

IN THE MATTER OF AN ARBITRATION PURSUANT TO
THE LABOUR RELATIONS ACT, 1995

Between:

NORTH BAY REGIONAL HEALTH CENTRE
("the Hospital")

and

ONTARIO PUBLIC SERVICE EMPLOYEES UNION
("OPSEU" or "the Union")

GRIEVANCES REGARDING THE PATIENT FLOW NAVIGATOR POSITION

ARBITRATOR: Peter F. Chauvin

APPEARANCES FOR THE HOSPITAL:

Shane Smith Legal Counsel

APPEARANCES FOR OPSEU:

Christopher Bryden Legal Counsel

Hearing conducted on December 6, 2016

CASE MANAGEMENT AWARD

The Hospital and OPSEU have appointed me regarding a number of grievances pertaining to the Hospital's creation of a new position, the Patient Flow Navigator ("the PFN"), which the Hospital has included its bargaining unit with the Ontario Nurses' Association ("ONA"). OPSEU submits that the PFNs should be included in its paramedical bargaining unit.

The hearing commenced on December 6, 2016. John D'Orsay appeared on behalf of ONA and requested intervenor status. ONA submits that the PFNs are properly included in the ONA bargaining unit.

OPSEU stated that it will consent to ONA's request to intervene, if ONA will agree that it is bound to this arbitration procedure and any rulings that I may make in it. OPSEU stated that if ONA will not agree to be so bound, it will file a jurisdictional dispute application at the Ontario Labour Relations Board ("the OLRB"), and request that this arbitration be adjourned, pending the outcome of the OLRB jurisdictional dispute application.

However, both OPSEU and the Hospital stated that they would prefer to proceed by way of this arbitration process, with ONA as an intervenor, rather than by way of the OLRB jurisdictional dispute process.

ONA stated that it could not answer at that time, on December 6, 2016, whether it would agree to be bound by this arbitration procedure and any rulings that I may make in it. However, ONA stated that it would answer that question by December 15, 2016.

The Hospital, OPSEU and ONA stated that pending ONA's answer to the above question, they could tentatively agree upon the following case management issues, and if

ONA states that it agrees to be bound by this arbitration procedure and any rulings that I may make in it, the following case management issues are confirmed. If ONA states that it does not agree to be bound by this arbitration procedure and any rulings that I may make in it, the following case management issues are null and void, and OPSEU may file a jurisdictional dispute application at the OLRB. On this basis, the Hospital, OPSEU and ONA agreed upon the following case management issues.

The Grievances

OPSEU has filed numerous grievances regarding the PFNs. OPSEU stated that it would review these grievances to determine whether any of the grievances can be withdrawn, and whether some or all of the remaining grievances can be consolidated or heard together.

The Issues in the Grievances

OPSEU stated that the grievances collectively allege 3 different issues, being:

1. That there has been an improper contracting out.
2. That there has been a violation of the bargaining unit work provision.
3. That the PFNs perform paramedical work that is properly included in the OPSEU bargaining unit, and not the ONA bargaining unit.

OPSEU confirmed that it will not be advancing issues 1 and 2, and will only be advancing issue 3.

Production of Documents

On December 6, 2016, OPSEU provided the Hospital and ONA with a bound volume of numerous documents. I informed the Hospital, OPSEU and ONA that if any of them require any further documents, they must make a clear and specific written (email is

sufficient) request for same, and if the requested production is not provided, they can contact me by email and request a Production Order.

Witnesses and Will-Say Statements

The Hospital, OPSEU and ONA agreed that they want this process to proceed as efficiently and expeditiously as possible, and that they will endeavor to call as few witnesses as possible. The Hospital stated that it anticipated, at this point, that it might call only two witnesses, being a member of management and a PFN. ONA stated that it might call only one witness, also a PFN. OPSEU stated that it was difficult to project at that time how many witnesses it might call, but confirmed that it would attempt to call as few witnesses as possible.

The Hospital, OPSEU and ONA agreed that they would provide each other with will-say statements for their witnesses according to the following schedule:

1. The Hospital – January 27, 2017
2. ONA – February 3, 2017
3. OPSEU – February 10, 2017

The Manner and Order of Proceeding

This hearing continues on February 23, 24, 27, 28 and April 11, 2017. Without prejudice to the issue of who bears the burden of proof, the Hospital will proceed first with the calling of its witnesses, followed by ONA, and then by OPSEU, following which ONA and then the Hospital will have the right to adduce reply evidence, if appropriate.

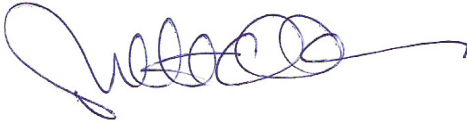
Notwithstanding the will-say statements, the Hospital, OPSEU and ONA will have the right to examine-in-chief (as limited as possible) and re-examine their own witnesses, and the Hospital, OPSEU and ONA have the full right to cross-examine the other parties' witnesses.

Bifurcation

The Hospital, OPSEU and ONA agreed that the hearing will be bifurcated, with a ruling on the merits first, and issues pertaining to remedies addressed thereafter.

As stated above, if ONA does not agree to be bound by this arbitration procedure and any rulings that I may make in it, the agreements above regarding case management are null and void.

Signed at Toronto on December 8, 2016.



Peter F. Chauvin, Arbitrator