

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LOCAL 3377, AFSCME, AFL-CIO

and

GRANT COUNTY (ORCHARD MANOR)

Case 98
No. 65338
MA-13197

Appearances:

Jennifer McCulley, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Jon Anderson, Attorney at Law, LaFollette Godfrey & Kahn, appearing on behalf of the County.

ARBITRATION AWARD

The Union and Employer named above are parties to a 2005-2007 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties asked the Wisconsin Employment Relations Commission to appoint an arbitrator to hear and resolve the grievance regarding laundry duties. The undersigned was appointed and held a hearing on April 4, 2006, in Lancaster, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. The parties completed filing briefs on May 22, 2006.

ISSUE

The parties did not stipulate to the framing of the issue. The issue is:

Did the County violate the collective bargaining agreement when it assigned certified nursing attendants the task of moving soiled linens and laundry from the floor to a collection point? If so, what is the appropriate remedy?

BACKGROUND

The parties stipulated that the applicable collective bargaining agreement is the 2005-2007 agreement between Local 3377, AFSCME and Grant County, and that the grievance is properly before the arbitrator for a decision on the merits. They further stipulated that prior to July 1, 2003, the Union represented laundry employees. In July of 2003, the County subcontracted laundry work to Superior Linens and to Platteville Laundry & Tanning. No employees lost their job as a result of the subcontracting. The Laundry Supervisor became the Laundry Coordinator (Deb Noel).

Orchard Manor is a nursing home run by the County. There are six wings and each has a temporary storage area for laundry, which is divided into personal items for residents and linens and then put into carts. The soiled laundry has to be moved from the wings on the floor to a collection point in the basement, where the commercial laundry service picks it up. When the soiled laundry is taken to the basement, one has to bring an empty cart back. The task takes about 15 to 20 minutes.

The Union President is Linda Klar, who is a CNA on the third shift working between 10:00 p.m., and 6:30 a.m. She has taken part in monthly labor-management meetings for about three years. The Director of Nursing, Angela Pierce, and the Administrator, Donna Haines took part, as well as Union members Pat Schram and Sharon Reed. There were a couple of examples of policy or procedural changes that the parties agreed to in their meetings. In 2004, the group agreed to discontinue an EE day program in the Dietary Department, and Haines sent a letter to Klar on May 12, 2004, stating that the Manor would implement the Union recommendation on the matter. On August 17, 2005, Haines sent a letter to Klar regarding a change in the schedule for the activity staff. Klar said that change was agreed upon in a labor-management meeting.

Klar recalled that they discussed how to handle laundry in labor-management meetings. The issue of CNA's helping with laundry on weekends was raised after the laundry was subcontracted out in July of 2003. The management asked the Union members if they would be willing to help bring the soiled laundry to the basement on weekends, and the Union members did not want to do it. However, they agreed to do it for weekends only during a labor-management meeting. Neither the management nor the Union put anything in writing regarding this change in duties.

The laundry duty at issue was taken care of during the first and second shifts by other people. Deb Noel took care of it during the day, and Karl Haskins was hired as a part-time employee to do laundry duties during the evening hours Sunday through Thursday. If Haskins was gone, the CNA's performed the duty of moving the soiled laundry to the basement, pursuant to a management directive. He worked two hours a night after being hired until he resigned on March 30, 2005. He had only worked about five or six months when he left. When Haskins left, the County advertised the job in a newspaper but was unsuccessful in filling the job. CNA's were then required to take the soiled laundry to the basement.

Klar testified that the Union members agreed to help out on the weekends in order to help out Noel. The schedules are different on the weekends. Moreover, they thought they had an agreement with the management that if they did the laundry duties on the weekends, they would not have to do it during the week. During a labor-management meeting, probably in 2003, a Union member asked what would stop management from expanding the duty to the weeknights. Klar said that Haines responded by telling them that they would never have to do it on weeknights.

Linda Rech is a CNA/Program Assistant on the third shift. She noted that the CNA's usually take the soiled laundry downstairs sometime between 2:00 and 4:00 a.m. They use an elevator to move the carts downstairs. They often have to lift the laundry and put it into other carts so that they can bring an empty cart back. Rech felt that there was a lack of time to move the laundry and leave the floor for that long of a time. She noted that some of the staff members are small women who have a hard time physically doing the task.

