

IN THE MATTER OF ARBITRATION ) INTEREST ARBITRATION  
)  
between )  
)  
Hennepin County Medical )  
Center, Minneapolis, ) BMS Case No. 11-PN-1177  
Minnesota )  
)  
-and - )  
)  
Minnesota Nurses Association ) November 11, 2011  
))

**APPEARANCES**

**For Hennepin County Medical Center, Minneapolis, Minnesota**

Frank J. Madden, Attorney, Madden Galanter Hansen, Plymouth, Minnesota  
Susan K. Hansen, Attorney, Madden Galanter Hansen, Plymouth, Minnesota  
Elizabeth Bonin, Senior Human Resources Consultant  
Bob Altman, Staff Attorney  
Kathy Wilde, RN Chief Nursing Officer  
Mark Thompson, Director of Ambulatory Care  
Sharon Carlson, Observer  
Mary Peterson, Observer

**For Minnesota Nurses Association**

Phillip I. Finkelstein, Labor Counsel  
Elayne Best, Staff Specialist, Labor Relations  
Keri Nelson, Director of Collective Bargaining  
Lily Hansen, Administrative Assistant  
Linda Campbell, RN, Pediatric Clinic  
Gen DuPlessis, Chairperson  
Meg Ploog, Co-Chair  
Peter Lunney, Labor Representative  
Julie Stewart, Labor Representative

**JURISDICTION OF ARBITRATOR**

Hennepin County Medical Center (hereinafter "HCMC", "Medical Center", or "Employer") has been part of Hennepin County since

1964. HCMC is unique among hospitals in the Twin Cities. The Medical Center is a public hospital, a safety net provider, a teaching hospital and a statewide medical education resource for all other hospitals. HCMC treats all patients regardless of their ability to pay, and as a result, it provides more uncompensated care than any other hospital in Minnesota and it has the highest share of public program recipient patients of any hospital in the Twin Cities.

The Medical Center has approximately 4,091 employees, including 1,381 non-union employees and 2,710 employees in 10 bargaining units.

The Minnesota Nurses Association (hereinafter "MNA", "Union" or "Association") is the certified bargaining representative for all Registered Nurses (RNs) in the job classifications of Staff Nurse, Senior Staff Nurse and Roster Nurse who are employed by the Medical Center "...predominantly twenty-eight (28) or more hours per two-(2) week pay period or more than sixty-seven workdays per calendar year..." (Article 1, Recognition, Section 1, Employer Exhibit #1).

This is the third collective bargaining agreement ("CBA" or "Contract") between HCMC and MNA (hereinafter "Parties"). The first CBA was for 2006 and 2007, with the majority of the items being resolved by the undersigned in his 108-page interest

arbitration decision rendered on January 15, 2007. (Employer Exhibit #14).

The Parties successfully negotiated a second CBA for 2008-2011, with only a wage re-opener for the period July 1, 2010 through June 30, 2011 being arbitrated. Arbitrator Andrea Mitau Kircher rendered her decision on the wage re-opener on April 25, 2011. (Employer Exhibit #13).

As part of the negotiations for the third CBA from July 1, 2011 through June 30, 2014, the Parties voluntarily reached tentative agreements on all items with the exception of layoff. (Employer Exhibit #2). Thus, layoff is the only issue before the Arbitrator in this proceeding.

On July 21, 2011, the Bureau of Mediation Services ("BMS") received a written request from the Parties to submit this sole layoff issue to conventional interest arbitration before the undersigned. (Employer Exhibit #3).

A hearing in the matter convened on October 4, 2011, at the BMS, 1380 Energy Lane, Suite 2, St. Paul, Minnesota. The Parties were afforded full and ample opportunity to present evidence and arguments in support of their respective positions.

The Parties elected to submit post hearing briefs. In accordance with the Parties' agreement and the statutory requirements, the Parties timely filed post hearing briefs by e-

mail to the Arbitrator on October 19, 2011. The post hearing briefs were exchanged through the Arbitrator to the opposing Parties on the next business day, October 20, 2011, after which the record was considered closed.

