

IN THE MATTER OF AN ARBITRATION

BETWEEN

WILLIAM OSLER HEALTH SYSTEM

("Hospital")

and

TEAMSTERS LOCAL 419

("Union")

Re: Program Assistant Classification Grievances

SOLE ARBITRATOR: James Hayes

APPEARANCES

For the Union

Daniel Anisfeld, Counsel

For the Hospital

Thomas Agnew, Counsel

A further consultation was held on September 29, 2017. Submissions were made in writing dated October 18, 2017 followed by teleconferences with counsel concluding on November 17, 2017.

AWARD

1. The parties remain in disagreement concerning Supplementary Awards dated April 6 and 28, 2017.
2. The dispositions set out below reflect my best assessment of the underlying facts and equities having regard to information received during a number of mediation efforts and consultations that have occurred over several years in a fluid labour relations environment. They are unlikely to satisfy the Union or the Hospital. However, neither party, nor I, has the appetite to prolong a dispute(s) that originated with a grievance filed in December 2011 by a predecessor bargaining agent.
3. Accordingly, the parties are in agreement that this Final Award should issue promptly in summary 'bottom line' fashion.

Requirement to post a Program Assistant position

4. The Hospital acknowledges that it failed to post a Program Assistant position within 30 days of April 6, 2017, as directed by the Award of that date, and alleges justification for this failure having regard to the situation concerning Sandra Vernon.
5. Ms. Vernon's present and future circumstances were well known to the parties and entirely foreseeable. There was nothing contingent about the order. The Hospital is directed to post a Program Assistant position forthwith.
6. The Hospital requests, if such an order be made, that the Award "make clear" that "this award would not affect the Hospital's ability to make operational decisions

in the future that could have an impact on Ms. Vernon, or any other Program Assistant, provided they are done in accordance with the collective agreement”.

7. Even should I have jurisdiction to do so, it would be unwise to make any general comment as to the rights of either party on the basis of a hypothetical proposition and I decline to do so.

8. While appreciating the Union’s understandable frustration concerning this issue, I decline to award damages as requested.

Classification of Grace Otello and Harjeet Sandu

9. There is now no question that the Program Assistant classification is properly in the bargaining unit. The Union has prevailed on this central issue. However, the Hospital says that Ms. Otello and Ms. Sandu are Administrative Assistants in excluded positions. Given that they were ‘red-circled’ in the 2017 Award, the Union suggests that they must be, and were always intended to be, included with other employees who are admitted Program Assistants. The Union’s perception is quite understandable.

10. However, the protracted history of these related grievances has been replete with attempted mediation and private meetings with the parties. Given my participation in this process, I am not able to accept that the position of the Hospital concerning this issue is late blooming. It has been raised with me previously by the Hospital.

11. This inclusion/exclusion issue lies beyond the scope of the grievances that ground my jurisdiction. Given the clear and fixed position now taken by the Hospital, the issue would now appear to be ripe for an independent grievance(s) should the Union wish to proceed in that manner. In my opinion, the Union’s

request for relief insofar as Union dues are concerned is directly linked to the outcome of any such grievance(s).

Placement on the wage grid

12. The intention of my April 28, 2017 Award was to reflect appropriate application of Section 25.02 of the Collective Agreement and to bring finality to this issue. While this summary Final Award is not intended to stand as any precedent concerning any subsequent debate concerning the proper interpretation of Section 25.02, there appears to be ostensible merit to the Union submission that the provision creates a 'floor not a ceiling' to the placement of affected employees.

13. It is not practical at this point to track 'what might have' or 'what should have' happened to all of the employees affected had the position postings required by the January 16, 2014 Minutes of Settlement been carried out in a timely fashion. The Union argues that Sandra Vernon, Cindy Estay, and Kelly Tyson remain prejudiced at this late date.

14. In all of the circumstances, I find that Ms. Vernon is now appropriately placed at the top of the Step 4 grid and that Ms. Estay and Ms. Tyson are now appropriately placed at the top of the Step 3 grid. Ms. Vernon shall be paid \$1,000 for the period prior to October 10, 2013 but her claim for additional compensation since that time is denied. Ms. Estay shall receive \$1,800 and Ms. Tyson \$1,300 relating to all retroactive claims arising from this matter.

Dated at Toronto this 17th day of November, 2017.


James Hayes