

**IN THE MATTER OF AN ARBITRATION  
BETWEEN**

**Service Employees International Union,  
District 1199 AFL-CIO, WV/KY/OH**

**Union**

**AND**

**STATE OF OHIO  
DEPARTMENT OF REHABILITATION  
AND CORRECTION**

**Employer**

**DRC-2022-06087-11  
Arbitrator: Jerry B. Sellman  
Issue: Right to bid on Assignment  
Openings  
Grievant: Nicole Langston**

**Award Dated: September 8, 2025**

**APPEARANCES**

**FOR THE UNION:**

Josh Norris – Executive Director, SEIU Local 1199, Representing SEIU Local 1199 and the Grievant  
Nicloe Langston – Nurse 1 at the Grafton Correctional Facility, Grievant and Witness  
Brett Langston – Nurse 1 at the Grafton Correctional Facility, Witness

**FOR THE EMPLOYER:**

James Adkins – LRO3, Ohio Department of Rehabilitation and Corrections, representing the Ohio Department of Rehabilitation and Corrections  
Kevin Runyon - Medical Operations Director – Operations Support Center, for the Ohio Department of Rehabilitation and Corrections, Witness  
Julie Hensley - Health Care Administrator at the Grafton Correctional Facility, Witness  
Peter Kimball - Labor Relations Officer 3, Ohio Dept. of Transportation, Witness  
Myron Costin - Labor Relations Officer 2, Grafton Correctional Facility, Witness

## **I. NATURE OF THE CASE**

Contract Interpretation: Management Right To Make Assignments Without Consideration of Seniority; Employee Right To Select Assignment Openings By Seniority: This matter came for hearing before Arbitrator Jerry B. Sellman on May 22, 2025. The hearing was held at the Service Employees International Union, District 1199, offices located at 1395 Dublin Rd, Columbus, Ohio 43215. The proceeding arises pursuant to the provisions of the Labor Agreement (the “CBA” or the “Agreement”) between the State of Ohio, Department of Rehabilitation and Corrections, (hereinafter the “Employer” or “Management”) and SEIU District 1199 (hereafter “SEIU” or the “Union”). This case concerns a grievance filed by Nicole Langston (hereinafter “Grievant”) alleging that the Employer violated Article 24, Section 24.16, Shift and Assignment Openings, when it failed/refused to allow her, and other Nurses, the right to select her assignments by seniority. The Employer argues principally that the past interpretation and practice of the parties for over 30 years regarding the application of the provisions contained in Section 24.16 does not permit employees, in this case Nurses, to bid on daily assignments under the language of the Section.

At the beginning of the hearing, the Parties stipulated that the matter was properly before the Arbitrator for resolution. At the conclusion of the hearing, the parties requested permission to file post-hearing briefs, which were filed on June 27, 2025.

The Union and the Employer identify the issue in this proceeding differently.

The Union frames the issue as:

Did the employer violate the terms of the parties CBA when they failed/refused to allow Nurses to select their assignments by seniority and if so, what shall the remedy be?

The Employer frames the issue as:

Did the Employer violate the terms of the Collective Bargaining agreement when they failed/refused to let nurses select their work locations by seniority; and if so, what shall the remedy be?

The applicable provisions of the Agreement in this proceeding are as follows:

## **COLLECTIVE BARGAINING AGREEMENT**

### **ARTICLE 24**

#### **NHOURS OF WORK AND OVERTIME**

##### **24.16 –Shift and Assignment Openings**

- A. When applicable, shift and assignment openings within institutions shall be filled by the qualified employee within the classification at the worksite having the greatest State seniority who desires the opening.
- B. The Employer retains the right to change an assignment for a rational management purpose, including but not limited to the best interest of the clients, patients, residents, inmates, offenders, or youths.

