

10577- RR-14

#836506

IN THE MATTER OF A MEDIATION-ARBITRATION brought pursuant to the Ontario *Labour Relations Act, 1995*, as amended, and IN THE MATTER OF Grievance #06-44-14 dated May 2, 2014, brought under the collective agreement

BETWEEN:

THE CORPORATION OF THE CITY OF BURLINGTON
(the "Employer")

- and -

THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL #44,
ROADS AND PARKS MAINTENANCE DEPARTMENT
(the "Union")

AWARD

Sole Arbitrator:

Marilyn A. Nairn

Hearing held:

February 9, 2015
(Burlington, Ontario)

APPEARANCES:

For the Employer: Jamie Knight, Counsel; Roy E. Male, Executive Director of Human Resources; Cathy Robertson, Director of Roads and Park Maintenance; Leanne Sneddon, Human Resources Representative, and others.

For the Union: Dean Mainville, CUPE National Representative; Brian Fallon, President, CUPE Local 44; Amy Howatson, Local Representative, and W. E., Grievor.

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full adjudication, which adjudication would also have included the human rights aspects to the case. The payment of a retiring allowance, as well as the human rights damages, are consistent with this concession by the Grievor.

6. The resolution of the grievance as described herein is intended by the parties and the Grievor to be a full and fair settlement of all claims that were or could have been made (either by the Grievor or by the Union on the Grievor's behalf) whether under the collective agreement, pursuant to any applicable statute, including the Ontario *Human Rights Code* or otherwise. As a result, the Employer requested that the Grievor sign a Release in the form attached as Schedule "B", and the Grievor agreed to do so.

7. Having regard to the agreement of the parties and the Grievor, and given the Grievor's decision to accept a monetary settlement in lieu of reinstatement and in settlement of the human rights claims, **I HEREBY ORDER** that the Employer pay to the Grievor the amount in damages and retiring allowance that is set out in Schedule "A", attached hereto. The retiring allowance is payable in return for the Grievor giving up the right to reinstatement and, in the usual way, is subject to withholding tax. The damages are not income. No income related deductions are appropriate from the damages and shall not be made.

8. **I FURTHER ORDER** that the evidence that would have been led in this proceeding and the details of Schedule 'A' are to be kept strictly confidential and further, that none of this information be revealed to any former or current employees of the City of Burlington or be discussed by the City's management team or the Union, except as is necessary to implement the terms of Schedule 'A' or as may be required by law. **I ORDER THAT** the Grievor also respect this confidentiality and, more particularly, that the Grievor limit any discussion of Schedule 'A' to financial and/or legal advisors and immediate family. I am confident that the parties and the Grievor will continue to demonstrate the respect that was plain throughout the mediation and I require that they do so, such that all concerned avoid making any disparaging remarks. In the same vein, any inquiries made of the Employer with respect to the Grievor's employment shall be consistent with the terms of the letter of reference attached to this Award as Schedule "C".

9. This Award is made in the particular circumstances of the Grievor's case, having regard to, and reflecting the rights, needs, and expectations of the parties and the Grievor. This Award has no value as a precedent in respect of other matters between these parties or other employees.

10. I commend the parties and the Grievor for the dignified and sensible manner in which they proceeded before me, and for the sensible way in which they resolved the issues. The Grievor specifically acknowledged that the Union had exercised its duty of representation in an appropriate manner. The Employer, in agreeing to resolve this matter on terms agreeable to all, demonstrated good faith. The settlement agreed to is, in my view, a reasonable resolution of the matters in issue having regard to the exigencies and uncertainties of the litigation and the time it would have taken to complete a formal hearing and arrive at an adjudicated resolution. This resolution enables the Grievor and the parties to move forward without further exposing the Grievor to the rigours of litigation.

11. Although Schedules 'A' and 'B' form part of this Award, in order to maintain the confidentiality agreed to and required, **I ORDER THAT** Schedules 'A' and 'B' in effect be "sealed" and redacted from any publication or other dissemination of the Award.

12. Finally, **I ORDER THAT** the Grievor's file be sealed and kept in a secure place and manner by the Employer's counsel such that the Employer would have on file only this settlement and necessary payroll records, all of which will be kept in a secure place and manner.

13. At the request of the parties, I shall remain seized in the unlikely event that difficulties arise with respect to the interpretation, implementation, or enforcement of this Award (including Schedules "A" to "C").

Dated at Toronto, Ontario this 11th day of February, 2015.



Marilyn A. Nairn, Arbitrator.