

In the Matter of Statutory Fact Finding Between

MICHIGAN NURSES ASSOCIATION
Petitioner/Union

Case No. L07 K-3016 (Unit I),
L07 K-3017 (Unit II) and
L07 K-3018 (Home Care)

-AND-

Fact Finder: Betty Widgeon

ALPENA REGIONAL MEDICAL CENTER
Respondent/Employer

APPEARANCES

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FINDINGS of FACT and RECOMMENDATIONS

The Fact Finding hearing in this matter was held on October 15, 2008 in Alpena, Michigan. This matter actually presented a triple fact finding proceeding respecting three units of registered nurses (hereinafter, “Unit I”, “Unit II” and “Home Care”) represented by the Michigan Nursing Association (hereafter “Union” or “MNA”) and the Alpena Regional Medical Center (hereafter “Employer” or “Hospital”). Three days had been scheduled for the hearing: day one for the Union to

present its witnesses, day two for the Employer to present its witnesses, and day three for any rebuttal witnesses. Prior to the hearing, the parties submitted a voluminous amount of documents in the form of pre-hearing briefs, affidavits, exhibits and rebuttal briefs. These written documents, along with testimony from any witnesses presented at the hearing and post-hearing briefs, comprised the record the Fact Finder considered in making her recommendations.

At the start of the hearing, the parties identified over 25 outstanding issues for the Fact Finder to address. The Fact Finder clarified for the parties that she would receive (from each side) a maximum of 5 comparables per unit in considering and formulating her recommendations. On day one of the hearing, the Union presented 7 witnesses and then rested. On day two, the Employer presented no witnesses and rested. Post hearing briefs were submitted by both sides on or about November 28, 2008. The record was closed upon receipt of the post-hearing briefs.

Brief History & Background

Alpena Regional Medical Center is a 146-bed acute care hospital located in the Northeast quadrant of the State of Michigan, servicing six counties. The MNA represents the three units involved: approximately 200 General Duty or Staff RNs (Unit I), approximately 15 Supervisory Nurses (Unit II), and approximately 9 Home Care RNs (Home Care). The parties have a long standing collective bargaining relationship, with the

latest agreement expiring on or about February 23, 2008. Negotiations began in 2007. When an impasse was reached, the MNA filed Petitions for Fact Finding with the Michigan Employment Relations Commission on or about March 26, 2008. ARMC filed Answers to the Petitions for Fact Finding on April 7, 2008. The parties participated in a total of four mediations with Mediator Tom Kreis. Three mediations occurred prior to MNA filing for Fact Finding and one took place after the petitions had been filed.

Remaining Issues

The MNA identified eleven remaining issues in its Post Hearing brief. Of these 11, three issues—*Release Hours, Wages, and Health and Safety*, involved all three units. *Staffing Committee, Mandatory Cancel for Women’s Health and Overtime* involved Unit I only, *Recognition & Job Share* involved Unit II only, and the issues of *Nurse Status, Visit Expectations, and Mileage* involved Home Care RNs only. This report considers and makes recommendations for the parties on these eleven issues on the basis of those divisions.

1. Release Hours

The MNA proposes that members of the NCA Committee be given up to 72 hours per month of release time for the purpose of doing Association business (not already described in Article 5.0). The 72 hours would be split among the members as needed. Currently, the NCA Committee only receives pay and benefits for time spent in Special

Conferences, Grievances, Negotiations, and NCA Committee/Nursing Administration Meetings. The MNA argues that the NCA Committee needs this release time so that it may: meet as a Committee separate from meeting with Hospital officials, meet with its MNA state labor representatives, hold Executive Committee meetings, and attend Conventions and Trainings without loss of pay. It calculates the potential additional costs (if all possible hours are used by Units I, II and HCS) at \$90,509.33. The MNA indicates that this number is based on the wage increase it proposed for 2008 wages, and includes *the vacation accrual amounts that could be affected* by the release hours.

The Hospital counters that although it is unpaid, RNs receive *full benefit credit* for all hours they engage in union business under this provision if the the hours qualify. It estimates the cost impact of this proposal at approximately \$107,000 when FICA, Social Security, and ARMC retirement costs are added.

No comparables or testimony supporting this proposal persuaded the Fact Finder of its reasonableness and appropriateness given the overall picture presented by the parties' evidence. Therefore, the Fact Finder's recommendation is that this proposal **not be adopted** by the parties.

