

IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

Extendicare

and

CAW, Locals 302, 504, 830, 1120 & 2458

Before: William Kaplan
Sole Arbitrator

Appearances

For the Employer: Malcolm Winter
Bass Associates

For the CAW: Robert Buchanan
National Representative
CAW

Corey Vermey
National Representative – Pension & Benefits
CAW

A hearing in this matter was held in Mississauga on September 29, 2012.

Introduction

This interest arbitration relates to the renewal of collective agreements covering 1400 full- and part-time employees at ten Extendicare facilities (nine owned and operated by Extendicare, and one managed by Extendicare). Notice to bargain was given on May 22, 2012. Conditions for joint bargaining were established on June 20, 2012. The parties met throughout June and July. While all previous agreements between the parties were resolved through direct bargaining without the need for third party intervention, in this round an agreement could not be reached. Accordingly, a no-board report was issued on July 20, 2012 and the outstanding issues in dispute proceeded to a hearing held in Mississauga on September 29, 2012.

At the request of the parties, I direct that the new collective agreements consist of all agreed-upon items, including holiday pay resolved at the hearing, the un-amended portions of the expired collective agreements, and this award disposing of the remaining items in dispute. Unless directly dealt with in this award, all outstanding employer and union proposals are dismissed.

In determining the outstanding issues, I have been guided by the legislative criteria. They are set out in the *Hospital Labour Disputes Arbitration Act*. Both parties referred to them in their written materials, and those materials have been carefully reviewed. There is no doubt, for example, that the economic situation in Ontario is very troubled. In 2012, the government increased funding to the

nursing envelope by only 1%. A significant portion of the employees in these bargaining units have their wages and compensation funded through the nursing envelope. While this point is elaborated below, it is quite clear that the economic situation in Ontario has influenced both collective bargaining settlements and interest arbitrators and thus appropriately informs the disposition in this award.

In addition to considering and applying the statutory criteria, careful attention has also been paid to replication, and by that I mean the requirement that boards of interest arbitration attempt to replicate the results which would have occurred if the collective bargaining process had not been interrupted by interest arbitration. What interest arbitrators attempt to achieve is a result that approximates, as closely as possible, what the parties would have accomplished by way of free collective bargaining. It is axiomatic that free collective bargaining results, not to mention awards arising out of the interest arbitration process, particularly in the health care sector, have recently been characterized by overall and significant monetary restraint.

Award

Wages

The union sought 2% in each year of the agreements and a variety of other monetary improvements. The employer proposed zeros and a freeze on movement through the grid (unless equivalent savings were found through cost containment), not to mention a number of monetary concessions.

As noted above, there is a trend in recent settlements of lump sum payments rather than across-the-board increases. Of particular relevance to this case, recent health care sector awards have provided for lump sum cash payments valued at 1% (and sometimes more) of wages. Note must also be made of the just-released SEIU master decision for the participating nursing homes of Arbitrator Teplitzky (September 27, 2012) that awarded zero percent in years 1 and 2 and a 15¢ per hour lump sum payable in the final weeks of each of the first two years of the agreement. Arbitrator Teplitzky also directed a wage re-opener in year 3. Obviously, this is a lead and influential award. It further cements the freely negotiated and awarded collective agreement trend in health care of providing for lump sums rather than increases to base.

In its submissions, the employer also cited some recent settlements such as, for example, the CAW with the Big Three. In the case of the Big Three, the parties negotiated status quo on wages (ranging, for instance, in the case of Ford from \$34.18 an hour to \$40.58). However, the three-year CAW settlements provide for lump sum payments of \$2000 per employee per year and a ratification bonus of \$3000. In addition to generous benefits and pension, the CAW represented-employees receive numerous, and well above the norm, paid holidays each year beyond vacation. Commitments were also given by the automobile manufacturers for hundreds of new jobs. The CAW settlements, along with a Red

Cross settlement for home care workers, discussed below, were directly relied on as comparators in the SEIU master.

In my view, the CAW settlements are distinguishable. The CAW settlements, I conclude, are not applicable or persuasive as comparators as the industry is not comparable, nor are any of the terms and conditions of employment. While the private sector is relevant, because of the statutory criteria among other reasons, when the specific terms of those particular settlements are carefully reviewed they cannot fairly be described as providing for zeros. They do that insofar as they freeze hourly wage rates, but given the quantum of the lump sums – \$9000 over three years – not to mention the reinvestment and hiring commitments, they are hardly roll-over agreements even though they do introduce certain cost containments, for example, on wages and pensions for new hires.

The Red Cross settlement, replicated in the SEIU master, provided 15¢ per hour (1%) on the highest rate in that collective agreement. This is a health care settlement: home workers. Other important awards referred to by the parties in this case were the ONA (Hospital) and ONA (Nursing Homes) and OPSEU (Hospital) awards, mentioned above, providing lump sums in the first two of three years followed by an ATB (and all containing both cost savings and improvements). All of these settlements and central awards, covering thousands of employees, are self-evidently important and persuasive comparators.

What matters most, in my view, are these other health care sector settlements and awards (although, to be fair, bargaining units of nurses and technologists are quite different than those in the bargaining units in this case and those differences are reflected in the much higher wage rates and the much higher value, therefore, of the lump sum payments). While not legally determinative of the compensation issue, it is noteworthy that the full-time employees in these Extendicare homes have, in general, extremely long service.

Having carefully considered all of these awards and settlements, including the determination of the lump sum per hour based on the highest rate in the Red Cross settlement, and being well aware of the important precedential impact of the SEIU master, traditionally the lead award in this sector, I conclude that it is appropriate to continue the wage freeze trend and award a lump sum, and one consistent with the prevailing practice, by and large, of awarding 1%.

Accordingly, I award \$400 in each year for full-time employees and \$200 in each year for part-time employees. This lump sum is calculated on the basis of 1% of the average rate (full- and part-time) of 20.46 based on the 37.5 hours of work of full-time employees as set out in the employer's brief. This lump sum is to be paid quarterly, and pro-rata as appropriate.

Pension Plan

As Arbitrator Stanley noted in *ONA & the Participating Hospitals* (October 31, 2011), one of the comparator awards, "We find the logic of allowing an employee

to participate in the Employer's pension plan on completion of their probationary period to be compelling." Eligibility threshold reduced as per union proposal.

ODA Schedule

Effective thirty days following issue of award, one year lag on current ODA Schedule.

Women's Advocate

Union proposal awarded in part. Employer to provide unpaid leave to one employee per home to participate in the training. However, any expenses to be assumed by the union directly and/or through the paid educational leave program.

Term

August 1, 2012 until July 31, 2014.

Conclusion

At the request of the parties, I remain seized with respect to the implementation of this award.

DATED at Toronto this 9th day of October 2012.

“William Kaplan”

William Kaplan, Sole Arbitrator