

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:

Ms. Andrea Hoeschen, Esq. Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman Goldberg, 1555 North RiverCenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, on behalf of Local 150.

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

ARBITRATION AWARD

On June 7, 2007 the Undersigned heard the instant grievance and on that date she issued an oral Bench Award regarding procedural issues which she later confirmed in writing on June 12, 2007, finding inter alia, the grievance was timely filed. On June 7th, the Undersigned also heard the parties' evidence and arguments on the merits of the case. By August 7, 2007, the parties submitted their briefs on the merits and the record herein was closed.

ISSUES

The parties stipulated and agreed that the Undersigned should decide the following issues on the merits hereof:

- 1) Did Healthcare Services Group, Inc., pay Kim Pelot the correct wage for housekeeping duties under the collective bargaining agreement?
- 2) If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS:

ARTICLE 15 – PROMOTIONS, TRANSFERS, DEMOTIONS AND JOB POSTINGS

- 15.1 An employee promoted into a higher classification will be placed on the scale step of the new classification that gives the employee a raise. An employee promoted into a higher classification will have a thirty (30) day trial period on the new job. If, in the opinion of either the Employer or the employee, s/he is not successful in the new job, s/he will be returned to her/his former position with her/his former seniority benefits and wages.
- 15.2 An employee who is transferred or promoted into another classification will not lose any seniority, benefits or pay because of the transfer. The employee's seniority date shall be the last hire date for purposes of layoff or rehiring. But in choice of scheduling vacation, holidays and priority for additional hours of work as decided and made available by management up to a regular full-time schedule, the employee's seniority priority shall be the date of starting in the new classification.
- 15.3 If an employee requests a demotion or transfer to a lower classification and receives the new position, s/he will be placed in the tenure step in the new classification based upon her/his seniority in her/his former classification. The employee will retain all previously accrued seniority and fringe benefits.
- 15.4 Job openings will be posted for five (5) calendar days to exclude Saturdays, Sundays and holidays. This clause shall not be construed to prevent the Employer from filling openings with outside applicants after the five (5) day calendar period. The first day of job posting will be that day in which the job is posted before 12 pm any posting after 12 pm day one will be considered the following day.
- 15.5 Each job posting will contain a brief job description, hours per pay period, shift and space to sign up for the positions. Each posting will outline only one job posting.
- 15.6 Present employees who are qualified shall be permitted to bid on job openings. Seniority, ability, qualifications, and relevant personnel files shall be considered by the Employer. Where all else is equal, seniority shall prevail. If during the trial period, either the Employer or the employee determines the employee is

not capable of performing the new job, the employer will make every attempt to return the employee back to their original position schedule and shift. Trial period in a new position shall be thirty (30) calendar days unless the Employer, employee and the Union mutually agree to an extension.

- 15.7 The Union Coordinator will, upon request, be provided a copy of all job postings, within a reasonable period of time, not to exceed three (3) days.

ARTICLE 28 – RATES OF PAY

- 28.1 The Wage Schedule which is attached hereto and by reference is made a part hereof, and the manner of application therein provided, shall prevail during the term of this Agreement, and the hourly rate to be paid any employee covered hereunder shall be determined by such schedule.

. . .

- 28.3 No employee shall perform two (2) jobs at the same time. To provide forty (40) hours a week, employees may divide their time between two classifications; however, each employee shall receive pay for the highest wage scale of the jobs being performed.
- 28.4 No employee shall receive a rate of pay less than the rate for the classification or position for which s/he was hired during the term of this Agreement.

EXHIBIT “A” – WAGE SCHEDULE

1. Effective May 1, 2005 – All employees hired before May 1, 2005 will transition to seven and one half (7.50) hour per day work schedule with wage adjustment. Adjustment will reflect same pay for 7.50 hours as for current eight (8) hours of work.
2. Effective May 1, 2005, All employees hired before May 1, 2005 will be grandfathered in a current wages with adjustments.
3. All Medication aides will receive a (sic) one-dollar (\$1.00) per hour above their CNA wage.
4. Employees hired on or after January 1, 2004 who work sixteen (16) but less than thirty (30) hours per week will receive a \$0.20 per hour premium

5. Effective January 1, 2004, employees who have completed five (5) years of service shall earn an additional \$0.20 per hour; ten (10) years of service an additional \$0.23 per hour; fifteen (15) years of service an additional \$0.25 per hour; and twenty (20) years of service an additional \$0.27 per hour. Current employees receive one (1) incremental longevity pay increase on conversion applicable to their years of service as of January 1, 2004.