2. Wages

The MNA proposes that the Home Care RNs have parity with the Unit I RNs. The Union argues that *fairness compels such parity* as the amount of work done by the HCNs is the same as that done by the Unit I RNs, and that HCNs, in fact, have more responsibility because they have to case manage the patients themselves. Unit I RNs do not. Moreover, it reasons, HCNs perform other more sophisticated procedures alone—such as *vacs and vena punctures*—whereas Unit I and Unit II RNs have additional assistance for these procedures. The Unit II RNs who supervise HCNs have the same pay rates and are on the same pay scale as the Hospital Unit II RNs.

The Hospital proposes non-retroactive wage rate increases of 3% for the first year of the contract, 2% for the second year of the contract, and 2.5% for the third year of the contract. In support of its position, the Hospital asserts that the actual wages of ARMC Home Care nurses are already among the highest in Michigan as well as the comparables, and that the proposed parity would mean a 17% raise for some Home Care RNs. in the first contract year.

The Fact Finder found the comparables helpful in appraising this issue. After evaluating the proofs and arguments from both sides, she found the Hospital's proofs more substantial and weighty and recommends that the Union's proposal not be adopted. The Fact Finder further recommends that the parties adopt the Hospital's proposal, with

the following modification: non-retroactive rate increases of 3% for the first year of the contract, 2.5 % for the second year of the contract and 2.5% for the third year of the contract.

3. Health and Safety

The MNA argues that by complying with *minimum* safety standards, the Hospital has *no interest in preventing* workplace health and safety issues before they happen. Specifically, the MNA brings up the issue of *conversion*. Because certain diseases can lie dormant for quite a while, the MNA believes it can not secure concerns such as this health and safety measure through a Hospital policy. Instead, it feels that this issue must be *secured in the parties' collective bargaining agreement in order to provide the maximum protection for RNs in such situations.*

Testimony was given about the *potential* for violence breaking out in the emergency room when there is an insufficient number of security staff available. A third example offered was an occurrence in the inpatient psychiatric unit (Pointe East) where one patient beat another to death. The MNA believes that this altercation would likely have been discovered earlier had more staff been assigned to this unit at the time.

The Hospital counters that it does not have a nursing shortage, and that of the nurses who leave the hospital, none have reported that *safety concerns* or *back injuries* contributed to their reasons for leaving. According to the Hospital, it does not have the level of injuries that other

hospitals might experience *precisely because of the exhaustive and comprehensive efforts it already takes to ensure its RNs safety.*

Both sides presented information on safety policies. The Union's Exhibit 23 and the Hospital's Reb. Ex RN-073a, were presented to demonstrate what policies could be put in place, and what policies have been put in place, respectively. The Hospital points to its "Workplace Violence" policy distributed at staff orientations, which states its "**ZERO** tolerance" policy. It also reiterates that in recent Safety Committee Minutes *no safety issues were raised by MNA*. The Fact Finder finds the MNA's arguments and testimony on this issue persuasive, and finds the counter arguments and proofs much less substantial. Therefore, the Fact Finder recommends that the MNA proposal be adopted.

4. Staffing Committee Unit 1 Only

The Union's position is that "mutuality on the Staffing Committee" is necessary because it is "inextricably intertwined" with the safety of the bargaining members. Although members are currently able to give input and suggestions, the Union's concern is that this will not necessarily result in guaranteed changes. It believes that there is no assurance that RN issues are or will be addressed. As it stands now, after "unsafe practice forms" are reviewed by the Staffing Committee, the Nursing Administrator makes the final decisions.

Hand in hand with this issue is the Union's concern about direct contact by the actual RNs instead of CNOs or CDNs. The Union refers to

this as “quality nursing time with the patients”. Its concern is that other staff are less knowledgeable about the every day problems and are “engaged in direct patient care”. The MNA stresses that, as presently constituted, the Staffing Committee is unable to resolve critical issues that come before it. The Union disputes the Hospital’s statements that all concerns raised by the Staffing Committee members are resolved at the initial committee level. Union witness, Lori Mousseau, confirmed that a special conference was held by the parties for the express purpose of discussing the issues of “mandatory overtime and acuity”.

The Hospital refers the Fact Finder to the Steelworkers Local 206 and Non Represented Staff as internal comparables which have no Staffing Committee. Further, it asserts that the articles proposed by the Union as exhibits don’t relate to the Hospital in that the Hospital does not have operational failures and does not lack of managerial support. It sees the current language as “working well”, and argues that staffing is a “permissive” subject of bargaining which should be left to management’s discretion. While conceding that some of the language in Article 5.06 is obsolete, the Hospital maintains that when there was an opportunity to address this language, the Union rejected the Hospital’s proposal.

