

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :  
of a Dispute Between :  
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FEDERATION OF NURSES AND HEALTH :  
PROFESSIONALS, LOCAL 5001, AFT, AFL-CIO : Case 322  
 : No. 47037  
and : MA-7144  
 :  
MILWAUKEE COUNTY (MEDICAL COMPLEX) :  
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Appearances:

Ms. Carol Beckerleg, Field Representative, Wisconsin Federation of Nurses and Health Professionals, AFT, AFL-CIO, 7700 West Bluemound Road, Milwaukee, Wisconsin 53213, appearing on behalf of the Union.  
Mr. Timothy R. Schoewe, Deputy Corporation Counsel, Milwaukee County, 901 North Ninth Street, Room 303, Courthouse, Milwaukee, Wisconsin 53233, appearing on behalf of the County.

ARBITRATION AWARD

The Federation of Nurses and Health Professionals, Local 5001, AFT, AFL-CIO, hereafter the Union, and Milwaukee County (Medical Complex), hereafter the County or Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances arising thereunder. The Union, with the concurrence of the County, requested the Wisconsin Employment Relations Commission to appoint a single, impartial arbitrator to resolve the instant dispute. On April 13, 1992, the Commission appointed Coleen A. Burns, a member of its staff, as Arbitrator. Hearing was held on June 18, 1992, in Milwaukee, Wisconsin. The record, which was not transcribed, was closed on July 13, 1992 upon receipt of posthearing written argument.

ISSUE:

The parties stipulated to the following statement of the issue:

Was the grievance filed in a timely manner?

RELEVANT CONTRACT LANGUAGE:

4.02 GRIEVANCE PROCEDURE. The County recognizes the right of an employe to file a grievance and will not discriminate against any employe for having exercised her rights under this Section.

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(3) TIME OF HANDLING. Whenever practical, grievances will be handled during the regularly scheduled working hours of the parties involved. The County agrees to provide at least 24 hours written notice of the time and place of the hearing to the grievant and the Federation.

(4) TIME LIMITATIONS. If it is impossible to comply with the time limits specified in the procedure because of work schedules, illness, vacations, etc., these limits may be extended by mutual consent in writing (extension of grievance time limit Form #4894). If any extension is not agreed upon by the parties within the time limits herein provided or a reply to the grievance is not received within time limits provided herein, the grievance may be appealed directly to the next step of the procedure.

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(6) FORMS. There are 3 separate forms used in processing a grievance:

- (a) Grievance Initiation Form;
- (b) Grievance Disposition Form;
- (c) Grievance Appeal Form.

All forms are to be copied in quadruplicate except at the County institutions, where 5 copies are to be prepared. Two copies are to be retained by the person originating the form; the remaining copies shall be served upon the other person involved in the procedure at that step, who shall distribute them in such manner as the department head shall direct. The department head shall furnish one copy to the Department of Labor Relations. The forms are available in the office of the Department of Human Resources and in any county department or institution, where they shall be readily available by all employees.

(d) Guidelines to be followed when initiating a written grievance:

1. The employe alone or with her steward shall cite the specific language of the rule, regulation or contract provision that was alleged to have been violated at the first step of the grievance procedure.
2. The employe alone or with her steward shall in writing provide her immediate supervisor designated to hear grievances a detailed explanation as to when, where, what, who, and why the employe believes that her contractual rights have allegedly been violated. The written Grievance Initiation Form shall contain the date or time that the employe alleges that her

contractual rights have been violated.

3. The employe alone or with her steward shall specifically detail the relief the employe is requesting. The specific relief being requested shall be in writing. The requested relief at the written step of the grievance procedure shall remain the same through all steps of the grievance procedure.
4. If more space is required than is provided for on the Grievance Initiation Form in order to comply with the provisions of this section, the employe shall be permitted to submit written attachments to said form.
5. The Grievance Initiation Form shall be prepared by the employe or with her steward in a manner that is neat, clear, and discernible to a third party.
6. Failure on the part of the employe alone or with their steward to follow section 4.02 (6)(d) 1,2,3,4, or 5, shall make the Grievance Initiation Form null and void and the employe's immediate supervisor designated to hear grievances shall return the Grievance Initiation Form to the employe for corrections.
7. The guidelines outlined in 4.02(6)(d), 1,2,3,4,5 and 6 are to clarify the grievance process. These guidelines shall not be used as a bar to the right of an employe to file a grievance. These guidelines are to assist the employe and management in the resolution of grievances at their lowest level of the grievance procedure. It is understood by the parties that should a dispute arise as to the intent of this section, the President or her designee and the Director of Labor Relations and/or his designee will meet to discuss the dispute and resolve it to the mutual satisfaction of both parties.

