

S August 1, 2002

Accusation of Conflicts at a Supplier to Hospitals

By MARY WILLIAMS WALSH

he was an eager new employee. Her company was the leader in its field, with a stated mission she could take pride in: to lower health care costs by helping hospitals buy supplies more cheaply.

But in a matter of months, Cynthia Fitzgerald was out of work — fired, she says, after complaining about her company's business practices, including pressure to steer millions of dollars in business to a former official of the buying group's predecessor.

"I don't look good in orange or in stripes," Ms. Fitzgerald said she told her supervisor after objecting to the way another contract was handled. Before long, the company, Novation, arranged to have her "escorted off the property by guards."

Ms. Fitzgerald's accusations, which are disputed by Novation, are among the most serious to be leveled at this private company, which negotiates medical supply contracts worth \$20 billion annually for a third of the nation's hospitals. Novation and another big buying group for hospitals, Premier Inc., have been accused in recent Congressional hearings of self-dealing and conflicts of interest that may have compromised their ability to find the best products at the lowest prices.

Ms. Fitzgerald, 44, made her comments recently under oath in a sealed deposition obtained by The New York Times. It is part of a lawsuit that a small medical device maker, [Retractable Technologies](#), filed in a Texas federal court, accusing Novation and Premier of effectively locking it out of the hospital market.

The two groups, which negotiate contracts for about two-thirds of the nation's hospitals, deny the accusations and are contesting them in court.

Novation officials declined to be interviewed for this story. But in a statement, the group said it could not comment on Ms. Fitzgerald's accusations because they had been made in a sealed deposition.

"We can, however, state that any decision to end Ms. Fitzgerald's employment was based on her work performance only," the statement added.

Ms. Fitzgerald, who once found inspiration in reciting the speeches of Martin Luther King to churchgoers, worked at Novation for just half a year — long enough, and at a level high enough, she says, to witness contracting processes that made her uncomfortable. "Some of the methods were not above board," she testified.

"There were undue pressures that were placed on contracting officers" to award contracts not necessarily based on price or quality, said Ms. Fitzgerald, who was herself a contracting officer.

Ms. Fitzgerald specifically complained that Novation for years had given special treatment to Heritage Bag, a garbage bag company in Texas represented by the former official of the buying group's predecessor, John M. Doyle. Mr. Doyle is the founder and former president of VHA Supply, a buying group that in 1998 merged with a smaller group to form Novation.

"I had been informed I would be fired if I didn't award it properly," she said in her deposition. Ms. Fitzgerald said she tried to find out why a seemingly mundane garbage bag contract was "sacrosanct."

"The only explanation that I ever received was that the contract belonged to Heritage Bag, it was going to belong to Heritage Bag, and that the last person who tried to remove that contract from Heritage Bag was in jeopardy of losing their job," she testified.

Novation's hospitals have been spending about \$11 million a year on Heritage Bag's products, the buying group said in its statement.

After Ms. Fitzgerald asked why Heritage's bags — called can liners — seemed to be getting favored treatment, her managers suddenly began questioning her competence and fired her, she said.

Mr. Doyle said favoritism played no role in Heritage getting contracts from Novation.

"We give them as high a quality liner as there is in the industry, and the most competitive pricing in the industry," Mr. Doyle said.

Heritage Bag declined to answer questions about Ms. Fitzgerald's accusations.

The Times, in examining Ms. Fitzgerald's charges, found that Mr. Doyle resigned from the buying group in 1986 amid complaints that he had sexually harassed two female employees and discriminated against a third.

"If John Doyle were the last man on this planet to have a job, I would starve before I'd go to work for this man again," said Deborah Long, who sued Mr. Doyle and his employer in federal court. She said Mr. Doyle abruptly demoted her during a staff meeting after she refused to let him into her hotel room at a convention. Her lawsuit has since been settled.

Mr. Doyle declined to be interviewed about the three women's charges.

Soon after Mr. Doyle began representing Heritage Bag as a manufacturer's representative, the company got its first contract with his former employer. Heritage has held that contract uninterrupted ever since — for more than 13 years. Mr. Doyle said he received a commission every time a Novation hospital bought Heritage's garbage bags, but he declined to reveal the amount.

