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ARBITRATION AWARD - AMBULANCE SERVICES COLLECTIVE BARGAINING ACT,
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DRS - ARBITRATION SERVICES

BETWEEN :

THE CORPORATION OF THE COUNTY OF ESSEX

AND

CANADIAN UNION OF PUBLIC EMPLOYEES , LOCAL 2974.2

Before : PETER BARTON, Windsor, Ont. September 5, 2013

APPEARANCES

FOR THE UNION

Simon Collins, CUPE Research Representative
Suanne Hawkins, CUPE National Representative
Ian T Nash, President CUPE Local 2974.2
Mark Ward
Justin Campeau
Dustin Anderson
Jacey Brockman
Jeremi Taylor

FOR THE EMPLOYER

B Richard Baldwin, Counsel
Erich Schafer, Counsel
Greg Schlosser, Director H.R.
Randy Mello, Chief
Debbie Strajnic , Administrative Manager
Joe Nardone, District Chief
Chris Grant , Deputy Chief, Operations

With the approval of the Parties I was appointed under the ASCBA to conduct an interest arbitration dealing with a three year collective agreement. The previous agreement expired on March 31, 2012.

The bargaining unit is a unit which was amalgamated in 2009 from units in Windsor, Harrow, Amherstberg, Anderton and Malden, and Chatham-Kent, Leamington (the Sun Parlour units). There are 258 employees in the unit, 37 Advanced Care Paramedics, 127 Primary Care Paramedics (PCP), 4 or 5 non-paramedics and 99 part-time employees who will be covered by this Award. The service provides 24 hour land ambulance service in Essex County. It serves a population base of 389,000 +/- with 22 vehicles in service from 12 bases. About 336,960 hours are involved with about 68 % of calls being within the City of Windsor. It appears to be a fairly busy service, with a projected increase in calls for 2013 of 3%. The 2013 EMS budget is \$34,665,860.

Although the Parties met four times in negotiations, they entered conciliation, a no-board report was filed Nov. 27 /12 and one more meeting was held. A number of items were signed off before this hearing date and these are expressly included in my Award (Union Ex. 2, Employer Ex. 50.) There was a passing reference in argument to letters of understanding in the expired agreement. My assumption is that these continue in the new agreement. If this is inaccurate, I expect the Parties to advise me.

About 20 issues remain between the Parties. The major ones are, of course, wages and benefits. The ASCBA directs me to consider certain criteria .

S. 21 (1) 'The arbitrator shall examine into and decide on the matters that are in dispute and any other matters that appear to him or her to be necessary to be decided in order to conclude a collective agreement between the parties, but in doing so the arbitrator shall not decide any matters that come within the jurisdiction of the Board.'

S. 21 (2) Criteria

' In making a decision, the arbitrator shall consider the following factors and any other factors that he or she considers relevant :

1. The employer's ability to pay, in light of its fiscal situation.
2. The extent to which services would have to be reduced in light of the decision, if current funding and taxation levels are not increased.
3. The economic situation in Ontario and in the municipality where the employees in the bargaining unit provide services.

4. A comparison, as between employees in the bargaining unit and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.
5. The employer's ability to attract and to retain qualified employees.
6. The purposes of the Public Sector Dispute Resolution Act, 1997.
7. A comparison of the cost of providing ambulance services through members of the bargaining unit with the cost of providing those services through,
 - i. in the case of a public sector employer, employees who work for private sector providers of ambulance services, or
 - ii. in the case of a private sector employer, employees who work for other private sector providers of ambulance services.'

The PSDRA , 1997 'Purposes

1.The following are the purposes of this Act :

1. To ensure the expeditious resolution of disputes during collective bargaining.
2. To encourage the settlement of disputes through negotiation.
3. To encourage best practices that ensure the delivery of quality and effective public services that are affordable for taxpayers.'

Both Parties filed extensive exhibits and made full submissions. I have considered these in the context of the legislation as required.