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## **II. SUMMARY OF THE TESTIMONY AND POSITION OF THE PARTIES**

The Ohio Department of Rehabilitation and Correction (ODRC) is the state agency that has the statutory responsibility of housing individuals found guilty of a felony and sentenced to a term in prison. Once they are incarcerated, it is the State's responsibility to provide these individuals with, among other things, their healthcare needs. In order to meet these obligations, the ODRC employs a number of healthcare professionals scattered around the state in each of twenty-five (25) state-operated institutions. These are the employees who operate the primary care offices and urgent care facilities for population of over 45,000 patients.

The Grafton Correctional Institution (Grafton) is one of those institutions. At the Grafton, there are three shifts and generally seven (7) nurses on the first shift, four (4) nurses on the second shift, and one (1) nurse on the third shift. Due to staffing shortages, there are, from time to time,

fewer nurses on the first and second shifts. Nurses bid on their shifts and days off about every six months and as a result, their shift will change due to their choice from time to time. Bidding is often called canvassing and shifts and days off are selected by seniority.

At Grafton, there are two buildings at which the nurses work. One is the main facility, and the other is referred to as the Camp facility. While both structures are at the same worksite, a nurse must drive from the main facility to perform duties at the Camp facility.<sup>1</sup>

Daily assignments, or shift task lists, are posted at the facility and denote the duties that are assigned to an identified category of duties and then to each Nurse. For reference, the duties associated with the assignments are a series of duties that are associated with an identified job function identified by the Employer. As an example, there is a Critical Care Nurse (CC Nurse), a Sick Call Nurse (Nurse-Sick Call), an onsite Infirmary Care Nurse (DSC/Infirmary Nurse), an Advanced Licenses Practitioner for health case assessment (Camp ALP Duties Nurse), a Sick Call Nurse at the Camp (Camp Nurse Sick Call), and a Nurse Administering Medications (Pill Call Nurse). Duties assigned to each of these categories can changed from time to time, but evidence submitted in this hearing indicates that the duties assigned to each of these categories and locations generally remain the same. Management reserves the right to determine the duties that are assigned to each of these categories.

This arbitration concerns a Nurse, classified as a Nurse 1, working at Grafton. The facts leading up to the filing of the Grievance are not in dispute and are quite simple. At the time of the filing of the Grievance, Grievant worked on the first shift, which is the shift she had bid on. She, and apparently other nurses, were choosing to perform an assignment of duties in a category other than that specified on the schedule. She selected an assignment based on her seniority over the

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<sup>1</sup> It is noted that Grafton is in the process of eliminating the need to

nurse assigned to duties designated in another category. Here, without seeking approval from her supervisor, Grievant switched locations with another nurse from working in the infirmary inside the main compound of Grafton (GCI Complex), to working at the medical area of the camp of the prison, which is in a different location, but still part of GCI. The Grievant testified that she filed this Grievance because she and the other nurse were reprimanded and “treated like children” for switching categories of job duties.

Grievant concluded that management was not permitting her, and others, to choose the assignment based on their seniority. She believed the Employer was violating the provisions of Article 24, Section 24.16, Shift and Assignment Openings, which provided:

- A. When applicable, shift and assignment openings within institutions shall be filled by the qualified employee within the classification at the worksite having the greatest State seniority who desires the opening.

On September 7, 2022, Grievant filed the instance Grievance as follows:

“Management refuses to allow bidding on job assignments as per the contract, pg 77 Article 24.16 shift and assignment openings within institutions shall be filled by the qualified employee within the classification at the worksite having the greatest seniority.

there was also a vote taken as requested by the LRO and was voted in favor of bidding vs rotating

also a arbitration ruling was found in favor of the union upholding referenced contract article.

Grievance #: DYS – 2018- 02275-12

Grievant: David Ziegler, et. al.”

The Grievance was processed through the grievance procedure, and the Employer denied the Grievance at each step. The dispute was advanced to arbitration on May 22, 2025.

Union witnesses, both in the Nurse 1 classification, testified at the hearing that in the past they were permitted to bid, or canvass as otherwise described, on assignments. Employer witnesses

testified that as a Nurse 1, they were never permitted to bid on an assignment in over twenty-five years, and as part of management, they never observed, experienced, or permitted, employees being permitted to bid on assignments or work locations within the institution. Employer witnesses testified that they only experienced bidding for shifts and good days (days off).

