**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT**
DISTRICT OF NEW JERSEY

CHAMBERS OF
**SUSAN D. WIGENTON**
UNITED STATES DISTRICT JUDGE

MARTIN LUTHER KING COURTHOUSE
50 WALNUT ST.
NEWARK, NJ 07101
973-645-5903

July 17, 2017

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**LETTER ORDER FILED WITH THE CLERK OF THE COURT**

**Re: Meridian Nursing and Rehabilitation at Shrewsbury v. 1199SEIU United Healthcare Workers East**
**Civil Action No. 17-2655 (SDW) (SCM)**

Counsel:

Before this Court are Petitioner Meridian Nursing and Rehabilitation at Shrewsbury's ("Meridian") Motion to Vacate an Arbitrator's Opinion and Award ("Award") and Respondent 1199SEIU United Healthcare Workers East's ("the Union") Cross-Motion to Enforce the Award.

This Court, having considered the parties' submissions and having reached its decision without oral argument pursuant to Federal Rule of Civil Procedure 78, and for the reasons discussed below, grants Respondent's Cross-Motion to Enforce and denies Petitioner's Motion to Vacate as moot.

## I. BACKGROUND AND PROCEDURAL HISTORY

On January 19, 2017, Arbitrator Margaret R. Brogan ("the Arbitrator") issued an Award regarding a dispute between the parties over whether Meridian terminated Laverne Bell, R.N. ("Bell") for just cause as required by the parties' collective bargaining agreement ("CBA").[1] (Pet. ¶ 1, 9 – 10, 19.) The Arbitrator found Meridian did not prove just cause for Bell's termination and directed Meridian to reinstate her as a Certified Nursing Assistant with back pay and "coaching/counseling." (*Id*. ¶ 2, 20.)

On April 18, 2017, Meridian filed a Petition and Motion to Vacate the Award, arguing it was arbitrary and capricious due to the Arbitrator's failure to properly consider certain evidence. (Pet'r's Br. at 3 – 8.) The Union opposed Meridian's motion and filed a Cross-Motion to Enforce the Award on May 1, 2017. Additionally, the Union seeks prejudgment interest, as well as attorneys' fees and costs, arguing that Meridian's petition is frivolous. (Resp't's Br. at 3.)

## II. DISCUSSION

The Federal Arbitration Act ("FAA") provides only four grounds upon which district courts may vacate an arbitration award: "(1) where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10.

"District courts have very little authority to upset arbitrators' awards." *United Transp. Union Local 1589 v. Suburban Transit Corp.*, 51 F.3d 376, 379 (3d Cir. 1995). "Thus, there must be absolutely no support at all in the record justifying the arbitrator's determinations for a court to deny enforcement of an award." *Id*. (quoting *News America Publications, Inc. v. Newark Typographical Union, Local 103*, 918 F.2d 21, 24 (3d Cir.1990) (internal quotation marks omitted).

Petitioner has presented this Court with an insufficient basis to vacate the Arbitrator's Award under the FAA. Petitioner's belief that the Arbitrator "irrationally characterized the evidence" (Pet'r's Br. at 5) does not demonstrate that she exceeded her powers.[2] The Arbitrator's findings do not appear to be without any support in the record. Furthermore, this Court must defer to her factual findings.[3] *See Citgo Asphalt Ref. Co. v. Paper, Allied-Indus., Chem. & Energy*

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[1] The CBA provides that the Union is the sole and exclusive bargaining representative for certified nurses' aides. (*See* Pet., Ex. A.)

[2] In its Opposition to Respondent's Cross-Motion, Petitioner concedes that the basis for its Petition is the fourth ground upon which an Arbitration Award may be vacated under the FAA; that the Arbitrator exceeded her powers. (Pet'r's Opp'n Br. at 2.)

[3] This is particularly true given no record or transcript was made at the hearing. (*See* Pet. ¶ 18.)

*Workers Int'l Union Local No. 2-991*, 385 F.3d 809, 816 (3d Cir. 2004); *see also NF&M Corp. v. United Steelworkers of Am.*, 524 F.2d 756, 759 (3d Cir. 1975) ("[A] court is precluded from overturning an award for errors in assessing the credibility of witnesses, in the weight accorded their testimony, or in the determination of factual issues.") Therefore, Respondent's Cross-Motion to Enforce will be granted and Petitioner's Motion to Vacate is dismissed as moot.

This Court will also grant Respondent's request for prejudgment interest. The damages in this case, Bell's back pay, are easily ascertainable and thus interest clearly can be calculated.[4] *See, e.g., Graphic Commc'ns Local 612M of the Graphic Commc'ns Conference of the Int'l Bhd. of Teamsters v. Nextwave Web, LLC*, Civ. No. 12-03082, 2012 WL 5306266, at *2 (D.N.J. Oct. 26, 2012) ("Courts typically have discretion to award prejudgment interest in labor law cases where breach of contract damages are ascertainable with mathematical precision.") (internal quotation marks omitted).

Finally, although this Court agrees that there is no basis to vacate the Arbitrator's Award, it does not appear Petitioner's Motion was brought in bad faith. *See Wilkes Barre Hosp. Co., LLC v. Wyoming Valley Nurses Ass'n Pasnap*, 453 F. App'x 258, 261 (3d Cir. 2011); *Chauffeurs, Teamsters & Helpers, Local Union No. 765 v. Stroehmann Bros. Co.*, 625 F.2d 1092, 1094 (3d Cir. 1980). Therefore, Respondent's request for attorneys' fees and costs will be denied.

## III. CONCLUSION

For the reasons set forth above,

**IT IS** on this 17th day of July, 2017,

ORDERED that Respondent's Cross-Motion to Enforce will be granted and Petitioner's Motion to Vacate is dismissed as moot. Prejudgment interest on the Arbitration Award is granted and attorneys' fees are denied.

**SO ORDERED**.

/s/ /Susan D. Wigenton

SUSAN D. WIGENTON, U.S.D.J

Orig: Clerk
cc: Parties
Steven C. Mannion, U.S.M.J.

[4] Petitioner contends the amount of back pay owed to Bell is still in dispute because "the parties have been corresponding" with the Arbitrator, but provides no support for this assertion. (Pet'r's Opp'n Br. at 7 – 8.)