To summarize the Union position it is that it represents about 50 % of unionized paramedics in Ontario Until 2001 there was some uniformity to the terms covering paramedics across the province. Since then, that uniformity has disappeared. The Union wants to bring it back, based primarily on the argument that people doing the same job in Ontario should receive the same wages and benefits.

As a result it chooses as its primary comparators, Durham and Niagara Region, both CUPE units.

The Employer responds with allegations of 'cherry-picking' and argues that the comparators are inapt since they are 'outliers', as is Essex itself. More attention should be paid to other negotiated settlements in Essex involving other public employees mostly represented by CUPE , as well as other land ambulance services closer to Essex.

My task is directed *inter alia*, by the concepts of replication and total compensation.

Replication means trying to achieve the results that would have been obtained in free, right to strike collective negotiations, despite no right to strike . Almost all interest arbitrators agree with the relevance of the concept, however difficult its application may be. These Parties entered into

an Essential Ambulance Services Agreement on July 26, 2012, removing the right to strike. Total compensation looks to the cost of the entire package in the collective agreement, recognizing that an increase in one part might require a decrease or a non-increase elsewhere, subject to the overriding amount of the increase in the total package. In comparing agreements from other services I have found this principle to be quite useful.

I will first outline my take on the application of the required criteria to this matter. Section 21(2)2 deals with possible reduction in service in light of my decision. The Employer here argues that if I award too much, nine recently hired employees will be laid off. I have no information from the Union on this issue.

Section 21(2)5 covers the ability to hire and to retain employees. The fact is that EMS jobs are highly sought after.

Section 21(2)7 directs me to compare costs of private services. Except for copies of some pre-2009 private agreements in what is now this unit, I do not have much information to aid me. I have looked closely at the Sun Parlour, Amherstberg, Harrow agreements to compare these to the expired Essex agreement. The Employer makes some reference to London-Middlesex and Elgin (both in the private sector).

Section 21(2)4 directs me to look at comparable private and public sector employees. Because the service was downloaded to municipalities in 2001, I do not have much private sector information, except as mentioned above. Section 21(2)3 deals with the situation in the municipality and in all of Ontario so I am using comparators from across Ontario where useful.

Section 21(2)6 references the PSDRA. The three criteria set out above are exceedingly general and provide at best a useful backdrop to this process.

The Employer ability to pay and the economic situation in Essex and in Ontario are perhaps, the most significant factors in addition to comparators. (S. 21(2)1,3)

In its Brief p.59, the Union states that it has shown that the municipality is in a healthy financial position. It addresses the Ontario picture pp 65-76, and the Essex picture pp. 77-93. It argues that the Ontario economy has turned the corner, employment is up, GDP growth is predicted for 2013 to be 1.7 % and higher for 2014, and the manufacturing sector (significant in Essex) is rebounding. In Essex, it points to a large number of ongoing building projects as evidence of robust activity, as well as the important agriculture sector.

The Employer addresses the ability to pay at pp. 8-20. It points out that the effect of downloading of costs to Essex by the province has been to put a strain on the County. Assessment growth is down, capital projects have been deferred, operational considerations

reduced, and some reserves utilized, giving specific examples. It points out that Ontario delays funding , if it pays at all, of additional costs of, *inter alia*, wage increases, until the year following their implementation, leaving the municipality to find the money for them .Requests from the EMS would put financial pressure on the County. That is always the case, of course, and the County has its own priorities also.

The Employer addresses the well known letter of the Deputy Premier on July 26/12 to public sector employers, in which it expected a two year compensation freeze. It shows that unemployment in Essex, while down, is still 2% higher than in Ontario generally. It mentions the Drummond Report and its concern about the large provincial deficit.

It appears that the 50% promised from the province toward health care has not been received. since 2010. In 2012 Essex received 48.6% and estimates the amount of 47.6% for this year.

While it is true that a tax-collecting body could in theory , pay any sums by adjusting its priorities within a limited budget , I think that an arbitrator should not put unreasonable stress on an employer which has already tried to reduce expenses in the medical care sector.

I am satisfied that the fiscal picture in the province and in Essex is not as positive as the Union suggests. While there are positive indicators, the overall picture is still of great concern to me. Thus I approach this matter without buoyant confidence for the future economy.