Employer witnesses testified that under their management rights, they determine the duties to be performed and assign the duties to specific employees in order to accomplish the mission required each day. The institutions needed to be able to have fluidness and control over operations. Further, the current Health Care Administrator (HCA) at the Grafton Correctional Facility testified that the method she uses to let nurses know where they will be working each day is by identifying the nurses' task list she completes for each day and shift. Any opportunity to bid on these duties would interfere with the flexibility needed to manage the nurses at the institution. The Employer refers to the duties assigned as a task list and the Union refers to the duties assigned as an assignment.

Employer witnesses testified that the Union had attempted to alter the language in Section 24.16 to achieve the results they were seeking in this proceeding but were unable to accomplish that in negotiations. The Union not only denied that allegation, but referred to prior arbitration decisions that referenced the Employer's attempts in the past to alter the language of this Section in negotiations but was unable to do so. The language in Article 24.16 has remained the same through numerous CBAs, with the exception of the inclusion of the additional language in 2015 that canvassing is proper "when applicable." No testimony was given relative to the reason(s) for the new language

### The Position of the Union

The Union argues the language in Section 24.16 is clear and unambiguous. The senior-most employee (RN in this case) is entitled to fill shift and assignment openings within the institution. Though “assignment” is not defined in the Collective Bargaining Agreement, the common definition of assignment is “a task or piece of work that one is given to do” or “an allotting, or an appointment to particular person or use.”

Here, all of the nurses assigned tasks are in the same classification and all are qualified to perform the work assigned. The Employer is not honoring this language because it is not providing Grievant, and other employees, the right to fill assignment openings that they desire by seniority.

The facts demonstrate that the Employer creates a list of job duties, their task list, and that list of job tasks is an assignment. The Union witnesses maintained that once these various assignments are established, the individuals in the classification are to be permitted to “bid” on these assignments by seniority. The one with the greatest state seniority has the right to choose his/her assignment of choice and the next most senior employee can choose the assignment until all assignments are filled. In this process all members’ seniority is honored and the language is satisfied.

When the Employer applies seniority to shifts, but not to assignments, it effectively rewrites the contract—ignoring the conjunction that binds both categories under a single rule. Such a selective application violates the agreed-upon language and undermines the mutual understanding of the parties who negotiated the contract. The “and” ensures that neither type of opening can be excluded from the seniority-based process.

The Employer’s arguments that permitting senior nurses to select assignments by seniority would hamper management from properly managing the operations is negated by the incorporation

of the language in Article 24.16 (B) and Article 24.17. Article 24,16 (B) enables the Employer to change an assignment for a rational management purpose, including but not limited to the best interest of the clients, patients, residents, inmates, offenders, or youths. Article 24.17 protects the most senior individuals' right to volunteer to be moved to a different assignment if they choose, and if they choose not to do so, then, after following the same process, the least senior employee shall be pulled or moved. The clear and unmistakable intent of this language is to recognize and honor seniority for both shift openings and assignment openings.

The Employer is ignoring the decision and Award of other arbitrators who have ruled on this issue. Specifically, in SEIU/District 1199 and Ohio Department of Youth Services, DYS-2018-02275-12, Arbitrator Buettner upheld the Union's position that under Section 24.16, when Corrections Program Specialists (CPS) and Social Workers (SW) were assigned to different units to complete different job duties, those employees were entitled to fill the assignment openings by canvassing the employees by seniority. Assignment openings in this case involved unilaterally making different unit assignments within the institution without making the assignments changes based on seniority.

In light of the specific language of Section 24.16 and the facts of this case, the Union requests that the Arbitrator sustain the Grievance in its entirety and that the Arbitrator determine that the Employer did in fact violate the terms of the parties CBA when they failed and refused to allow employees to select their assignments by seniority. The Union requests that the Arbitrator reinforce the decision of Arbitrator Buettner and find that the Employer is obligated to honor seniority when filling assignment openings as the language clearly states. The Union also requests that the Arbitrator issue a "made whole" remedy. The Union further requests that the Arbitrator



retain authority over his award to resolve all matters of any subsequent action awarded which cannot be agreed upon between the parties until they have been resolved.

