

IN THE MATTER OF THE *LABOUR RELATIONS ACT, S.O. 1995, c.1, Sched. A*

AND IN THE MATTER OF A FIRST CONTRACT ARBITRATION

BETWEEN:

**SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 2
BREWERY, GENERAL & PROFESSIONAL WORKERS UNION**

UNION

AND:

4089171 CANADA INC. O/A BUILDING AND MAINTENANCE IND. COMPANY

EMPLOYER

Arbitration Board:

Norm Jesin, Chair
J. Cameron Nelson, Union Nominee
Ahmed Shammout, Employer Nominee

Appearing for the Union:

Robert Logue, Counsel

Appearing for the Employer:

Terry Strong, Regional Maintenance Manager

AWARD:

1. The following is the award of the Chair, concurred in by Mr. Nelson, the Union nominee. As such it is the award of the majority. I will leave it to the Employer nominee, Mr. Shammout, to indicate separately whether he concurs or dissents from this award.
2. This award is for a first contract pursuant to a direction from the Ontario Labour Relations Board for first contract arbitration in accordance with s. 43 of the *Labour Relations Act, 1995* (the LRA). A hearing was held in this matter on April 19, 2021. The Board was duly constituted in accordance with s. 43 of the LRA and there is no objection to the jurisdiction of this Board to render this award. As the parties were unable to agree on the term of the collective agreement, in accordance with s. 43 (19) of the LRA, the agreement will be for a two-year term to commence on the date of release of this award. In determining the matters in dispute, we have applied the normative and well accepted criteria routinely relied on by boards of interest arbitration, most notably replication and comparability.
3. The Employer is a building cleaning contractor with operations in the City of Ottawa. The Union represents approximately 2800 employees in the building cleaning industry in the City of Ottawa. Approximately, 2700 of those employees are covered by a local industry agreement that was referred to as "Ottawa City-Wide Collective Agreement" (the Ottawa Agreement). The Ottawa agreement has 23 employer signatories and covers 464 worksites.
4. The Union was certified to represent a bargaining unit of the Employer's employees on July 3, 2018. The bargaining unit consisted of employees employed at 1030 Innes Road,

in Ottawa. There are two employees in the bargaining unit. The Union also represents employees of the Employer in at least six other locations in Ottawa that are not subject of this award. The Employer obtained the cleaning contract for the Innes Road location in 2017 from the federal government Department of Heritage.

5. Prior to 2017, the cleaning contract for this location was held by another employer - Canalatin Janitorial Services Inc. The Union had been certified to represent employees of Canalatin in 2016 and Canalatin agreed to become bound to the Ottawa Collective Agreement. Subsequently, the Department of Heritage put out an RFP for a new contract which was ultimately awarded to the Employer. The RFP indicated that the employees under the present contract were unionized and further set out the rates that were applicable under the Ottawa Agreement.
6. According to the Union, apart from term, there are six monetary items in dispute between the parties. Those items are listed as follows:
 - Wages and Premiums
 - Benefits
 - Sick Days
 - Vacation
 - Pension
 - Retroactivity

In essence, the Union proposals for the first five items mirror the monetary terms set out in the Ottawa Agreement. The Union asserts that the Ottawa agreement sets out an industry standard in Ottawa and that this standard should be awarded in this case. The Union asserts that some of the Employer's who are not covered by the Ottawa Agreement pay superior rates and there are very few that pay lesser rates. Indeed, this Employer pays wage rates that are superior to the rates in the Ottawa Agreement in another Ottawa

property. Furthermore, where the Employer at a building had been subject to the Ottawa Agreement terms a subsequent employer should not pay a lesser rate than what has been negotiated throughout the industry. The Union has also submitted evidence of two locations in which it has agreements with this Employer in which the Employer provides benefits, sick days, vacation and pension equivalent to the Union proposal.

7. The Employer maintains that it was able to obtain the contract with lesser monetary terms and should not be forced to comply with terms of an agreement negotiated with other employers. Furthermore, the Employer has indicated that it could not afford to pay the Ottawa Agreement rates under its contract at the building in question. The Employer did not put forward any comparator evidence in support of its position.
8. In *Kleenway Building Maintenance Services Inc*, [2012] OLRD No 2551, [2012] OLRB Rep July/August 725 ("*Kleenway*"), the Board awarded a first contract for a building cleaning company in London Ontario. In that case the Board specifically rejected the Employer's argument regarding its ability to pay and instead awarded the Union's substantially higher proposal. Like the situation in our case, the *Kleenway* was certified after taking the contract over from a previous contractor which was certified and was paying higher industry rates. The Board noted at paragraph 30 of its decision that it was not the Board's role to facilitate a "race to the bottom" and it did not wish to award rates which were substandard relative to the industry. We are in agreement with the approach taken in the *Kleenway* case.
9. Having regard to the foregoing, the foregoing the collective agreement will consist of those items not in dispute together with the items awarded as follows:

10. Wages and Premiums:

The Union's proposal is awarded. For greater clarity, the Union's proposed 2021 rate will apply in year 1 and the proposed 2022 rate will apply in year 2.

11. Benefits, Sick Days, Vacation and Pension:

12. The Union's proposal on these items are awarded. For greater clarity, the pension of 1% as proposed is to be introduced effective April 1, 2022, as that is when the pension is to be introduced under the Ottawa Agreement.

13. Retroactivity:

The Union seeks retroactivity for wages from the date of certification – July 3, 2018. Section 43 (19) provides that although the collective agreement is effective from the date of release of the Award, this Board is authorized to make any item (other than term) retroactive to any date up to the date on which notice to bargain was given. That date is July 4, 2018. The Union seeks retroactivity of wages based on the wage rates as they existed from that time forward.

14. In *Canada Building Materials* 1990 CanLII 5701 (OLRB) the Ontario Labour Relations Board awarded one year's retroactivity in a first contract under this section. We are of the view that some retroactivity should be awarded in this case. This Employer has been certified since July 3, 2018. To deny any retroactivity would be to reward the Employer for the delay in reaching this agreement. However, we are of the view that retroactivity in this case should be limited to the date on which the year one rate that we have awarded became effective under the Ottawa agreement. That date is July 1, 2020. Our Award is

therefore that wages will be retroactive to July 1, 2020. Retroactivity will apply for wages only and will not apply for any of the premiums or other monetary items awarded herein. Retroactive payments will be made to all current and former employees within three pay periods from release of this award.

15. The Board will remain seized of any further items which may be in dispute until a collective agreement is signed.

Dated at Toronto this 10th day of May 2021.



Norm Desin, Chair

“J. Cameron Nelson”

I concur – J. Cameron Nelson, Union Nominee

Ahmed Shammout, Employer Nominee