IN THE MATTER OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT

AND IN THE MATTER OF AN INTEREST ARBITRATION FOR A RENEWAL COLLECTIVE AGREEMENT

BETWEEN:

COLLEGIATE HEIGHTS RETIREMENT RESIDENCE

("the employer")

- and -

UNITED STEELWORKERS on behalf of itself

and its Local 8748

("the union")

BEFORE:

John McNamee, Chair
Marcelle Goldenberg, Union nominee
Yves Campeau, Employer nominee

APPEARANCES:

For the Employer:

Ryan Wood (Spokesperson – Bass Associates)

For the Union:

Meg Gingrich (Spokesperson – USW Staff Representative)
David Pettalia (USW Staff Representative)
Tammy Prosser (Unit Chair, Collegiate Heights)
Meagan Jean (Steward, Collegiate Heights)

A hearing was held at Sault Ste. Marie, Ontario, on September 13, 2016, and a conference call took place on September 29, 2016, following which the parties filed additional submissions. The arbitration board held conference call executive sessions on October 26, 2016 and on November 14, 2016.
AWARD

The parties were unable to resolve all of the issues with respect to the contents of a collective agreement to replace the agreement which expired on December 31, 2015, and therefore referred to this board the outstanding disputes.

There was no disagreement as to our jurisdiction to decide these issues.

The parties agreed at the hearing upon a two year term for the agreement which would terminate on December 31, 2017.

By way of background, the employer is a retirement home located in Sault Ste. Marie, Ontario. It is owned by Chartwell Retirement Residences, which is one of the largest, if not the largest, operator of retirement homes in Canada and the United States. This facility was upgraded to its present 110 room capacity (from 80 rooms) in 2011.

At this facility, the union represents approximately 34 (10 full time, 14 part time, and 10 casual) employees of the employer. These employees are classified as Guest Attendants, Cooks, and Resident Attendants. There is also a classification for students.

THE CRITERIA

The Hospital Labour Disputes Arbitration Act requires an interest board of arbitration to consider the following five criteria:

a) The employer’s ability to pay in light of its fiscal situation;
b) The extent to which services may have to be reduced, in light of the decision or award, if current funding and taxation levels are not increased;
c) The economic situation in Ontario and in the municipality where the hospital is located;
d) A comparison, as between the employees and other comparable employees in the public and private sectors, of the terms and conditions of employment, and the nature of the work performed; and

e) The employer’s ability to attract and retain qualified employees.

The parties also argued that the replication principle should apply, and that we should consider comparability to other employers and bargaining units, as well as total compensation. To that end, they provided the Board with a variety of economic data, including summaries, and in some cases the text, of memoranda of agreement and arbitration awards from within, and without, the retirement home sector. We have considered all of the statutory criteria, the economic data, the precedents, and the arguments placed before us.

The employer did not argue that it had an inability to pay. The union did argue that the rate of turnover of employees indicated that there was an inability to retain qualified employees in that 14 of those employed as of June 2016 had been employed for less than two years. Further, the union points out that eight of the 14 most junior employees were hired between January 1 and May 31, 2016. The Board agrees that this degree of employee turnover is cause for concern.

The submissions of the union

The union seeks, amongst other matters, three percent annual wage increases together with substantial adjustment increases for cooks and for resident attendants. It also seeks night shift premium increases and an increase in the employer’s share of pension (RRSP) increase from one percent to three percent.

It seeks to justify these increases based up a regional comparator(s), and upon data which suggests that minimum two percent employer contributions to pension are becoming the norm. More precisely, it says that there are only two other unionized retirement homes in the city of Sault Ste. Marie, and that the wage rates at those homes are above the rates at this home, i.e.
<table>
<thead>
<tr>
<th></th>
<th>Cook</th>
<th>Assistant Cook</th>
<th>Resident Attendant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pathways Retirement Home*</td>
<td>$20.99</td>
<td>$19.18</td>
<td>No comparable rate</td>
</tr>
<tr>
<td>Great Northern Retirement Home**</td>
<td>$20.81</td>
<td>No comparable rate</td>
<td>$18.73</td>
</tr>
<tr>
<td>Collegiate Heights***</td>
<td>$16.65</td>
<td>$16.45</td>
<td>$16.60</td>
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</tbody>
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* The Pathways rates above are effective on September 1, 2016, and apply to employees with two years’ service. These rates are scheduled to increase by approximately 1.5% on September 1, 2017 and on September 1, 2018. Pathways contributes $60.00 per month to employee pensions (assuming the employee contributes at least $25.00/month) and pays an afternoon/midnight shift premium of $0.35 per hour.

** The Great Northern rates above became effective on January 1, 2016, and apply to employees who have at least six months service after probation. The rates for “Guest Attendants” apply to Personal Service Workers and Health Care Aides. All rates are scheduled to increase by 2% on January 1, 2017. Great Northern contributes $0.59 per regular hour worked to employee pensions, which amount will increase to $0.62 on January 1, 2017 (provided that the employee matches). Great Northern also pays an afternoon/night shift premium of $0.20 per hour.