#### Position of the Employer

The Employer argues that it did not violate any of the provisions of the CBA because the issue, based upon the facts presented, is whether nurses are permitted to select their work locations by seniority. This is not within the scope of Article 24.16 and is not permitted under the CBA. Since Grievant switched locations with another nurse from working in the infirmary inside the main compound of the Grafton Correctional Institution (GCI) complex, to working at the medical area of the camp of the prison, which is in a different location but still part of GCI, without seeking approval from her supervisor, the Grievance should be about the denial of moving locations, not assignments. The Grievance should be denied on this basis.

Notwithstanding the above, the Employer did not violate any provisions of Section 24.16 because (1) the parties' past practice and consistent application of the language since it was adopted into the contract establishes that daily bidding on job duties and locations within the institution is not required by Section 24.16; (2) the contract language in the ODRC Agency Specific section when read as a whole with the language of Section 24.16 of the parties' CBA establishes that canvassing for "shift and assignment openings" does not include bidding on daily job duties or locations within the institution; (3) the Union's interpretation of Section 24.16 would require a time-consuming and pointless daily canvass for job duties and work locations within the institution; (4) the contract must be interpreted in a way that gives effect to all terms of the agreement; and, (5) the arbitration decision cited by the Union does not negate the Employer's right to determine a Nurse 1's daily job duties and/or work locations within the institution.

The parties past practice and consistent application of the language in this Section since it was adopted into the contract establishes that daily bidding on job duties and locations within the institution is not required by Section 24.16. Since the inclusion of the language regarding “shift and assignment openings” in 1992, the parties have followed the same practice of honoring bargaining unit members’ right to canvass for their shift and good days, while the Employer has retained the right to assign daily duties to Nurse 1s. This position was supported by the testimony of Employer witnesses.

The contract language in the ODRC Agency Specific section when read as a whole with the language of Section 24.16 of the parties’ CBA establishes that canvassing for “shift and assignment openings” does not include bidding on daily job duties or locations within the institution. As an example, ODRC Agency Specific language provides the procedure for bidding on shifts as set forth in Section 24.16 but does not mention assignments. The fact that the word “assignment” was left out clearly shows that the assignment of job duties is not intended to be included in this procedure. If the intention of the parties was to permit a canvass for job duties, then that procedure would have been placed into this Agency Specific language.

Since 1992, the Employer has used this term “assignment” to mean “an appointment to a particular person.” In other words, an” assignment” is an appointment of a particular person to a classification. The appointment of the Grievant in this case is to the classification of Nurse 1. Nurse 1 is the Grievant’s “assignment.” Therefore, the assignment is to the classification.

The Union’s interpretation of Section 24.16 would require a time-consuming and pointless daily canvass for job duties and work locations within the institution. Applying the language based on the Union's interpretation would cause absurd, harsh, and nonsensical results. Each day and shift may have completely different tasks that must be completed compared to the

prior day's or even the prior shift's tasks. The HCA oversees each day's mission and prepares the day's schedule based on the needs of the Physicians, the Nurse Practitioners, the Incarcerated Adults, and the distribution of medication. If the Union's interpretation prevails, the outcome would be absurd: the institution would be required to conduct a canvass for job duties and work locations within the institution every day.

Because of the changing nature of the duties that need to be performed each day, if the Employer is required to create job "assignments" that are completed every day, it would also be required to create a relief factor for Nurse 1s so that different or unexpected duties could be completed when needed. The hardship in trying to fill additional positions would unduly burden both the current employees and the Employer. With the current dearth of applicants for Nurse classifications, the Nurse 1s themselves would be negatively affected by the resulting increase in mandatory overtime. This would further hinder ODRC's ability to recruit and retain employees in these positions.

