

**VOLUNTARY LABOR ARBITRATION TRIBUNAL**

**In the Matter of the Arbitration Between:**

OPEIU LOCAL 459

**-and-**

MCLAREN MEDICAL CENTER

**OPINION**

**AND**

**AWARD**

**Re: Subcontracting - Biller/  
Collector Work**

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The undersigned, Barry C. Brown, was mutually selected by the parties to render an Opinion and Award in the Class Action Grievance involving Subcontracting - Biller/Collector Work. Hearing was held at the Ingham Regional Medical Center in Lansing, Michigan on April 27, 2007. The parties submitted post hearing briefs on June 1, 2007, and thereafter, the record was closed.

**APPEARANCES:**

**For the Employer:**

Mike Bommarito-Attorney

**Also Present:**

Laurie Brewis-Vice President, Human Resources

Kevin Sharp-Director, PT. Financial Services

**For the Union:**

Eric Frankie-Attorney

**Also Present:**

Cindy Jeffries-OPEIU Representative

Jill Weber-Biller/Collector

Debi Stott-Biller/Collector

**ISSUES:**

Did the medical center violate the collective bargaining agreement when it subcontracted the self-pay collections? If so, what is the appropriate remedy?

**PERTINENT CONTRACT PROVISIONS:**

**Section 3: MANAGEMENT RIGHTS**

### **Section 3.1. Management's Reserved Rights.**

- (a) Except as expressly limited by the terms of this Agreement, the Employer retains and shall have the sole and exclusive right to manage and operate the Medical Center in all of its operations and activities. Among the rights of management, included only by way of illustration and not by way of limitation, is the right to determine all matters pertaining to the services to be furnished and the methods, procedure, means, equipment and machines required to provide such service; to determine the nature and number of facilities and departments to be operated and their location; to establish classification of work and the number of personnel required, to direct and control operations; to discontinue, combine or reorganize any part or all of its operations; to maintain order and efficiency; to make judgements as to the ability and skill of its employees; to continue and maintains its operations as in the past; to study and use improved methods and equipment; use outside assistance or engage independent contractors to perform any of the Employer's operations or phases thereof (subcontracting); and in all respects to carry out the ordinary and customary functions of management. All such rights are vested exclusively in the Employer and shall not be subject to arbitration procedure established in this Agreement.

### **Section 5: GRIEVANCE AND ARBITRATION PROCEDURE**

**Section 5.10. Arbitrator's Jurisdiction.** The arbitrator's jurisdiction shall be limited to the application and interpretation of this Agreement as written, he/she shall be governed wholly by the express terms of this Agreement. The arbitrator shall have no power or authority to amend, alter or modify this Agreement either directly or indirectly. The arbitrator shall have no authority to rule on the Employer's reserved rights not otherwise abrogated by the express terms of this Agreement. If the issue of procedural arbitrability is raised, the arbitrator shall first decide that question before he/she shall be permitted to decide the merits of the grievance. The Union acknowledges that the arbitrator is limited by the express provisions of Management's Reserved Rights, Section 3.1(a) and that any grievance involving such exclusive rights shall not be arbitrable. The awarded of the arbitrator shall not be retroactive any earlier than the time the grievance could be presented and in no event prior to seventy-five (75) calendar days from the date the grievance was submitted in writing. The Arbitrator's decision shall be final and binding on the Employer, Union and employees in the bargaining unit, provided however, either party shall have the right to challenge the arbitrator's decision or procedure in the courts, if the arbitrator has exceeded his/her jurisdiction as provided herein. All claims for back wages shall be limited to the amount of wages that the employee would otherwise have earned, less any unemployment compensation or compensation for personal services that the employee may have received from any source during the period in

question.

## **Section 15: SUBCONTRACTING**

**Section 15.1. Subcontracting, Affiliation and Mergers.** The Employer reserves the right to enter into affiliation and merger agreements and to subcontract work normally performed by bargaining unit employees. However, if such merger, affiliation, or subcontracting causes a layoff of bargaining unit employees, the Employer agrees to first discuss the decision and impact of the merger, affiliation or subcontracting and layoff with the Union and give sixty (60) days advance notice, or in lieu thereof, wages the laid-off employees would have earned during the sixty (60) day notice period but for the layoff.