On July 22, 2011, the BMS determined that the following item was certified for conventional interest arbitration pursuant to M.S. 179A.16, subd. 2 and Minn. Rule 5510.2930:

1. Layoff - What Shall The Language Of Article 39, Layoff, Be For The Term Of This Contract - Art. 39

#### **HCMC POSITION**

The Medical Center proposes to retain the current Contract language in Article 3, Definitions, and Article 39, Layoffs, as follows:

#### **ARTICLE 3 - DEFINITIONS**

L. **LAYOFF:** Separation from service with the Medical Center necessitated by lack of work, lack of funds, or other reasons without reference to incompetence, misconduct, or other behavioral considerations. When such separation is due to emergency circumstances, only a separation in excess of fifteen (15) calendar days shall be considered a layoff.

#### **ARTICLE 39 - LAYOFFS**

**Section 1:** Except in those instances where senior nurses are not qualified to perform remaining work duties, seniority will determine the order of:

- A. Layoffs will be in inverse order of seniority within each work classification and department, provided that any senior staff nurse who is to be laid off and has previously served as a staff nurse covered by this

Agreement may request to exercise seniority rights as a staff nurse. A description of "departments" is included in Appendix B.

- B. Recall from layoff will be in order of seniority within each work classification and department, provided that if a nurse does not return to work upon recall as directed by the Medical Center or on an extended date mutually acceptable to the nurse and Medical Center, he/she shall automatically have terminated his/her employment.
- C. If a senior nurse requests exercise of seniority rights over a less senior nurse for purposes of layoff, the senior nurse, as a condition of the Medical Center granting such a request, must accept the work schedule (days of week, work shift, and number of hours per shift) and work location of the least senior nurse. In situations when more than one (1) nurse in a job class is simultaneously requesting to exercise seniority rights to positions in the same or lower job class, the Medical Center will make reasonable efforts to match scheduled hours by seniority.

**Section 2.** The Medical Center will issue written notice of layoff or recall from layoff to affected nurses at least ten (10) calendar days in advance of the effective date. Such notice will be made by certified mail to the nurse's last known address as shown by the Medical Center's records except when the nurses are present at the work site to receive notice.

**Section 3.** For purposes of this article, "seniority" will be defined as compensated hours since the most recent date of hire into the bargaining unit.

#### **UNION POSITION**

The Union has proposed to revise the definition of "layoff" in Article 3 and to make substantial revisions to the layoff and recall process in Article 39 as follows:

### ARTICLE 3 - DEFINITIONS

M. LAYOFF: Separation from service with the Medical Center or any involuntary reduction in hours necessitated by lack of work other than day to day low need.

### ARTICLE 39 - LAYOFFS AND RECALLS

Section 1: Layoff: In the event it is necessary to lay off nurses due to lack of work, the least senior nurses in the employ of the Medical Center will be laid off first. Lay off shall continue in order of least seniority toward most seniority until the needed reduction is accomplished.

It is expressly agreed that the operation of this Section shall not have the effect of depriving patients of needed nursing care. The Medical Center may determine a core of registered nurse staff to be retained on a station unit or clinical service. For purposes of this Section, a "core" is defined as the minimum number of registered nurses with the skills required to maintain a specific station's, unit's or clinical area's standard for safe, specialized care. It is understood that care is routinely provided by "core" staffing in conjunction with other registered nurses. A nurse may be retained out of the seniority sequence described above only if such retention is necessary to satisfy "core" requirements, and no nurse with greater seniority has the skills to function as "core" or could become prepared within a reasonable period of orientation not to exceed four weeks.

To effect a reduction of staff on an individual station, unit or clinical service when a layoff becomes necessary the Medical Center shall use a system whereby all affected nurses assigned to that unit or service, in order of greater seniority, would be offered any/all the following options:

1. Vacant positions for which they are qualified.
2. Qualified nurses will be offered an opportunity in order of seniority to replace less senior nurses within the cluster group.

3. Qualified nurses will be offered an opportunity in order of seniority to replace less senior nurse in other cluster groups.
4. Nurses may accept complete layoff and retain full rights to recall.

A nurse displaced by a more senior nurse under (2) and (3) above would then, in seniority order, be offered any/all options (1) through (4).

In exercising seniority rights under steps (1), (2), and (3) the nurse will be offered a position for which qualified according to the step selected, such position to be determined on the basis of the nurse's position preference, greater seniority and the need to minimize multiple displacement of nurses.

Concurrently with the offering of steps (1) through (4), nurses shall be offered the option of accepting reduced hours in their unit. A nurse accepting such reduction shall be considered on layoff and retain all recall rights. Before or at the time a nurse is offered vacancies or replacement opportunities, the nurse will be provided a description of available positions which includes the unit assignment, shifts and number of scheduled hours.

