

**IN THE MATTER OF AN INTEREST ARBITRATION UNDER THE *HOSPITAL  
LABOUR DISPUTES ARBITRATION ACT* (HLDA)**

**BETWEEN:**

**OPSEU, Local 203**

**(“OPSEU” or the “union”)**

**-and-**

**Guelph Independent Living**

**(“GIL” or the “employer”)**

**And in the matter of a dispute about the terms to be included in collective agreement that will run from January 1, 2012 until December 31, 2013**

**BOARD OF ABITRATION:**

Christine Schmidt, Chair  
Morag Fraser, Employer Nominee  
Terry Moore, Union Nominee

**APPEARANCES:**

**For the employer:** Kelsey Orth, counsel  
Brian Silva, counsel  
Andrew Cogswell, student-at-law  
Joanne Young Evans, Executive Director  
Janet Redman, Manager of Services  
Pamela Polfuss-Schmidt, Manager of Human Resources  
Victoria Miron, Communications Officer

**For the union:** Steve Crossman, Research Officer  
Greg McVeigh, staff representative  
Lisa Gadbois, negotiating committee  
Darlene Mallany, negotiating committee  
Lisa Parker, negotiating committee  
Laura Webster, negotiating committee

This hearing was held in Guelph, September 12, 2013.

## **Introduction**

This is an interest arbitration under the *Hospital Labour Disputes Arbitration Act*, R.S.O. 1990, c. H.14, as amended (“HLDAA”). The Board has been appointed to adjudicate upon the issues that remain in dispute between the parties in respect of the negotiation of a renewal to the collective agreement between them that expired on December 31, 2011. There is no dispute with respect to our authority.

## **Background and General Considerations**

Guelph Independent Living (“GIL”) is a non-profit employer, incorporated in 1975, that provides services and support to adults with physical disabilities and seniors in the Guelph community. The approximately 70 Attendant Service Workers (“ASWs”) and 11 Senior Support Workers (“SSWs”) employed at GIL provide support in the activities of daily living as well as homemaking services to GIL’s approximately 88 clients. These services enable the clients to live independently.

OPSEU was certified on October 8, 2009 to represent all employees of GIL “save and except co-ordinators, persons above the rank of co-ordinator, office and clerical staff.” The bargaining unit (“BU”) consists ASWs, SSWs, a Live-In Superintendent and a Key Tenant. Approximately 45% of the BU are full-time employees and 32 of all ASWs and SSWs have Personal Support Worker (“PSW”) certification. This certification is a “preferred” educational requirement for ASWs and SSWs. ASWs work primarily out of two locations, namely 238 Willow Place and 87 Neeve Street. The SSWs also work at primarily two locations, namely 85 Neeve Street and the Dublin and Grange Street apartments.

The parties entered into a first collective agreement effective from January 1, 2011 to December 31, 2011. They began negotiations for the

renewal of the first collective agreement in May 2012. Negotiations reached an impasse on August 29, 2012. By decision dated March 21, 2013, the Ontario Labour Relations Board declared GIL's employees to be covered by HLDAA. The Ministry of Labour issued a "No Board Report" on March 28, 2013.

The following issues remain in dispute:

- Article 2 – Recognition – decrease in hours for qualification as full-time employee
- Article 15 – Scheduling, hours of work and overtime  
Cancellations for outreach clients, shift exchange, notice of shift change, breaks.
- Article 20 – Sick Leave - carryover
- Article 22 – RRSP contribution plan
- Article 21 – Insured Benefits  
Long term disability – premium payment  
Prescribed drugs – dispensing fee  
Hearing aids  
Paramedical services  
Vision Care  
Dental  
Payment-in-lieu of benefits for part-time employees
- Article 23 – Personal vehicle expenses - mileage
- Schedule "A" – Wage Rates

In assessing the merits of the outstanding issues in dispute, the Board is mindful of the financial constraints under which GIL operates as set out in its brief. In light of these constraints, GIL emphasises the importance of the Board considering the mandated "ability to pay" criterion set out under section 9(1.1) of HLDAA.

The Board's primary task, however, is to replicate the agreement that would have been reached if bargaining took place in a strike/lockout environment, with comparability as the primary tool to effect this task. In reaching its conclusions on the outstanding issues in dispute, the Board has also been governed by the long accepted principles of interest arbitration of demonstrated need and total compensation. The principle of demonstrated need applies primarily to non-monetary issues. In this case, where non-monetary demands were made, they were unsupported by evidence suggesting real problems in the administration of the collective agreement. As such, those proposed amendments are not addressed in this award.

As for the relevant comparators, the parties were unable to agree on which apply to GIL. OPSEU proposed Community Living Guelph Wellington ("CLGW") as an important comparator. On wages specifically, OPSEU seeks parity with the Support Worker 4 position at CLGW, whose rates range from a probationary rate of \$19.87 through a level 4 rate of \$20.76. This was the range rate at CLGW when the parties entered into their first collective agreement setting their wage rates for the support service employees from the probationary rate of \$13.49 through to Step 8 at \$16.74 for the Supportive Housing/Seniors classification, and at the probationary rate of \$13.69 through to Step 8 at \$16.94 for the Outreach/Grange/Dublin classification.