**Interpretive Statement:** The discussion of the decision and impact of the merger, affiliation or subcontracting, which causes a layoff of bargaining unit employees, shall occur prior to the Employer actually deciding whether or not to enter into such agreement or to subcontract the work. The parties shall meet to discuss ways that the work environment can be changed to prevent layoffs. The Union will be given at least a sixty (60) day period after that initial discussion to work with the Employer to illustrate that the work can be performed by bargaining unit employees within the employer's identified parameters. The Employer shall not give the sixty (60) day advance layoff notice, or in lieu thereof, wages the laid off employees would have earned but for the layoff, until the end of the initial sixty (60) day discussion period.

## **Section 29: ALTERATION OF AGREEMENT**

### **Section 29.1. Alteration of Agreement and Waiver.**

- (a) No agreement, alteration, variation, waiver or modification of any of the terms or conditions contained herein shall be made by an employee or group of employees with the Hospital, and no amendments or revision of any of the terms or conditions contained herein shall be binding upon the parties hereto unless executed in writing by the parties hereto. The provisions of this Agreement can be amended, supplemented, rescinded or otherwise altered only by mutual agreement in writing hereafter signed by the parties hereto, and such agreements shall be in full force and effect to the same extent as any other provision of this Agreement.
- (b) The Employer and Union acknowledge that this Agreement, together with any letters of understanding and/or agreements, embody the full understandings reached by the parties as to the wages, hours, benefits and other terms and conditions of employment of all employees covered by this Agreement. Neither party is obligated to negotiate further on any matter

covered by this Agreement.

- (c) Any provision of this Agreement which is held by the final order of a court of competent jurisdiction to be in violation of or contrary to municipal, state or federal acts, statutes, ordinances, regulations or orders, or revisions thereof, now effective or which may become effective during the term of this Agreement, shall be considered void. In the event that any provision of this Agreement is thus voided, it is the express intent of the parties that all other non-affected provision of this Agreement, Letters of Understanding and/or agreements, shall remain in full force and effect during the term of this Agreement.

**LETTER DATED APRIL 8, 2005**

April 8, 2005

Cindy Jeffries  
Service Representative  
OPEIU, Local 459  
838 Louisa Street  
Suite A  
Lansing, Michigan 48911-5207

Dear Ms. Jeffries:

It is not our intention to subcontract any work normally performed by POST bargaining unit employees. However, I can assure that I will avoid subcontracting during the life of the POST collective bargaining agreement ending September 30, 2007.

Sincerely,

(Signature present)

Dennis M. Litos  
President and Chief Executive Officer

**STATEMENT OF FACTS:**

The employer, Ingham Regional Medical Center, is a large hospital located in Lansing, Michigan. The hospital's 700 office, technical and paraprofessional employees are in a bargaining

unit represented by the union, OPEIU Local 459. On July 13, 2006, the union filed the following grievance:

**“EMPLOYEE’S NAME: *Class Action - Biller/Collectors***

**EMPLOYEE’S UNIT: *Billing - Patient Account Services***

**EMPLOYEE’S SHIFT: *All***

**STEP TWO - HUMAN RESOURCES CONSULTANT**

**DATE: *July 13, 2006***

**Reason for Grievance (state facts): *On July 11, 2006, the employer faxed notice to the union of subcontracting the self-pay collections assignment of the above classification effective September 1, 2006.***

**This violates the contract including Section(s): *1 - Recognition, Letter on Subcontracting from Dennis Litos.***

**It also violates: *Any other contract language, police or law that may apply.***

**Union Demand: *The employer abide by the contractual letter and not proceed with the subcontracting. In the event the employer proceeds with the subcontracting, the work be brought back to the bargaining unit and the bargaining unit employees be paid for an equivalent of number of hours that the subcontracted company spent performing the bargaining unit work to be divided among the Biller/Collectors in the bargaining unit. Make the employees otherwise whole and give all equitable relief.***

On August 11, 2006, the hospital’s employee relations manager denied the grievance, as follows:

**“Grievance Response: *Class Action - Biller/Collectors***

**Union’s Reason for Grievance: *“On July 11, 2006, the Employer faxed notice to the union of subcontracting the self-pay collections assignment of the above classification effective September 1, 2006.”***

