

IN THE MATTER OF AN ARBITRATION

BETWEEN:

HEALTH EMPLOYERS ASSOCIATION OF BRITISH COLUMBIA

(the "Employer")

AND:

FACILITIES BARGAINING ASSOCIATION

(the "Union")

ARBITRATOR:

Vincent L. Ready

COUNSEL:

Trevor Hughes for
the Employer

Bonnie Pearson for
the Union

HEARING:

March 25 and 26, 2008
Burnaby, BC

PUBLISHED:

March 31, 2008

The parties agreed I was properly constituted as an arbitrator under the terms of the Settlement Agreement (the Agreement) reached on January 25, 2008 between the Government of the Province of British Columbia and the Health Employers Association of British Columbia (HEABC) and the Facilities Bargaining Association (FBA). The Agreement was reached following a decision of the Supreme Court of Canada striking down certain sections of the *Health and Social Services Delivery Improvement Act* (Bill 29).

The Agreement provides for a lump sum amount for payments to be made to employees impacted by Bill 29. Section 7.4 sets up the governing language concerning these payments as well as the dispute resolution process:

7.4 The parties agree on the following process for the identification and categorization of impacted individuals entitled to a payment from the sixty-eight million dollar (\$68,000,000) lump-sum amount:

- A. Step One:
- i. The Facilities Bargaining Association will engage in the following preliminary process:
 - a) the identification of impacted individuals;
 - b) the criteria and categories of impact; and
 - c) the value assigned to each criteria in the category of impact.

By no later than March 31, 2008, the number of categories and the relative value of such categories will be established. Subsequently, the determination can be made as to the expenditure of the sixty-eight million dollar (\$68,000,000) lump sum by calculating the number of impacted individuals in each category times the relative value of all categories divided into the sixty-eight million dollar (\$68,000,000) lump sum.

- B. Step Two:
- i. The joint governance Committee with a neutral Chair will be established comprised of three (3) representatives appointed by the Facilities Bargaining Association and three (3) representatives appointed by HEABC. The parties agree that, in order, Vince Ready or Irene Holden or Chris Sullivan will be appointed as

- the neutral Chair of the joint governance Committee, subject to his/her availability consistent with the needs of the parties.
- ii. The Committee will determine its own process.
 - iii. The Committee will review and confirm:
 - a) the identification of impacted individuals;
 - b) the categories of impact and criteria for inclusion in that category;
 - c) the application of the criteria to impacted individuals and/or the assignment of impacted individuals to categories of impact; and
 - d) the value assigned to each criteria in the category of impact.
 - iv. Disputes by previously impacted individuals will be limited to appropriate application of the criteria to individuals for placement within the categories established.
 - v. The application of the criteria to impacted individuals and/or the assignment of impacted individuals to categories of impact must be finalized, prior to any distribution of funds, in the event there are disputes over assignments.
 - vi. The Chair has jurisdiction only to resolve disputes regarding the allocations and development of criteria and assignment of individuals to categories, and there is no jurisdiction to render any decision, the effect of which would result in the lump sum of sixty-eight million dollars (\$68,000,000) being exceeded. The Chair also has jurisdiction to determine that the process set out in Step One and Step Two will not be conducted in a manner that is arbitrary, discriminatory, or in bad faith.

The parties have raised two preliminary issues. The first issue centres around whether or not employees covered by local agreements have access to the payments under the provisions of the Agreement set out above. The second issue to be determined is the criteria and categories of impact as per Section 7.4B above. I will deal first with the local agreements.

In 2003 the FBA, the Government of British Columbia, and HEABC entered into “tentative framework negotiations” in an attempt to address

government and employer concerns regarding wage and benefit costs in the Facilities Subsector Collective Agreement. The agreement reached was subsequently rejected by a narrow margin in a ratification vote of Union members of the FBA.

The submissions reveal that following rejection of the Tentative Framework Agreement, Unions, their members and local officers faced increasing pressure from the Employer community that the work of the facilities subsector would be contracted out to realize savings to make up for the shortfall in provincial funding.

In the submission of the Union, rumours, threats and ultimatums were the order of the day. As a result, says the Union, its member Unions of the FBA agreed that individual locals could enter into local agreements with Employers in an attempt to avoid contracting out. The Union further submitted that local executive members were left in an untenable situation – assessing, in consultation with their Union the veracity of the Employer threats, the local economy, the re-employment possibility of members in the event of job loss, the disruption of continuity of care for fragile seniors, and continued instability in the work place. Locals in the Hospital Employees' Union, the BC Government & Service Employees' Union and the International Union of Operating Engineers all entered into local agreements.