Wage Scale as of May 1, 2005

	<u>Start</u>	<u>6 months</u>	<u>1 year</u>
C.N.A	\$10.70	\$10.90	\$11.05
Cooks	\$10.00	\$10.20	\$10.35
Dietary aide	\$ 9.20	\$ 9.35	\$ 9.50
Hskg./Laundry	\$10.65		
Maintenance	\$10.00	\$10.20	\$10.35

MEMORANDUM OF AGREEMENT

It is hereby agreed by and between **HEALTHCARE SERVICES GROUP, INC.** (hereinafter the "Employer") and **SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC, Local 150** (hereinafter the "Union"), as follows:

The Employer and Union agree to be bound by all terms and conditions of the collective bargaining agreement currently in effect between the Union and Strawberry Lane for Housekeeping and Laundry employees employed by the Employer at this location with the exceptions to change the starting rate to \$9.20 and to follow the wage scale outlined in the contract with Strawberry Lane, for any and all new hires from the date of this agreement, also excluding 401K and tuition reimbursement.

This agreement shall be in full force and effect until the end of the current contract. The Employer and the Union agree to jointly enter into discussions relative to a renewal of this Agreement no later than the ninetieth (90th) day immediately preceding the termination of this Agreement.

. . .

BACKGROUND

Service Employees Local 150 (Union) has represented the CNA, housekeeping and laundry at the Strawberry Lane Medical Center for the past 20 years. In 2003, Strawberry Lane (SL), owned and operated by North Point Senior Services (NPSS), decided to subcontract the housekeeping and laundry services at SL to a separate entity, Healthcare Services Group, Inc. (HCS). Local 150 did not object to SL subcontracting with HCS because, as part of the agreement between NPSS and HCS, HCS agreed to sign the above-quoted Memorandum of Agreement (MOA), binding it to the terms of the 2005-08 labor agreement between SL and the Union.

The Grievant, Kim Pelot, has been employed at SL as a CNA working 15 hours per pay period for the past 5 years.¹ In the Fall of 2006, Pelot signed a posting at SL for a housekeeping/laundry position in order to get more work hours. Thereafter, Pelot was interviewed by the on-site account manager for HCS at SL, Patrick Meyer. At the interview, and when he later hired her as a housekeeper/laundry employee, Meyer explained to Pelot that HCS was a separate entity from the owner/operator of SL, North Point Senior Services which had been hired by NPSS to perform laundry and housekeeping services at SL; and that Pelot would have to go through a separate orientation process for HCS when hired by HCS. Meyer also told Pelot the starting hourly rate for the offered position was \$9.20 per hour. Pelot neither questioned nor objected to the \$9.20 hourly rate for the position.

On October 9, 2006, Pelot received the housekeeping/laundry position with HCS.² All SL employees are paid biweekly. After October 9th Pelot received two paychecks - - one from NPSS for her CNA work and a separate one from HCS for her housekeeping/laundry work. Pelot had received at least two paychecks (which, again, she did not question) when Union Steward Kim Schauer noticed Pelot had signed the posting for the housekeeping/laundry position. Schauer then asked Pelot about her pay as a housekeeper, whether she was receiving her CNA rate for the HCS housekeeper job. Pelot responded that she was not aware she should be receiving the higher CNA rate for her housekeeper work. Schauer said Pelot should be making the CNA rate under the contract and asked Pelot if she wanted to file a grievance.³ The instant grievance was then filed.

¹ Pelot stated herein that her employer in her CNA position is NPSS.

² Pelot stated herein that she understood that her employer for the housekeeping/laundry position was HCS.

³ Schauer stated herein that she does not recognize that there is any difference between NPSS and HCS.