Other OPSEU proposed comparators in the independent living sector include the following employers where OPSEU holds bargaining rights: the Niagara District Homes Committee for the Physically Disabled ("NDHCPD" in Niagara Falls), Personal Choice Independent Living (in Ottawa), Access Better Living Inc. (in Timmins), Clarendon Homes (Cheshire Homes in Ottawa) and ICAN Independence Centre and Network (in Sudbury). Non-OPSEU bargaining units proposed by OPSEU include PACE Independent Living (in Toronto), PACE Independent Living – Outreach & Bathurst/Prince Charles Program (in Toronto) and Nucleus Independent Living (in Toronto). At the hearing GIL referenced

Traverse Independence (in Kitchener) and March of Dimes (in Hamilton) as suitable comparators. It also referenced one non-unionized workplace, namely Independent Living Centre Waterloo.

When assessing the appropriateness of a suggested comparator, the Board prefers those employees in bargaining unit positions in geographical proximity to GIL. Based on a thorough evaluation of the job descriptions provided by the parties, the client population served, and the training and qualifications of the employees performing the work, the Board considers the Attendant Support Workers at Traverse Independence, the Support Services Attendants at March of Dimes, the Attendants at NDHCPD and PACE Independent Living to be the reliable comparators to the ASWs and SSWs at GIL.

While the Board appreciates why the Union has set out CLGW as an important comparator, the client population at CLGW includes adults with physical disabilities as well as those with developmental and emotional challenges. This translates to a higher level of training required of the support workers employed at CLGW to meet their client bases' needs. The Board is not persuaded that the position of Support Worker 4 at CLGW is sufficiently similar to ASWs or SSWs at GIL to warrant the comparison OPSEU would have it make.

Finally, on the issue of benefits, having regard to the parties' respective positions as set out in their briefs, the Board was persuaded to extend 3% Pay-in-Lieu of Benefits to the part-time ASWs and SSWs at GIL. The Board has made the tradeoffs and compromises warranted in light of OPSEU's proposed improvements to benefits considering the parties' proposals.

Having regard to all the foregoing, we award as follows.

## **AWARD**

We direct the parties to enter into a renewal collective agreement for the term of January 1, 2012 to December 31, 2013. The collective agreement shall consist of the unchanged items from the collective agreement that expired on December 31, 2011, the items agreed by the parties themselves, including those set out in the paragraph below, and the Board's award on only those items set out herein.

For clarity, in addition to those previously agreed upon items, at the hearing the parties agreed to the PSW Letter of Understanding as well as wage increases of 3% effective January 1, 2012 and 3% effective January 1, 2013 for the Live-In Superintendent and the Key Tenant. GIL also agreed to increase the Live-In-Superintendent's hours of work to 35 hours per week and provide 1 pair of CSA-approved work boots every two years, with receipt, to a maximum of \$150 and to pay the Key Tenant's monthly parking.

The collective agreement shall also consist of the following additions and/or amendments.

### **Article 21 – Insured Benefits**

The collective agreement provides for paramedical services – 50% reimbursement to a maximum of \$200.00 per calendar year per practitioner. Per visit maximum of \$20.00.

The Board awards the following:

Paramedical services coverage to a maximum of \$500.00 per calendar year with no co-pay or per visit maximum.

**Pay in Lieu of Benefits for Part-Time Employees- New**

The collective agreement provides no pay-in-lieu of benefits for part-time employees.

The Board awards the following:

- 3% pay in lieu of benefits (ASWs and SSWs).

**WAGES: Schedule "A"**

The collective agreement provides for two separate salary grids: a wage rate for Supportive Housing/Seniors and Outreach/Grange/Dublin. The 8-step grid is based on seniority hours.

The Board awards the following retroactive increase to wages:

- Effective January 1, 2012: 1.1%
- Effective January 1, 2013: 1.1%

**Retroactivity**

Wages and payment-in-lieu of benefits are to be retroactive. Changes to the paramedical coverage shall be effective the date of the award. Wage and payment in-lieu retroactivity applied to all paid hours is to be paid to all employees who have worked since the expiry of the predecessor collective agreement. Payment is to be made within sixty (60) days of the date of this award. Any employee who has left the employ of the GIL is to be so notified in writing at his/her address on file within thirty (30) days of the this award. Payment is to be made within (30) days of acknowledgement of receipt of such notice.

**Seized**

We remain seized of the implementation of this award until a collective agreement is in effect between the parties.

Dated at TORONTO this 11th day of October, 2013.



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Christine Schmidt, Arbitrator

"Morag Fraser"

I concur.

Morag Fraser, Centre's Nominee

"Terry Moore"

I concur.

Terry Moore, Union Nominee