

IN THE MATTER OF AN ARBITRATION
UNDER THE *LABOUR RELATION ACT*

BETWEEN

ERIE ST. CLAIR COMMUNITY CARE ACCESS CENTRE

("the Employer")

and

ONTARIO NURSES' ASSOCIATION

("the Union")

**Union/Policy Grievance and Individual Grievances of Kimberly Evans
Darlene Keelan, Jacqueline Werstien and Michelle Fetterly**

BEFORE:

Colin Johnston

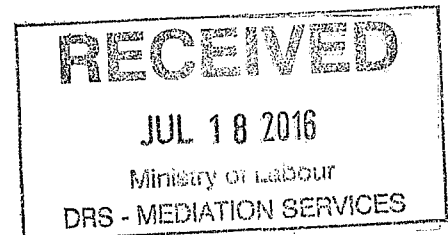
APPEARANCES:

For the Employer:

Nancy Jammu-Taylor, Counsel

For the Union:

Rob Dobrucki, Litigating Labour Relations Officer



Hearing held in Windsor, Ontario on June 27, 2016

INTERIM DECISION

File ID's: 845408/845409/845411/845412 & 845413
Folder ID's: 10360-XR-16 to 10364-XR-16
Rel ID: 20769

- [1] This is an interim decision regarding a request for production by the Union. The request was made at the close of the last date of hearing.
- [2] The grievances before me allege that the Employer has not taken sufficient steps to protect the health and safety of the Grievors' following a verbal threat and other aggressive behavior displayed by a family member of a CCAC client.
- [3] The Union seeks production of all client note reports, and service provider reports (addressed specifically to the CCAC) for the client, M.S. for the period January 9, 2016 to June 1, 2016.
- [4] A similar request for production was granted for the period April 1, 2015 to January 8, 2016 after consultation with the parties on the first day of hearing.
- [5] The Union seeks further production on the basis that this material will demonstrate the family member in question continues to display threatening behavior. The Union states it is aware of this behavior, as one of the Grievors inadvertently read a notation in the client's file, which supports this conclusion.
- [6] The Employer disputes this allegation. The Employer also raises concerns about the privacy rights of the family and the client involved.
- [7] The parties' submissions on the request for production were brief. Neither party relied on any case law to support their position.

ANALYSIS

- [8] It is generally accepted that the test for production in an arbitration hearing is arguable relevance. The Union submits that if this family member is continuing to engage in threatening behavior then any information supporting this claim is relevant to the issues in dispute, as the grievances involve the ongoing health and safety concerns of the Grievors. Such evidence is also relevant to the remedies sought in the grievances.
- [9] I agree with Union counsel that the material sought is arguably relevant. The grievances before were precipitated by the conduct of a family member of a client. If the person in question continues to engage in threatening behavior then it is relevant to the issues in dispute including the remedies sought, some of which are prospective in nature.
- [10] On the flipside, if there is no evidence to suggest that this family member has engaged in further threatening behavior then that too may be arguably relevant to the grievances and remedies sought in this case.

- [11] The confidential nature of the material requested and the fact that it relates to a third party who has no standing or notice of this hearing must also be taken into consideration.
- [12] It is not unusual that grievances involving registered nurses involve production of patient files. This is certainly true in cases involving nurses disciplined for practice issues. The production of such material typically requires that certain safeguards be in place to protect the identity of patients and any confidential medical information contained in a patient's file. I see no reason why this cannot be done in this case as it was done in the earlier production order.
- [13] Upon full consideration of the parties' submissions, I order the Employer to produce to Union counsel copies of the client notes, and service provider reports (addressed specifically to the CCAC) for patient M.S. for the period January 9, 2016 to June 1, 2016. Such material will be redacted to remove any medical information regarding the patient or other personal identifying information such as OHIP and SIN numbers.
- [14] The Union is directed to return all of the information produced as part of this Order to Employer Counsel immediately following the completion or settlement of this arbitration proceeding.
- [15] It is further understood that the information produced will be used for no purpose other than this arbitration proceeding and will remain exclusively in the possession of Union counsel.

Dated this 12th day of July, 2016 in the Town of Lakeshore, Ontario.

A handwritten signature in black ink, appearing to read 'Colin Johnston', is written over a horizontal line.

Colin Johnston, Arbitrator