On review of the parties documents, including information regarding their bargaining history, and the testimony supporting their mutual dissatisfaction with respect to *either* the obsolescence *or* inadequacy of the current language, the Fact Finder is more impressed

with and persuaded as to the appropriateness of the language proposed by the MNA, and therefore recommends its adoption by the parties.

5. Mandatory Cancel for Women's Health Unit I only sec 7.04D

This issue concerns whether or not WHU RNs can be given a mandatory cancel by the Hospital on days when there are few or no patients. The Hospital's position is that it needs the ability to give mandatory cancels to the WHU RNs, to avoid instances of paying WHU RNs who have nothing to do. The MNA allowed that, although it is uncommon, *there are times when on some shifts there are no patients in the entire WHU department.*

Ms. Deb Naylor, Nurse Manager of WHU, testified when there are no patients in any of these areas, the WHU RNs are asked to either "take a voluntary cancel or they are floated to another area of the hospital to assist other RNs but not to take a patient assignment in that unit unless they have been cross-trained there". And RNs who stay in the WHU when there are no patients perform such downtime duties as *cleaning, stocking, and other items that must be done by the RNs because they have no ancillary staff.* They are also allowed to use this time for required educational hours. Testimony established that three RNS must always be available for the WHU—one physically present in the unit, one present in the hospital but who could be in another unit, and a third RN available on-call.

Another witness, Ms. Becky Splitt, testified that at times some RNs had wanted to take a voluntary cancel, but the requests were refused. Testimony also confirmed that the last contract negotiations resulted in the RNs picking up extra responsibility for setting up and recovery of C-Section patients, duties which had previously rested with the Surgery RNs. In rebuttal, the Hospital asserts that C-sections occur very seldom, and that when they do, the set up takes fewer than twenty minutes. In fact, they are so rarely done that the Hospital currently provides a “mock competency” for RNs who haven’t had the opportunity to set up a c-section within the previous three months.

Evaluating the facts presented in the parties’ documents and testimony presented, the Fact Finder does not find strength in the Hospital’s arguments for a change in the language with respect to this issue. Therefore the Fact Finder recommends that the parties not adopt the Hospital’s proposed language.

6. Overtime Unit I only 22.10, 22.10 A.6, 22.10 A.6.c.7, 22.01 A.6.h

The Hospital proposes a change in the overtime provisions that it believes would affect part-time, job-share and supplemental part-time nurses only. It proposes to modify the current provision to allow overtime to be based “only upon a 40 hour work week”. The Hospital notes that this change would be not only cost-saving, but would also be a fairer situation for all nurses. It points out that under the current provisions, a part-time nurse who fills a twelve hour shift automatically qualifies for

four hours overtime, whereas a full time nurse who works only 40 hours does not qualify for overtime. The Union sees it quite differently. It points out the benefit of having the part-time nurses readily available to fill in when the full-time nurses are “on vacation or taking time off for a leave”.

The Union argues that the current arrangement has worked so well because the part-time RNs are “willing to pick up those extra shifts because they are being compensated fairly for them”. Amy Pfeifer-Twite testified that overtime pay provides “incentive” for these part-timers to help “fill in” in crucial areas, such as the emergency room, where they are “subjected” to suicidal/homicidal patients, family members and physicians who sometimes act “violently” toward staff. In some such instances, calling for security is ineffective, as there is “only one [security guard] per shift covering the whole hospital”.

Given the testimony, documents and arguments presented by both sides, the Fact Finder finds that maintaining the status quo as previously jointly set forth by the parties adequately and appropriately addresses the concerns. Therefore the Fact Finder recommends that the parties not adopt the Hospital’s proposed modification regarding overtime.

7. Recognition Unit II only

While the parties are in disagreement about whether or not the Fact Finder may appropriately make a recommendation on this issue, what is clear is that historically their CBAs (1997-2002, 2002-2005,

2005-2008) have including language indicating that the Hospital has a *right to create positions with prior notification to the NCA Committee and the MNA. And, that if the parties are unable to reach an agreement the Asociation has the right to grieve starting at Level Three of the Greviance Procedure.* Therefore, to the extent that the Hospital's language in 1.03 seeks to continue this "long established traditon", and "clarify Nurse Manager roles" only, the Fact Finder recommends acceptance of the language. The Fact Finder goes no further in this recommendation.