HCS Account Manager Meyer stated herein that HCS signed the Memorandum of Agreement (Joint Exh. 2) as a part of the deal it made with NPSS to perform housekeeping/laundry services at SL and that he is aware the MOA bound HCS to abide by the effective labor agreement between SL and the Union. However, Meyer stated that Pelot was a new hire with HCS, which is a separate entity from NPSS; she was not taken by HCS on a transfer, promotion or a change of position, and that HCS does not employ CNA's. Meyer stated that at the time of the instant hearing, Pelot was being paid \$9.38 per hour and that her pay, benefits and seniority began as of her date of hire with HCS. Finally, Meyer acknowledged that when HCS took over supplying housekeeping/laundry services at SL, as part of its agreement to provide housekeeping/laundry services at SL, it took several former Housekeeping/laundry employees, with their prior employment seniority in their prior positions, who had been hired before HCS became involved at SL; that it is not possible to transfer from NPSS to HCS – one must be hired by each – because they are separate employees; and that he (Meyer) has nothing to do with NPSS, or the positions they cover.

POSITIONS OF THE PARTIES

The Union:

The Union asserted that Article 28 is clear – that employees have the option of dividing their time between two classifications and if they do, they “shall” be paid “for the highest wage scale of the jobs being performed.” Because the language is clear, the Union urged that the Arbitrator needs not interpret the contract. The Union noted that in one prior case, that of Amanda Calhoun, HCS agreed to pay Calhoun her CNA rate for housekeeper work after Union Steward Schauer complained in Calhoun's behalf, and that this prior case supports the Union's arguments herein.

In this case, HCS has raised only two defenses to the grievance: 1) that Pelot was hired by HCS (as a new hire) not as an SL employee; 2) that Pelot only took the housekeeper position to add to her CNA hours and pay. Regarding the first defense, the Union queried, if the labor contract does not apply to Pelot because she is an HCS employee, what was the point of agreeing to the MOA. And if the MOA does not apply in this case, it has no meaning and nothing governs the terms and conditions of housekeeper and laundry employees at SL. Such a result would be illogical, impractical and contrary to the clear language of the MOA.

Regarding the second defense, the Union urged that it is irrelevant; that the parties could have agreed upon a different method, but here, the parties clearly agreed that employees should be able to decide to split their work in two classifications and then make the higher pay rate for all work done. Other options were not used by the parties, such as when employees are involuntarily transferred or when employees need to maintain work hours despite an assignment to another job.

Finally, the Union noted that HCS suggested, for the first time, at the instant hearing that Pelot should have been paid \$11.01 per hour instead of her CNA rate or her (new hire) HCS housekeeper rate. Apparently, this was based on Account Manager Meyer's testimony herein that when SL housekeeping/laundry employees were accepted as HCS employees in the same positions for HCS as they had previously had at SL when the subcontract went into effect. In the Union's view, there is no reason why Pelot should be denied the benefit of her SL seniority when other SL housekeepers are paid more based upon their SL seniority. Thus, even if the Arbitrator rejects the Union's primary arguments herein, she should order HCS to adjust Pelot's wage rate to credit her for her SL seniority.

The Employer:

HCS argued that Pelot voluntarily sought employment as a new hire with HCS; that this was Pelot's sole decision and not required by her employer as a means of trying to provide her 40 hours of work per week. Thus, Article 28.3 and the MOA do not apply to Pelot's situation. Rather, Article 15.3 should be applied in Pelot's case because she applied for and requested the housekeeper job and at most, HCS argued, her situation can be described as a voluntary change to a lower classification which would require HCS to recognize her 5 years of SL seniority for purposes of her HCS pay.

Here, HCS, a separate entity from NPSS, has no discretion and cannot make any decisions to require Pelot to work more CNA hours and less housekeeping hours. HCS urged that the "original intent of the collective bargaining agreement Article 28.3 was to hold an employer accountable for reducing an employees (sic) hours, not to allow for a part time CNA to voluntarily divide her time between two classifications simply to get the higher wage rate for doing a job that should pay less" (ER Br. p 1)⁴ Therefore, if Article 15.3 is applied, HCS argued that Pelot could receive \$11.01 per hour back to her HCS date of hire, giving her credit for her 5 years' seniority at SL.

DISCUSSION

Several preliminary observations are necessary here. First, there is no dispute in this case that HCS is a separate employer from NPSS and that HCS employs only housekeeping and laundry employees at SL. Second, it is clear that the MOA requires HCS "to be bound by all terms and conditions of the collective bargaining agreement in effect between the Union and Strawberry Lane for Housekeeping and Laundry employees" and that part of this MOA included changing the contractual starting rate for such housekeeping/laundry work from \$10.65 (Jt Exh. 1, p. 28) to \$9.20 per hour.

⁴ HCS submitted no evidence on this point.