**This violates the contract including Section (s): *1 - Recognition, Letter on Subcontracting from Dennis Litos.***

**In this grievance, you allege that IRMC is violating the collective bargaining agreement because it has determined it necessary to contract with an outside agency to perform self-pay collections work and this, according to your statement, is in conflict with a letter that former President and CEO, Dennis M. Litos gave to the Union at the conclusion of our most recent negotiations.**

**IRMC does not feel that it is in violation of the collective bargaining agreement for several reasons. I have highlighted the most significant below:**

IRMC argues that the intent behind this letter, which is not technically a "Section" of the collective bargaining agreement is stated in the original letter agreed to on April 8, 2005, during negotiations held between Dennis Litos, Linda Gardner, and Laurie Brewis for management and you and Joseph Marutiak for the Union. The original copy of the letter states "I can assure that I *will do my best* to avoid subcontracting . . ." There is no explanation or indication as to why the original letter was modified. IRMC considers this an obvious mutual mistake with regard to the letter that was retyped to appear in the collective bargaining agreement. It is apparent that the actual final written form of the letter does not express what was really intended by the parties.

Additionally, IRMC held several meetings with the Union to discuss the self-pay collections and provided you with information on the immense increase in the amount of uncollected self-pay charges we are experiencing. The financial indicators show that this trend will only continue to rise requiring us to act on a well-thought out plan that is necessary to achieve the significant improvement needed in self-pay collections.

Even if the letter is taken to mean that IRMC is prohibited from subcontracting work through the life of the agreement, under any hardship or circumstances, IRMC currently does not have the necessary equipment and technology nor can it be purchased economically. The only feasible way to tap into these types of resources is to utilize an external company that specializes in this work and is able to competently achieve economies of scale that we are not.

Outsourcing this work because it is the right and necessary thing to do to move IRMC forward. As indicated to you by Laurie Brewis, employees currently performing this work will not be laid off but will be reassigned to other assignments in their current classification and department.

**There is no violation of the collective bargaining agreement. Grievance denied."**

The OPEIU service representative testified that she was the union's chief spokesperson in the 2005 contract negotiations. She recalled that one of the member's primary concerns was the issue of subcontracting. She said that in the past some work of the bargaining unit had been contracted out, and so there was a job security concern by the employees. She recalled that in 2001 medical records had been outsourced, and a grievance had been filed. She indicated that that grievance had been resolved with extended time to make adjustments, but there were concerns that the billers' unit would be the next to go. She said that her team proposed that there would be no further subcontracting, but the employer would not agree.

The chief executive officer of the medical center and the OPEIU service representative discussed the subcontracting issue. She recalled that at one time he had said that the coders' work

would not be contracted out, and then their work was subcontracted. The employer even stated that possibly the work of the housekeepers would be subcontracted. When the negotiations neared the end and a strike date was set, the subcontracting issue was the only issue still on the table. The membership had authorized a strike by a large majority, the OPEIU representative said, and it seemed that there would be a work stoppage.

The union's witness stated further that the CEO met with the union representatives and together they drafted a letter which was to appear in the collective bargaining agreement. The letter had been pre-typed and then modified as follows:

**"It is not our intention to subcontract any work normally performed by POST bargaining unit employees. (Capitalization indicates prior language crossed out and initialed.) HOWEVER, IN THE CURRENT CLIMATE, WE DO NOT HAVE CONTROL OVER ALL OF THE FACTORS IMPACTING SUCH DECISIONS. I can assure that I will avoid subcontracting during the life of THE CURRENT (*Italics indicates handwritten additions, which are initialed.*) our POST collective bargaining agreement ending September 30, 2007."**

The CEO initialed all the changes indicated above. She noted that the original words "do our best" had not been acceptable to the union, and so it was crossed out and the union found this to be an acceptable assurance. This letter was executed a day before the strike deadline, and the strike was called off.