I understand the reasons for and the wish of the Union to use Durham and Niagara as comparators. Given that there are many more services in Ontario, some of a similar size to Essex, I think the search for comparators should be wider. Collective agreements are affected by many factors. Changes come about through negotiation, arbitration, and job evaluation internally . In Essex , job evaluation assessments in Windsor in 2002, raised rates considerably and fed into the 2009 Essex agreement. These moved Essex to the higher end of the Ontario scale, using the base-line PCP rate. Similar changes happened in Durham putting it at the top province-wide.. The term ‘outlier’ is sometimes used to suggest that a particular rate should not be followed because it is extreme, and is used for Essex and Durham by some. I am not sure the use of a label helps me. I prefer to look at selections from the 50 EMS services across the province, with some emphasis on those of a somewhat similar size to Essex and those geographically near Essex. I make specific reference to Durham and Niagara where useful, particularly Niagara since it is closer in distance from Essex than Durham. I use the internal comparators from Essex as well.

1. Schedule A

Because wages are the largest part of compensation, it makes sense to deal with them first, and then apply further the principle of total compensation.

The Union is seeking 3% in each of the 3 years, with full retroactivity and applied to the highest rate in the BM classification (PCP).

The Employer seeks a two year freeze and increases in year 3 of 0.5 % in April and October 2014. It would pay lump sums of \$1000 for each of the first two years with half of that to the part-timers. This would mean that the base rate in the collective agreement would increase over three years by the amount awarded in the third year.

As I read the figures, rates in 2012 are about :

Essex - \$ 35.27 (as of April1/12)

Elgin -\$34.59 CAW

Huron - \$35.41 CUPE

Perth - \$ 35.17 CUPE

Waterloo - \$ 34.85 CUPE

Durham - \$ 40.61 CUPE

Niagara - \$ 35.19 CUPE

Lambton- \$ 34.86 SEIU

Haldimand - \$34.95 SEIU

Brant - \$ 34.96 OPSEU

These show a wide range and the Union wishes to advance its goal of province-wide standardization of rates by using its units in which wages are higher, since most are CUPE units. It can be seen that Essex is between but at the low end of the two Union comparators. The Employer puts Essex well within the range of its external comparators. Although different agreements have different expiry dates, I assume that the information about 2012 rates here is accurate since it is already 2013.

Percentage increases already in some agreements for 2012 and future increases for 2013 are :

Elgin - 2012- 1.5 % , 2013-2.0%

Huron - 2.0% in 2013

Waterloo - 2.0 % 2012

Durham - (my calculation)1.02%, 1.02%

Niagara - (my calculation) 1.02%, 1.02%

Lambton- 2% split, 2.25 % split

Haldimand-\$ 2.50 split, 2.50 split

Brant - 2.0 %

Much of the Employer attention was on internal comparators. It referred to agreements negotiated within Essex, with this Union Local 2974.1 (clerical and skilled) , the Teamsters and the Library staff. It argues that these are the best evidence of what this Local could have achieved in negotiations with it if it had the right to strike (the replication principle) That is a strong argument but that principle is not the only factor for me to consider. A comparison with other EMS units is important because they all do essentially the same job. Their wages would, of course, also reflect the replication principle.

Local 2974.1 negotiated a two year freeze with lump sums of \$ 800 each year, plus 1% in 2014, split April 1, Sept. 1

The Teamsters had 1% for 2012 from a previous agreement and negotiated a lump sum of \$ 1250 for 2013 and 1.5 % for 2014 split as with CUPE

Library people negotiated lump sums of \$ 1000 , \$ 1100 all prorated, and 1% split as above for 2014. Thus they did , where allowed, negotiate a freeze followed by an increase in 2014.

Elgin, Haldimand, Lambton, Brant and Waterloo ended 2012 with a base rate well below Essex. Huron had a rate slightly higher.

The first difficult question for me is - freeze or not ? Toronto had a one year freeze. Rates for the comparators set out above were, as far as I can tell, negotiated and , except for Essex led to modest increases in 2012, 3.