It is also submitted by the Union that the local agreements followed a pattern: continued recognition of the Employer's right to contract out, a concluding date of March 31, 2004, cost reductions including retroactively forgoing the COLA of 3.2%, retroactively forgoing pay equity adjustments, wage reductions ranging from \$1.00 per hour to \$3.00 plus per hour, reduction of vacation ranging from two days to five days per year.

It is not disputed that in each case the local agreements were subject to a ratification vote of the membership. In at least one case, when the membership rejected a local agreement the bargaining unit was contracted out. This, says the Union, crystallized the threat for many locals and their members and led to even greater insecurity throughout the FBA.

In summary, it is the position of the FBA that local unions that entered into local agreements with their Employer to avoid contracting out did so under duress. As such, members of those Unions should be considered “impacted individuals” pursuant to Article 7 of the Settlement Agreement and are entitled to compensation. A category recognizing local agreements, with corresponding criteria, should be established by the Joint Governance Committee and included on the claim form for this group of impacted members.

It is the position of the Employer that employees covered under local agreements should not be entitled to a claim under the Settlement Agreement for two reasons. First, none of the employees lost their employment under the local agreements. Second, those local agreements were sanctioned by the local leadership and the FBA and were voted on by the respective members of the Unions.

DECISION

While it is difficult to take issue with the Union’s submission regarding the difficult economic and labour relations climate which existed at the time of the passage of Bill 29, nevertheless it was the reality of the times. That said, the local agreements were sanctioned by the FBA and the local executives. I am also satisfied these agreements were negotiated in the best interests of the affected Union members. Put bluntly, they were negotiated to save the members’ employment.

Further, the submissions reveal that all local agreements were ratified by the respective membership of the Unions.

It is well settled in labour relations that negotiated agreements are designed to bring certainty to the affected parties. These local agreements are no exception to that general principle. I am also satisfied that the employees who ratified these local agreements did not lose employment, thereby avoiding the consequences suffered by employees who did lose employment.

In the result, I find that employees covered by local agreements are not entitled to make a claim under the Agreement.

I now turn to the claim form. I award the form attached as Appendix "A" to this award.

Dated at the City of Vancouver in the Province of British Columbia this 31st day of March, 2008.



Vincent L. Ready

CLAIM FORM

**Facilities Bargaining Association and the HEABC
Bill 29-2002 Settlement Agreement – Joint Governance Committee**

1. Claimant name: _____
2. Current or forwarding address: _____
3. Previous address at date of displacement: _____
Note: Only complete if this address is different from current or forwarding address.
4. Phone number: (____) _____ E-mail: _____
5. Social Insurance Number: _____ Union affiliation: _____
6. Job classification/title at date of displacement: _____
7. Health Sector Employer which displaced you: _____
8. Current Employer: _____
9. For regular employees only: Did you receive a displacement notice eliminating your regular position due to contracting out or a bump by a more senior employee?
 Yes: No:
10. For casual employees only: What was the date of your last day worked in the Health Sector with an Employer covered by an HEABC Provincial Collective Agreement?

**COMPLETE ONLY ONE OF SECTION A OR B OR C, as applicable to your circumstances.
 IF YOU COMPLETE SECTION A OR B, COMPLETE ALL OF SECTIONS D, E, and F.
 IF YOU COMPLETE SECTION C, SECTIONS D, E, and F DO NOT APPLY.**

SECTION A

LOSS OF JOB/EMPLOYMENT (due to contracting out or restriction of bumping rights):

What was your length of service as a regular employee at the date of displacement which resulted in the loss of your job/employment? <i>Note: Length of service does not include any time spent as a casual employee.</i>	Over 20 years:	<input type="checkbox"/>
	16 to 20 years:	<input type="checkbox"/>
	11 to 15 years:	<input type="checkbox"/>
	6 to 10 years:	<input type="checkbox"/>
	0 to 5 years:	<input type="checkbox"/>
What was the length of time you were without employment following the loss of your job/employment?	Over 1 year:	<input type="checkbox"/>
	6 months to 1 year:	<input type="checkbox"/>
	Up to 6 months:	<input type="checkbox"/>

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What was your employment status at the time of the loss of your job/employment in the Health Sector?	Regular full-time:	<input type="checkbox"/>
	Regular part-time:	<input type="checkbox"/>
	Casual:	<input type="checkbox"/>
If you were a casual employee at the termination of employment, what was the length of your employment?	Over 5 years:	<input type="checkbox"/>
	0 to 5 years:	<input type="checkbox"/>
What is the difference between your gross (before tax) annual income in the Health Sector prior to the loss of your job/employment compared to your subsequent gross annual income? <i>Note: Annual income includes pension income and income from any Employer regardless of where you were re-employed.</i>	Over \$20,000 less per year:	<input type="checkbox"/>
	\$10,001 to \$20,000 less per year:	<input type="checkbox"/>
	\$5,001 to \$10,000 less per year:	<input type="checkbox"/>
	\$0 to \$5,000 less per year:	<input type="checkbox"/>

If you completed Section A above, proceed to Section D and complete through to Section F.