The OPEIU representative testified further that she learned of the employer's plan to subcontract unit work when the employer sent her an e-mail message on March 6, 2006. She said that she met with employer executives, and they discussed productivity and the employer's need for a rapid dial phone. The employer explained that it wanted to give collection work to a collection agency. The employer claimed that the union employees did not like this work, and several positions had been left vacant so there was no need for a layoff. The unions' witness said that she had met with the employees involved, and they voted against any subcontracting. She noted that the HR vice

president had rejected all of the ideas put forth by the union, and the parties never met again.

The OPEIU witness asserted that the CEO's letter was always considered part of the labor agreement. Further, there was no mutual mistake here, as the CEO had typed the original letter and then initialed every subsequent change. She noted that the IRMC had never documented any of its claims regarding productivity, special equipment needs, costs and/or alternatives. The employer then contracted out the self pay work on September 6, 2006. This work is on the collection cases under \$5,000 for outpatient work in which the insurance covers some expenses, but there is a balance owed by the patient. The employer claimed that the OPEIU members had hours which were not suitable for evening collection calls. The union said the employees' hours could be changed.

When the parties had agreed to the terms of the new contract, the chief human resources officer for the employer summarized the changes, which had been agreed upon. She sent a memo to the union to be used in the ratification process. In the employer's memo, section 15 was summarized, as follows:

**"Section 15: SUBCONTRACTING**

**This Section in the contract was not changed. CEO, Dennis Litos gave the Union a letter guaranteeing IRMC would not subcontract any POST positions during the life of this Agreement."**

The OPEIU representative asserted that the remedy for this contract violation should be that the work contracted out be returned, and the bargaining unit employees be paid for the hours worked by the subcontractor. She stated that even though no one was laid off as a direct result of the subcontracting, the Litos letter of guarantee was still violated, as it was not tied to layoffs. She said in any case, there were layoffs here in that vacant union jobs had not been filled. She maintained that this was a letter of agreement added at the eleventh hour to avoid a strike. It may not have followed

the format of other memos of understanding because it was created under different circumstances. She said the employer rejected the union's proposal to post three biller/collector jobs with new evening hours and Saturday work. The employer rejected this even though the employees would have accepted these new hours.

The vice president of human resources testified that the parties labor agreement never banned subcontracting, but rather, it limited subcontracting which caused layoffs. She said that during the 2005 negotiations, the employer always took the position that the existing contract language should be maintained. She recalled that the parties met in a restaurant on April 8, 2005, to discuss the subcontracting issue. She said that she had prepared a letter for the CEO's signature, and they had presented it to the union. She indicated that the union objected to some wording and sought clarification on other points. The CEO initialed language added or stricken. The union accepted the letter and the proposed strike was called off, she said, and the revised letter was retyped by the employer.

The vice president stated further that the union had made concessions during the negotiations, and it wanted assurances regarding subcontracting. She said the union felt vulnerable about the possible loss of work in housekeeping and in the kitchen. There was a lot of pressure on the union leaders to address this issue. She stated that the chief executive officer wanted to assure the union members that it was not his intention to subcontract bargaining unit work. However, she asserted, the letter he signed was not a formal letter of understanding. She noted that the contract language requires that all amendments to the contract must be signed by both parties, and that was not done here.

The vice president explained that the now disputed letter was included in the booklet with

the labor agreement because the union had insisted on its inclusion. She said that she had resisted the letter being a part of the booklet, but the union representative had said she would mail a copy to all members, and so the vice president allowed inclusion in preference over the mailing approach. She stated that in the discussions over the letter the parties did not attempt to define the word “avoid.” The CEO had initially wanted to say, “not our intent,” but that was not acceptable to the union. The words chosen were to be a middle ground, which was not a total ban on subcontracting.

When the employer proposed contracting out the self-pay collections and the union had objected, the vice president (then chief HR officer) sent the following letter to the union:

**“RE: Self-Pay Collections LOU**

**We received and carefully reviewed your most recent version of the LOU proposed for the outsourcing of self-pay collections at IRMC. Unfortunately, the letter you sent to me is unacceptable to IRMC and it appears as if we are not in agreement. Attached please find our last LOU offer made on May 26, 2006.**

**As we discussed, we currently outsource our bad debt collections and now need to expand outsourcing to include a majority of our self-pay collections. During our meetings on this matter you, Sunni Lira, POST Chief Steward and Deborah Stott were provided with information on the tremendous increase in the amount of uncollected self-pay charges we are experiencing requiring us to act on a well-thought out plan that will be effective and efficient. The plan presented is in the best interest of IRMC and is that least disruptive to employee work scheduled wand work assignments.**