A 1.00 % increase in 2012, would move the base rate from \$35.27 to \$ 35.62. According to Union Ex. 11, which covers CUPE units only, this rate would be well within the range of most CUPE units, below Durham but above Niagara. It would not keep up with any inflationary increases over 1 % . A bonus rather than a percentage increase would put cash in hand but delay the increase in the base rate. A percentage increase if retroactive, would put cash in hand as well. Based upon 2080 hours a \$0.5 per hour increase amounts to \$ 1040.00 which is about the same as the Employer offers as bonus. I reject a freeze and award 1.00 % for 2012, and 1.25 % for 2013.

By my calculation this will bring the 2013 rate to about \$ 36.06.

What of 2014 ? The Employer negotiated increases for 2013 in its other three units for which I have information of 1% and 1.5% , split. The external comparator units set out above, including Niagara and Durham got from 1 % -2.5% in 2012 or 2013. I think a fair increase for 2014 would be 2 % , and so order.

The issue of retroactivity was argued. For 2012, 2013 the budgets have been set and much of

the money spent. The province will not fund these . By the same token the employer- offered bonus of \$ 1000 x 2 has not been funded, as far as I know. Generally wage increases are fully retroactive and I do not wish to change that. Increases will be retroactive to the end of the last collective agreement.

Benefits

The cost of benefits is the second largest item in the cost to the employer. The Union in its exhibits included a Benefit booklet which I have read carefully. . The medical benefits are provided through Clarice under a Green Shield plan and extend to spouse and family. Under Article 30.01 the employer agrees to pay premiums only.

Medical benefits are drugs ,vision ,supplementary hospital, supplementary health care , dental, and chiropractic.

The Union stresses the importance of a good benefit package and gives it a high priority. It seeks to increase **vision** care from \$ 200 every 24 months to \$ 300. It points out that even for single vision glasses, local costs exceed \$ 300. The 24 month limit seems to be common in the industry. I award the extra \$ 100.

The **dental** plan , as outlined in the benefits booklet , covers basic procedures , which are quite extensive. The Union seeks to add Major services, which covers dentures, crowns (co-pay, yearly cap),and orthodontics(co-pay, lifetime cap).It points out that Ottawa, Toronto, Durham, Waterloo, Niagara and York have Full Plan coverage and orthodontics. I recognize the utility of this coverage, as the Union argues, the overall cost of it is high. I decline to award it in this current economic climate.

The Union seeks to increase **life insurance** to cover spouse and children to \$ 20,000 and \$10,000 respectively Current coverage for the employee is 2x salary. It points out that this coverage was provided in the three private agreements which became part of the Essex agreement. This is a straight cost item and is not overwhelmingly expensive. I award this.

Current **LTD** is 66 2/3 % up to \$ 4000 per month. The Union seeks to raise this to 75 % with no cap. Its comparators have Niagara at 60 % non-taxable, and Durham at 67 % with a \$6000 per month cap. Employer costings include the existing cap and are modest. I agree that coverage in Essex is at the low end, and award an increase to 70 % with a \$ 6000 cap.

The Union seeks to raise the **chiropractic** coverage by \$ 35.00 to cover administration costs. I award this.

The federal budget in 2012 will gradually raise the retirement age to 67. Currently early retirees get many benefits to age 65 and spouses and children the same. The Union wishes to raise the

age of coverage to 67. I agree that this may become necessary but it is premature to do so at this time. I decline to award it.

OTHER ISSUES

Article 1.01 Management rights.

Currently the clause provides just cause protection to probationary employees as well as seniority employees, with the attendant right to grieve under Article 9. The Employer wishes to remove this right from probationary employees by changes to both Articles. It argues that full just cause protection makes it difficult and expensive to remove unsuitable probationary employees. External comparators show a wide range of provisions dealing with this. I agree that full just cause protection is unwarranted. Some protection for a highly trained person who has spent a lot of time preparing for and seeking such a well paid position seems justified , however. Where the probationary period is 12 months , this is even more important. What is required is a full, fair chance to show ability. I think it follows that giving the employer full discretion with no limits is unfair. I am not even sure the jurisprudence allows that . I direct the parties to address this in the light of my comments.