8. Job Share-Unit II only

The MNA proposes job sharing for the Unit II RNs that "mirrors those types of jobs in the Unit I bargaining unit". In its pre-hearing brief the MNA pointed out that should this proposal be adopted by the parties, the Hospital would have the right to *determine how the responsibilities of the employees would be divided and how the pro-rated benefits would apply.* The Hospital counters that the functions of supervisory positions *are not shift or task specific.* Instead, the concern is that *they involve certain functions that require individual accountability and cannot be divided.*

At the Fact Finding hearing, Joan Prentice, the Infection Control Health Care Coordinator since 2003, testified that there are many Unit II instances where a job share would be quite workable. Referring to her own situation as an example, Ms. Prentice testified that currently there is no one trained or oriented at this time to take over if she retires, but that

many of her duties could be either shared or delegated. She stated that her job functions include data collection, monitoring compliance and leaks, coaching and mentoring, providing information on employee health for new hires and making sure immunizations are “all on board”. At present, when she is gone, many problems she needs to attend to must either be handled by someone else like a shift-supervisor, or that work must wait until she gets back. The MNA sees a dual benefit for the employees and the Hospital. There would be a second RN available when the more senior RN is on vacation and, as in the case with Ms. Prentice’s position, job sharing could alleviate potential delays in treatment to patients and in responses to the exposed employees, when time was *of the essence*.

Ms. Prentice opined that job sharing would be particularly important in a position like hers, as it would take another RN approximately 6 months of training and orientation to become comfortable in performing the job of Infection Control and Employee Health Coordinator. She further testified that the time might be split or shared “any number of ways” but in particular, the person most senior would be responsible for getting the job share “set up and running smoothly”, and the other person would have to agree to be there full time. She reiterated that with “good communication”, job sharing of her position would work well. Ms. Prentice summarized that the advantages include having a person there for the other employees and new hires,

when she is not, and that the Hospital would “have a body in [her] position at all times”.

Considering the evidence, witness testimony, and the documents presented by the parties, and evaluating their arguments for and against this proposal, the Fact Finder recommends that the MNA’s proposal be adopted by the parties.

9. Nurse Status--Home Care only

The Hospital describes its proposed new language as “fair”. It argues that only in limited circumstances will the Hospital need to use part-time RNs, such as when there is a great discrepancy in the distance between the patient’s home and the regular and part-time RN’s driving distance. It reiterates that the Hospital has agreed to *limit its use of Supplemental part-time nurses when other full-time or part-time nurses have met their minimum guaranteed hours.*

The Union’s position is that the Hospital’s proposed language would “unfairly” allow supplemental part time RNs to take away work from the regularly scheduled RNs. It argues that instead, part-time RNs are merely supposed *to be filling in after the regularly scheduled RNs have all of their hours and requirements met.* It feels that the Hospital’s proposed language *is vague and ambiguous,* and instead proposes language the Union believes will alleviate any ambiguity or inability of limiting the supplemental part time RNs’ hours.

The Hospital's proposed language reads:

The Supplemental part time nurse is not intended to consistently displace full time or part time nurses regardless of geographic unit, as reasonably possible.

The Union's proposed language reads:

. . . without displacing full time or part time nurses regardless of geographic unit

The Fact Finder recommends that language inserting a specific outer travel limit, **such as the language stated below,** be adopted by the parties:

. . . the Supplemental part time nurse will not displace full time or part time nurses unless the travel distance between the patient's home and the regular RN's home is greater than 50 miles one way. When such is the case, the Employer may opt to either have the regular RN complete the work or to utilize supplemental part-time staff as a cost saving measure.

10. Visit Expectations—Section 22.03 Home Care Only

The Fact Finder recommends that the parties adopt the following proposal for Visit Equivalents: Admissions (3) Recertification (2), Resumptions of Care (2.5), Discharge (2) Supervisory/Non-Billable Visits (1) and Daily Expected Visits (5).

11. Mileage—Home Care Only 22.04 A & B

And finally, with respect to **mileage**, the Fact Finder recommends that the parties adopt a formula which follows the Northwest Michigan Community Health Agency's policy of counting the distance and time beginning with the RN leaving from the office or home, whichever is

closer to the patient's home, finish at the point of the RN returning home or to the office, whichever is less, and that the mileage rate be the IRS rate.