**At this time, we can assure you that we have done everything we can to avoid subcontracting the self-pay collections work during the life of the POST collective bargaining agreement. As you know, we have considered proposed schedule changes and staffing reallocation with current and vacant positions to resolve this issue but after closely reviewing the potential impact these minor changes would have on outstanding and future self-pay accounts, we realize that we cannot achieve the significant improvement needed in self-pay collections. We currently do not have the necessary equipment and technology nor can we purchase it ourselves economically. The only way to tap into these resources it to utilize an external company that specializes in this work. At this time, we are left with no other feasible alternative but to move forward with outsourcing this work because it is the right and necessary thing to do to move IRMC forward. Employees currently performing this work will not be laid off but will be reassigned to other assignments in their department.**

**We still consider IRMC’s most recent LOU on this issue to be “on the table” if you are still interested in pursuing the guarantees it has to offer. I have included a copy with this letter. Otherwise, we intend to proceed with the outsourcing arrangement by September 1, 2006.”**

The proposed letter of understanding sought to “clarify” the parties’ agreement. It stated that

an outside vendor could be used if the employees whose work was taken were reassigned in the patients' account department. The employer guaranteed no layoffs resulting from the subcontracting. The guarantee expired on August 30, 2007. The employer's witness noted that the CEO who signed the now disputed letter left the IRMC in May 2006. She said that she and the new CEO decided on the outsourcing of the self-pay collection work in July 2006. She indicated that the three primary reasons for this action were; a) the large number of unsuccessful collections; b) technological changes; c) increase in self-pay collections, because many more patients had no insurance coverage or they had large co-pay liability.

The employer's witness acknowledged that she had executed the current collective bargaining agreement with the Litos letter attached. She said that she took it to be an "enhancement" of the existing contract language. She said this letter was intended to make the IRMC employees "more comfortable." She asserted that she did not disavow the letter dated April 8, 2005. She indicated that both parties agreed that the union had only bargained for limits on outsourcing for the term of the labor agreement. She also explained that the confusion about the deletion of the "will do my best" language came from a poor photocopy in which it was not clear that these words had been stricken.

The director of patient financial services testified that in the past there had been four experienced employees handling self-pay collections. He noted that two additional positions had been left unfilled. He indicated that two employees handled incoming calls, and two employees called patients to arrange for payments of amounts owing to the center. He said less calls were coming in during 2005. He also explained that there were two employees who handled data entries as support for the billed/collectors. He added that when the self-pay collection work was

subcontracted two employees who did this work were reassigned to insurance billing positions.

The IRMC witness testified further that when the collection efforts of the hospital biller/collectors was unsuccessful the bill was labeled a "bad debt" and the matter was turned over to a collection agency. He noted that the collection agency had handled bad debts for more than eight years. He said that in many self-pay collection cases, there is insurance coverage, and in those cases, the bill is returned to the insurance billing section for payment. He also included that there was no \$5,000 limit on the patient self-pay bills contracted out. He said that the volume of self-pay bills had increased dramatically in recent years. He indicated that the center's bills were mailed to patients, and they were due on receipt, but they were not paid. The biller/collectors tried to call the patients, but after they could not be reached. He added that many of the biller/collectors told him they did not like this work. He said that he had had trouble filling vacant positions. He added that his department did not have the collection technology necessary to be effective.

The employer's witness went on to say that the self-pay collection total amount due to IRMC was approximately \$16m, but the employer never discussed these figures with the union. He said that the account receivables department gave the patients telephone numbers to the biller/collectors to call. He explained that his employees use standard phone equipment while the collection agencies use an automatic dialer, and a recorded message to be left on the patient's answering machine. He said he investigated, and it would cost IRMC \$100,000 to purchase the software to upgrade its technology so that it could match what the collection agency can do. He indicated that he had executed a contract to contract out the self-pay collection work on August 1, 2006. He said the first accounts were sent to them on October 6, 2006. The cost of this contract is 7% on all monies collected. If the agency cannot collect within 120 days, the account is then forwarded to the bad debt