



In the Matter of an Arbitration
Between
Humber River Hospital (Employer)
and
Teamsters, Local Union 419 (Union)
and
Compass Canada Support Services Ltd. (Intervenor)
Policy Grievances #00249 & #00252

PRELIMINARY AWARD

Before: Dana Randall, Arbitrator

For the Employer: Brian Smeenck, Counsel
Megan Rolland, Counsel
Karen Adams

For the Union: Mike Biliski, Counsel
Michael Downes Thelcia Williams
Carlyle Bennett Diane Colucci

For the Intervenor: Jeffrey Mitchell, Counsel

Hearings in this matter were held on November 13, 2015 and March 9, 2016 in Toronto, Ontario.

File #: 10629-RR-15
File ID: 849728
Ref. 84423

PRELIMINARY AWARD

I

This is a preliminary award only. It sets out various agreements between the parties and directions from me with respect to procedure.

On the merits, Teamsters Local Union No. 419 (the Union) has filed 2 grievances (#00249 and #00252) protesting Humber River Hospital's action of contracting out housekeeping bargaining unit work to Compass Canada Support Services Ltd. (CCSSL). The Union challenges the action on 3 grounds: 1) the Hospital remains the true employer of the disputed employees; 2) prior to its action, the Hospital failed and/or refused to consult with the Union contrary to article 10.01 of the collective agreement between the Union and the Hospital; and 3) the Hospital's actions resulted in lay-offs of bargaining unit members and was therefore a breach of the collective agreement.

II

The parties have agreed to bifurcate the matter. They will proceed with the 'true employer' issue first. 2) and 3) only become relevant in the event the Union is unsuccessful with respect to 1). CCSSL is given Intervenor status for the purpose of 1) only.

Compass Group Canada Ltd. and CCSSL stipulate that CCSSL is the employer of the disputed employees. The Hospital stipulates that the most recent draft of the contract for services is between the Hospital and CCSSL.

On the basis of those stipulations, the Union agrees that it will withdraw, forthwith, its application for certification against Compass Group Canada Ltd. (Board file #2281-15-R).

III

The Hospital requested particulars from the Union. The Union provided same in a letter dated March 8, 2016. The Hospital objected to one paragraph in the letter, to wit:

Further to your correspondence of February 10, 2016, these are the particulars of the Union in these grievances. The Union reserves the right to add to, alter or otherwise amend these particulars at any time.

The Hospital argued that this represented too much of a moving target; the Union that this was a continuing grievance and therefore justified. I directed as follows. The second sentence will now read:

The Union reserves the right to add to, alter or otherwise amend these particulars at any time, with leave of the arbitrator and, where granted, with sufficient notice to the Hospital before calling evidence respecting same that the Hospital is not prejudiced in its preparation.

IV

There are a number of production issues, The Union sought production from the Hospital on November 5, 2015; the Hospital provided 3 volumes of documents on February 10, 2016. By letter dated February 29, 2016, the Union complained that it had not received production in 8 areas and, by the hearing day, that had increased to 11. After discussions between the parties, it became clear that none of these alleged shortcomings in the production (or very few of them) arise from a legal dispute about the arguable relevance of the production request.

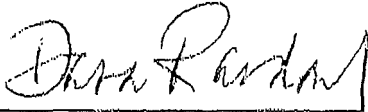
The Hospital undertook to make further inquiries and produce all documents that they are able to identify and which are under their control. Mr. Smeenk indicated that the Hospital would need a month 'to do further digging'. He advised, however, that the Union's request for production, set out in numbered paragraphs 3. and 4. of the Union's February 29, 2016 letter would have to be obtained from CCSSL. CCSSL not only agreed to produce same, but agreed to produce the broader range of documents set out in Schedule A to a subpoena issued to Ian Baskerville of CCSSL. There is a deemed undertaking that the information disclosed will be used for no other purposes than this proceeding.

The process for further production agreed to by the parties is this. Both the Hospital and CCSSL will provide the Union with the fruits of its inquiries by April 22, 2016. By May 6, 2016, the Union will advise in writing what it considers to be still outstanding. On or before May 16, 2016, the Hospital and CCSSL will address any issues of outstanding production raised by the Union. The Union will respond to same on or before May 26, 2016. If after that process, there are still outstanding issues with respect to production, we will convene a conference call.

V

The parties have had some discussions with respect to an expeditious procedure for litigating this matter. I welcome that and offer my services, by way of a conference call, to facilitate same.

DATED THIS 14TH DAY OF MARCH , 2016 IN BARRIE, ONTARIO.

A handwritten signature in cursive script, appearing to read "Dana Randall", is written over a horizontal line.

Dana Randall, Arbitrator