Betty R. Widgeon
Betty R. Widgeon, Fact Finder

January 31, 2009
January 31, 2009

In the Matter of Statutory Fact Finding Between

Michigan Nurses Association I), Petitioner/Union II) and K-3018 (Home Care) -and- Betty Widgeon ALPENA REGIONAL MEDICAL CENTER Respondent/Employer	L07 K-3016 (Unit L07 K-3017 (Unit L07 Fact Finder:
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Supplemental Recommendations

The Fact Finder presented the parties with initial Findings of Fact and Recommendations on or about January 31, 2009. She indicated at that time that her findings were limited to the 11 issues specifically set forth by the Union in its post hearing brief. Upon petition by the Union to address remaining issues that it had loosely referenced in its post hearing brief, and over the objections raised by the Employer, the Fact Finder carefully considered the arguments presented on either side of the question and found the following:

- a) both parties addressed these “additional” issues in their pre-hearing and rebuttal briefs;
- b) Union testimony at the hearing, in addition to the pre-hearing briefs and rebuttals yielded sufficient evidence for the Fact Finder to evaluate and make recommendations on these additional issues;
- c) the Employer specifically detailed and presented arguments on each of these “additional” issues in its post-hearing brief; and

c) it was the Fact Finder's judgment that neither party would be unduly prejudiced by her evaluating and making recommendations on these previously identified issues.

Considering such, she found it appropriate to issue **Supplemental Recommendations** with respect to these "additional" issues only.

<u>Issue</u>	<u>Fact Finder's</u>
Recommendation	
a) TRANSFER FEE: PULL PAY (ARTICLE 8.0) HOURS OF WORK, SCHEDULING Adopt	Status Quo/Not
b) VOLUNTARY ON-CALL: ON-CALL PAY WHEN REPORT (ARTICLE 8.08(F)) Adopt	Status Quo/Not
c) VOLUNTARY ON-CALL: ROTATING BASIS (ARTICLE 8.08(J)) Adopt	Status Quo/Not
d) HOSPITALIZATION INSURANCE & RX CO-PAYS (ARTICLE 14.0: BENEFITS) Parties Adopt	Recommend
<p>Hospital's proposed Sec A}</p> <p>Recommend modifications to</p> <p>Cost Share {4} (a-b) as follows: _</p> <p><i>RNs will be responsible for</i></p> <p><i>12% of the health insurance</i></p> <p><i>premium. The cost</i></p> <p><i>share will be 5% if the</i></p> <p><i>nurse participates</i></p> <p><i>in the established Hospital</i></p> <p><i>Wellness Program.</i></p> <p><i>Recommend Parties Adopt</i></p> <p><i>Hospital's proposed { 4} (a)c-f</i></p>	
e) MEDICARE REIMBURSEMENTS (ARTICLE 14.01(H)(1)) Adopt	Status Quo/ Not
f) RETIREMENT: COST SHARING FOR DEFINED BENEFIT PLAN (ARTICLE 14.02: RETIREMENT PROGRAM) Adopt	Status Quo/ Not

g) VACATION (ARTICLE 15.0 : VACATION) Adopt	Status Quo/ Not
h) PAID LEAVE: BEREAVEMENT (ARTICLE 17.0: PAID LEAVES) Adopt	Status Quo/ Not
i) LONGEVITY (ARTICLE 21.0: LONGEVITY) Adopt	Status Quo/ Not
j) ROLE OF THE RN (ARTICLE 24.0) Adopt	Status Quo/ Not
k) HOLIDAYS (ARTICLE 16.0: HOLIDAYS) Adopt	Status Quo/ Not
l) ASSOCIATION BUSINESS LEAVE (ARTICLE 18.0: UNPAID LEAVES) Adopt	Status Quo/Not
m) EDUCATIONAL DIFFERENTIAL (ARTICLE 22.0: WAGES, DIFFERENTIALS, OVERTIME AND REPORT PAY) Adopt	Status Quo/Not
n) SHIFT DIFFERENTIAL (ARTICLE 22.0: WAGES, DIFFERENTIALS, OVERTIME AND REPORT PAY) Adopt	Status Quo/Not
o) WEEKEND DIFFERENTIAL (ARTICLE 22.0: WAGES, DIFFERENTIALS, OVERTIME AND REPORT PAY) Adopt	Status Quo/Not
p) ON-CALL DIFFERENTIAL (ARTICLE 22.0: WAGES, DIFFERENTIALS, OVERTIME AND REPORT PAY) Adopt	Status Quo/Not

**q) OVERTIME (ARTICLE 22.0:
WAGES, DIFFERENTIALS,
OVERTIME AND REPORT PAY)**
Adopt

Recommend

Betty R. Widgeon
Betty R. Widgeon,

Fact Finder

February 12, 2009