IN THE MATTER OF AN ARBITRATION
UNDER THE LABOUR RELATIONS ACT

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Ministry of Labour
DRS - ARBITRATION SERVICES

BETWEEN

NIAGARA GARDENS RETIREMENT MANOR

AND

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1 CANADA

UNION/POLICY GRIEVANCE

File ID: 816147
File Folder: 10186 RR-13
Rel id: 36214

SOLE ARBITRATOR: JOSEPH B. ROSE

WRITTEN SUBMISSIONS ON SEPTEMBER 19, 2014

In a consent award dated January 10, 2014, I ordered the Employer to (1) pay the Union all union dues owing pursuant to Art. 5 by March 15, 2014 and (2) provide the Union with the current updated information required by Art. 5 by March 15, 2014. Although the grievance also requested interest on the amount owing, the award noted the Union agreed to waive the claim if the Employer provided payment for the amount owing and the requested employee information by the deadline. If, on the other hand, the Employer failed to comply by the deadline, the Union reserved the right to claim interest and make further submissions. I remained seized of the matter on consent, including the claim for interest.

By letter dated August 11, 2014, the Union advised the Employer failed to comply with the award and made the following request about the interest owed by the Employer.

> The Union intends to file the award in this matter with the Superior Court in accordance with section 48(19) of the *Labour Relations Act* for enforcement. However, as you will recall, your award states that no interest would be payable on the union dues owed if the Employer paid the dues and provided employee information by March 15, 2014; no payment or information has been received. Prior to filing the award with the Court (and receiving automatic post-judgement interest under the *Courts of Justice Act*), the Union is seeking a determination from you on the interest owed by the Employer from September 2012 to the present.

On August 18, 2014, I issued an Order setting out a timetable for written submissions. The Union agreed to proceed first and made written submissions on September 19, 2014. The Employer did not comply with the Order to produce written submissions by October 20, 2014.

The Union referred to the following provisions of the collective agreement.

> 5.02 (a) All employees who are employed in the employ of the Employer at the signing date of this agreement, and all new

employees who have entered the employ of the Employer, after the agreement has been signed, **shall as a condition of employment, be subject to regular monthly union dues to be deducted from their wages and remitted to the union including any initiation/ assessment fees.** In this regard, employees who leave the bargaining unit in accordance with Article 17 of the Collective Agreement shall continue to pay dues to the union.

(b) The Employer shall, when remitting such dues, name the employees from whom pay deductions have been made. All remittances shall be electronic and shall include current updated information.

(c) **The Employer will supply the Union with the name, current address, classification and other relevant information of the employees with the first dues deduction and on an annual basis thereafter.**

5.03 (a) Deductions shall be made upon first month of hire the first pay of each month forwarded to the Union office on or before the last day of the same month in which the deductions are made.

The Employer shall provide each employee with a T4slip showing the annual union dues paid by the employees for the year previous.

(Union emphasis)

By way of background, the Union documents reveal that since the January 10, 2014 award, the Employer has paid $15,126.27 or about one-third of the amount owed to the Union. The Union estimates the total amount outstanding as of September 19, 2004 is $27,196.24.

Decision

It is recognized that arbitrators have the jurisdiction to award interest owing on unpaid union dues (see Brown and Beatty, *Canada Labour Arbitration*, at 2:1514 and *Fincore Industries Inc. and United Steelworkers of America, Local 13491* (1999), O.L.A.A. (Armstrong). The

Union adds it is entitled to interest to compensate for the delay in payment. Further, given this is a continuing breach "interest should be payable on the total amount not paid to the present".

After reviewing the Union's submissions, I find its request is reasonable and make the following order.

> (1) The Employer, Niagara Gardens Retirement Manor, is to immediately pay union dues arrears in the amount of **$27,196.24**.
>
> (2) The Employer is to pay interest in the amount of 3% (the current Bank of Canada prime rate and the post-judgement interest rate under the *Court of Justice Act*), which equals **$815.88**.
>
> (3) The total amount to be paid by the Employer is **$28,012.12**.

DATED at Hamilton this 21st day of November 2014.

Joseph B. Rose, Arbitrator