

IN THE MATTER OF THE ONTARIO LABOUR RELATIONS ACT, 1995

AND IN THE MATTER OF AN ARBITRATION

B E T W E E N :

ALBRIGHT GARDENS

(“the employer”)

- and -

ONTARIO NURSES’ ASSOCIATION

(“the union”)

AND IN THE MATTER OF a union policy grievance, dated January 13, 2014, alleging that the employer had improperly overcharged the union in respect of the cost of payments made by the employer to union officials who had been granted leaves of absence for union business.

BEFORE: John McNamee, Sole Arbitrator

APPEARANCES: For the Employer:

Melissa Nixon (Counsel)

For the Union:

Rob Dobrucki (ONA Litigator)

A hearing in this matter took place at Grimsby, Ontario, on December 3, 2014.

A W A R D

The issue in this case is whether the union should be permitted to withdraw its grievance after the arbitration with respect to that grievance commenced.

Both parties agree that I have jurisdiction to determine this matter.

The Facts

The facts are not in dispute.

- 1) The union filed a grievance dated January 13, 2014, alleging that it had been overcharged by the employer with respect to payments made by the employer to union officials who, at the request of the union, had been granted leaves of absence with pay to attend to union business.
- 2) The dispute between the parties involved the interpretation of Article 12 of the collective agreement between them.
- 3) The matter was not settled in the course of the grievance procedure, and was referred to me as single arbitrator. I convened a hearing in the matter on December 3, 2014.
- 4) At the hearing, the employer agreed to proceed first in calling its evidence without prejudice as to the onus. It called one witness, and the examination of that witness, together with cross-examination and re-examination, was completed. The employer then indicated that it had no more evidence.
- 5) The union indicated that that it would not call evidence.
- 6) The parties agreed to submit written argument. It was agreed that the union was to submit its argument first, and that argument was to be delivered on January 23, 2015.

- 7) On January 23, in lieu of submitting its argument, the union wrote the employer, as follows:

I write to inform you and your client that ONA is withdrawing the above-noted Grievance without prejudice or precedent to either party's legal position on the interpretation of the collective agreement. I note that ONA has provided an estoppel notice to the Employer with respect to ONA's intention to rely on the strict wording of Article 12.02. I further note that ONA may be addressing this issue in the upcoming round of bargaining between the Parties.

Positions of the parties

The employer now says that it is too late for the union to withdraw the grievance, and that it should be dismissed. It submitted that the union ought not to be able to listen to the evidence in an arbitration, and then seek to withdraw without prejudice, retaining the right to re-submit the matter to arbitration. It relies upon Re Guelph General Hospital and ONA, 25 L.A.C. (4th) 260 (Burkett).

In the alternative, the employer says that I should issue a decision with respect to the withdrawal request, and provide some context as to what the matter was about and when the grievance was withdrawn. It says that a decision outlining the grievance, the facts and the stage in the process when ONA decided to withdraw would go a long way to prevent duplicitous litigation.

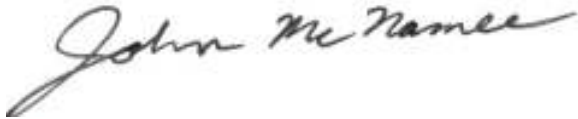
The union opposes any dismissal of the grievance, but says that it accepts that it is relinquishing any claims that it may have for remedies associated with the earlier grievance. It agrees that if it pursues an issue relating to the questions of reimbursement/chargeback in the future, it would have to deal with the process that has occurred to date in this arbitration process. Accordingly, it agrees that I should issue a document with respect to ONA's withdrawal of this grievance.

DECISION

As I understand the thrust of arbitral jurisprudence with respect to this issue, I should not take it upon myself to dismiss a grievance when a party wishes to withdraw it from arbitration. Instead, I should leave it to any subsequent arbitrator or arbitration board to determine how any

grievance, including the current grievance, which is placed before him, her or it should be disposed of. I concur with the results in those cases, and accordingly these proceeding are terminated without prejudice to any position that either of these parties might take in a subsequent arbitration.

DATED at Toronto, this 24th day of February, 2015

A handwritten signature in cursive script that reads "John McNamee". The signature is written in dark ink and is positioned above a horizontal line.

John McNamee, Sole Arbitrator