

IN THE MATTER OF AN ARBITRATION BETWEEN

THE CORPORATION OF THE COUNTY OF ESSEX

and

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCALS 2974.0, 2974.1 AND 2974.2

(Separate Policy Grievances Filed by Each Local - All Dated November 23, 2018)

AND BETWEEN

THE CORPORATION OF THE COUNTY OF ESSEX
(SUN PARLOUR HOME FOR THE AGED)

and

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 860

(Policy Grievance Dated November 12, 2018)

ARBITRATOR

TED CRLJENICA

COUNSEL FOR THE UNION

MICHAEL KLUG

COUNSEL FOR THE EMPLOYER

LEONARD P. KAVANAUGH Q.C.

RELEASED

MAY 25, 2021

RULING ON THE UNIONS' NOTICE OF WITHDRAWAL OF THE GRIEVANCES

- [1] Before me are four policy grievances arising from four separate bargaining units. The grievances are being heard together as they involve the same issue, that being whether the employers reduced coverage for certain health and welfare benefits. The relevant health and welfare benefits policy wording is the same or similar for all four units.
- [2] The primary focus of the arbitration hearing was an alleged reduction in the amount

reimbursed for the purchase of compression stockings.

- [3] Subsequent to the third day of hearing the unions reviewed their evidence and concluded that none of their members were “out of pocket” as a result of the alleged reduction. Thus, if successful the unions would obtain declaratory relief.
- [4] Further, according to the unions since the filing of the grievances the amount reimbursed for compression stockings has increased. In the union’s view the cost to complete the arbitration hearing to obtain a declaratory order is not justified.
- [5] Prior to the fourth day of hearing counsel for the unions gave notice that the unions were withdrawing the grievances. This was communicated by email:

Dear Mr. Crljenica:

This is to advise that my clients, CUPE Local 2974 and CUPE Local 860, do hereby withdraw the above-noted grievances.

Further to my email to Mr. Kavanaugh earlier today, it is my clients’ position that the withdrawal of these grievances is strictly without prejudice to any other matter between the parties.

Thank you for your attention to this and please advise with any questions or concerns.

- [6] As reflected in the employers’ responding email, they objected to the grievances being withdrawn “*without prejudice*”:

Our client does not agree to the unilateral conditions which [the unions have] imposed on the withdrawal of the Grievances.
- [7] The employers were concerned that if the unions were allowed to withdraw the grievances on a *without prejudice* basis they would be in a position to file new grievances alleging the same violation and seeking the same remedies but the employers would be prevented from relying on the withdrawals of the current grievances in defence of such future grievances.
- [8] Many emails were exchanged between the parties, some of which were copied to the arbitrator. This culminated in the employers requesting that the grievances be ruled to have been withdrawn on a *with prejudice* basis or alternatively a ruling that the grievances were withdrawn without conditions.
- [9] The unions’ position was that a ruling is not required as they were not unilaterally imposing a condition that the grievances were withdrawn *without prejudice* nor are they seeking a ruling to that effect. Rather, they only reserved the right to argue before an arbitrator in the context of future grievances dealing with this same issue that the withdrawals were *without prejudice*. The unions recognize that the

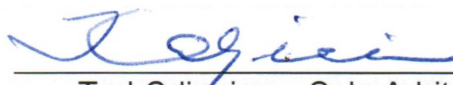
employers would be free to argue that the current grievances were withdrawn *with prejudice*. The issue would then be determined by the arbitrator hearing the future grievance.

- [10] The authorities relied on the parties recognize that an arbitrator seized with a grievance can allow or disallow a party from withdrawing the grievance and can determine the conditions attached to a grievance that is being withdrawn; see: *Canadian Red Cross Blood Transfusion Services and Ontario Nurses Association*, (1981) 30 L.A.C. (2d) 23 (Ont. Arb.); *Reliacare Inc. (Maitland Manor Health Care Centre) and Service Employees Union, Local 201* (1991) 20 L.A.C. (4th) 170 (Ont. Arb.); *Verspeeten Cartage and Teamsters, Local 141*, (2001) 103 L.A.C. (4th) 174 (Ont. Arb.); *Maple Leaf Foods Inc. and United Food and Commercial Workers Union, Canada, Local 175*, 2018 CanLII 7735 (ONLA).
- [11] Unlike some of the authorities to which the parties referred, these employers are not alleging that the unions' withdrawal of the grievances was an abuse of process. The unions simply decided that the cost of continuing the arbitration is not justified by the best possible outcome they can achieve. To ensure there is no misunderstanding between the parties, it is my ruling that the unions are entitled to withdraw the grievances. I am not prepared to grant the employers' request that the unions only be allowed to withdraw the grievances on a *with prejudice* basis.
- [12] As was ruled in *Reliacare Inc. (Maitland Manor Health Care Centre) and Service Employees Union, Local 210*, it is my determination that the nature and consequences of the withdrawals should be left to be determined by an arbitrator or a board of arbitration seized with a potential future grievance.

RULING

- a. It is recorded that these grievances have simply been withdrawn, without conditions attached;
- b. It is also recorded that the unions are free to argue in the context of a potential future grievance, the nature and consequences of the withdrawals;
- c. It is also recorded that the employers did not accept that the withdrawals were *without prejudice*; that they argued that the withdrawals should have been withdrawn on a *with prejudice* basis, which request was denied. They are free to argue in the context of a potential future grievance, the nature and consequences of the withdrawals.

MAY 25, 2021



Ted Crljenica – Sole Arbitrator