

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

HEALTHCARE SERVICES GROUP, INC.,

and

SEIU, LOCAL 150

Case 1

No. 66674

A-6272

Appearances:

Mr. Adam Konig, District Manager, Healthcare Services Group, Inc., 15 Spinning Wheel Drive, Suite 436, Hinsdale, Illinois 60521, on behalf of the Company.

Ms. Andrea Hoeschen, Esq., Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman Goldberg, 1555 North RiverCenter Drive, Suite 202, Milwaukee, Wisconsin 53212, on behalf of the Union.

SUMMARY OF BENCH AWARD

The parties jointly selected Arbitrator Sharon A. Gallagher from a panel of five Wisconsin Employment Relations Commission Staff Arbitrators to hear and resolve a dispute between them concerning whether Grievant Kim Pelot had been paid properly for housekeeping duties since October 9, 2006. At the hearing, held at Wisconsin Rapids, Wisconsin on June 7, 2007 (without stenographic transcription), the parties agreed that the Arbitrator could issue a verbal Bench Award (to be confirmed in summary form at a later date) regarding the timeliness issue raised by the Company at the hearing and that the Arbitrator would only reach the merits if she found the grievance timely.

The Undersigned then heard opening statements, took documentary and testimonial evidence from two Union witnesses (including the Grievant) and one Employer witness and heard closing statements from the parties, all of which she studied and considered during a recess. The Arbitrator then reconvened the hearing and gave the parties her verbal Bench Award including all findings and conclusions which can be summarized as follows:

- 1) Joint Exhibit 2 (known as the “Me-Too” Agreement) clearly binds the Company to “all terms and conditions of the Collective bargaining agreement currently in effect between the union and Strawberry Lane for Housekeeping and Laundry employees. . .” This “Me-Too” agreement will remain in full force and effect until April 30, 2008.
- 2) Therefore, Article 7 of the 2005 labor agreement applies to the procedural aspects of this case. Section 7.1 defines a grievance and states that a grievance must be presented to the Company “within seven (7) calendar days, excluding Saturday, Sunday and holidays, after the employee knew or should have known of the alleged violation.”
- 3) Pelot has been employed as a CNA at Strawberry Lane (SL) by North Point Senior Services, since 2002. Pelot’s rate of pay as a CNA is in excess of \$12.00 per hour. Pelot signed a job posting at SL for a Housekeeper position offered by Healthcare Services Group, Inc. (a separate entity from SL and hereafter the Company); Pelot was thereafter interviewed and hired. At both her interview and on her date of hire, Pelot was told her rate of pay would be around \$9.00 per hour. Pelot did not object to this offered pay rate. Pelot’s first day of work as a Housekeeper was October 9, 2006; and as employees are paid biweekly, Pelot could have received her first housekeeper paycheck on either October 26th or 27th or November 9th or 10th. At the time Pelot, received her first housekeeper paycheck she did not believe her pay was wrongly calculated.
- 4) Union Steward Kim Schauer asked Pelot about her housekeeper rate of pay some time in November, 2006 after Pelot had been working as a housekeeper for between 2 and 4 weeks. At this time, Schauer indicated that she believed Pelot’s pay was wrong - - that Pelot should have been receiving her CNA wage rate for all housekeeping duties under Article 23. Pelot then requested to file a grievance regarding her pay.
- 5) Sometimes between November 13 and 17, 2006, Schauer orally presented Pelot’s grievance to the Company’s on-site Account Manager, Patrick Meyer, at Step 1, Section 7.3. The language of Step 1 is clear - there is no requirement to document in any way, the Union’s initial oral presentation of a grievance. Meyer responded in writing to Schauer’s oral presentation by his answer dated November 29, 2006.
- 6) At no time prior to the instant hearing did the Company raise the argument that the grievance was untimely; the Company offered no explanation why it failed to raise timeliness either in its November 29th answer or at any other level of the grievance procedure. Timeliness should be raised at the first opportunity so that cases can be properly assessed and dropped/settled early on, if necessary.

- 7) The contract here is between the Company and the Union only. As such, Pelot, as an individual, could not “agree” to a housekeeper pay rate which allegedly violated the labor agreement and she could not thereby waive the Union’s right to file a pay rate grievance (a continuing contract violation) on her behalf. Pelot did not know she had allegedly been wrongly paid until Schauer spoke to her in November, 2006. Schauer was a credible witness.
- 8) Company failed to meet its burden of proof regarding timeliness. In fact, the Company failed to offer any evidence to contradict Schauer’s assertions that a) she timely orally presented the grievance to Meyer within seven calendar days (excluding weekends and holidays) after Pelot discovered her pay was wrong and that b) Schauer filed the written grievance, according to her practice, within 5 days of her oral presentation to Meyer.

AWARD¹

Therefore, the grievance was timely filed.

Dated in Oshkosh, Wisconsin, this 12th day of June, 2007.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator

1. As the grievance as found timely, the Arbitrator then heard the merits of the case on June 7th. She will proceed to decide the merits of this case after the receipt of briefs thereon in July.