(7) STEPS IN THE PROCEDURE

(a) STEP 1

1. The employe alone or with her representative shall explain her grievance verbally to her supervisor designated to respond to employe grievances.
2. The supervisor designated in paragraph 1 shall within 3 working days verbally inform the employe of her decision on the grievance presented.

3. If the supervisor's decision resolves the grievance, the decision shall be reduced to writing on a Grievance Disposition Form within 5 working days from the date of the verbal decision.

(b) STEP 2

1. If the grievance is not settled at the first step, the employe or her representative shall prepare the grievance in writing on the Grievance Initiation Form and shall present such form to the supervisor designated in paragraph 1 to initial as confirmation of her verbal response.
  - a. The employe alone or with her steward shall fill out the Grievance Initiation Form pursuant to Section 4.02(6)(d), 1,2,3,4,5, and 6 of this Memorandum of Agreement.
2. The employe or her representative after receiving confirmation shall forward the grievance to her appointing authority or to the person designated by her to receive grievances within 5 working days of the verbal decision.
3. The person designated in (7)(b) 2. above will schedule a hearing with the persons concerned and within 15 working days from date of service of the Grievance Initiation Form, the Hearing Officer shall inform the aggrieved employe in writing of her decision.
4. Those grievances which would become moot if unanswered before the expiration of the established time limits will be answered as soon as possible after the conclusion of the hearing.

If the grievance is not resolved at Step 2 as provided, the Federation shall refer such grievance within 15 working days to Step 3.

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- (8) No grievance shall be initiated after the expiration of 90 calendar days from the date of the grievable event, or the date on which the employe becomes aware, or should have become aware that a grievable event occurred, whichever is later. This clause shall not limit retroactive payment of economic benefits for

which it has been determined the County is liable nor would it prohibit a prospective adjustment of an ongoing situation.

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#### 4.03 SELECTION OF ARBITRATOR

- (1) To assist the resolution of disputes arising under the terms of the Agreement and in order to resolve such disputes, the parties agree to petition the Wisconsin Employment Relations Commission to appoint a member of their staff to serve as arbitrator to resolve all grievances arising between the parties.

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- (4) ARBITRATOR'S AUTHORITY. The arbitrator in all proceedings outlined above shall neither add to, detract from nor modify the language of any civil service rule or resolution or ordinance of the Milwaukee County Board of Supervisors, nor revise any language of this Memorandum of Agreement. The arbitrator shall confine himself to the precise issue submitted.

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#### BACKGROUND

On August 7, 1991, the Union and the County were parties to a disciplinary hearing concerning the conduct of La Verne Marciulionis, hereafter the Grievant. On August 14, 1991, Minnie Linyear, Assistant Hospital Administrator/Human Resources, issued the following letter to the Grievant:

This communication is to document that a hearing for proposed discipline was held on 8/7/91 with Barbara Kelsey, Shirley Uribe, Joyce Biehn and Paula Lucey.

Information was presented by Ms. Biehn indicating three patients, (Angela, Paula and Debra) had filed complaints with Patient Relations regarding the manner in which you treated them. You also had an opportunity to present an explanation of your involvement with each of the three patients.

The area of concern regarding all of the incidents is that as a RN you are expected to treat all patients in a professional manner. The behavior described in each of the incidents was not what is expected of a RN. The other concern expressed by Nursing Management was that this was not the first incident of a patient reporting you as having acted in a verbally abusive manner.

