

IN THE MATTER OF AN ARBITRATION

BETWEEN:

HEALTH EMPLOYERS ASSOCIATION OF BRITISH COLUMBIA

(the “Employer”)

AND:

FACILITIES BARGAINING ASSOCIATION

(the “Unions”)

ARBITRATOR:

Vincent L. Ready

COUNSEL:

Trevor Hughes for
the Employer

Bonnie Pearson for
the Unions

HEARING:

July 4, 2008
Burnaby, BC

PUBLISHED:

August 14, 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).

In an award dated March 31, 2008, I ruled that employees covered by local agreements are not entitled to make a claim under the Agreement, and I determined the criteria and categories of impact per Section 7.4B of the Agreement. Finally, I issued a Claim Form to be completed by impacted individuals.

Further, on June 13, 2008, I ruled that employees who were covered by the Facilities Subsector Collective Agreement as of the enactment of Bill 29 and who subsequently elected to de-certify from a constituent Union in the FBA are not entitled to access the lump sum set out in the Agreement. In addition, I determined that where a constituent Union in the FBA has subsequently re-certified a bargaining unit, the employees are not entitled to access the lump sum set out in the Agreement.

A number of additional issues have arisen regarding interpretation and implementation of the Agreement. Having heard comprehensive submissions by the parties, I have made the following determinations:

1. The parties made submissions to me about the value of each criteria within each category. After much consideration, I have assigned point values to the criteria in the Claim Form I awarded on March 31, 2008. The Claim Form with an additional column including my points for each answer is attached as Appendix "A" to this award. I wish to be clear that

the Unions have argued strenuously that the funds allocated in the Agreement will never adequately compensate all of the Union members whose jobs and lives were affected by Bill 29. That said, there is a limited fund established for payments and the Agreement requires a distribution of the funds by categories of impact. The Agreement does not allow for consideration of all the circumstances of each individual's case regardless of their merits. This would be a monumental task with claimants numbering in the thousands and would unduly delay the process of making payments from the funds. The assignment of points is one more step in distributing the funds according to objective criteria that can be measured.

2. I have reviewed the Unions' efforts to identify and contact their members who were impacted by Bill 29 and who may be eligible to claim from the Agreement fund. They have used Union websites, newsletters, advertised in most newspapers in B.C. and major newspapers in each major city in Canada, mailouts and phone calls to reach these impacted individuals. I find the Unions have made incredible efforts and have conducted themselves reasonably in trying to identify and contact all of these people. Evidence of that is receipt of Claim Forms from as far away as South Korea and the Philippines. I am satisfied the requirements of the Agreement have been met and that the Unions' deadline for submitting a Claim Form is reasonable. I note that the Unions had an initial deadline of June 15, 2008 but moved it back to June 30 to accommodate the needs of their members.
3. Finally, I have been asked to consider what right a member or former member of the FBA who was impacted by Bill 29 has to dispute a decision regarding their claim. Having considered the Agreement in its entirety, I find that an individual's right to dispute is limited to their assignment to a category. I direct the parties to work out an agreed-to

process to have any disputes that arise heard by the Joint Governance Committee chaired by me. The appeal hearings will take place on September 13 and 14, 2008 in Richmond.

Dated at the City of Vancouver in the Province of British Columbia this 14th day of August, 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"/> 12 points
	16 to 20 years:	<input type="checkbox"/> 10 points
	11 to 15 years:	<input type="checkbox"/> 8 points
	6 to 10 years:	<input type="checkbox"/> 6 points
	0 to 5 years:	<input type="checkbox"/> 4 points
What was the length of time you were without employment following the loss of your job/employment?	Over 1 year:	<input type="checkbox"/> 6 points
	6 months to 1 year:	<input type="checkbox"/> 5 points
	Up to 6 months:	<input type="checkbox"/> 4 points

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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"/> 8 points
	Regular part-time:	<input type="checkbox"/> 4 points
	Casual:	<input type="checkbox"/> 2 points
If you were a casual employee at the termination of employment, what was the length of your employment?	Over 5 years:	<input type="checkbox"/> 4 points
	0 to 5 years:	<input type="checkbox"/> 2 points
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"/> 8 points
	\$10,001 to \$20,000 less per year:	<input type="checkbox"/> 6 points
	\$5,001 to \$10,000 less per year:	<input type="checkbox"/> 4 points
	\$0 to \$5,000 less per year:	<input type="checkbox"/> 2 points

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"/> 4 points
	Over 3 years to 5 years:	<input type="checkbox"/> 2 points
	0 to 3 years:	<input type="checkbox"/> 0 points
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"/> 8 points
	Regular part-time:	<input type="checkbox"/> 4 points
	Casual:	<input type="checkbox"/> 2 points
If you were a casual employee at the termination of employment, what was the length of your employment?	Over 5 years:	<input type="checkbox"/> 4 points
	0 to 5 years:	<input type="checkbox"/> 2 points

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"/> 5 points
	Yes – between \$1.01 and \$3.00 per hour less:	<input type="checkbox"/> 3 points
	Yes – up to \$1.00 per hour less:	<input type="checkbox"/> 2 points
	No:	<input type="checkbox"/> 0 points
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"/> 5 points
	Yes – between 7.5 and 15 hours per week less:	<input type="checkbox"/> 3 points
	Yes – up to 7.5 hours per week less:	<input type="checkbox"/> 2 points
	No:	<input type="checkbox"/> 0 points

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"/> 0 points
	No:	<input type="checkbox"/> 2 points
Do you have a Dental Plan in your current employment?	Yes:	<input type="checkbox"/> 0 points
	No:	<input type="checkbox"/> 1 point
Do you have access to a Long-Term Disability Insurance Plan in your current employment?	Yes:	<input type="checkbox"/> 0 points
	No:	<input type="checkbox"/> 3 points

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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"/> 0 points
<i>Note: If you are in receipt of a pension, do not answer this question.</i>	No:	<input type="checkbox"/> 5 points
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"/> 2 points
	Public Sector Pension Plan:	<input type="checkbox"/> 0 points
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"/> 3 points
	No:	<input type="checkbox"/> 0 points

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"/> -5 points
	Yes – received a gross payment of up to \$11,000:	<input type="checkbox"/> -3 points
	No:	<input type="checkbox"/> 0 points

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. ****