It is also significant that the MOA also states that HCS will “follow the wage scale outlined in the contract with Strawberry Lane, for all new hires from the date of this agreement. . .”⁵

The Union has argued that, pursuant to Article 28.3, Pelot must be paid her CNA rate at Strawberry Lane for all hours worked as a Housekeeper for HCS from her housekeeper hire date forward because HCS has agreed to be bound by the labor agreement between SL and the Union. The problem with this approach is that the MOA specifically states that the Housekeeping/laundry start rate (contained in the contract) is amended by the MOA to \$9.20 per hour for “new hires” of HCS. In my view, the facts herein clearly show that Pelot was interviewed and “hired” as a Housekeeping employee by the separate entity, HCS, in October, 2006, long after (the latest execution date of the MOA) November 21, 2005; that Pelot has received separate HCS paychecks for her housekeeper work; that HCS told Pelot that HCS is a separate employer from NPSS and no evidence was proffered herein to prove HCS and NPSS are a single employer; and that Pelot never performed housekeeping/laundry duties at SL prior to her October, 2006 hire by HCS. In these circumstances, the MOA indicates that Pelot should have been paid at the \$9.20 per hour MOA start rate for the first six months of her HCS housekeeping employment, through approximately April 9, 2007.⁶

Beyond this, the question arises what the proper pay rate for Pelot is for the period after April 9, 2007. On this point, I note that the MOA specifically states that HCS is bound to follow the contractual wage scale for new hires, except for those subject to the \$ 9.20 per hour starting rate. In this regard, it is clear that Exhibit “A” of the labor agreement lists only one pay rate for the single classification of “Housekeeping/laundry,” a starting rate of \$10.65 per hour. Given the specific language of the MOA which sets the Housekeeping/laundry start rate at \$9.20 per hour, the remaining \$10.65 rate listed in Exhibit “A” for such work is the proper rate for the hours Pelot worked after she completed her first six months of work at \$9.20 per hour.

In my view and despite the arguments herein to the contrary, Article 15.3 and Article 28.3 do not apply to this case. In regard to the former clause, I note that Pelot never requested a demotion or a transfer to a lower classification and she was not promoted. Rather, she was hired as a new employee into the sole contractual classification employed by HCS, Housekeeping/laundry. Thus, Article 15.3 does not apply to Pelot’s situation by its clear terms.

⁵ Other exceptions stated in the MOA are not relevant here.

⁶ The labor agreement, at Exhibit A, lists the pay rates for all classifications and rates for “start”, “6 months” and “1 year” for all classifications except Housekeeping/laundry which lists only a \$10.65 per hour “start” rate.

Regarding Article 28.3, it is significant that Exhibit "A" lists only one classification, Housekeeping/laundry, that HCS employs at SL. Therefore, based on the contract language, Pelot could not have chosen to "perform two (2) jobs at the same time" for HCS and she could not have decided "to divide" her time "between two classifications" as an HCS employee.⁷ As HCS correctly argued, the record showed that HCS has no control over Pelot's CNA work hours and other terms and conditions of employment for NPSS in her CNA position.

Based upon the above analysis, I issue the following

AWARD⁸

Healthcare Services Group, Inc., paid Kim Pelot the correct wage for her first six months of employment as an HCS Housekeeper under the Memorandum of Agreement, \$9.20 per hour. Therefore, the grievance is denied and dismissed in part concerning that six month time period.

Healthcare Services Group, Inc., failed to give Kim Pelot the correct wage for the housekeeping duties she performed after her first six months of HCS employment. Therefore, the grievance is sustained regarding this time period and forward. HCS is ordered to make Pelot whole by paying her the difference between \$ 10.65 per hour and the pay rate it paid her beginning six months after her hire by HCS to the date of this Award, and HCS is ordered to pay Pelot according to the MOA and SL labor agreement thereafter.

Dated in Oshkosh, Wisconsin, this 10th day of September, 2007.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator

⁷ The Union argued that the prior treatment of Amanda Calhoun (a CNA who was hired as an HCS housekeeper and paid her CNA rate for all HCS housekeeper hours) should support its case. I disagree. Calhoun's situation was informally settled by Schauer and would be insufficient standing alone, to prove a past practice in favor of the Union.

⁸ I will retain jurisdiction of this case, for purposes of the remedy only, for 60 days after the date of this Award.