If the Union's interpretation prevails, the outcome would be nonsensical. After wasting the time to conduct a canvass for daily job duties and locations within the institution, the HCA could simply "change [the Nurse 1s'] assignment for a rational management purpose, including but not limited to the best interest of the [. . .] inmates [. . .]." under Article 24.16 (B). If the HCA determined that a particular Nurse 1 had a better skill set for a certain set of duties, the HCA could simply "change the assignment" to have that Nurse 1 perform those duties, making the canvass a pointless, nonsensical exercise.

The contract must be interpreted in a way that gives effect to all terms of the agreement. Accepting the Union's position would necessarily nullify the section of Article 5 that reserves Management's right to determine the work assignments of the employees, the work standards and

the quality and quantity of work to be produced, and the right to run its operations. The Employer has not “specifically abridged, deleted, granted, or modified” its right to determine the daily job duties and/or work locations within the institution of its Nurses by either the ODRC Agency Specific language, or by the terms of Section 24.16.

The Buettner arbitration decision cited by the Union does not negate the Employer’s right to determine a Nurse 1’s daily job duties and/or work locations within the institution. The Buettner decision has nothing to do with ODRC Nurses and does not address how an HCA determines which Nurse should perform particular duties based on the complexity of the duties, or the particular locations within the institution at which the duties need to be performed. The facts of that case are significantly different than the facts of the case presented here. The first major difference is that the grievants involved in the DYS case were Corrections Program Specialists (CPSs) and Social Workers (SWs) who worked in “different units within the facility [. . .] based on the individual needs of the youths. The Grievant in the current case is a Nurse 1 assigned to the Medical Department where the needed duties and work locations within the institution may change daily. In the DYS case, the Employer “changed the units of several Correctional Program Specialists and Social Workers without canvassing by seniority.” The Union argued that the moves “did indeed qualify as an ‘assignment opening.’ Citing Arbitrator Howard Silver’s prior decision about this language, an ‘assignment opening’ could be a newly created position or ‘. . . an existing position which is vacated.’”

In the current case, the Grievant was upset because she was reprimanded for switching locations without seeking the permission of her supervisor. Another major difference between the cases is the type of work done by CPSs and SWs, as compared to nurses. The CPSs’ and SWs’ “assignments” were to a specific unit within the facility where such units were “based on the

individual needs of the youths.” At GCI, the nursing duties that need to be performed may change from day to day and are based on the mission(s) of the day.

Next, in the DYS case, the Union noted that DYS established a practice of canvassing CPSs and SWs for openings that were solely “assignment” openings with no mention of a shift change. In the current case, the Union produced no examples of ODRC management establishing a practice of canvassing nurses to allow them to select their job duties or the work locations within the institution at which the duties will be performed each day.

Another arbitration decision involved the ODRC/Adult Parole Authority (APA) and SEIU/District 1199. In that case, the APA reorganized the Akron Region in an attempt to balance caseloads within the units of that region. (APA/DRC and SEIU/District 1199, Silver, 1989.) To accomplish its goal, “the Employer created new positions; deleted positions; reconfigured existing positions as to office location, supervisors, and home county status; [and left] other positions unchanged.” The APA did not allow employees to bid on the positions that were made available through the reorganization.

Arbitrator Silver found that the “term ‘assignment openings’ denotes new vacancies of some configuration. A newly created position would create such an ‘assignment opening’, as would an existing position which is vacated.” The case before you does not involve “new vacancies of some configuration.” The case before you involves Nurse 1s who are assigned to work in the Medical Department at GCI, and who are informed of their job duties and work locations within GCI on a daily basis.

The argument the Union made in the APA arbitration is the true intention of the language. This is why we have used this practice for over thirty (30) years. If a Nurses’ position opens up at another institution, the language of Section 26.14 applies and permits a Nurse 1 to be awarded a

transfer by seniority. The same language applies if a layoff occurs within a jurisdiction. However, based on the parties' more than thirty-year understanding of this arbitration decision, nurses have never been permitted to canvass or bid for daily job duties or work locations within the institution.

Based upon the above, the Grievance should be denied.