After reviewing information concerning the incidents, there appears to be a problem with the manner in which you react to the patients. It was brought out in the hearing that there have been difficulties between you and Debra so there is an effort by Nursing Management to try to not assign her to you.

This communication will serve as an Administrative Reprimand. You are requested to contact the Employee Service Program for assistance in resolving any personal problems which may be contributing to the behaviors you have displayed in working with patients on your unit. You are expected to follow through with the treatment plan as outlined by the Employee Service Program Counselor. We will need communication from the Counselor that you are following through with the plan.

In addition the Patient Relations Coordinator is available to discuss techniques with you for defusing patient interactions without entering into a confrontation.

As a staff member you are reminded the patient is the most important person in the hospital. It is hoped that you will receive assistance in resolving whatever issues you are facing which prevent you from treating all patients in a professional manner. In the event there are additional problems, the department can request another hearing for further disciplinary action.

In a letter dated November 13, 1991, Barbara Kelsey, a Union Steward, advised the Grievant of the following:

At the request of management, a meeting has been set for your first step grievance with Joyce Biehn. The date is Friday, November 22 at 6:30 AM. If there is a problem, please notify me as soon as possible.

A first step grievance meeting was held as scheduled. The grievance was denied at all steps of the grievance procedure.

#### POSITIONS OF THE PARTIES

##### Union

As confirmed by the testimony of Barbara Kelsey, the Union Steward who filed the grievance, she made numerous attempts to schedule the first step grievance meeting with Joyce Biehn, the supervisor who was in charge of the Grievant's Department in August of 1991, as well as with Betsy Jackson, who assumed supervision of the Grievant's Department in October of 1991. It was not until November 11th or 12th that management made a commitment to meet with the Union on November 22, 1991.

The Union was prepared to meet, and made numerous attempts to schedule the first step meeting prior to November 22, 1992. Given these circumstances, the steward considered the grievance to be timely filed and did not consider it necessary to file for an extension of the time limit.

While the issue of timeliness was discussed at the second step meeting, there was no mention of timeliness in the second step response. The lack of reference to the timeliness issue in the second step response should be construed to be acceptance of the explanation provided at the meeting by the parties involved.

Arbitrators have recognized that issues involving time limits should be resolved against forfeiture of the right to process the grievance. Addressing a similar situation, Arbitrator Aisenberg ruled that a union complied with a three day limit to file a grievance when it requested to meet with the employer

within the three day limit but the actual meeting occurred after the three days had expired. (cite omitted) The grievance was filed in a timely manner.

#### County

The collective bargaining agreement specifies that a matter is no longer grievable if the grievance is not initiated 90 days after the grievable event occurs or 90 days from the date in which the grievant can reasonably expect to have become aware that the grievable event occurred. The grievance, which was initiated some 100 days after the grievable event, was not timely filed. Since the grievance was not timely filed, the arbitrator does not have jurisdiction to determine the merits of the grievance.

The collective bargaining agreement sets forth a procedure by which a party may make a written request of the other party to extend or defer the timelines contained in the grievance process. The form has been utilized for that purpose by the Union in the past. In the present case, the Union did not file a written request to extend the timelines for filing the grievance.

The grievance is barred not only by the specific terms of the collective bargaining agreement, but also by the Doctrine of Laches.

#### DISCUSSION

Section 4.02 (8), the provision relied upon by the County, provides in relevant part that "No grievance shall be initiated after the expiration of 90 calendar days from the date of the grievable event, or the date on which the employe becomes aware, or should have become aware that a grievable event occurred, whichever is later." The County, contrary to the Union, argues that the grievance was not initiated within the time limits set forth in Section 4.02 (8) and, therefore, the undersigned is without jurisdiction to decide the merits of the grievance.

The Grievance Initiation Form which is used by the parties contains a section which states "What happened to cause your Grievance?(Please give details as to Date, Where, Who was involved)." The Union response to this section contained the following: "Grievant inappropriately disciplined on August 7, 1991." The Grievance Initiation Form also contains a section which states "What specific relief do you want?" The Union's response to this section contained the following: "Removal of the Administrative Reprimand from the employees personnel file."

