IN THE MATTER OF AN ARBITRATION

BETWEEN:

UFCW-LOCAL 333 ("Union")

-and-

RUSSELL SECURITY SERVICES INC. ("Employer")

(The Corporation and the Union collectively "the Parties")

ARBITRATOR:	**F.R. VON VEH, Q.C.**
FOR THE UNION:	**MARK GERNON, Consultant** **GEOFF GOSSELIN, Union Business Agent**
FOR THE CORPORATION:	**DAVID BECK, Human Resources Manager**
LOCATION OF HEARING:	**VAUGHAN, ONTARIO**
DATE OF HEARING:	**DECEMBER 18, 2019**
SUBJECT MATTER:	**ARTICLE 17.03(e) – Personal Emergency Leave/Sick Time**
DATE OF AWARD:	**January 22, 2020**
GRIEVANCE:	**POLICY Grievance Article 17.03(e)-Personal Emergency Leave/Sick Time**

AWARD

The instant Grievance dated July 26, 2019, states:

UFCW Local 333 ("the Union") grieves on behalf of its members, that the Employer, Russell Security has violated the Collective Agreement including, but not limited to, the Employment Standards Act, 2000 (the "ESA"), by not paying sick/PEL days to their employees.

As a remedy, the Union is seeking

- *The immediate payment of sick/PEL days;*
- *A declaration that the Employer has breached the Collective Agreement and the ESA;*
- *Such further and other relief as may be appropriate in the circumstances and that an arbitrator may award*

The representatives of the Parties made comprehensive submissions relating to the grievance before me, and no witnesses were called to testify. There is no dispute on the facts leading up to the Grievance. The issue for adjudication is the interpretation of Article 17.03(e) of the applicable Collective Agreement

The Union was party to a Collective Agreement with G4S Secure Solutions (Canada) Ltd., a security services provider (hereinafter referred to as "G4S") effective March 1, 2018, and terminating February 28, 2022.

The Employer is a security services provider who replaced and took over the security service contract for numerous LCBO stores from G4S, effective April 1, 2019. All employees of G4S providing security services were members of UFCW Local 333. The Parties are in agreement that the G4S – Local 333 Collective Agreement is accepted by the Employer "as is" – in other words, it applies without any amendments to the Employer effective April 1, 2019.

Some background information is important to note. In Ontario in 1995 bill 7 was passed into law. This Bill applied to "service providers" who provided "cleaning services", "food services", and "security services". Since service provider contracts changed hands on a regular basis, Bill 7 provided protections to employees who are affected when contracts changed hands. Bill 7 deemed a "sale of business" occurred when one service provider (such as G4S) is replaced by another service provider (such as the Employer). The employees governed by the G4S – Local 333 Collective Agreement, effective April 1, 2019, are all offered employment with the Employer on the exact terms and provisions of the G4S – Local 333 Collective Agreement. If any employees do not accept to continue employment with the Employer, they must be paid the applicable statutory termination and severance pay. With this methodology of dealing with changing service providers, Bill 7 focused on protecting employees when service provider contracts changed hands. The provisions of Bill 7 amended the Employment Standards Act.

Article 17.03(e) of the applicable Collective Agreement – now Russell Security Services Inc. and UFCW – Local 333 is central to the issue being adjudicated.

> *"17.03(e)For purposes of considering transfers under the Building Services Act, individuals will not be entitled to PEL/Sick Leave until achieving one (1) years' service with G4S"*

Also relevant is an undated Letter of Intent between the Parties set out at page 61 of the applicable Collective Agreement.

> *"The Parties agree that in the case of future acquisitions by the employer of companies providing the same or similar security services, benefit contributions as per Article 17.01 shall not commence until one year from the date of acquisition".*

Section 69(1) of the Labour Relations Act was referred to by the Union.

