

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**AMERICAN NATIONAL RED CROSS
(BADGER-HAWKEYE REGION)**

and

CLARA BARTON BRIGADE, LOCAL 1205, AFSCME, AFL-CIO

Case 30
No. 56727
A-5705

(Set-Up Grievance)

Appearances:

Clark & Hill, PLC, by **Attorney Fred W. Batten**, 500 Woodward Avenue, Suite 3500, Detroit, Michigan 48226-3435, appearing on behalf of the American National Red Cross.

Mr. Laurence Rodenstein, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, appearing on behalf of Local Union 1205.

ARBITRATION AWARD

American National Red Cross (hereinafter referred to as the Employer) and the Clara Barton Brigade, Local 1205, AFSCME, AFL-CIO (hereinafter referred to as the Union) requested that the Wisconsin Employment Relations Commission designate Daniel Nielsen, a member of its staff, to serve as arbitrator of a dispute over the performance of set-up work by supervisors. A hearing was held on November 12, 1998, in Green Bay, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant. No stenographic record was made of the hearing. The parties submitted post-hearing briefs which were exchanged through the arbitrator on January 22, 1999. The parties requested ten days for submitting any exceptions. No exceptions were submitted, and the record was closed as of February 1, 1999.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

Now, having considered the evidence, the arguments of the parties, the relevant provisions of the contract and the record as a whole, the arbitrator makes the following Award.

ISSUE

The parties stipulated that the following issue should be determined herein:

Did the Employer violate the collective bargaining agreement when it failed to assign the grievant, Julie Olson (nee' Umentum) 30 minutes of set-up time on April 20, 1998?

If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

ARTICLE I - RECOGNITION

Section 1.1 Recognition

The Employer recognizes the Union as the sole and exclusive bargaining representative for the purposes of collective bargaining under the National Labor Relations Act on behalf of all RN's and LPN's who perform allogeneic, autologous, and apheresis collection duties working out of the Madison and Green Bay locations in blood collections; all hereinafter collectively referred to as Employees; but excluding RN/LPN staff with additional duties, temporary personnel as defined in Section 1.3, Nursing Assistants (nursing students) and further excluding members of Local 1558, other professional employees, office clerical employees, confidential employees, guards, managers, supervisors, as defined in the National Labor Relations Act, and all other personnel.

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ARTICLE V - MANAGEMENT RIGHTS

Except as may be expressly limited by this agreement, the employer has the sole right to plan, direct and control the working force, to schedule and assign work

to employees, to determine the means, methods and schedules of operation for the continuance of its operations, to establish reasonable standards, to determine qualifications, and to maintain the efficiency of its employees. The Employer also has the sole right to require employees to observe its reasonable rules and reasonable regulations, to hire, layoff or relieve employees from duties and to maintain order and to suspend, demote, discipline and discharge for just cause. The Employer has the right to assign temporary personnel in any other duties at such times as natural and man-made disasters threaten to endanger or actually endanger the public health, safety and welfare or the continuation beyond the duration of such disasters. The Employer shall determine what constitutes a natural and man-made disaster as expressed in this Article.

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ARTICLE IX - GRIEVANCE PROCEDURE

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Section 9.9 Arbitrator's Jurisdiction

The jurisdiction and authority of the arbitrator and his opinion and award shall be confined exclusively to the interpretation and/or application of the provision(s) of this Agreement to the issue between the Union and the Employer. He shall have no authority to add to, detract from, alter, amend, or modify any provision of this Agreement; to impose on either party a limitation or obligation not provided for in this Agreement; or to establish or alter any wage rate or wage structure. The arbitrator shall not hear or decide more than one (1) grievance without the mutual consent of the Employer and the Union. The written award of the arbitrator on the merits of any grievance adjudicated within his jurisdiction and authority shall be final and binding on the aggrieved Employee, the Union and the Employer.