It is evident that there was a disciplinary meeting which was held on August 7, 1991. It is not evident, however, that the County issued an Administrative Reprimand, or imposed any other discipline, at the meeting of August 7, 1991.

Paragraph Five of Administrator Linyear's letter of August 14, 1991, expressly acknowledges that the letter of August 14, 1991 served as the Administrative Reprimand. As the Union argues, the record demonstrates that it was the letter of August 14, 1991, and not the meeting of August 7, 1991, which triggered the time limits set forth in Section 4.02 (8) of the collective bargaining agreement. 1/ Having concluded that the "grievable event" occurred

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1/ Neither the testimony of the witnesses, nor the documentary evidence, establishes that the Grievant and the Union actually received the letter of August 14, 1991 on August 14, 1991. In post-hearing written argument, however, the Union acknowledges that the grievable event occurred on August 14, 1991.

on August 14, 1991, the undersigned is satisfied that the 90 calendar days referenced in Section 4.02 (8) expired at the end of the day on November 12, 1991.

There is no dispute that the written grievance is filed on a form entitled "Grievance Initiation Form" and that, in the present case, this form was filed with the County on November 22, 1991. While the County argues that the grievance is initiated by the filing of this form, Section 4.02 (8) does not expressly reference either the written grievance, or the "Grievance Initiation Form". Nor does Section 4.02 (8) expressly provide that, for the purposes of Section 4.02 (8), the grievance is initiated by the filing of the written grievance, or the "Grievance Initiation Form".

Section 4.02 (6)(d), expressly addresses procedures for "initiating a written grievance". Had the parties intended Section 4.02 (8) to address the "initiation" of the written grievance, presumably they would have expressly referenced the written grievance, as they did in Section 4.02 (6)(d).

Section 4.02 (7), entitled Steps in the Procedure, provides a Four Step grievance procedure. Section 4.02 (7)(a), Step 1, states that "The employe alone or with her representative shall explain her grievance verbally to her supervisor designated to respond to employe grievances." Given this language, the undersigned is persuaded that a grievance is initiated at Step 1, and not at Step 2, of the grievance procedure. Contrary to the argument of the County, the Union did not violate the time limits set forth in Section 4.02 (8) by filing the Step Two written grievance on November 22, 1991.

At hearing, Union Steward Kelsey stated that, prior to November 13, 1991, when she advised the Grievant of the Step 1 meeting of November 22, 1991, Kelsey had repeatedly contacted the Grievant's Supervisors, Biehn and Jackson, to schedule the Step 1 grievance meeting. 2/ Union Steward Kelsey further stated that management did not respond to her requests until November 11th or 12th, at which time management indicated that the only available date for the meeting was November 22, 1991. The record does not demonstrate otherwise.

Under the circumstances presented herein, the undersigned considers the Step 1 grievance to have been filed at the time that the Union and County grievance representatives agreed to hold the Step 1 meeting on November 22, 1991. As this agreement was reached prior to the end of the day on November 12, 1991, the grievance is timely filed. Contrary to the argument of the County, the grievance is neither barred by the specific language of the collective bargaining agreement, nor the Doctrine of Laches.

As the County argues, Section 4.02 (4) states as follows:

- (4) TIME LIMITATIONS. If it is impossible to comply with the time limits specified in the procedure because of work schedules, illness, vacations, etc., these limits may be extended by mutual consent in writing (extension of grievance time limit Form #4894). If any extension is not agreed upon by the parties within the time limits herein provided or a reply to the grievance is not received within time limits provided herein, the grievance may be appealed directly to the next step of the procedure.

As discussed above, the undersigned considers the grievance to have been initiated within the time limits set forth in Section 4.02 (8). Accordingly, the provisions of Section 4.02 (4) are not applicable.

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2/ Biehn was the supervisor at the time that the Administrative Reprimand was issued. Jackson assumed the supervisory position in October of 1991.



Based upon the above and foregoing, and the record as a whole, the undersigned issues the following

AWARD

The grievance was filed in a timely manner.

Dated at Madison, Wisconsin this 9th day of October, 1992.

By \_\_\_\_\_  
Coleen A. Burns, Arbitrator