In the Matter of an Arbitration under the Hospital Labour Disputes Arbitration Act.

Between

Honeywell Building Solutions [employer]

And

Ontario Public Service Employees Union, Local 152

Before: M. Brian Keller, Chair

Harold Ball, Employer Nominee

Larry Robbins, Union Nominee

Sven Poysa, Janice To, Helen Mitzinis, Heather Crook, Trevor Whittingham, for the employer

David Lundy, Tom Watson, Amanda Picott, David Lacroix, Chris Smith, for the union.

Hearing, by videoconference. January 15, 2021, and Executive Sessions by videoconference on January 15, 2021 and February 11, 2021 respectively.

Award

This Board was constituted, and the hearing held, pursuant to the provisions of the Hospital Labour Disputes Arbitration Act.

The employer provides facilities management services to the St. Joseph's Specialized Mental Health Care Facility in London and the St. Joseph's Forensic Mental Health Care Facility in St. Thomas. Honeywell is not a public-sector employer but, rather, a private sector publicly traded company. Consequently, Bill 124 does not apply to these parties.

The Local consists of 13 employees who perform electrical, mechanical, maintenance, office administration, painting, and plumbing duties. Each is a full-time employee working 1950 hours per year.

The parties entered into negotiations for the renewal of the collective agreement which had expired on March 31, 2018. Negotiations appeared to be successful, and a Memorandum of Settlement was entered into and signed on October 11, 2018. The Memorandum provided, inter alia, that it constituted a full settlement of all matters in dispute. It further provided that the signatories to the document would *"recommend complete acceptance of all the terms of this memorandum to their respective principals."*

As it turned out, the members of the bargaining unit did not ratify the settlement reached by their negotiators with the employer.

There is very considerable jurisprudence dealing with how a board of arbitration considers a Memorandum of Settlement that is subsequently not ratified by the membership. The overwhelming body of decisions provides that a Board of Arbitration, faced with a Memorandum of Settlement that has not been ratified, will consider what was agreed to by the negotiators as *"a realistic basis of settlement and may find that the signed memorandum constitutes an equitable basis on which to make an award."* Where a party wishes to subsequently resile from the agreement, they bear a heavy burden to justify their position.

There is a compelling institutional logic for this position. It is to be presumed that negotiators representing either the employer or the members of the local union know and understand what is important to their constituency. It is further presumed that if the negotiators reach a settlement through free collective bargaining, they do so with the understanding that they have either succeeded in meeting their objectives or, at least, coming as close as possible to what they were seeking. Consequently, absent compelling reasons, arbitrators have generally concluded that what has been freely negotiated in face-to-face negotiations should be upheld in their award.

In the instant case, a Memorandum of Settlement was entered into by representatives of both parties. Not only that, the representatives of the parties also agreed that they would recommend the agreement for ratification

The Board points out that the union, if it was not satisfied with what the employer was proposing regarding benefit co-pay contributions, could have availed itself, at the time, of the arbitration provisions of the Hospital Labour Disputes Arbitrations Act.

In any event, this Board is not of the view that, given the circumstances and facts of this case, a compelling argument has been made by the union to set aside what was freely agreed to by the parties. Consequently, the Board awards that the collective agreement shall consist of the previous collective agreement, as amended by those matters agreed to by the parties, including a three- year term, during the course of negotiations and memorialized in the Memorandum of Settlement dated October 11, 2018.

The two remaining issues deal with retroactivity. The Board notes that the Memorandum of Settlement provides specifically that wage increases are to be retroactive to April 1, 2018. In keeping with the principle of this award that what was agreed to by the parties should govern, the Board awards wage increases, as negotiated by the parties, retroactive to April 1, 2018.

The employer has proposed that members of the bargaining unit should be required to pay back the excess in benefit contribution made by the employer from January 1, 2019 until now. Having given the matter full consideration, the Board is of the opinion that under these particular circumstances the most equitable outcome for the employees concerned would be not to award a payback.

The Board remains seized to deal with any issue arising from the interpretation, application or implementation of this award.

Ottawa this 16th day of February, 2021

M. Brian Keller, arbitrator

“I Partially Dissent”, Harold Ball, employer nominee

“I Partially Dissent”, Larry Robbins, union nominee