Seniority shall be lost if the nurse is not recalled from lay off within one (1) year; provided, however, a nurse may have seniority rights extended for an additional period of one (1) year by giving written notice to the Medical Center within thirty (30) days before the expiration of the first year of lay off. The nurse and the Minnesota Nurses Association will be given two (2) weeks written notice in advance of any lay off.

If there has been a lay off, the Medical Center shall not newly employ nurses into the bargaining unit, shall not increase the usual specified number of shifts per payroll period of nurses not laid off, shall not schedule less than minimal nurses to meet staffing needs, shall not transfer or temporarily assign non-bargaining unit nurses into the bargaining unit, shall not use temporary nurses until all nurses holding length of employment rights who are qualified

or who could become qualified within a reasonable period of orientation not to exceed four (4) weeks shall have been offered recall or have been recalled.

Nurses on lay off shall be given first opportunity, if available, to work intermittent shifts that become available, for which they are reasonably qualified, before such shifts are offered to non-laid off nurses, less than minimally qualified, or non-bargaining unit personnel. Such shifts shall be offered to nurses on lay off in order of the nurse's seniority with most senior nurses having first opportunity for the available shift. An offer of intermittent shifts shall not be considered a recall.

A nurse who is partially laid off shall have the right at the time of lay off to receive appropriate pro-rated vacation with pay upon written request to the Medical Center.

As part of on-going communication between the Association and the Medical Center, the Medical Center will notify the Association as soon as it determines that a layoff may occur. The parties will meet to review relevant data and to jointly develop the procedure for applying this Section to the specific situation.

A nurse and the Association will be given two (2) weeks' written notice in advance of any layoff.

A nurse on layoff status who has been benefit eligible and has worked an average of .5 FTE for the first four pay periods following layoff, shall continue on a benefit eligible status so long as she or he continues to work an average of at least .5 FTE per four pay periods either through intermittent shifts or because of recall. In the event that the nurse refuses a recall to a regularly scheduled benefit eligible position for which she or he is qualified, the nurse shall lose the benefit eligible status. Exceptions to the loss of benefit eligible status may be made in cases of extenuating circumstances.

In the event of a pending layoff or major restructuring, in addition to other contractual options, each senior nurse in affected or related clinical areas will be given the option of retirement with the employer portion of health insurance

(single coverage) continued until attainment of age 65. For purposes of this paragraph, senior nurses are defined as nurses (.7 or above FTE) at age 58 or above who have attained the monthly salary increment for twenty (20) calendar years employment.

Any unit in layoff status will be reviewed quarterly by the Labor Management Committee until either the downsizing is permanent or the end of the recall period. This review will address current status of department layoff and any pending changes.

## Section 2: Layoff and Recall Process

1. As part of the continuing communication between the parties through each Medical Center's system for cooperative labor-management the Medical Center will share its data and assessment of patient volume and projections, reimbursement changes, pay or/contract changes and other environmental factors. The Medical Center will notify the Association if it is considering layoffs.

2. All options will be considered prior to layoff. These include but are not limited to:

- a. Voluntary leaves
- b. Permanent or temporary voluntary decrease of scheduled hours
- c. Voluntary retraining
- d. Alternate positions
- e. Mutually agreed severance packages
- f. Other ideas mutually agreeable to the parties and consistent with the Contract Agreement.

3. A plan will be mutually developed for implementing the contract provision relating to layoff that fits the individual situation and provides senior nurses greater options. It will identify units affected, education/training needs, competencies for replacing junior nurses on specific units, mechanics of notifying nurses and data to be tracked (e.g., overtime, intermittent, casual and extra shifts worked and volume increases) that will trigger a recall.

4. The parties will jointly review data on a continuing basis. The indicators that a recall is needed will be identified.

5. In implementing recall, a system will be used that results in senior nurses having greater options and not being disadvantaged by the recall of junior nurses. As in layoff, recall of nurses to their shift, unit and FTE will be done in seniority order and in a fashion designed to minimize multiple displacement.