Article 11.03 Discipline and Discharge

Where an employee faces possible discipline the Employer will send a copy of the complaint to the employee within 10 calendar days of the event. If the employer needs to include individuals or outside agencies in its investigation, it is able to extend the time to 30 days. The Employer seeks to raise this to 60 days because it cannot always get the information it needs, particularly from outside agencies, in 30. The Union objects to the increase.

I am often faced with a Union argument that the employer investigation was shoddy . An extension which might improve it seems justified even though the employee may have the apprehension of a longer wait. I award this change.

Article 12.03 Seniority

Current probationary term is 1896 hours worked or 12 months whichever occurs last. The Union wishes to reduce this to 948 hours or 6 months. The term was raised from 6 months in the now expired agreement. The Employer argues that it needs this time. Since this was just changed, I am reluctant to interfere and decline to make this change.

Article 12.04 Loss of Employment

The present clause covers the usual reasons, discharge ,unexplained absence, long lay-off, etc. The Employer wishes to add (g) **‘Subject to the provisions of the Ontario Human Rights Code, an absence for eighteen (18) consecutive months , if employed less than one (1) year , or an absence from work for twenty-four (24) consecutive months if employed more than one (1) year , unless the employee can provide evidence that he/she will be able to return to work within a reasonable time period beyond such period.’**

This is to give both the employer and the member some idea of their future should an employee be off on a long indeterminate leave. It is quite common now, as seen in the comparators provided by the Employer and I award it.

Article 12.05 Transfer out of the Bargaining Unit

The current article allows a return after twelve months out without seniority accumulation while out. The Employer seeks to allow seniority accumulation for that time out. The reason given is that some employees are reluctant to leave if they know they will drop down the union seniority list should they return. It argues that this affects its power to appoint people of merit to outside positions. The Union resists . Among other things it would not be receiving union dues and it puts a high value on seniority. I have no information on whether the concern of the Employer has been borne out by practice. The Teamster unit in Essex allows accumulation. A few external comparators allow it, for differing periods, but it is not a common provision.

It has not been proven to me to be necessary and I decline to award it

Article 13.01 Postings

Currently the Employer can fill temporary vacancies by appointment for up to 12 months. As I read it, temporary vacancies of more than 90 days must be posted. The Employer seeks to make some changes to allow it to fill for up to 12 months without posting and to administer vacancies of 90 days or less as an open shift. Its current practice is to do that with the 90 day ones by filling them with part-time employees. For the longer ones, it asks the senior part-timer but does not post.

I did not hear an objection from the Union and since it is current practice, award the request.

Article 18.01(b)i Vacations

Currently the clause allows six weeks after 25 years. Some employees with 7 weeks are 'grandparented.' Employees who are not paramedics have a different schedule. The Union seeks to add seven weeks after 28 years and make one schedule for all unit employees. It makes the valid argument that a long time doing a stressful job should be rewarded. The Employer costs this at over \$ 100,000 during the three year agreement. I agree with the Union reason but decline to award this in the current economic climate and considering total compensation.

Article 18.01(b)ii Vacations

This article allows employees to use vacation time in increments of 4 hours at the beginning or end of their shift. The Employer wishes to remove this option and to require vacations to be taken in full days. It describes a scheduling difficulty with the current language. Most work 12 hour shifts and the availability of 4 hour vacations triples the number of times it must seek replacements. Using a part time employee for 4 hours dis-entitles that person from taking a full shift later in the day. In 2012 it received 770 requests , about two a day. It approved about 165 of these.

The Union responds by stating that the current overtime clause, A. 16.04 allows a person to choose not to be paid for overtime but to take time off at the overtime rate to a maximum of 80 hours a year. I have no information as to the usage of this provision. It might well be that employees prefer the extra money if they have the choice of using vacation time instead of overtime credits.

