

**In the Matter of an Adjudication Concerning Market Supplement Wage Rates
for the following classification:
• Pharmacist**

Between:

Health Sciences Association of Saskatchewan

- and -

Saskatchewan Association of Health Organizations

Before: Beth Bilson, Q.C., Adjudicator

**Present: For HSAS: Kevin Glass
Nicole Bidwell**

**For SAHO: Kevin Zimmerman
Ian Billett**

Hearing Date: September 7, 2006

Decision of Adjudicator

This is a decision concerning market supplement wage rates for the Pharmacist classification represented by the Health Sciences Association of Saskatchewan (HSAS). The employers of these employees are represented for the purposes of collective bargaining by the Saskatchewan Association of Health Organizations (SAHO).

The market supplement program was agreed to by these parties in a collective agreement concluded in 2001, and its objective has been described as follows by the Market Supplement Review Committee (MSRC) in recent reports concerning this classification:

The objective of the Saskatchewan Market Supplement Program is to ensure that Saskatchewan health care employers can attract and retain the employees required to provide appropriate health care services to the people of Saskatchewan.

This program is designed to address specific skill shortages by use of a market supplement to attract and/or retain qualified employees. The program is designed to ensure that market supplements respond to valid labour market criteria to address recruitment and/or retention pressures.

The Letters of Understanding (LOUs) setting out the process for determining whether market supplements should be awarded to particular classifications, and for deciding if necessary what the amount of the market supplement should be, provide for reference to an MSRC of the question of whether a market supplement should be awarded or whether an existing market supplement should be increased. Either party can ask for an adjudication if they disagree with the conclusion of an MSRC, and can also ask for adjudication to determine the amount of a market supplement if the parties fail to agree on this.

In a decision dated March 17, 2005, I upheld the decision of an MSRC that there should be no additional market supplement in the Pharmacist classification, based on an analysis of the five factors which are indicated as relevant to the question in the LOUs: service delivery impacts, turnover rates, vacancy rate analysis, recruitment issue analysis and salary market conditions. At that time, the vacancy rate in this classification had shown steady improvement over the period leading up to the MSRC examination of these issues.

As provided in the LOUs, HSAS subsequently sought a review of the market supplement for Pharmacists, and in October, 2005, the MSRC reported that they did not find that an additional market supplement should be awarded. In a departure from the usual procedure, a second MSRC review was conducted at the request of the Regina-Qu'Appelle Health Region, and the MSRC reported in May, 2006, again recommending that no additional market supplement be awarded. HSAS has referred the results of both these MSRC reviews to adjudication, and this decision is a response to that reference.

In his submissions on behalf of HSAS, Mr. Glass pointed to a number of steps taken by employers which in his view demonstrate the recruitment and retention problems currently associated with this classification. He alluded to the practice of hiring new employees at the higher steps of the pay scale rather than at the first step. His written submission included comments from a number of Pharmacists suggesting that this practice is causing morale problems, since more senior Pharmacists find it unfair that they should have had to start at a lower point on the scale than newer employees. In one health region, the response to these comments was to raise more senior Pharmacists to the top step of the scale, rather than have them proceed through the steps in the usual fashion.

Mr. Glass argued that the “notwithstanding” clause in the collective agreement, which authorizes employers to place new employees at a higher step on the scale under certain circumstances, was not intended to address recruitment and retention problems, and that its use by employers in this way was a distortion of the provision. He stated that the measure of responding to complaints from senior Pharmacists by moving them up on the scale was entirely irregular. HSAS was placed in an awkward position, since opposing this measure would be to the detriment of these members; nonetheless, they felt that these ways of dealing with recruitment and retention issues outside the market supplement program undermined the integrity and coherence of the system. He argued that the LOUs setting out the market supplement program override the notwithstanding provision, and that recruitment and retention matters should be dealt with in the framework of the market supplement program.

He also included as an appendix to his brief a letter from Pharmacists at St. Paul’s Hospital in the Saskatoon Health Region setting out their concerns about a variety of staffing and workload issues.

Ms. Bidwell argued that the evidence indicates that there is the potential for serious difficulties in attracting and retaining Pharmacists, and urged me to take a proactive approach which would prevent these problems from becoming worse.

Mr. Zimmerman argued on behalf of SAHO that employers are entitled to make use of a number of tools to address issues of recruitment and retention. These include offering educational opportunities, signing bonuses and other enhancements of the terms and conditions for these employees. If there is some issue about whether the employers have made improper use of the notwithstanding provision in Article 18.05 of the collective agreement, the proper recourse for HSAS is through the grievance procedure.

Mr. Zimmerman acknowledged that the vacancy rate in the classification had risen between October 2005 and May 2006 from 1.2% to 10.5%. He argued, however, that this was largely a localized phenomenon arising from a number of departures from the Regina-Qu’Appelle Health Region, and that an addition to market supplement rates across the province is not the appropriate response to a specific problem of this kind.