Section 3: Notice of Recall: Recall shall be in the reverse order of length of employment in the bargaining unit. A nurse shall be allowed up to two (2) weeks to respond to a notice of permanent recall. No nurse shall be recalled to less than forty (40) hours per payroll period if such nurse was regularly scheduled for forty (40) hours or more prior to layoff. A nurse whose hours were reduced to forty (40) hours per payroll period or a nurse recalled to forty (40) hours per payroll period shall retain his/her length of employment rights for purposes of recall to the nurse's regularly scheduled number of hours prior to lay off as soon as additional week day shifts are available.

A nurse shall be considered totally recalled when his/her confirmed hours, shift or rotation, length of shift, and he/she has been returned to his/her original unit/station or clinical service.

A nurse unable to respond to notice of recall due to illness or disability shall be transferred to medical leave of absence status. If a nurse is unable to respond to recall for good reason other than illness or disability the nurse shall retain his/her place on the seniority list but the next most senior nurses may be recalled.

A nurse on lay off may be offered occasional work hours that become available on a day-to-day basis. Acceptance or refusal of such offered hours shall not adversely affect a nurse's right to recall. Overtime hours, bonus shifts and less than minimal nurses shall not be used except in emergency situations where an absolute prohibition of their use would deprive patients of needed nursing care.

Intermittent shifts reasonably expected to occur over a continuing period of time shall not be used in lieu of recall of nurses who retain recall rights.

The Medical Center shall post weekly, and provide in writing to Minnesota Nurses Association, the names of nurses who have been given notice of recall.

**Section 4.** For purposes of this article, "seniority" will be defined as compensated hours since the most recent date of hire into the bargaining unit.

## **AWARD**

### **ARTICLE 3 - DEFINITIONS**

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### **ARTICLE 39 - LAYOFFS AND RECALLS**

Section 1: Layoff: In the event it is necessary to lay off nurses due to lack of work, lack of funds, or other reasons without reference to incompetence, misconduct, or other behavioral considerations, the least senior nurses in the employ of the Medical Center will be laid off first. Lay off shall continue in order of least seniority toward most seniority until the needed reduction is accomplished.

It is expressly agreed that the operation of this Section shall not have the effect of depriving patients of needed nursing care. The Medical Center may determine a core of registered nurse staff to be retained on a station unit or clinical service. For purposes of this Section, a "core" is defined as the minimum number of registered nurses with the skills required to maintain a specific station's, unit's or clinical area's standard for safe, specialized care. It is understood that care is routinely provided by "core" staffing in conjunction with other registered nurses.

A nurse may be retained out of the seniority sequence described above only if such retention is necessary to satisfy "core" requirements, and no nurse with greater seniority has the skills to function as "core" or could become prepared within a reasonable period of orientation not to exceed four weeks.

To effect a reduction of staff on an individual station, unit or clinical service when a layoff becomes necessary the Medical Center shall use a system whereby all affected nurses assigned to that unit or service, in order of greater seniority, would be offered any/all the following options:

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2. Qualified nurses will be offered an opportunity in order of seniority to replace less senior nurses within the cluster group.
3. Qualified nurses will be offered an opportunity in order of seniority to replace less senior nurse in other cluster groups.
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A nurse displaced by a more senior nurse under (2) and (3) above would then, in seniority order, be offered any/all options (1) through (4).

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In the event of a pending layoff or major restructuring, in addition to other contractual options, each senior nurse in affected or related clinical areas will be given the option of retirement with the employer portion of health insurance (single coverage) continued until attainment of age 65. For purposes of this paragraph, senior nurses are defined as nurses (.7 or above FTE) at age 58 or above who have attained the monthly salary increment for twenty (20) calendar years employment.

Any unit in layoff status will be reviewed quarterly by the Labor Management Committee until either the downsizing is permanent or the end of the recall period. This review will address current status of department layoff and any pending changes.

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- d. Alternate positions
- e. Mutually agreed severance packages
- f. Other ideas mutually agreeable to the parties and consistent with the Contract Agreement.

3. A plan will be mutually developed for implementing the contract provision relating to layoff that fits the individual situation and provides senior nurses greater options. It will identify units affected, education/training needs, competencies for replacing junior nurses on specific units, mechanics of notifying nurses and data to be tracked (e.g., overtime, intermittent, casual and extra shifts worked and volume increases) that will trigger a recall.

4. The parties will jointly review data on a continuing basis. The indicators that a recall is needed will be identified.