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ARTICLE XI – SENIORITY

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Section 11.13 Work By Non-Bargaining Unit Personnel

The Employer may assign qualified Supervisors (Team Supervisors, and Collection Specialist II's) who will not be members of the bargaining unit covered by this Agreement to any operational site who may perform work

normally performed by members of the bargaining unit. The bargaining unit work performed by supervisors shall be in accordance with past practice. The Employer may also utilize Nursing Assistants (student nurses) in accordance with past practice.

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ARTICLE XII - HOURS OF WORK

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Section 12.5.3 Set-Up

The Employer will schedule minimum set up times in accordance with the following:

Unit Type	Set Up Time
Mobiles:	30 minutes
Repeat mobiles:	15 minutes
Fixed sites:	30 minutes
Apheresis:	15 minutes

This does not preclude staggering the arrival time of employees so that not all employees are scheduled for set up.

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BACKGROUND

The Employer supplies blood and blood products to hospitals in the Midwest from facilities in Madison and Green Bay, Wisconsin. The Union represents the non-supervisory nurses who work in blood collection. Nurses under this contract are classified as Collection Specialists I. The grievant, Julie Olson, is a Collection Specialist I who has worked for the Red Cross for eight years out of the Green Bay office.

On April 20, 1999, Olson was told to report to the donor room at the Green Bay office at 1:00 p.m. When she arrived, she observed that two supervisory nurses, Jane Gerbach and Sue Killinger, both Collection Specialist II's, had already arrived and had set up the equipment to draw blood. Set-up includes calibrating equipment, and documenting what equipment is being used and that it is appropriate and safe. Set-up typically takes about 30 minutes. Olson asked Killinger why she had not been called in to do the set-up, and Killinger told her it was already done.

The instant grievance was filed later that day. In her grievance, Olson alleged that the Employer violated the contract by having Collection Specialist II's do set-up rather than calling in a Collection Specialist I. The dispute was not resolved in the lower steps of the grievance procedure and was referred to arbitration. A hearing was held on November 12, 1998, in Green Bay.

At the hearing, Olson testified that she knew of occasions when supervisors did set-up work, but only in conjunction with staff nurses. Olson said that it was not uncommon for supervisors to draw blood, and that if supervising nurses were not working in a supervisory role, they would function as staff nurses.

Sue Killinger testified that for regular collections all staff are scheduled to arrive a half hour early to work set-up, but that for special collections (for example, people donating blood for themselves) the starting times are staggered, depending upon the number of donors and the need for staffing. Staff are randomly assigned from the pool to do set-up for special collections. She estimated that 5% of collections are specials.

Killinger testified that CS II's are normally needed as supervisors, but that if the supervisory slots were filled on a given day, the CS II would go into the pool as a staff nurse. Killinger said that it was common for CS I's (staff nurses) and CS II's (supervisory nurses) to work together on set-up, but she was not aware of any other instance since the collective bargaining agreement was signed in which CS II's did set-up to the exclusion of CS I's. Killinger was aware of an instance on March 18, 1997, prior to the collective bargaining agreement, where set-up had been done by a CS II working as a supervisor and a CS II working as a staff nurse, with no CS I present.

The parties stipulated that there was a past practice of allowing supervisors to do set-up work without the presence of a bargaining unit member at the Employer's Madison location, but they also stipulated that some practices varied between Madison and Green Bay. Additional facts, as necessary, will be set forth below.

POSITIONS OF THE PARTIES

The Position of the Union

The Union takes the position that the contract allows supervisors to perform bargaining unit work in accordance with past practice, but that the clear past practice at the Green Bay location has been to have them perform this work only in conjunction with CS I's. Section 12.5.3 of the contract makes it clear that this work must be assigned to bargaining unit members in the first instance: "The Employer will schedule minimum set up times in accordance with the following: . . . fixed sites: 30 minutes . . ." The parties have struck a

balance between work preservation and efficiency by allowing supervisors to occasionally share set-up work. The Employer may not now alter that balance by claiming this work exclusively for supervisors.

