

In the Matter of an Arbitration

BETWEEN

THE CITY OF OTTAWA

(The Employer)

- AND -

**THE OTTAWA-CARLETON PUBLIC EMPLOYEES UNION,
CUPE LOCAL 503**

(The Union)

(GRIEVANCE OF Frank Storti)

Before: Kevin Burkett
Joe Herbert
Kathryn Butler-Malette

Counsel for the Employer: David Patacairk
Counsel for the Union: David Jewitt and Alison Longmore

Hearings held in Ottawa on December 17, 2015 and June 9, 2016.

AWARD

The employment of the Grievor, Frank Storti, was terminated effective March 3, 2015. The Union filed a grievance the next day alleging that the termination of the Grievor's employment was unjust and requested reinstatement of his employment to the City of Ottawa.

The parties met before this Board on two dates, namely December 17, 2015 and June 9, 2016 for a hearing of this matter. After hearing the submissions of the parties, the Board hereby orders as follows on a without prejudice or precedent basis:

1. The Grievor's employment shall be reinstated effective March 3, 2015 subject to the following conditions set out in this Order.
2. The letter of termination dated March 3, 2015 shall be replaced with a letter of discipline dated March 3, 2015.
3. The Grievor shall be demoted to a Labourer, Solid Waste position, or a position with an equivalent pay grade which is mutually agreeable between the Union and the City, (the

"Labourer position") with reinstatement to an active and vacant position in a Department of the City's choice as soon as a Labourer position becomes available and as soon as is administratively feasible. The parties further agree that:

- a. the Grievor shall not be considered for any Labourer position in which he would have access to precious metals or other valuable materials;
 - b. employees requiring accommodation in a Labourer position shall have priority over the Grievor to placement in any vacant Labourer position; and
 - c. the Grievor shall be supervised in the Labourer position in accordance with the City's usual practices and procedures.
4. The parties agree that the time spent from March 3, 2015 until the date that the Grievor is returned to an active position shall be considered a disciplinary suspension. The Grievor shall not receive any compensation or accumulation of seniority or service during the time of his disciplinary suspension; however, the period of suspension shall be considered an authorized leave so as to permit the Grievor to apply to OMERS to purchase back this period of leave at his own and sole expense. It is understood that such an application shall be determined entirely at the discretion of OMERS, and that the City shall not be required to pay any costs in relation to any such request.
5. The Grievor shall be reinstated on the following conditions:
 - a. For a period of two (2) years from the date the Grievor is returned to an active position, the Grievor shall not be able to post under the Collective Agreement for any other position(s).
 - b. For a period of two (2) years from the date the Grievor is returned to an active position, should the Grievor be subject to any discipline, which would normally attract a suspension or greater penalty, he shall be terminated from his employment immediately and without access to the grievance or arbitration procedure, except for the purpose of challenging the facts giving rise to the discipline.
 - c. After a period of two (2) years from the date the Grievor is returned to an active position, at the City's sole discretion, which cannot be subject to review by an arbitrator, the City will consider whether it will remove the posting barrier set out in (a) above, or whether it will remain for a further period of two (2) years.
 - d. Should the City, pursuant to (c) above, determine that the posting barrier is to remain for a further period of two (2) years, the posting barrier is to be removed at the end of that further two (2) year period, except that it is agreed that the Grievor shall not be entitled to post for any position of any sort in his former work area while he remains a City of Ottawa employee.
 - e. Should the grievor be unable, for any reason, to continue to work in the position(s) he obtains pursuant to paragraphs 3 and 5(a) through (d), including, but not limited to, a requirement for an accommodation in another position for reasons of disability, the City shall not be required to accommodate the grievor in

any position during that time which does not meet the requirements of paragraph 3 or 5(d).

- f. In addition, as a result of the Grievor's demotion, the Board finds that the City shall not be responsible for any assistance, financial or otherwise, with any efforts the Grievor may undertake in the future to renew or otherwise retain any MOECC licensing.
6. Neither the City, the Union nor the Grievor shall disclose the reason for the Grievor's placement into the Labourer position to his new coworkers except for implementation purposes in order to permit the Grievor a fresh start. In the event that either party breaches this provision, the abiding party will be entitled to a determination by this Board of an appropriate remedy, if any.

The Board will remain seized with respect to any issues arising from this Award.

Dated at Ottawa this 23rd day of March, 2017.

Kevin Burkett

K. Burkett, arbitrator

"Kathryn Butler-Malette"

K. Butler-Malette, employer
nominee

"Joe Herbert"

J. Herbert, union nominee