5. In implementing recall, a system will be used that results in senior nurses having greater options and not being disadvantaged by the recall of junior nurses. As in layoff, recall of nurses to their shift, unit and FTE will be done in seniority order and in a fashion designed to minimize multiple displacement.

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Intermittent shifts reasonably expected to occur over a continuing period of time shall not be used in lieu of recall of nurses who retain recall rights.

The Medical Center shall post weekly, and provide in writing to Minnesota Nurses Association, the names of nurses who have been given notice of recall.

**Section 4.** For purposes of this article, "seniority" will be defined as compensated hours since the most recent date of hire into the bargaining unit.

#### **RATIONALE**

It is generally the role of an interest arbitrator to determine what the parties themselves would have agreed to voluntarily in negotiations. The award made by the Arbitrator in this case strongly adhere to this well-settled arbitral principle.

The Arbitrator recognizes that the Union's layoff position is similar to layoff articles at other Twins Cities hospitals, including Abbott, United, Mercy, North Memorial, HealthEast,

Methodist, Children's St. Paul, Children's Minneapolis, Fairview Riverside, Fairview Southdale and Unity.

The Twin Cities hospitals contracts have been in existence for more than 20 years according to the Union. While it is true that HCMC is unique as it is a public hospital, a safety net provider, a teaching hospital and a statewide medical education resource, it is similar to the other Twin Cities hospitals in providing excellent medical care to all of their patients. This excellent medical care is due to the dedication of RNs and all other medical personnel working as a team in all of these hospitals, whether public or private.

While there is a difference in purpose and structure at HCMC compared to the other Twin Cities hospitals, all of these hospitals are similar in that at times they are required to reduce labor costs due to decreased revenues or other reasons through a reduction in FTEs and/or layoff of employees.

The current Contract language in Articles 3 and 39 was a result of the Arbitrator's first interest arbitration decision. The Arbitrator sustained the Employer's definition and layoff language proposals reasoning that they were internally consistent with other Hospital bargaining units, and the Union's proposed language was not necessary because there had never been layoffs or reductions in nurses' hours in the history of HCMC, and there

were no planned layoffs in the future. In other words, there was no valid reason for awarding the Union's first contract proposals related to the definition of a layoff and the layoff language itself. All of this changed very quickly. The evidence demonstrates that the current layoff language in Article 39 has not worked, nor is it able to deal with the challenges of the future. Clearly, a change in the layoff language is mandated by the evidence.

While it is true that the Employer never engaged in any layoffs during 2008-2010, they instead decided to reduce the FTEs of nurses and/or rebid positions to achieve their financial goals which caused problems for nurses and the Parties.

In 2008, the current layoff language was vague and not instructive as to process which required one hundred RNs to rebid in the birth center. Because the current layoff language was lacking in specificity the Parties were forced to negotiate a Memorandum of Understanding ("MOU") in September 2008. (MNA Exhibit Problems, Pages 3-5).

In 2009, there were FTE reductions in the CCU. Again, the current layoff language was vague and not instructive. RNs were quite upset as to how they were treated and how the current layoff language was lacking in specificity as to the process for layoffs and FTE reductions. In fact, Over 650 RNs signed a

petition protesting the FTE reductions and the uncertainty of the process. In addition, at least one grievance was filed with respect to this situation. All of these events, resulted in another separate MOU having to be negotiated by the Parties when the current layoff language did not deal with the process for layoffs and FTE reductions. (MNA Exhibit Problems, Pages 1-3, 8).

What is problematic about this MOU is that the Parties agreed in the MOU that its express terms could not be used again. Thus, MNA members do not have a consistent practice or rights under the current layoff language that could be carried forward for future layoffs or FTE reductions.

Unfortunately, problems with the current language and its inability to handle FTE reductions appeared again in 2010. In this situation, the Employer had earlier hired Delta Consultants ("Delta") when the Minnesota Legislature made changes to Medicaid; initially, the Employer thought this would be a negative impact to HCMC of approximately \$42 million. Delta was to be paid out a percentage of any savings they were able to create; thus, Delta had a strong incentive to reduce nursing care hours to create savings.

Pursuant to the staffing changes proposed by Delta in 2010 to account for anticipated GMAC changes, there was mass chaos.