The Position of the Employer

The Employer takes the position that there has been no contract violation and that the grievance must be denied. This grievance concerns a very narrow subset of cases. In regular collections, which are 90-95% of the workload, all employees are scheduled to come in for set-up. In the case of special collections, reporting times are staggered, because less staff is needed. The Union concedes that there has been a practice of allowing supervisors to act as staff nurses, and of allowing supervisors and staff nurses to work together on set-up. The assignment of staff nurses, including supervisors acting as staff nurses, is made randomly from the available pool of staff nurses. Thus it is inevitable that at some point an assignment would be made, as it was here, where a supervisor and a supervisor working as a staff nurse would do the set-up for a special collection without a regular staff nurse being assigned. It is extremely rare, since it involves the conjunction of a random selection and an occasion where a supervisor is working as a staff nurse, but it has happened prior to the contract and it was bound to happen sooner or later post-contract. It is no less a practice for being rare. Since the contract specifically allows supervisors to perform bargaining unit work in accordance with past practice, there is no contract violation.

DISCUSSION

Article XI of the collective bargaining agreement provides that supervisors "may perform work normally performed by members of the bargaining unit. The bargaining unit work performed by supervisors shall be in accordance with past practice." The parties agree that part of the bargaining unit work performed by supervisors has been set-up work. They disagree on whether the Employer in this case was consciously attempting to exclude unit nurses from set-up work.

The Union's concern is that the Employer is seeking to establish a right to use supervisors for set-up work to the exclusion of bargaining unit personnel. The Employer's contention is that what happened in this case was a truly random occurrence in that the assignment resulted from a special collection, on a day when a supervisor was working as a staff nurse, where the supervisor was randomly chosen from the pool of staff nurses to report early for set-up. Accepting the Employer's claims that (1) supervisors rarely work as staff nurses; and (2) special collections are the only occasions on which all scheduled employees are not called in early for set-up; and (3) the selection of the employees for set-up work on special collections is done randomly from the pool of staff nurses, it is not possible to find a contract violation. The record shows that this has happened once before, in March of 1997, and the

Employer attributes that case to the same convergence of unusual events. The Union protests that this was pre-contract. Granting that point, it must be noted that this is an initial contract. In Article XI, the parties make specific reference to supervisors performing unit work "in accordance with past practice." Presumably the parties had something in mind when they bargained this language, and in order for the quoted phrase to have any meaning, it must include clear practices that pre-date the contract. 1/

1/ Given a choice between two permissible interpretations, one of which gives meaning to all of the words and phrases used in the contract, and one of which renders a provision mere surplusage, the former interpretation should be favored. Elkouri, How Arbitration Works, 5th Ed. (Volz, Ed., BNA 1997), at pps. 493-495.

Contrary to the Union's view of this case, the Employer is not claiming any sweeping right to reserve set-up work to supervisors. Instead it is asserting the right to have supervisors working as staff nurses included in the pool when making random selections for set-up work on special collections. The evidence suggests that this has been done in the past. Granting that there is but a single example, the mixture of unusual circumstances and random chance that would cause it to happen are such that there would not be many examples. While the Union's concerns for both protecting the integrity of its bargaining unit and preserving the unit's work are understandable, the Employer has the right to hold the Union to its bargain. The Union has agreed that supervisors may perform unit work in accordance with past practice. The Employer has satisfactorily demonstrated that having supervisory nurses working as staff nurses included in the overall pool for random assignment to set-up work on special collections is a past practice. It follows that the Employer did not violate the contract in this instance.

On the basis of the foregoing, and the record as a whole, I have made the following

AWARD

The Employer did not violate the collective bargaining agreement when it failed to assign the grievant, Julie Olson (nee' Umentum) 30 minutes of set-up time on April 20, 1998. The grievance is denied.

Dated at Racine, Wisconsin, this 28th day of April, 1999.

Daniel Nielsen /s/

Daniel Nielsen, Arbitrator

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