IN THE MATTER OF AN ARBITRATION
Pursuant to the *Labour Relations Act,* R.S. 1995

BETWEEN:

HURON SUPERIOR CATHOLIC DISTRICT SCHOOL BOARD

("Board")

- and –

CUPE, LOCAL 4148

("Union")

SOLE ARBITRATOR: Jasbir Parmar

On Behalf of the Board:

Jessica Koper, Counsel, Shibley Righton LLP

On Behalf of the Union:

Felicia Forbes, CUPE National Representative

This matter was heard by way of teleconference on January 28, 2019.

1. The parties have a dispute with respect to implementation of Minutes of Settlement, signed October 1, 2018. I am seized with determining such issues.

2. The Minutes of Settlement state as follows:

> In the matter of a Grievances Number 06-18- and Number 06-19 (Group) and Number 04-2017
>
> Between
>
> CUPE Local 4148 ("CUPE")
>
> And
>
> Huron-Superior Catholic District School Board ("the Board")
>
> Minutes of Settlement
>
> WHEREAS the parties have resolved the differences between them with respect to the above captioned grievances, without prejudice or precedent to any other matter
>
> The parties agree as follows:
>
> 1. Grievances #06-18, #06-19, and #04-2017 are withdrawn.
>
> 2. In accordance with the requirements of the Employment Standards Act, 2000 the Board shall adjust the rates paid to all caretakers to $22.77 per hour retroactive to April 1, 2018 for the period April 2018 to August 31, 2018 and from September 1, 2018 $23.00 per hour, and effective February 1, 2019, $23.23 per hour until August 31, 2019 when the rate shall be 23.35 per hour, providing such increases are permitted by law.
>
> 3. Arbitrator Jasbir Parmar will remain seized.

3. Some key facts provide useful context for the current dispute.

4. The collective agreement, in effect at the time of the grievance, the time the MOS was signed and at present, provides a different wage rate for full-time than it does for non-full-time caretakers. In October 2018, when the MOS was negotiated and signed, Bill 148 was in effect. Bill 148 mandated that employees performing the same work could not be paid different rates of pay because of a difference in employment status (section 42.1, *ESA*). On January 1, 2019, Bill 47 came into effect, repealing section 42.1.

5. No actual steps to implement the MOS have yet taken place.

6. The Board acknowledges the affected employees are entitled to receive payment of an amount equal to the difference between the amount they were actually paid, for the period

from April 1 to December 31, 2018, and the amount they were entitled to receive as reflected by the wage adjustments specified for that period in paragraph 2 of the MOS,.

7. However, the Board argues that since section 42.1 has been repealed, the statutory requirement set out therein no longer applies. The Board submits that the MOS did not include an agreement to change the collective agreement, and therefore, effective January 1, 2019, the collective agreement governs. In other words, the affected employees would revert to the lower wage rate specified in the collective agreement, rather than the higher rates specified in the MOS. The Board submits the MOS is clear that the wage rate adjustments specified therein were to be made only to accord with the requirements of the *ESA*, and the MOS was not intended to prevail beyond the period those requirements were in place. The Board also relies on section 52(3) of the *Legislation Act*, which provides that when an Act is repealed and replaced "Proceedings commenced under the former Act or regulation shall be continued under the new or amended one, in conformity with the new or amended one as much as possible."

8. Meanwhile, the Union submits that all of the wage increases referenced in paragraph 2, including those that are to take effect in 2019, must be made. The Union's position is based on the fact that the legislation in place at the time the MOS were signed mandated such increases.

9. I accept that the parties intended that the wage increases specified in paragraph 2 were to be made in order to comply with the ESA. This is evident from the fact that the MOS does not simply state the wage rates will be adjusted, but rather that they will be adjusted to accord with the *ESA.*

10. Section 42.1 is no longer in effect as of January 1, 2019, and as such any further wage adjustment is no longer required in order to comply with the ESA. For this reason, I find the Board is not required to implement any wage adjustments specified in the MOS to be made after January 1, 2019.

11. However, I do not agree with the Board's interpretation that this means the wage rate of the non-full-time caretakers as of January 1, 2019 reverts back to the lower rates set out in the collective agreement. There is nothing in the MOS that suggests that was the intention of the parties.

12. Paragraph 2 of the MOS states that the Board will "adjust the rate" of these caretakers effective specific dates in 2018. In agreeing to "adjust [their] rates", the MOS altered the operation of the collective agreement with respect to the wage rate of these employees. Accordingly, their rate of pay as of December 31, 2018 was $23.00 per hour.

13. Bill 47 does not provide any authorization for an employer to rescind any wage adjustments made in 2018 to comply with Bill 148. The legal requirements of the ESA with respect to the period in 2018 when Bill 148 was in effect continue.

14. Similarly, the MOS does not provide for any reduction of these employees' wage rate *after* any specified wage adjustment has been made, even if there is no longer a statutory requirement to make any future adjustments. There is nothing in the MOS which supports the conclusion that the parties intended to revert back to the wage rates specified in the collective agreement in the event there was any change in the legislation.

15. The rate of these caretakers remains at $23.00 hour even after January 1, 2019. It will remain at that level until the collective agreement requires the rate be increased.

Dated this 5th day of February, 2019.

"Jasbir Parmar"

JASBIR PARMAR