the difference between pay class 56 and pay class 59. The retroactivity date is found by noting that the Committee announced its conclusions on September 6, 1994, at which time the correct placement of pay class 59 should have been announced. Consequently, following the provision of the second paragraph of Article IV, Section 1, the retroactivity should run from a date not later than 30 calendar days after September 6, 1994.

In the light of the record and the above discussion, I issue the following

AWARD

1. The Hospital violated the collective bargaining agreement by continuing to place the position of Nursing Assistant I in pay class 56.
2. The Hospital shall place the position of Nursing Assistant I in the pay class 59.
3. The Hospital shall make all employees whole for wages and benefits lost as a result of its violation, retroactive to a date no later than 30 days after September 6, 1994.

Dated at Madison, Wisconsin, this 22nd day of October, 1996.

By Jane B. Buffett /s/
Jane B. Buffett, Arbitrator