There were numerous RNs who had their FTEs reduced and this had a dramatic effect on the nurses. By unilaterally reducing many nurses' FTEs rather than implementing a 40-50 FTE layoff, the Employer evaded the current layoff language, affected nurses' pay and benefits including, but not limited to, nurses' right to short term and long term disability (28 nurses), and Federal loan repayment programs (24 nurses); not to mention the resulting reductions in their public pensions; 215 nurses suffered FTE reductions and over 550 nurses had to rebid. (MNA Exhibit Problems, Pages 31, 33). A myriad of nurses were, and are still, affected by how this process was handled by the Employer under the current layoff language. (MNA Exhibit Problems, Page 23; MNA Exhibit #3).

Gen DuPlessis, MNA Chairperson, and Keri Nelson, MNA Director of Collective Bargaining, noted in their testimony that nurses were so upset about this situation that they would have "walked the street", if they had been allowed under state law to strike, to get new FTE reduction protection, house wide bumping language, and a system where open positions are given to laid-off nurses first if qualified. This situation resulted in RNs being forced to chase their FTEs. There were also "lucky clusters," where less senior nurses were not affected at all by the FTE reductions. Nurses, especially senior nurses, should not have to

pin their lives on the hope of being in a "lucky cluster."

Patient care suffered as various nurses were forced to go after open positions in their cluster instead of working in areas where they had past experience. Other nurses ended up in new clusters where it took months to orient them in their new positions because, under current cluster language, they were unable to utilize their previous skills as they would with house wide bumping.

As a result of the nurses having their FTEs reduced, "churning," and open holes in the nursing schedule, HCMC's overtime spiked to almost double their overtime costs. These costs have continued into 2011. (MNA Exhibit Problems, Pages 37-38, 56).

In addition, HCMC is also contemplating making substantial changes in the future during the existence of the term of the 2011-14 Contract. These changes include, but are not limited to, a new psychiatric hospital to be built downtown and a Target-sized ambulatory care facility of 120,000 square feet. This would take services from the current facility, and it is projected to account for a growth rate of 44% in the Western suburbs. Further, the Employer plans consolidation of in-patient care with the destruction of several buildings, and movement of many inpatient rooms to the two remaining buildings.

It is estimated that the total project cost could exceed \$450 million, as noted on September 28, 2011, at the most recent HCMC Board Meeting, and a majority of the work will be done before the end of the 2011-14 Contract. The Employer admitted that all of the plans were subject to change, and that clinics may open or close. In fact, HCMC has also signed a letter of intent to merge with Hennepin Faculty Associates and its 30 senior nurses, with over two-thirds being .7 FTE or above. (MNA Exhibit Problems, Page 58).

It is axiomatic in interest arbitration that provisions to which parties have agreed previously, or which were placed in a contract by an arbitrator, should not be changed unless there is an extremely persuasive showing by the evidence on the party proposing change that the current contract language is unworkable or a substantial inequity exists that is unfair or unreasonable or contrary to accepted standards. Thus, it is a generally accepted principle that interest arbitration should not be used as a procedure for initiating changes in basic working conditions absent a compelling reason for changing them.

In this case, the foregoing evidence introduced by the Union has proved that the current layoff language in Article 39 is unworkable and has created a substantial inequity to RNs and may also negatively affect RNs in the future. As a result, after the

lessons of 2008, 2009, 2010, and 2011, it was reasonable and prudent for the MNA to propose new contract layoff and staff reduction language similar to that which is contained in the CBAs of other Twin City MNA contract hospitals. In all of these contracts, a reduction in FTE is seen as a layoff, nurses are allowed to bump house wide where they have experience, and are able to be oriented within four weeks. The contract layoff rights are also limited to two years and do not guarantee the nurses' schedule, contrary to HCMC fears.

While the Arbitrator premised his initial interest arbitration award with respect to layoff on the assurance of the Employer that layoffs and/or reductions in FTEs were not being contemplated for the future, sadly that has not been the case in the four years that have followed the Arbitrator's ruling. There has been dramatic FTE reductions each and every year. Each time there has been FTE reductions and/or rebids, there has been uncertainty as to the process, and it has been very upsetting to nurses that has resulted in HCMC being in the bottom 4% on employee satisfaction surveys in comparison to other Twin Cities hospitals. Among other things, it has caused nurses to "chase" their FTEs to prevent their benefits from being cut. Chasing FTE is not a safe practice since nurses ended up into different areas where they were not experienced and required a lengthy

orientation. The layoff and recall procedures in Article 39 have also been disruptive, resulting in at least one grievance and MOUs to address the situations. In addition, the "churn" of nurses changing positions has continued even today. Nurses who are constantly changing positions, and do not have a consistent process for the loss of their FTEs, have created huge scheduling holes and increased cost to the Employer in overtime and in recruitment. Clearly, change was needed in the layoff language contained in Article 39.