*** The Collegiate Heights rates above became effective on January 1, 2015, and apply to employees with at least 3600 hours worked. Resident Attendants are Unregistered Resident Aides. Collegiate Heights matches employee contributions to the pension plan to a maximum of 1% of gross earnings, and pays a midnight shift premium of $0.10 per hour.

The union also relied upon the terms of a collective agreement between the Ontario Finnish Resthome Association and SEIU, Local 1 (where the rates and other provisions substantially eclipse the Collegiate Heights terms), but that employer is a combined long term care facility/retirement home, and the majority of the Board (Ms. Goldenberg dissenting) does not agree that the collective agreement there is as good a comparator as are agreements solely in the retirement home sector.
As regards, the rate for Personal Service Workers and Health Care Aides at Great Northern retirement home, the union says that this category of employees is comparable to the Resident Attendant classification at Collegiate Heights. It agrees that Collegiate Heights does not require PSW certification for Resident Aides, but notes that such certification is preferred, and that nine of the 17 Resident Aides (as of May 31, 2016) are PSW’s.

The submissions of the employer

The employer acknowledges that two percent annual wage increases are the norm in the retirement home sector, but submits that the employees at Collegiate Heights are relatively well compensated in comparison to collective agreements across the province.

It also says that there are approximately 90 homes (out of 330) who have no provision for employee pension, or have a pension provision which is inferior which is the 1% pertaining at Collegiate Heights, and another 44 homes at which the employer pension contribution is 1%.

As regards shift premium, the employer notes that there are some 131 homes with no shift premium, and another two homes where the premium is $0.10 per hour.

In general, the employer submits that, on a total compensation basis, the wages and benefits at Collegiate Heights are above the average of retirement homes across the province, and that private sector settlements generally (all industries and sectors) are substantially below two percent annually.

Factors Considered by the Board

In formulating its award, the board has considered the following factors:

a) this is a mature collective agreement;

b) the statute requires us to consider a wide range of comparators, but in light of the economic situation in the municipality concerned, the nature of the work
performed, and the economic sector under consideration, we believe that retirement homes in the subject municipality ought to be given greater weight;

c) there is a substantial gap between the wage rates paid to cooks at Collegiate Heights and those paid to cooks at Pathways and Great Northern;

d) there is also a substantial gap between the rates paid to Assistant Cooks at Collegiate Heights (who are currently paid as Guest Attendants) and the rates paid at Pathways;

e) there is a $2.13/hour gap between the rates for Resident Attendants at Collegiate Heights and the rates paid to Personal Service Workers and Health Care Aides at Great Northern. However, the Great Northern rates apply to employees (PSW’s) who have substantially more training and qualifications than are required of unregistered Resident Aides at Collegiate Heights;

f) although wage rates and benefits are not the only factor in employee turnover, they most likely have some influence upon an employee’s decision to remain with an employer; and

g) when providing for catch up, an interest arbitration board ought to be cautious in the manner in which it proceeds, and should not necessarily assume that large gaps can be closed in the course of an one collective agreement.

ORDER

In light of all of the circumstances and submissions, the Board makes the following award. The parties are therefore directed to enter into a collective agreement which consists of all of the terms of the previous expired agreement, including any letters of intent or letters of understanding, except as modified by the following:

1) Term – January 1, 2016, to December 31, 2017, in accordance with the agreement of the parties.

2) Retroactive to January 1, 2016, increase all wage rates by 2.25%;
3) Retroactivity pursuant to paragraph (2) above shall be provided to all persons who worked in the relevant time period, whether or not they remain employees of the employer. Retroactivity is to be paid, by separate cheque, within three full pay periods of this award to persons who remain employees of the employer. The employer shall, within one month of the date of this award, send a letter to the last known address in the records of the employer, to any person who left employment after January 1, 2016, advising them of their right to retroactivity, which shall be paid if they claim it within 60 days from the date upon which the letter was mailed. Ex-employees who fail to claim retroactivity within the 60 day period shall be deemed to forfeit any claim thereto;

4) Effective on the date of this award, increase midnight shift premium to 20 cents per hour;

5) Effective on the date of this award, increase the maximum employer contribution to employee RRSP’s to 2%;

6) Effective on the date of this award, increase Resident Attendant wage rates by 10 cents per hour;

7) Effective on the date of this award, increase wage rates for Cooks and Assistant Cooks by 10 cents per hour. (This will require the creation of a new category of Assistant Cook, instead of including it in the Guest Attendant category);

8) Effective January 1, 2017, increase all wage rates by 2.25%;

9) In accordance with the agreement of the parties, renew Letters of Understanding #’s 1, 2, 3 and 4; and
10) Include any item(s) mutually agreed between the parties prior to the hearing. The effective date of these items shall be the date of this award, unless otherwise agreed between the parties.

Any proposal not specifically included herein is rejected.

The board retains jurisdiction over this award until a new collective agreement is executed.

DATED at Toronto, this 16th day of November, 2016.

John McNamee, Chair

I dissent

“Marcelle Goldenberg”
Marcelle Goldenberg, Union Nominee

I dissent

“Yves Campeau”
Yves Campeau, Employer Nominee