> "69(1) In this section,
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> *"business" includes a part or parts thereof; ("enterprise")*
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> *Sells" includes leases, transfers and any other manner of disposition, and "sold" and 'sale" have corresponding meanings. ("vend", "vendu", "vente")*

Successor employer

(2) Where an employer who is bound by or is a party to a Collective Agreement with a trade union or council of trade unions sells his, her or its business, the person to whom the business has been sold is, until the Board otherwise declares, bound by the Collective Agreement as if the person had been a party thereto and, where an employer sells his, her or its business while an application for certification or termination of bargaining rights to which the employer is a party is before the Board, the person to whom the business has been sold is, until the Board otherwise declares, the employer for the purposes of the application as if the person were named as the employer in the application".

Also, the Employment Standards Act, Part IV – Section 9(1) and 10(2) were referred to.

> *"9. (1) Sale, etc., of business. – If an employer sells a business or a part of a business and the purchaser employs an employee of the seller, the employment of the employee shall be deemed not to have been terminated or severed for the purposes of this Act and his or her employment with the seller shall be deemed to have been employment with the purchaser for the purpose of any subsequent calculation of the employee's length or period of employment".*
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> *"10. (2) No termination or severance. – The employment of the employee shall be deemed not to have been terminated or severed for the purposes of this Act and his or her employment with the replaced provider shall be deemed to have been employment with the new provider for the purpose of any subsequent calculation of the employee's length or period of employment".*

The Union submits that by virtue of section 69 of the Labour Relations Act, the Employer is a "successor employer". It is further submitted the seniority of all the employees previously employed by G4S are deemed to be continued in employment with the Employer by virtue of the provisions of sections 9(1) and 10(2) of Part IV of the Employment Standards Act. The Union further submitted that the provisions of the Letter of Intent (set out earlier), would apply in a situation where the Employer acquired another company – in such case benefit contributions pursuant to Article 17.01 would commence one year from the date of acquisition. As well, it is submitted that the provisions of the Letter of Intent do not apply to Article 17.03(e).

The Employer submits that it must follow the terms and provisions of the Collective Agreement as of April 1, 2019, the date when it took over the business from G4S. In other words, effective April 1, 2019, if an employee covered by the Collective Agreement did not have one year of service with the Employer, such employee would not be entitled to PEL/Sick Leave.

Observations and Findings

1. The issue being adjudicated is set out earlier in this Award and will not be repeated.

2. I find that when Russell Security Services Inc. replaced and took over the security service contract effective April 1, 2019, from G4S it became a successor employer under Section 69 of the Labour Relations Act. Accordingly, Russell Security Services Inc. became bound by the then – existing Collective Agreement between G4S and the Union.

3. I find, based on agreement of the Parties at the hearing before me, the Parties accept that the Collective Agreement between G4S and the Union is accepted by the Employer "as is" effective April 1, 2019.

4. I find that by virtue of the provisions of Section 9(1) of Part IV of the Employment Standards Act, the employment of the employees of the seller (G4S), shall be deemed to have been employed with the purchaser (the Employer) for the purpose of any subsequent calculation of the employee's length or period of employment. My finding in this regard is further supported by the provisions of Section 10(2) of Part IV of the Employment Standards Act.

5. I find that the provisions of the Letter of Intent (set out earlier) do not have a bearing on the determination of the grievance before me.

6. I find that the correct and reasonable interpretation of Section 9(1) and 10(2) of Part IV of the Employment Standards Act, result in the Employer's employees, after April 1, 2019, being governed by their previous length of service with G4S.

7. In order to correctly interpret Article 17.03(e), I find that any employee covered by the Collective Agreement having accumulated more than one year of service with G4S as of April 1, 2019 is entitled to the PEL/Sick Leave benefits provided for in Article 17.03(e).

8. I find the Grievance before me has merit, and accordingly succeeds.

ORDER

1. All employees covered by the Collective Agreement between the Parties having one year of service as of April 1, 2019, are entitled to PEL/Sick Leave pursuant to the provisions of Article 17.03(e). To correctly interpret and apply the words "one year of service", please refer to point #4 of the above noted Observations and Findings.

2. I remain seized to deal with any issues in case there are any difficulties in implementing this Award.

Dated at Toronto, Ontario, this 22nd day of January, 2019

F.R. VON VEH, Q.C.
Arbitrator