

IN THE MATTER OF AN ARBITRATION*(Under the Labour Relations Act, 1995)*

BETWEEN:

HEADWATERS HEALTH CARE CENTRE

("Hospital")

-AND-

ONTARIO NURSES' ASSOCIATION

("ONA")

-AND-

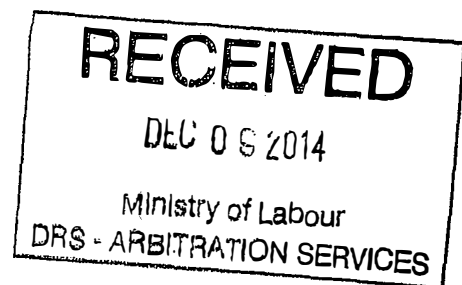
SEIU LOCAL 1 CANADA

("SEIU")

AND IN THE MATTER OF an arbitration of an ONA layoff grievance and work jurisdiction dispute.

BEFORE: G. T. SURDYKOWSKI – Sole Arbitrator

APPEARANCES:

For the Hospital: Robert L. Little, CounselFor ONA: Marcia Barry, CounselFor SEIU: Robert M. Church, Counsel

HEARING HELD IN ORANGEVILLE, ONTARIO ON DECEMBER 3, 2014.

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File ID: 834574
File Folder: 10475RR-14
Rel id: 12870

PROCESS AWARD

1. This proceeding originated with the January 23, 2014 grievance filed by ONA which challenging the layoff by the Hospital of a bargaining unit Registered Nurse ("RN") from the Endoscopy Unit.
2. I was appointed sole of the grievance arbitrator and a hearing was scheduled for December 3, 2014 on agreement of the Hospital and ONA.
2. Historically, the Endoscopy Unit had been staffed with two physicians, an RN who is in ONA's bargaining unit, and a Registered Practical Nurse ("RPN") who is in the SEIU's bargaining unit. The Hospital decided that the nature of the endoscopy procedure and typical patient is such that with two physicians in the room only one nursing health care professional was required to be there with them during the procedure and that an RPN was sufficient for the purpose. The RN was therefore laid off and the Endoscopy Unit RN position was effectively eliminated.
4. I understand ONA's primary position to be that two nursing health care professionals are required to properly staff the Endoscopy Unit during a procedure, such that the layoff was inappropriate and a violation of the ONA collective agreement. In the alternative, ONA asserts that if one nursing health care professional is sufficient it should be staffed by an RN, such that the layoff was contrary to the collective agreement.
5. The grievance therefore raised the specter of a jurisdictional dispute. Accordingly, the SEIU was given notice of the proceeding. A SEIU representative attended the December 3, 2014 hearing with counsel.
6. After some discussion, the parties agreed to deal with the matter as a jurisdictional dispute, and for that purpose:
 - The parties agree that I have jurisdiction as an arbitrator under both the ONA collective agreement and the SEIU collective agreement for the purposes of this proceeding.
 - The parties agree to proceed in a manner which adapts the procedure which the Ontario Labour Relations Board (the "OLRB") has adopted for non-construction industry jurisdictional disputes; that is, substantially in accord with Rule 13 of the OLRB's Rules of Procedure.

- The parties will therefore each file a written brief which contains:
 - (a) A statement of the issues in dispute.
 - (b) A detailed description of the work in dispute.
 - (c) A statement of particulars of the asserted facts upon which they rely.
 - (d) A copy of any relevant collective agreement.
 - (e) A copy of any agreement or understanding between ONA and the SEIU as to their respective jurisdictions or assignment of the work in dispute.
 - (f) A copy of any agreement or understanding between any trade union and any employer regarding the assignment of the work in dispute.
 - (g) A copy of any decision of any tribunal respecting the assignment of the work in dispute.
 - (h) A copy of any other document relating to the assignment of the work in dispute on which they intend to rely to support their position in this proceeding.
 - (i) A statement about any area or professional practice relating to the assignment of the work in dispute, together with supporting documentary evidence (including any relevant pictures, diagrams or drawings).

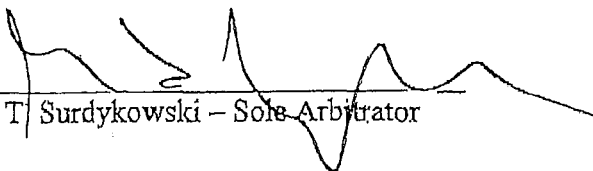
(A document need not be reproduced in a brief if it has already been included in another party's brief. The parties may also consider producing a joint brief of documents to which more than one party intends to refer.)

- The parties agree to schedule the hearing to proceed on October 15 and 16, 2015, and if necessary on January 5 and 6, 2016.
- The parties agree that:
 - (i) ONA will deliver its written brief no later than 16 weeks before the first day of hearing (i.e. by no later than June 25, 2015).

- (ii) The Hospital and SEIU will deliver their written briefs by no later than 10 weeks before the first day of hearing (i.e. by no later than September 3, 2015).
- (iii) ONA's reply brief, if any, will be delivered by no later than 4 weeks before the first day of hearing (i.e. by no later than September 17, 2015).
- The parties agree that they will each be responsible for the payment of one-third (1/3) of my proceeding related fees and expenses upon being provide with my account in that respect.

Any process-related issues, or other issues which must be resolved prior to the first day of hearing, will be dealt with by telephone conference call, written submissions, or otherwise, as I consider appropriate.

DATED AT TORONTO THIS 4TH DAY OF DECEMBER 2014.


George T. Surdykowski – Sole Arbitrator