It is also noteworthy that the Arbitrator premised his initial decision with respect to layoff language on internal consistency among bargaining units, but an analysis of the other bargaining units finds they are not comparable and not consistent. Only 79 of all AFSCME employees are professional out of 1,300 total. (Employer Exhibit #17c). Close to 50% of all AFSCME members compared to less than 20% of MNA's 1000+ members are full time. AFSCME local 977 and 2474 (Professional) allows bumping in geographical work area, in addition to departments, and all require the elimination of temporary and intermittent employee assignments prior to permanent full time and part time employees being laid off. IBEW and Paramedics Contracts do not mention geographic work areas. IUOE Local 70 has a three year layoff and recall rights provision in their contract. Other

contracts are either less or have no limit, such as is found in Article 39 of the Contract. This should be contrasted with MNA nurse contracts in Twin Cities hospitals which have a total of two years of layoff and recall rights.

The Employer argues that in order to change existing contract layoff language the Union must provide a quid pro quo (an appropriate trade-off in negotiations). The argument that the proponent of a proposed contract change must provide a compelling reason and a quid pro quo is a minority opinion among active arbitrators. In fact, the Employer could only cite one interest arbitrator that adheres to this philosophy. To the contrary, the majority of interest arbitrators prescribe to the principle that the proponent of a proposed contract change must only provide a compelling reason for the change. The Union has met this burden by providing convincing and compelling reasons for the change in the current contract language found in Article 39.

Even assuming that the Employer is correct in that the proponent of a proposed contract change must provide a compelling reason and a quid pro quo, there is no evidence that when the Arbitrator placed the contract language in Article 39 in the Parties' first contract that the Employer provided a quid pro quo in support of their position that was awarded by the Arbitrator.

In this case, there is no evidence of any bargaining history as to whether or not the Parties provided any quid pro quo for any of their tentative agreements for the 2011-2014 Contract reached prior to this arbitration hearing.

The current definition of layoff which includes "separation from service with the Medical Center necessitated by lack of work, lack of funds, or other reasons without reference to incompetence, misconduct, or other behavioral considerations" was voluntarily agreed to by the MNA as part of the Parties' negotiations of their initial CBA. The only part of the definition that was not voluntarily agreed to was the final sentence which includes the reference to an emergency situation which was awarded by the Arbitrator. Therefore, there is no compelling reason to remove that portion of the definition language as proposed by the Association.

On the other hand, the inclusion of "any involuntary reduction in hours" in Article 3 is warranted and consistent with the Union's position that the Employer is relying upon reductions in FTEs rather than layoffs to meet their desired outcomes.

The addition of the language "lack of funds, or other reasons without reference to incompetence, misconduct, or other behavioral considerations" is warranted in Article 39, Section 1 as it conforms to the definition of layoff found in Article 3.

The Employer argues that the MNA's entire proposals in Article 3 and Article 39 would be chaotic, costly, lengthy, administratively burdensome, disruptive to many nurses, cause grievances, and detrimental to continuity of care and safe patient care. All of the Employer's arguments are conjecture at best. What is known is that only two grievance arbitrations over the Twin Cities hospitals layoff language has occurred in the past. What is unknown is the content of the arbitrations as to whether or not the layoff language was alleged to have been ambiguous, or whether it was alleged to have been misapplied by the affected hospitals. Moreover, two arbitrations over the layoff language by several hospitals over numerous years of existence in their contracts is noteworthy, and establishes that the Contract language works with remarkable ease and exercise for layoffs and FTE reductions.

If, however, this new layoff language causes numerous problems to administer in the future, as alleged by the Medical Center, the Employer has the right to negotiate different layoff or FTE reduction in force language in successor contract negotiations or go before an interest arbitrator and present convincing and compelling reasons for change, just as was done successfully by the Union in support of their position for change in this case.

The Arbitrator gratefully acknowledges the professionalism shown by the representatives in their presentation of the evidence and in their written briefs.



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Richard John Miller

Dated November 11, 2011, at Maple Grove, Minnesota.