SECTION B

LOSS OF JOB/EMPLOYMENT (due to facility closure and reduced layoff notice period):

What was your length of service as a regular employee at the date of closure? <i>Note: Length of service does not include any time spent as a casual employee.</i>	Over 5 years:	<input type="checkbox"/>
	Over 3 years to 5 years:	<input type="checkbox"/>
	0 to 3 years:	<input type="checkbox"/>
What was your employment status at the time of the loss of your job/employment in the Health Sector?	Regular full-time:	<input type="checkbox"/>
	Regular part-time:	<input type="checkbox"/>
	Casual:	<input type="checkbox"/>
If you were a casual employee at the termination of employment, what was the length of your employment?	Over 5 years:	<input type="checkbox"/>
	0 to 5 years:	<input type="checkbox"/>

If you completed Section B above, proceed to Section D and complete through to Section F.

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SECTION C

LOSS OF EARNINGS DUE TO A BUMP:

Are you in a lower paying position in the Health Sector as a result of exercising a bumping option?	Yes – more than \$3.00 per hour less:	<input type="checkbox"/>
	Yes – between \$1.01 and \$3.00 per hour less:	<input type="checkbox"/>
	Yes – up to \$1.00 per hour less:	<input type="checkbox"/>
	No:	<input type="checkbox"/>
Are you working fewer hours per week in the Health Sector as a result of exercising a bumping option?	Yes – more than 15 hours per week less:	<input type="checkbox"/>
	Yes – between 7.5 and 15 hours per week less:	<input type="checkbox"/>
	Yes – up to 7.5 hours per week less:	<input type="checkbox"/>
	No:	<input type="checkbox"/>

If you completed Section C above, you may skip Section D through F as they do not apply to you. Proceed to Section G.

SECTION D

LOSS OF HEALTH AND WELFARE BENEFITS:

Do you have 100% Employer-paid health and welfare benefits in your current employment?	Yes:	<input type="checkbox"/>
	No:	<input type="checkbox"/>
Do you have a Dental Plan in your current employment?	Yes:	<input type="checkbox"/>
	No:	<input type="checkbox"/>
Do you have access to a Long-Term Disability Insurance Plan in your current employment?	Yes:	<input type="checkbox"/>
	No:	<input type="checkbox"/>

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SECTION E

LOSS OF PENSION BENEFITS:

Do you have access to a pension in your current employment?	Yes:	<input type="checkbox"/>
<i>Note: If you are in receipt of a pension, do not answer this question.</i>	No:	<input type="checkbox"/>
Is your pension plan a Group RSP or a Public Sector Pension Plan (e.g., Municipal Pension Plan or Public Service Pension Plan)?	Group RSP:	<input type="checkbox"/>
	Public Sector Pension Plan:	<input type="checkbox"/>
Did you take early retirement as a result of being issued a displacement notice and start collecting a Public Sector Pension Plan?	Yes:	<input type="checkbox"/>
	No:	<input type="checkbox"/>

SECTION F

ENHANCED SEVERANCE:

Did you collect an Enhanced Severance as a result of layoff due to contracting out?	Yes – received a gross payment of between \$11,001 and \$17,000:	<input type="checkbox"/>
	Yes – received a gross payment of up to \$11,000:	<input type="checkbox"/>
	No:	<input type="checkbox"/>

SECTION G

I hereby certify that the information I have provided in this Claim Form is true to the best of my knowledge. I acknowledge that a failure to complete this Claim Form honestly and in its entirety may result in the forfeiture, in whole or in part, of any claim to a payment. I also acknowledge that by completing this Claim Form, I authorize the production of any relevant supporting documents (e.g., T4A information slips, pay stubs) if requested by HEABC and/or by the Facilities Bargaining Association.

Signature of Claimant: _____

Date Claim Form Completed: _____, 200__

Privacy Statement:

The information in this Claim Form is confidential and will be used only for the purposes of determining eligibility for and the payment of an amount to eligible claimants pursuant to the HEABC/FBA Bill 29-2002 Settlement Agreement. By completing and signing this Claim Form, the claimant agrees to have his/her personal information collected and used for this specific purpose.

**** This Claim Form must be submitted to your Union on or before June 15, 2008. ****