

**IN THE MATTER OF AN ARBITRATION  
UNDER THE COLLECTIVE AGREEMENT  
AND THE ONTARIO *LABOUR RELATIONS ACT***

**BETWEEN:**

**HEADWATERS HEALTH CARE CENTRE**

**("the Employer")**

**AND**

**ONTARIO PUBLIC SERVICE EMPLOYEES UNION**

**("the Union")**

**OPSEU GRIEVANCE NO. 2018-0227-0027**

**AWARD**

|                          |                                                               |
|--------------------------|---------------------------------------------------------------|
| <b>Arbitrator:</b>       | <b>Barry Stephens</b>                                         |
| <b>Union Counsel:</b>    | <b>Alison Nielson-Jones, OPSEU Grievance Officer</b>          |
| <b>Employer Counsel:</b> | <b>Robert W. Little, Hicks Morley Hamilton Stewart Storie</b> |

**Heard by conference call on March 13, 2020**

## **AWARD**

[1] The union seeks to withdraw the grievance in this matter and takes the position that it does so “neither with nor without prejudice”. The employer does not oppose the union’s right to withdraw the grievance but has raised issues with respect to the arbitration process, alleging that the grievance was obviously without merit, and further alleging that the union has a history of pursuing meritless grievances to arbitration and abandoning them prior to the start of the hearing, but only after incurring the expenses associated with the hearing process.

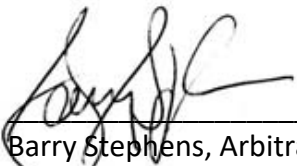
### **Conclusions and Decision**

[2] The parties are not in disagreement that the union has the right to withdraw the grievance, and the employer is not seeking a ruling that the withdrawal must be with prejudice. In essence the employer seeks a finding that the union’s decision to withdraw is part of an unacceptable pattern of inappropriate use of the grievance arbitration process and that the members of the bargaining unit, the union executive and the union should be cautioned against the filing of grievances that are not sustainable with respect to collective agreement language.

[3] I can understand the employer’s concerns in the instant case. There does not appear to be any ambiguity in the collective agreement provision in that it calls for some evidence of harm to the bargaining unit that is a direct result of the employer’s actions. Moreover, the union’s grievance correspondence appears to emphasize the opening

words of the relevant collective agreement provision, without any reference to the harmful triggering events that would appear to be required to substantiate a breach.

[4] However, having not heard any evidence I am not in a position to admonish, instruct or make any meaningful comment about the union's actions or motivations with respect to this grievance or the reasons for withdrawing the grievance. Thus, all that can be done in these circumstances is to observe that the union has withdrawn the grievance as it is permitted to do.

A handwritten signature in black ink, appearing to read 'Barry Stephens', is written over a horizontal line.

Barry Stephens, Arbitrator  
April 4, 2020