Rochelle Dilley is also a CNA/Program Assistant, working nights (second shift) or sometimes other shifts. On the second shift, the CNA's always helped move the personal laundry items downstairs. They now help with some of the other laundry, such as napkins and bibs. Marlene Maurice is a CNA/Program Assistant working on the day shift. She noted that day shift employees often take the laundry downstairs with them when they go on a break or to lunch.

The Administrator, Donna Haines, recalled that when the County had an older building, the CNA's took all linens to a dock area. The laundry was in a separate building. Haines knew that from at least 1976 to 1993 when they moved into the new building, CNA's took laundry to the dock. After the move to the new building in 1993, the laundry department took laundry over to the old separate building. Haines stated that after the move to the new building, CNA's handled different aspects of laundry. They put away clean linens, they exchanged linens on weekends, they put clean personal laundry in rooms, they bagged personal laundry and put it in storage rooms, and the soiled laundry stayed on the units until the subcontracting took place.

Haines said there was no agreement with the Union regarding laundry. They had discussed job duties and management felt that the CNA's were the most logical people to take the soiled laundry downstairs on weekends. The management thought that Noel would be able to take care of it during the weekdays, but after a year, she was worn out physically, and they hired Haskins for Sunday through Thursdays. After Haskins left, Haines said that an office person picked up the duty a couple of afternoons a week, but her position changed and she wasn't available. On August 10, 2005, a labor-management meeting was held to address problems with the laundry since the subcontracting. Newly assigned laundry duties were posted the next day, and this is what triggered the instant grievance. Haines noted that laundry duties were assigned as a job assignment since July of 2003. Instructions were frequently changed due to confusion and problems with the laundry.

Haines views the labor-management meetings as advisory or for brain storming, but that matters discussed there are not the final word, as she has the final decision. She has tried to use the labor-management meetings to get the Union to change policies and has looked for the Union's input before implementing policies.

The Director of Nursing, Angela Pierce, said that laundry duties relate to the CNA's job to provide direct patient care because the residents need linens and their personal belongings. When Pierce became the DON, she found the laundry practices to be inconsistent and no one was happy with them. She looked to managers to solve the problems, and they came up with specific assignments to have the day shift and second shift take napkins and personal laundry downstairs, and the third shift takes dirty linens downstairs. She estimated that it takes a CNA about 15 minutes to take the laundry cart downstairs. So if six CNA's on six wings take down laundry, the whole job takes an hour and a half per night. Since no residents are in the hallways at night, it was the best time to take carts downstairs. Pierce polled the nurses and CNA's, and the nurses did not feel that the time to take laundry downstairs jeopardized patient care. Most of the CNA's said they had the time to do the job. She acknowledged that most of the complaints come from the third shift CNA's who feel there is not enough time. Klar noted that she had complaints from the second shift as well as the third shift, and that the third shift is the hardest job and there is no time to do it.

THE PARTIES' POSITIONS

The Union

The Union asserts that the County violated the practice of the Union and County making agreements in labor-management meetings when it changed the agreement from the CNA's performing laundry duties on the weekends, to unilaterally assigning them to do laundry duties during the weekdays, thus altering the status quo. For the last three years, the Union and County have met monthly in labor-management meetings. On several occasions, the Union discussed, negotiated and came to agreement on several issues. Two documents sent to Klar from Haines clearly indicated that agreements had been reached. The May 12, 2004 letter shows a change in policy that was discussed in a labor-management meeting, where the Union's proposal was implemented. A letter dated August 17, 2005 shows that the Union and the County reached an agreement that would alter the schedules of the activity staff. The Union offered a proposal to the County to help with the issue and its proposal was accepted. While the County will argue that it had the right to make those changes without discussing or negotiating with the Union, the County did not unilaterally implement those changes but used the labor-management meeting to facilitate discussions, negotiations and agreements.

The Union notes that when the issue of laundry came up, the County asked the Union if the CNA's would help out on the weekends with hauling the laundry to the collection point. At first, the Union said no. The County asked again if the Union would agree to help out on

the weekends. That is a clear indicator that the County believed that it needed to obtain the Union's agreement to make this change in the work assignments. The Union agreed to do the work on the weekends but made it clear that it was for weekends only. The Union believed that an agreement had been reached and that the County could only change that agreement if the Union agreed to a change. Weekends are quieter and the CNA's felt they could make that commitment. The weekdays are much busier and the CNA's felt they needed to stay on their units and do the work they were hired to do, to give direct patient care.