### **III. DISCUSSION AND OPINION**

I would agree with the Union that the issue in this case is whether the Employer violated the terms of the parties CBA, specifically Article 24, Section 24.16, when it failed/refused to allow Nurses to select assignments by seniority and if so, what shall the remedy be. While it is correct that the facts supporting the dispute involved Grievant moving from her assigned duties in the infirmary inside the main compound of Grafton (GCI Complex), to working at the medical area of the camp of the prison, the move was based upon the duties assigned to the individual at the other location rather than the location itself. As such, recognizing the nature of the Union's grievance is necessary to resolve the dispute.

A resolution of the dispute in this case is difficult because of the lack of facts presented by both parties. Based upon my interpretation of a nurse's right to bid on assignment openings pursuant to the language of Section, the Union's arguments are fundamentally sound, but because of the "restrictive nuances" contained in this Section, the Union did not produce sufficient evidence to support its position and fell short in carrying its burden of proof. As such, it must be concluded that based upon the facts submitted, or lack thereof, provisions of the CBA were not shown to have been violated. The rationale for this conclusion is set forth below.

Both parties agree that Management has the right to determine what duties are assigned to employees and what work is to be performed. The issue here is to what degree management has agreed to allow employees, in this case nurses, the right to use their seniority to bid on assignments.

Section 24.16 was mutually agreed to by the parties to address the issue. It provides that shift and assignment openings shall be filled by the qualified employee within the classification at the worksite having the greatest State seniority who desires the opening. This language is qualified, however, by the preceding phrase “when applicable,” and further qualified by the language “assignment openings.”

The Union’s laborious and excruciating analysis of the meaning of each of the words in the section, as well as the plain meaning of the words, terms, and phrases themselves, was insightful, but unnecessary. The language clearly envisioned providing seniority bidding on assignment openings. The Employer’s arguments that bidding on assignment openings are not envisioned by referencing other provisions of the CBA and past practice are unavailing. As an example, while the ODRC Agency Specific language specifies canvassing for shift openings and omits a procedure for assignment openings, it cannot be concluded from that that there was no intention to canvass for assignment openings. Further, from the specific language itself, Management could not determine who desires the assignment opening, as required in Section 24.16, without a canvass. Secondly, even if Management never permitted nurses to bid on job assignments as testified by Employer witnesses as a past practice (which was disputed), it is a stretch to conclude that such action was a past practice when both the Union and the Employer indicated that this issue has been the subject of grievances in the past. Additionally, arbitrators have already determined that employees under this language are entitled to bid on job openings by seniority.

Since it is clear from the language in this section that nurses are generally permitted to bid on assignment openings, attention must be focused on the limitations to the general principle

contained in Section 24.16. As mentioned, those limiting words include “when applicable,” and “assignment openings.”

While not defined in Section 24.16, I would attribute the plain meaning of “when applicable” to mean if it is relevant or appropriate in a given situation, and I would attribute the plain meaning of “assignment opening” to mean when a specific role, post, or duty, becomes available. In order to determine if the Union met these terms, evidence would need to be presented to demonstrate that there is a specific assignment that can be subject to a bid, and the assignment would be relevant and appropriate in the situation of providing nursing care at the ODRC institution.

The first analysis is to determine what should be considered as an assignment. I do not interpret an assignment in this section to be merely a job duty, but a series of duties that is associated with an identified job function. As an example, if an assignment is made to a Critical Care Nurse, will the same duties associated with that designation be assigned on a consistent basis? If an assignment is made to a Sick Call Nurse, will the same duties associated with that designation be assigned on a consistent basis? And the same with Camp ALP duties, Pill Call Nurse, etc. If assignments are made in this fashion, then it should be concluded that there is an assignment for purposes of this section of the CBA that should be subject to a canvass.

The Employer argues that an assignment opening does not include bidding on daily job duties or locations within the institution. I would not agree. If the language was meant to be this restrictive, it would, or should, have included such limiting language. Piggy backing on the Agency Specific language regarding to shift openings cannot be deemed to be applicable to assignment openings.



