

File 10: 832767
File Folder 10345-RR-14

IN THE MATTER OF AN ARBITRATION

BETWEEN

Ontario Hospital Association

("OHA")

Sault Area Hospital

and

Ontario Nurses' Association

("Union")

**ONA Grievances 13-120 and 14-04
concerning Influenza Immunization Policies**

SOLE ARBITRATOR: James Hayes

APPEARANCES

OHA and Sault Area Hospital

John C. Field, Counsel
Dianne E. Jozefacki, Counsel

Union

Kate Hughes, Counsel
Danielle Bisnar, Counsel
Sharan Basran, ONA Counsel

Conference calls with counsel were held on August 22 and September 19, 2014. A prehearing conference took place on September 2, 2014.



Relid 27128

Procedural Directions and Agreements

1. This Award records agreements and directions either made on the dates noted above, or, that arose from discussions and submissions made on those occasions.
2. Counsel for SAH and the OHA confirmed that the requests by ONA for relevant e-mails and reports have been answered to the extent that such material is in existence or ever existed.
3. The Briefing Note sought by ONA is arguably relevant and should be produced.
4. ONA should indicate to Drs. Gardam and Lemieux that their cooperation is sought in connection with ONA's request for production of any retainer agreement they may have with the Sault Area Hospital. Any confidential financial information may be redacted. If issues remain following the request by ONA to the physicians, they may be raised at a later date.
5. The objections raised by SAH and the OHA concerning the provenance and form of the Will say Statements/Expert Reports filed on behalf of Drs. Gardam, Lemieux, and De Serres are duly noted but, particularly given the broad procedural scope of the originating Memorandum of Agreement dated March 19, 2014 ("MOA"), they will be accepted. SAH and the OHA may make any submissions they deem to be appropriate concerning 'weight' at a later appropriate time.
6. The September hearing dates are adjourned to permit timely production and consideration of the OHA/SAH expert reports and to allow for further discussion between counsel concerning facts and documents.

7. Counsel undertake to prepare an Agreed Statement of Fact to the extent possible together with a Joint Document Brief. Any documents to which they are not agreed may be filed in a separate Brief(s) unless privilege is asserted. All Will say statements, as well as expert reports, should also be filed with me when they are exchanged by the parties.

8. The arbitration will be conducted in Toronto subject to any future agreement or direction concerning any particular day.

9. Future hearing dates of October 1, 2, 9, 10; November 11, 2014 and May 19, 20, 21; June 9, 23, 24, 25, 26, 2014 are confirmed on agreement.

10. Opening statements will be heard on October 1, 2014 to be followed by a discussion concerning process for the reception of expert evidence.

11. ONA 'fact' witnesses will follow on October 2, 2014. ONA's request that the case be bifurcated in the sense that OHA/SAH follow with reply 'fact' evidence, before expert evidence is heard, remains an issue for further consideration.

12. The parties are agreed that transcripts should be obtained for expert evidence. SAH/OHA sees no need for the transcription of the evidence of 'fact' witnesses. Having regard to:

- i. The parties' shared expectation that the testimony of 'fact' witnesses will be limited in duration;
- ii. The reasonable expectation, accordingly, that the additional cost of a court reporter will not be excessive;
- iii. The certainty that the hearings will be more efficient if the time otherwise required for detailed note-taking by counsel and the arbitrator is reduced or eliminated;

- iv. The suggestion that some of the anticipated 'fact' testimony may be put to expert witnesses for comment either before or during any personal attendance by them;
- v. Subparagraph 6 (b) of the MOA that contemplates the possibility that "transcripts of examinations of such witnesses may be used in another following grievance";
- vi. Subparagraph 6 (c) of the MOA that directs "any processes for otherwise expediting the evidence or hearing process".

13. I direct that a court reporter be retained to record any of the evidence called by the parties in this proceeding at their shared cost.

Dated at Toronto the 23rd day of September 2014.


James Hayes