When the County contracted out the laundry three years ago, it took the consequences of that change. It could have left one laundry aide to do the work. The County knew it needed a part-time person to help out with the laundry. However, it decided to pass the responsibility for this work onto the overworked CNA's.

The Union states that the labor-management meetings had always been a way for the Union and the County to maintain a good working relationship. They had been able to work out issues and come to agreements when the County wanted to change policy. All the Union expected was for the County to come to them with the proposal of doing laundry during the week. Instead, the County issued a mandate. That is a violation of trust and respect that the Union felt it had in its relationship with the County. The Union asks that the County be ordered to rescind its new policy of having CNA's taking laundry to a collection point during the weekdays.

The County

The County asserts that the collective bargaining agreement contains a broad enumeration of management rights, including the right to direct the work, direct and control operations, determine who does the work, to change any existing service practices, and to assign duties. The work assignment given to CNA's on this case falls within the right of management to make. The task of removing dirty linens and personal laundry from a temporary storage room and transporting them to a collection point is not difficult or dangerous or unrelated to the work that CNA's regularly do. The task is related to the overall work of a CNA in caring for the residents of the facility.

The County argues that the labor contract does not limit its right to assign laundry transport responsibilities to CNA's. The management rights clause is a reserved rights clause, and the parties only need to identify those rights that management has agreed to give away or share. In this case, management has not agreed to limit its right to assign work. The Union did not offer any evidence that management had agreed to limit its authority to assign work to CNA's within the scope of Section 2.02 of the contract. Its failure to do so is fatal to its cause here. A grievance is a claim that management has violated a specific term of the labor contract between the parties. The Union has not identified a specific clause of the contract that has been violated.

Further, the County contends that the Union has not proved that management has violated any agreement. The essence of the Union's case is that management violated an agreement reached in a labor-management cooperative context. The Union failed to provide any documentation of such agreement. They had discussions about the laundry situation. The evidence reveals an employer and a union who talk about issues in the facility. Management considers the suggestions made by its employees, but that does not mean that management has surrendered its right to manage.

As to the laundry, management established procedures and assignments to get the work done. There was an evolution of assignments – some variations were discussed with the Union, some were not. Management has employed a variety of different staff to remove the soiled laundry to a collection point, with this task now on the CNA's. While some of them objected to the task, others did not. Haines denied that there was an agreement between the Union and management concerning how the laundry transport would be done. It is reasonable to believe that an agreement to limit management's right to manage would be in writing, but there is no such agreement.

Finally, the County argues that the assignment is reasonable. For nearly 30 years, the CNA's have had some responsibilities for transporting laundry, both before and after the County decided to get out of the laundry business. They either brought soiled linens to a collection point or brought clean linens to the floor. CNA's change linens for residents as part of their job duties and responsibilities. The Employer has the general right to make reasonable changes from time to time in the job duties of every individual.

DISCUSSION

The County clearly has the better case here. There is no contract language that protects the Union from being assigned laundry duties such as the ones assigned in this case. Article 2, Section 2.01, gives management the right to assign duties and to make reasonable rules. While the Union believed it had a negotiated deal on laundry in a labor-management meeting, nothing was written down. There is no side letter of agreement or memorandum of understanding – nothing to enforce here. The parties had a discussion over the laundry, and the Union reluctantly agreed to take laundry to the basement on the weekends and thought it had a promise from management that CNA's would not have to do it during the week. However, that was a promise that management couldn't or didn't fulfill after the part-timer, Haskins, left and his job was not filled.

While the Union points to the labor-management meetings as evidence that management had to get the Union's agreement to change the duties on the laundry, it was not mandatory that the County get the Union's consent first. It appears that the parties were successful in using labor-management meetings to get some agreements on the operation of the nursing

home, and the Union's input was useful and sometimes implemented. Nothing turned those meetings into a vehicle that rises to the level of an enforceable collective bargaining agreement or side agreement to a labor contract.

Although performing certain laundry tasks does not mesh well with direct patient care, CNA's have always been involved in some aspects of handling laundry, whether moving soiled laundry to the dock in the old building or bringing clean laundry to the floor and rooms in the new building. The task is fairly minor in the time it takes. Management has not been unreasonable in its assignment of this duty.

AWARD

The grievance is denied and dismissed.

Dated at Elkhorn, Wisconsin this 7th day of July, 2006.

Karen J. Mawhinney /s/

Karen J. Mawhinney, Arbitrator