Further, the argument by the Employer that it has used this term “assignment” to mean the appointment of an individual to the classification, in this case to the classification of Nurse 1, is also unavailing. While this definition is not wholly invalid, it is not applicable to the use of assignment in Section 24.16. An assignment can be to a classification, but in this Section it is meant to be within the classification.

This finding is consistent with Arbitrator Buettner and Arbitrator Silver’s Decisions. In the Buettner Decision there were different identifiable units within the facility to help run the facility based upon the individual needs of the youths. Previously, Corrections Program Specialists (CPS) and Social Workers (SW) were assigned to different units to complete different job duties. However, in July of 2018, the Department decided to modify the positions of both CPS Workers and SWs without allowing the employees to canvass to work a specific unit based upon seniority. Arbitrator Buettner determined that under Section 24.16 a canvass should have been taken for some of the employees, while it was appropriate for the Employer to take the action it did in some of the instances because of the rights retained in Section 24.16 (B), where a rational management purpose was found out of necessity because of construction on certain units. Arbitrator Silver likewise found that the APA’s attempt to reorganize its Akron Region to balance caseloads within the units of that region required a canvass under Section 24.16 because the assignment of the units was considered an assignment opening. In both cases, the assignment consisted of the same duties associated with that designation be assigned on a consistent basis.

While it appeared from the evidence submitted by the Union that each of the identified assignments consistently contained the same duties, the evidence covered such a short period of time it could not be concluded that it was more likely than not that the same duties were assigned

to the designed categories (Critical Care Nurse, Camp ALP Duties, Pill Call, etc.) on a routine or regular basis.

The second analysis is to determine the meaning of “when applicable.” As stated above, “when applicable” should be interpreted to mean if it is relevant or appropriate in a given situation. Employer witnesses testified that different duties are assigned every day to each individual nurse. The evidence did not seem to support that testimony for Critical Care Nurses perform certain functions, Camp ALP nurses seem to perform certain functions, the Camp Sick nurse seems to perform the same function every day. That is not to say that additional duties cannot be assigned to each job every day, or that management cannot change an assignment for a rational management purpose under Section 24.16 (B), but the key question to be answered is whether the principle duties fall within the identifiable categories, or every day each nurse must be assigned different duties for a rational management purpose.

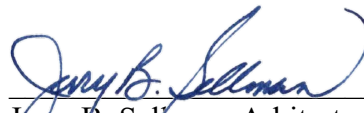
This may seem complicated, but it is not. If nurses are assigned a series of duties that are associated with an identified job function each day (e.g. Critical Care Nurse) that are consistent, that it is an assignment opening. If each nurse is assigned duties that are not associated with an identified job function each day, i.e. by necessity nurses could be performing any of the jobs on a daily basis, then bidding on assignment openings would not make sense, for I would agree with the Employer that it would be operationally chaotic. However, the exhibits introduced at the hearing indicated that the same individuals were being assigned the same primary duties on the daily schedules, i.e. the same individuals were assigned these categories, or assignment openings, on a consistent basis. From this, it can be concluded that there are assignment openings that are subject to canvass. A senior nurse may want to be on Pill Call or perform Camp ALP duties instead of being a Critical Care Nurse. If those job duties are performed on a routine daily basis, the

agreement provides for that choice. However, if these duties are assigned to different nurses each day, than such a procedure would not seem to be relevant and appropriate at the institution, i.e. “when applicable.” It would make no sense to permit a nurse to canvass for different duties every day under the language of Section 24.16. That would infringe on management’s right to assign duties, because there would be no assignment of duties to an individual nurse.

Since the evidence was inconclusive as to the nature or the assignment, a decision cannot be issued on whether there was or was not compliance with the terms of Section 24.16. While the Union’s arguments had merit, it was unable to meet its burden of proof to demonstrate that the nature of the assignment openings contained the same identifiable job duties such that an assignment opening existed or that the method of assigning duties to nurses was amenable and/or possible (“applicable”) to canvassing at the ORDC.

#### **IV. AWARD**

For the foregoing reasons and conclusions, the Grievance is denied.

  
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Jerry B. Sellman, Arbitrator