

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. _____

MASSACHUSETTS NURSES
ASSOCIATION,

Plaintiff

v.

ESSENT HEALTHCARE OF
MASSACHUSETTS, INC.,
d/b/a MERRIMACK VALLEY
HOSPITAL,

Defendant

COMPLAINT

INTRODUCTION

1. This is action is brought to vacate an arbitration award, and arises under, and jurisdiction is conferred on this Court by, 29 U.S.C. § 185 and 9 U.S.C. § 10.

PARTIES

2. Plaintiff Massachusetts Nurses Association (MNA) is a non-profit Massachusetts corporation, and a labor organization representing employees in an industry affecting commerce, within the meaning of 29 U.S.C. § 185. MNA maintains its principal office in Canton, Massachusetts.

3. Defendant Essent Healthcare of Massachusetts, Inc., d/b/a Merrimack Valley Hospital (Merrimack Valley), is a for-profit Massachusetts corporation, having a principal place of business in Haverhill, Massachusetts, and is an employer in an industry affecting commerce, within the meaning of 29 U.S.C. § 185.

FACTS

4. MNA and Merrimack Valley are parties to a collective bargaining agreement (CBA), covering the terms and conditions of employment of a bargaining unit of registered nurses (RNs) employed by Merrimack Valley. The CBA is effective by its own terms from September 26, 2005 through November 30, 2007. A copy of the CBA is attached hereto as Exhibit 1, and is incorporated herein by reference.
5. The CBA contains, at Article XLIV, a system for resolution of disputes between the parties through grievance and arbitration. See Exhibit 1 at pages 55-60. Article XLIV, Section 6(a) of the CBA provides as follows: The Arbitrator shall not have the power to add to, subtract from, or modify any of the terms of the Agreement. The Arbitrator shall have the authority only to decide disputes concerning the interpretation and application of the specific section(s) and article(s) of the Agreement based upon the facts of the particular grievance presented to him or her. The Arbitrator shall have no power to engage in any form of interest arbitration. The Arbitrator may not issue any

award which provides any monetary remedy which includes any time before fifteen (15) days before the grievance was filed, unless the delay is the fault of the Hospital.

6. The CBA contains, at Article III, a non-discrimination clause. See Exhibit 1 at pages 2-3. Article III, Section 1 of the CBA provides as follows: Neither the Hospital nor the Association will discriminate on the basis of race, color, religion, sex, national origin, age, disability, veteran's status or sexual orientation.
7. The CBA contains, at Article XXV, a provision for health insurance for bargaining unit RNs and their families, including their spouses. See Exhibit 1 at pages 34-36. Article XXV, Section 1 of the CBA provides as follows: All eligible RNs have the option to be covered by the medical insurance plan(s) provided by the Hospital, subject to the enrollment requirements of the plan and as set forth below in this Article.
8. On or about October 1, 2005, Maria Ciulla (Ciulla), a woman and an RN in the bargaining unit represented by MNA at Merrimack Valley, lawfully married another woman under the laws of the Commonwealth of Massachusetts.

9. Ciulla had been employed as an RN in the bargaining unit since August, 2004 and was by October 1, 2005 eligible for health insurance under the CBA.
10. Shortly after her October 1, 2005 wedding, Ciulla sought to enroll her spouse in the Blue Cross/Blue Shield health insurance plan offered by Merrimack Valley to bargaining unit employees.
11. Merrimack Valley denied Ciulla permission to enroll her spouse in the health insurance plan.
12. Ciulla and MNA filed a timely grievance under the CBA challenging the denial of health insurance to her spouse.
13. The grievance was not resolved short of arbitration.
14. The grievance was arbitrated in Haverhill, Massachusetts before Arbitrator Arnold M. Marrow on April 20, 2006.
15. On June 21, 2006, the Arbitrator issued an award denying the grievance. The award is attached hereto as Exhibit 2 and is incorporated herein by reference.
16. The Arbitrator, in his award, failed to give effect to Articles III and XXV, for which MNA and Merrimack Valley had contracted.
17. The Arbitrator, in his award, violated Article XLIV, Section 6(a), of the CBA, in that he added to, subtracted from, and/or modified the terms of the CBA; and in that he did not decide a dispute limited to specific provisions of the CBA presented to him.

COUNT I

18. MNA re-states and here incorporates by reference the allegations contained in paragraphs 1-17, above.
19. The Arbitrator's award exceeded his authority under the CBA.
20. The Arbitrator's award should be vacated.

COUNT II

21. MNA re-states and here incorporates by reference the allegations contained in paragraphs 1-20, above.
22. There is in the Commonwealth of Massachusetts a well-defined public policy against discrimination on the basis of sexual orientation.
23. The Arbitrator's award violates public policy.
24. The Arbitrator's award should be vacated.

CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, MNA requests

1. That this Court enter judgment in MNA's favor vacating the arbitration award;
2. That this Court direct Merrimack Valley to take all steps necessary to permit Ciulla to enroll her spouse in its Blue Cross/Blue Shield health insurance plan;

3. That this Court remand the matter to Arbitrator Marrow, or another arbitrator, for consideration of the sole issue of a make-whole award for Ciulla;
4. That this Court award MNA its costs sustained in this action; and
5. That this Court grant MNA such other and further relief as may be just and proper.

Respectfully submitted,

MASSACHUSETTS NURSES
ASSOCIATION

By its attorneys,

Alan J. McDonald, BBO #330960
Mark A. Hickernell, BBO #638005
McDonald, Lamond & Canzoneri
153 Cordaville Road, Suite 210
Southborough, MA 01772
(508) 485-6600

Dated: July 17, 2006