

IN THE MATTER OF AN ARBITRATION
UNDER THE *LABOUR RELATIONS ACT*, 1995

Between:

THE CORPORATION OF THE COUNTY OF SIMCOE

(Employer)

-and-

ONTARIO PUBLIC SERVICE EMPLOYEES UNION ON BEHALF OF ITS LOCAL 3035

(Union)

Re: UNION POLICY GRIEVANCE

SOLE ARBITRATOR: Yasmeena Mohamed

APPEARANCES:

FOR THE EMPLOYER: Philip Wolfenden, Counsel

FOR THE UNION: Chris Donovan, Counsel

TELECONFERENCE DATE: July 19, 2012

DECISION DATE: July 20, 2012

CONSENT ORDER

Introduction:

(1) This decision deals with a preliminary issue raised by the Ontario Public Service Employees Union (the “Union”) relating to the non-production of documents by the Corporation of the County of Simcoe (the “Employer”).

(2) On July 6, 2011, the Union filed a policy grievance alleging that the Employer has been deducting “OMERS” pension contributions incorrectly and is therefore in violation of Article 22.05 of the Collective Agreement.

(3) On February 28, 2012, I was appointed under subsection 49 (4) of *The Labour Relations Act*, 1995, to hear this grievance. The hearing in the matter was set down for March 15, 2012 and the continuation of the hearing was set down for July 31, 2012.

(4) In preparation for the July 31, 2012 hearing date, the Union made several requests for the production of all the arguably relevant documents. By letter dated June 21, 2012, the Union requested the following documents:

- a. The ledgers with respect to the pay of the part-time employees, dating back to 2001; which the Employer brought to the March 15, 2012 hearing;
- b. Any pay-stubs of the part-time employees, dating back to 2001; and
- c. All documents which the Employer intended to rely upon.

(5) To date the Employer had not responded to the Union’s production request under cover of its letter dated March 15, 2012

(6) On July 12, 2012, the Union requested a teleconference prior to the July 31, 2012 hearing to seek an Order for the production of all of the arguably relevant documents in the matter.

(7) A teleconference was held on July 19, 2012, at which time the following submissions were made by the parties:

Submissions of the Parties:

Employer:

(8) From the outset of the teleconference, the Employer agreed that the documents requested were all arguable relevant, but could not be produced in a timely manner because of the following circumstances:

- a. The part-time employee pay-stubs backdating to 2001 were no longer in the Employer’s possession and therefore unavailable;

- b. The retrieval of the pay “ledgers” for all of the part-time employees backdating to 2001 was a monumental task requiring additional staff and time.
- c. The production request came at a time when the payroll and finance staff were dealing with massive computer difficulties and hence could not respond to the production request in a timely manner.

(9) The Employer submitted that it required additional time to respond to the Union’s production request and proposed that the July 31, 2012 hearing be adjourned to a later date in September 2012.

Union:

(10) The Union submitted that it would agree to the Employer’s adjournment request, conditional upon the parties setting the next hearing date and an appropriate time line for the provision of the productions prior to the next scheduled hearing date.

Agreement:

(11) The parties subsequently agreed to the following terms of adjournment:

- a. The hearing date of July 31, 2012 be adjourned and the next hearing date will be set for September 26, 2012;
- b. The Employer will undertake to produce all arguably relevant documents, which includes: the pay “ledgers” from 2001 to present and all of the documents the Employer intends to rely upon, by September 7, 2012.

Order:

(12) Having heard the submissions of the parties, I hereby make the following Order:

1. The hearing date in the above matter, scheduled for July 31, 2012 will be adjourned.
2. The next hearing date is set for September 26, 2012.
3. The Employer will produce, by September 7, 2012, all arguably relevant documents, which includes: the pay “ledgers” from 2001 to present and any and all the documents the Employer intends to rely upon.
4. I will remain seized with respect to the implementation of this award.

Dated this 20th day of July, 2012 in the City of Mississauga

Yasmeena Mohamed

Sole Arbitrator