So how good is Novation's contract?

For one thing, Novation recommends Heritage bags to its hospitals as a good buy. Even so, individual hospitals, consultants and smaller buying groups surveyed by The Times reported that if hospitals shop around they can get better deals on many of those same Heritage bags or on comparable bags made by other companies.

One medium-sized hospital in the Midwest found, for example, that if it were to switch to Novation's products, it would add about \$10,000 a year, or about 11 percent, to its garbage-bag budget. The hospital executive who analyzed the prices asked not to be named because of a confidentiality agreement.

"There is much better bag pricing outside the Novation-Heritage

agreement" — sometimes more than 20 percent better, said Bob Bissell, a principal of CoalesCo Ltd., which sets up purchasing cooperatives for small groups of hospitals.

Two smaller buying groups separately compared their prices with Novation's prices for identical bags and each reported that its products were about 3 to 5 percent cheaper, on average, when the numbers were weighted to reflect the most frequently purchased bags. Both of these groups requested anonymity for fear of angering Heritage.

Some critics of Novation believe that products like the garbage bags may cost more because of the fees manufacturers must pay in connection with contracts, which are then built into their prices.

In a written response to questions about its prices, Novation said, "It is possible that on any given day and with respect to any given product, a hospital — especially a large hospital system — may be able to obtain a better price than Novation." But, the buying group said, these individual cases did not negate the overall economic benefits its contracts bring to participating hospitals.

Ms. Fitzgerald joined Novation in 1998 after working as, among other things, a pharmaceutical representative. She said she initially earned praise from management for the way she went about picking companies to supply Novation's 2,500 hospitals nationwide.

Novation made her a senior contracting official, a position with considerable power.

Many companies, particularly the smaller or newer ones, say a supply contract with Novation, the nation's largest buying group for hospitals, can make or break them financially.

To secure these contracts, companies promise to pay Novation a percentage of what hospitals spend on their products, usually 3 percent or less of sales, but sometimes much more. Heritage Bag, for example, paid Novation more than 8 percent in fees.

Ms. Fitzgerald said in an interview that she recalled that Novation pushed to raise more and more revenue from suppliers. To satisfy her managers, she said, she persuaded one contractor, Becton Dickinson, to make an extra upfront contribution of

\$100,000 in connection with the awarding of a "sole source" catheter contract.

"I hate to say it, but I'm the one who dreamed it up; they told me they wanted to get revenue," Ms. Fitzgerald said, noting that she thought Becton Dickinson deserved the contract, even without the extra payment.

She said she was so proud of having secured the payment that she arranged to have Novation take a picture as the check was being handed over.

She said the extra money was to be used to finance a communication system within Novation.

Federal regulators have cautioned that such upfront payments might be construed as illegal kickbacks if they were used to obtain business.

Both Becton Dickinson and Novation say the payment was proper and legal.

On another occasion, Ms. Fitzgerald complained about a major contractor that appeared to be soliciting confidential information about a competitor's bid. She said she did not want to cooperate. She testified: "I turned to my manager, who was sitting next to me, and said, 'Oh, no. I don't look good in orange or in stripes.' "

She said her complaints were unheeded.

Ms. Fitzgerald said she first heard about Heritage Bag's apparently special status within Novation from colleagues and from her supervisor. Later, she said, she told her managers she wanted nothing to do with awarding that contract. "I was not going to do that particular contract and if it was going to be done, that management would have to do it," she testified.

Soon after, Ms. Fitzgerald said, the accolades she had once received from management became criticism. "Everything changed," she said. "Suddenly, I was incompetent."

During her deposition, Novation produced her personnel file. In it, according to questions asked by Novation's lawyer, Ms. Fitzgerald was criticized for such offenses as failing to complete reports on time, and failing to complete projects. Ms. Fitzgerald objected strenuously to these characterizations of her work

history.

"I remember those issues coming to light after I made my accusations," she testified. "I thought it was very unusual that none of those issues had ever been raised prior to then."

After her dismissal, Ms. Fitzgerald founded her own medical distributorship. She offered her deposition only after being subpoenaed and said in her testimony she feared Novation would retaliate against her for speaking out about her experience.