

IN THE MATTER OF A MEDIATION/ARBITRATION

BETWEEN:

HEALTH EMPLOYERS ASSOCIATION OF BC

(the “Employer”)

AND:

HEALTH SCIENCES PROFESSIONAL BARGAINING ASSOCIATION

(the “HSPBA”)

(Layoffs re 37.5 Hour Work Week
Clarification of Awards dated April 7, 2014)

MEDIATORS/ARBITRATORS:

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COUNSEL:

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WRITTEN SUBMISSIONS:

September 9 and 26
and October 3, 2014

AWARD:

October 29, 2014

The parties have requested clarification respecting the two awards issued on April 7, 2014 (the “Interpretation Award” and the “Process Award”). The central issue is in regard to the “final note”.

More specifically, the parties have come before us respecting the “final note” made on the issue of seniority as a labour relations consideration in the Interpretation Award.

We begin by stating that it is our hope that seniority is one of many considerations when evaluating employee lay offs during a difficult transition process. The “final note” reflects these parties’ commitment to work together on the transition to 37.5 hours but, in our opinion, the Interpretation Award makes very clear that seniority was not a prescribed consideration under the MOU with respect to reducing part-time employee hours of work.

We now turn to the specific issues regarding seniority and the clarification requested.

1. Reduction of Hours

In the Interpretation Award dated April 7, 2014 the issue was whether the reduction of part-time employee hours constitutes a lay off for the purpose of the Memorandum of Understanding – Implementation of 37.5 Hour Work Week (“MOU”). The Interpretation Award found as follows:

I have read and considered the Relevant documents, the Collective Agreement, the case law and submissions of the parties with respect to the threshold question of whether a reduction of hours for part-time employees constitutes a layoff. I find that *prima facie*, it does not.

In reviewing the bargaining proposals, the correspondence between the parties in negotiating the 37.5 hour work week, and the final language respecting part-time hours that was agreed to by the parties to the MOU, I find that the parties understood and established that it was a possibility that part-time employee hours could be impacted in this process. The MOU expressly contemplates that in order to minimize the impact of the transition, the Employer must consider, as an

option, how to utilize current vacancies "...to maintain current part-time employees' hours of work". I agree with HEABC that if I were to find that a reduction of part-time hours constituted a layoff for the purpose of interpreting the MOU, it would render that option quite meaningless, especially in light of the proposals that were exchanged with respect to the MOU language.

This MOU and accompanying documents were discussed and negotiated for a very specific purpose: moving the hours of work per week of health science professionals to an average of thirty-seven and one-half (37.5) work hours per week. Therefore, for the specific purpose of interpreting and implementing the MOU across the industry, I do not find that a reduction of part-time employee hours of work constitutes a layoff and was therefore prohibited by the MOU.

The parties have requested clarification in this Award with respect to a number of grievances still in dispute.

While the parties presented oral and written arguments on the interpretation issues, the parties did not present the specifics of any particular grievances (we understand them to be in the hundreds). The Interpretation Award did not order any specific grievances to be dismissed. That said, the effect of the Interpretation Award is that any grievance which alleges or asserts that a reduction of part-time employee hours constitutes a lay off is without merit.

With respect to the issue raised several times in the Union's submission regarding "seniority as a labour relations consideration"; it was clear in the Interpretation Award that it was not a requirement of the MOU. However, in the context of the co-operative/collaborative intent of the MOU, seniority, along with other workplace factors, would be a labour relations consideration of the Employer when evaluating lay offs in the workplace. The Interpretation Award did not find that part-time hour reductions must always be in reverse order of seniority and, in fact, the Award makes clear that a reduction of hours for part-time employees does not constitute a lay off.

2. Seniority as a “Labour Relations Consideration” with respect to process

The “final note” was made in the concluding paragraph of the Interpretation Award. We intended that the Interpretation Award must be read in conjunction with the Process Award with respect to the grievances relating to the reduction part-time employee hours. This is specifically addressed in the Interpretation Award as follows:

Therefore, I find that although the reduction of part-time hours does not constitute a lay-off in the context of implementing the MOU, the parties were bound by the commitments negotiated to and agreed in the MOU as well as the January 30 Letter and the April 15 Guidelines. As such, in any reduction of hours for part-time employees, it would have been incumbent on the Employer to implement such changes in a manner that minimizes the impact, and was done in accordance with all process requirements, including the requirement that the Employer consider and respond to proposals which part-time employees put forward once service delivery options were outlined by the Employer.

That said, the “final note” respecting seniority related specifically to the issue of reducing part-time employee hours of work. That “final note” did not form part of the Process Award and should not be imported into that Award. Rather, what is important, for the purposes of grievance resolution, is that the parties follow the principles and procedures set out in our Award.

It is so awarded.

Dated at the City of Vancouver in the Province of British Columbia this 29th day of October, 2014.



Vincent L. Ready



Corinn Bell