

IN THE MATTER OF AN ARBITRATION

B e t w e e n:

ROYAL OTTAWA HEALTH CARE GROUP

(the "Employer")

- and -

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 942

(the "Union")

And in the matter of a Union policy grievance concerning bargaining unit work (2017-RP11).

Russell Goodfellow – Sole Arbitrator

APPEARANCES FOR THE HOSPITAL:

Marie-Pierre T. Pilon, counsel
Alicia Bouchard
Cal Crocker

APPEARANCES FOR THE UNION:

Margo Pasley, National Representative
Amir Sigarchi
Jamie Lafreniere
Lisa Riasyk

Hearing held March 6, 2018. Written submissions completed June 12, 2018.

AWARD

This award concerns a Union policy grievance.

The Union claims that duties normally assigned to bargaining unit members are being performed by non-bargaining unit personnel, contrary to Article 11.01 of the collective agreement, which states:

11.01 - Work of the Bargaining Unit

Employees not covered by the terms of this Agreement will not perform duties normally assigned to those employees who are covered by this Agreement, except for the purposes of instruction, experimentation, or in emergencies when regular employees are not readily available.

Two witnesses testified for the Union. The first was Marlene Rivier, the President of the local OPSEU unit at the Hospital. The second was Amir Sigarchi, the President of the grieving CUPE unit. Mr. Sigarchi was cross-examined briefly. Ms. Rivier was not cross-examined at all. The Hospital led no evidence of its own. Closing submissions were made in writing. The submissions were quite brief, with the Union filing no reply submissions.

In my view, the evidence fails to establish a breach of the collective agreement. What it does establish, which was the thrust of Mr. Sigarchi's evidence, was a belief on the part of the Union that certain administrative duties associated with the Hospital's recent acquisition of a PET MRI machine would be performed for a defined period of time and to a limited extent by employees of a third party, after which they would be brought "in-house" and assigned to a CUPE member.

Both Ms. Rivier and Mr. Sigarchi told of a meeting involving Hospital and union representatives (including them and the local ONA president) on October 29, 2015. In that meeting the Hospital informed the union representatives of its plans for the acquisition and operation of the machine in what was to be a newly established Brain Imaging Centre. Both witnesses testified they were advised that after the Hospital had gained sufficient familiarity with

the operation of the machine, which was anticipated to take between three and five years, the Hospital would review the matter with a view to bringing the work “in-house” under the OPSEU and CUPE collective agreements. In the meantime, however, it would be performed by employees of the Ottawa Heart Institute, from which the machine was being acquired. Mr. Sigarchi testified that because he understood the amount of work in the interim would be minimal (no more than four or five hours per week) he did not object, provided the Hospital, which it undertook to do, would keep him informed of any changes.

Regrettably, Mr. Sigarchi testified, that did not happen. Within about a year, the volume of work increased to the point where it was being performed by not one but two Ottawa Heart Institute employees on a part-time basis, without Mr. Sigarchi being advised, thus leading to the filing of the grievance. Mr. Sigarchi testified that had he known how much work would be involved from the outset, he would have grieved sooner.

The difficulty, from the Union’s perspective, is that the claimed administrative work is and has always been contracted out. This means that Article 11.01 has no application. Article 11.01 is concerned with non-bargaining unit employees of the Hospital performing bargaining unit work, not employees of a third-party. Subcontracting is the business of Article 10.01, which also does not apply because it requires “... a layoff of any employees other than casual part-time employees ...”, something that has not happened. Nor, to be clear, was there any evidence or argument that the work has, in effect, been “contracted in”, arguably contrary to Article 11.01.

In my view, that is the beginning and end of the matter. While the volume of work has increased, it remains under subcontract. The time of the Hospital’s promised review has not yet arrived. While the Hospital also argued, as part of its legal defence of the grievance, that there is “little overlap, if any” between the duties of the positions in question and those performed within the bargaining unit, the evidence on point was extremely limited and, in my view, this is an issue that is better left to be addressed, more fully, at a future time, should it become necessary.

The grievance is accordingly dismissed.

DATED at Toronto this 3rd day of July 2018.

A handwritten signature, appearing to be 'R. Goodfellow', is enclosed within a hand-drawn oval. The signature is written in a cursive style with a prominent loop at the end.

Russell Goodfellow – Sole Arbitrator