He noted that the May 2006 report of the MSRC listed two full-time vacancies in Saskatoon. These, he said, represented the transfer of two Pharmacists into out-of-scope

positions; two residents had been placed in the in-scope positions, and it is hoped that they will remain.

Mr. Zimmerman also suggested that the comments in the letter from the Pharmacists at St. Paul's Hospital were related to staffing and workload issues which are not directly related to recruitment and retention.

In support of his argument, Mr. Glass referred me, with the indicated emphasis, to the following sentence in LOU #13:

It is agreed by HSAS, SAHO and Employers that this Letter of Understanding shall work in concert with the Collective Agreement and the SAHO Provincial Market Supplement Program and will supercede all previous Letters of Understanding or special local provisions regarding market supplements with respect to the named classification.

My role as an adjudicator is strictly circumscribed by the LOUs, and I do not understand those documents as conferring on me any jurisdiction to embark on a general interpretation of the provisions of the collective agreement. In this respect, I agree with counsel for SAHO that, if HSAS is of the view that either the application of Article 18.05 of the agreement or the decision to put senior Pharmacists at a different point on the pay scale violates the collective agreement, they must seek recourse through the grievance procedure. I cannot comment on whether employers were entitled under the collective agreement to take those steps.

I think it lies within my jurisdiction to engage in some interpretation of the LOUs themselves. In this respect, in addition to the part of the sentence from LOU #13 underlined by Mr. Glass, I would note the earlier part of the sentence which refers to the LOU working "in concert with the Collective Agreement." Though understanding the full significance of this in this context would require a reading of Article 18.05 - and I have just said my jurisdiction does not extend to such a role - it seems safe to say on the basis of this sentence that the LOUs do not "override" or "replace" Article 18.05 in the sweeping sense argued by Mr. Glass.

On the other hand, though I cannot determine whether the use of Article 18.05 has been appropriate, the evidence of the practice of hiring above the starting rate can be considered as one of the indicators that the employer may be encountering difficulties in recruiting Pharmacists; indeed, the MSRC report of May 2006 indicates that six regions identified this as one of their responses to ameliorating vacancy rates.

I have said before that I do not think it is appropriate for me to attempt to anticipate the trajectory of recruitment and retention problems. In a decision dated June 24, 2003, concerning the wage rates of Infection Control Practitioners, I made the following comment:

Nonetheless, I am persuaded by the argument put forward by the Employer that the focus of the Market Supplement Program should be on assessing the current situation and attempting to establish a competitive position in that environment, rather than on establishing a gap which represents an attempt to anticipate further changes in the wages of comparator groups or other market factors. There is no reason to suppose that the market will not continue to be volatile. The wage profiles of other groups will continue to change, and the effect of those changes, along with other factors, such as non-monetary rewards, the supply of trained professionals, and natural human inertia, must be continually assessed. This is, presumably, why the Letter of Understanding provides frequent opportunities to revisit the market supplement question.

The MSRC in their report of October 2005 regarding the Pharmacists also declined to do other than respond to the existing circumstances; they felt that the data provided to them indicated that there was no need to augment the market supplement. In May 2006, the MSRC acknowledged that the circumstances had changed somewhat; they concluded, however, that it was too early to tell whether the economic increases which came into place on April 1, 2006, would have an ameliorative effect on what appeared to be new pressures on recruitment and retention.

At the time I heard this matter, the parties presented some new information, but indicated that there had not been any notable change in the vacancy rate since the May report, five months after the implementation of the latest economic increase. Though Regina-Qu'Appelle is still the centre of the most significant vacancy issues, there are signs of pressure in other regions, notably those six which reported hiring at higher wage steps to attract new Pharmacists. In some regions, a single position seems difficult to fill, and there may be many explanations for this. Overall, however, there does seem to be a difference in the scale of the problem between the October and May reports of the MSRC; in particular, it seems that there was a departure from a trend which was steadily decreasing the vacancy rate after 2002.

I have said before that there is no way of developing an approach to the award of market supplements which can be defended as scientific. The situation is a volatile one, and there is no way of knowing exactly how wage levels influence the decision of individuals to take a job or remain in it. Nonetheless, I am persuaded that the picture outlined by the MSRC in their May report, which was largely confirmed by the parties at this hearing, suggests that there are recruitment and retention issues for this classification which justify the award of an additional market supplement at this time.

In this connection, Mr. Glass argued that any additional market supplement should be retroactive to the time of the first MSRC report in October 2005. Though this was a somewhat unusual sequence of events, in that there are two reports addressing the same classification within a period of time shorter than the regular interval between reviews, the two reports did address distinct environments and have to be seen as two separate reviews. I do not disagree with the conclusion in the October report that the

circumstances at that time did not warrant an additional market supplement. Any addition to the market supplement would only be retroactive to May 2006.

DATED at the City of Saskatoon, this 16th day of October, 2006.

Beth Bilson

Beth Bilson, Q.C.