

IN THE MATTER OF ARBITRATION
UNDER THE LABOUR RELATIONS ACT, 1995

B E T W E E N

Marshall Gowland Manor

("the Employer")

and

Unifor Local 302

("the Union")

Unifor Policy Grievance

BEFORE: Colin Johnston

APPEARANCES:

For the Employer: Erich Schafer and David Defrancesco, counsel

For the Union: Farah Baloo, counsel

Hearing held in Sarnia, Ontario on January 31, 2018

- [1] To the extent necessary, I have heard the submissions of the parties. The facts as presented to me are as follows:
- [2] Unifor Local 302 represents a bargaining unit of employees employed at Marshall Gowland Manor by the Corporation of the County of Lambton, described in Article 2.01 of the collective agreement between the parties:

The Employer recognizes the Union as the sole and exclusive bargaining agent for all the employees in the bargaining unit defined in the Certificate of the Ontario Labour Relations Board dated November 28, 1974, save and except supervisors, persons above the rank of supervisor, registered nurses, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period and office staff.

- [3] At all material times, Unifor and the employer were parties to a collective agreement which expired on March 31, 2017. The current collective agreement between the parties expires on March 31, 2020.
- [4] The employer is party to a collective agreement with the Ontario Nurses' Association (the "ONA Agreement"). Article 7.03 (b) of the ONA Agreement requires the employer to maintain a ratio of four (4) FTE RNs to two (2) FTE RPNs. In 2013, ONA filed a grievance alleging a violation of Article 7.03 (b). On October 20th, 2014, Arbitrator Davie issued an award that made several directions with respect to the application of Article 7.03 (b) (the "Davie Award").
- [5] In order to comply with Article 7.03 (b) of the ONA Agreement and the Davie Award, the employer decided to eliminate certain RPN shifts. It informed Unifor of its decision by letter dated October 20, 2015. A layoff was not expected to follow but one RPN was required to be assigned from a part time position to a casual position. The reduction in the number of shifts affected the hours of approximately three RPN's in the Unifor bargaining unit.
- [6] Unifor claimed that the RPN's had been staffing the shifts that were eliminated since approximately April of 2012. The Employer's position was that the RPN's had only more recently been staffing those shifts after the ratio (which is established by the collective agreement between ONA and the Employer) became skewed. The Employer confirmed that, as a result of its long-standing obligation pursuant to its collective agreement with ONA, it was required to have the shifts staffed with RNs.
- [7] On October 29, 2015, Unifor filed a grievance protesting the reduction of RPN hours. The union alleged that by reducing the RPN hours the employer violated, *inter alia* Articles 10 and 2.04 of the collective agreement.

- [8] Article 10 of the Unifor collective agreement pertains to seniority, layoff and recall rights, whereas Article 2.04 states:

2.04 No person outside the bargaining unit shall perform work normally performed by members of the bargaining unit except:

- (a) in cases of emergency;*
- (b) when instructing other employees;*
- (c) when performing experimental work;*
- (d) When regular employees are not available due to being late for work or absent from work;*
- (e) in other circumstances, upon obtaining consent of the Union.*

- [9] The Employer denied the grievance maintaining that the reassignment of the work to RN's within the ONA bargaining unit was consistent with the Employer's practice and was required by its collective agreement with ONA. The Employer also asserted that the RPN work in question was not exclusively work of the Unifor bargaining unit, but was also normally performed by members of ONA.

- [10] The Employer also advanced an Application Concerning Work Assignment (Jurisdictional Dispute) to the Ontario Labour Relations Board, which Application remains pending before the Board.

- [11] Having reviewed the relevant Unifor collective agreement, the submissions of the parties and the facts as set out above, it is my view that there has been no violation of the Unifor collective agreement. The grievance is hereby dismissed.

Dated this 31st day of March, 2018 in the Town of Lakeshore, Ontario.



Colin Johnston, Arbitrator