Scheduling is a very unit-specific problem and I am reluctant to alter existing procedures without more information about the impact of a change . I decline to award this change.

Article 18.01(c) Vacations

Currently employees on WSIB or LTD and absent for more than 6 months have their vacation pay, but not their entitlement, reduced on a pro-rated basis. The Employer wishes to extend this clause to all employees and to add that persons taking Union leave or personal leave would accrue no vacation credits at all. The Union did not respond to this matter.

I think the proposed change, particularly as it relates to Union leave and voluntary leaves is sufficiently drastic that the Parties should deal with it themselves. I decline to award this.

Article 19.08(5)a Sick Leave

Currently if an employee is on Short Term Disability and is seeking WSIB benefits, the Employer continues to pay the STD benefits beyond the normal 15 calendar weeks of STD, until the person starts to receive the WSIB money. Should the injury or illness be one for which the employee might collect damages, the employee signs an undertaking to pay back the extra STD money. The Employer argues that this makes it a banker and recovery is unsure, since it would have to go to court to enforce the undertaking. Presumably, auto accidents do happen in the service.

The Employer seeks to remove its requirement to continue STD beyond the normal time, and seeks a better enforcement mechanism, as set out on p. 83 of its brief. This includes employee cheques and deduction from wages.

The continuation of STD is not a common thing. I have no information as to the extent to which repayment is a problem. Without more, I decline to award this change.

Article 21.08 Pregnancy, Parental leave

Currently pregnancy leave in A. 21.07 allows an employee who applies for EI pregnancy benefits to top these up for 15 weeks at 80% of earnings. There is the usual two week waiting period., uncovered. The parental leave clause, A.21.08 allows top up of 80 % for 10 weeks. The Union seeks to raise this to 15 weeks and require top up during the two week waiting period.

It points to the importance of parenting, with which I agree. The comparators show this to be rare in Ontario. 10 weeks is common and top up for the waiting period most uncommon. Given the principle of total compensation and the cost, this is not awarded.

Article 22.01 Changes in Classification

When a job changes or a new job is proposed, the clause allows the Union or an employee to require negotiation about it. Failing resolution the matter can go to arbitration. The Employer seeks to add its name to this list of those able to trigger a dispute resolution process. That seems fair and I so award.

Article 24.06 Weekend Premium

Currently paramedics receive a night shift premium of \$0.75 per hour for all hours worked during a shift that commences between the hours of 12:00 pm and 2:00 am., but no weekend premium. The Union seeks to add a weekend premium of the same sum for ‘ **all hours worked during a night shift that commences on the weekend between 6:00 pm on Friday to 07:00 am Monday.**’

The Union points to the normal reasons for a weekend premium, with which I agree. It shows this to be fairly common in CUPE units. This would be particularly so in hospital-based units. The Employer states that this is a costly item, about \$ 143,000.

I do not understand the Union proposal, given that I do not know how weekends are staffed. It covers only night shifts and I assume that there are some day shifts on weekends. Perhaps it just expands the night shift coverage.

Given cost and my failure to understand how it would work, I decline this.

Article 25.02 WSIB

Under A. 19.08, above, the Employer continues to pay STD for employees awaiting WSIB. This clause gives a formula for the calculation of the advance of pay. The Employer ties this request, to eliminate the formula to its earlier one. Given my decision earlier, this is declined as well.

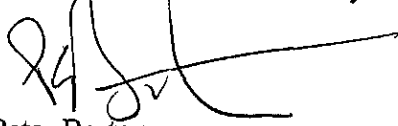
Article 26 Clothing

Currently the Employer pays \$ 125.00 a year toward safety footwear. It wishes to add to the article ‘ **for purchase of footwear approved by the Employer.**’

The reason given is that if it is paying, it should have some control over what is purchased. I don’t find that convincing. It would add administrative complexity to the job and if an employee is wearing inappropriate footwear and gives the Employer safety concerns, it has options.

That covers the matter, as far as I know. I remain seized of the implementation of the award and of any items missed by me. I thank the Parties for their careful submissions.

Dated at London this 27th day of September, 2013


Peter Barton