

**IN THE MATTER OF AN ADJUDICATION
PURSUANT TO A MEMORANDUM OF SETTLEMENT
DATED OCTOBER 16, 2002, BETWEEN
THE SASKATCHEWAN ASSOCIATION OF HEALTH ORGANIZATIONS AND
THE HEALTH SCIENCES ASSOCIATION OF SASKATCHEWAN**

BETWEEN:

Health Sciences Association of Saskatchewan

APPLICANT

-and-

Saskatchewan Association of Health Organizations

RESPONDENT

BEFORE:

Beth Bilson, Q.C.

APPEARANCES:

Greg Deren, for the Health Sciences Association of Saskatchewan

Leah Schatz, for the Saskatchewan Association of Health Organizations

Decision of Adjudicator

The Health Sciences Association of Saskatchewan (HSA) has requested this adjudication pursuant to a Letter of Understanding appended to a collective agreement which was concluded between that Union and the Saskatchewan Association of Health Organizations (SAHO) on October 16, 2002. The issue presented for adjudication is whether a market supplement should be paid to Speech Language Pathologists who are employed by SAHO and represented by HAS, and what the amount of such a supplement should be.

The Letter of Understanding provides a mechanism for determination by a single adjudicator of issues relating to market supplements in the event the parties are unable to resolve these questions following the report of a joint committee. The adjudication is bounded by specified time limits, though it was necessary for the parties to waive these restrictions in this case.

The Letter of Understanding provides that no witnesses are to be called. Each of the parties is expected to put forward a single proposal, and the adjudicator is required to choose one of these.

The hearing in this case took place in Saskatoon on January 22, 2003.

Counsel for the Employer explained by way of background that the health care system in Saskatchewan had for some years been experiencing problems with recruitment and retention in many of the specialized paraprofessional groups represented by the HSA. Some time ago the Employer had tried to establish unilaterally a market supplement for some of these groups of employees. This initiative was challenged by the Union.

Following this, the Employer and the Union agreed that a joint Market Supplement Review Committee should be established to consider market supplement issues, and to make recommendations with respect to the payment and size of market supplements.

In the case of the Speech Language Pathologists, the Market Supplement Review Committee reported in August, 2002, with a recommendation that a supplement should be paid to this group. I was supplied with a copy of this report at the hearing.

In preparation for the hearing, the Employer had gathered information about the salaries of Speech Language Pathologists employed by a number of school boards in Saskatchewan, and by the health care systems in Alberta and Manitoba. The Union acknowledged that the Employer had co-operated in sharing this information to assist them in the formulation of their own submissions.

In his presentation on behalf of the Union, Mr. Deren argued that the most useful comparator is the salaries paid by Saskatchewan school boards. This represents an indicator of the true Saskatchewan market for employees doing very similar work. In their brief, the Union made comparisons of the compensation of Speech language Pathologists employed by SAHO and by a number of school boards, taking into account differences in the compensation structure and in working conditions.

The proposal made by the Union was that parity should be established between the salaries of Speech Language Pathologists employed by SAHO and the average salaries of those employed by the selected school boards, at the maximum rates, and that the difference this represented should then be allocated evenly along the pay scale for SAHO Speech Language Pathologists.

In his argument, Mr. Deren alluded to the problems with recruitment and retention which had led to the Market Supplement Review Committee recommendation in August, 2002. He suggested that a similar situation prevails at the current time, and submitted copies of a number of newspaper advertisements for Speech Language Pathologist positions in the Saskatchewan health care system.

Counsel for the Employer, Ms. Schatz, presented a brief in which the comparisons shown with salaries for Speech Language Pathologists employed by Saskatchewan school boards differed slightly from those figures used by the Union. In particular, Ms. Schatz pointed out that the salary levels for Speech Language Pathologists employed by SAHO rose faster at the lower levels of the wage scale, and then levelled off, while the school board scales showed a more gradual movement to a higher rate at the top. These differences in structure would, she argued, make comparisons of only maximum rates problematic.

In any case, SAHO was not putting forward a proposal for a market supplement set in a different way, or based on different assumptions. Rather, counsel argued that no market supplement should be paid at this time. She argued that the recommendations of the Market Supplement Review Committee in August, which were based on information gathered in March, 2002, had been overtaken by the bargaining for a new collective agreement, and the settlement which ended the industrial action taken by the Union in the fall of 2002.

Counsel pointed out that the Speech Language Pathologists had received a significant increase in compensation under the new collective agreement, and argued that it is impossible to tell, until these new rates have been in place for a reasonable period, whether the same problems with recruitment and retention continue to exist.

Responding to this argument, Mr. Deren explained that the issue of market supplements had been addressed during the bargaining which had culminated in the new collective agreement. Indeed, market supplement rates had been established for a number of other groups represented by HSA. Through what Mr. Deren described as an oversight, the Speech Language Pathologists had been omitted from this list, and no market supplement had been bargained for them. Mr. Deren argued that this was an additional basis on which their claim should be considered at this point.

The awarding of market supplements is one strategy by which employers have sought to respond to market pressures and to attract members of groups whose skills are scarce or who are more highly paid in other places or by other employers. Though dealing with these market forces is sometimes seen as a problem peculiar to employers, the history of the negotiations between these parties demonstrates that it can be of critical interest to unions and, of course, to the employees they represent.

In the context of this collective bargaining relationship, the Union and the Employer have put in place a series of mechanisms by which a determination can be made as to whether the market conditions which prevail at a particular time justify the establishment, for a limited term, of a supplement which will attract employees to this Employer and persuade current employees to remain. The parties have provided opportunities to resolve these issues themselves, and also a protocol for reference to a third party adjudicator.

In the Letter of Understanding, the parties have indicated the factors which they consider relevant to resolving the question of whether a market supplement should be awarded, in the following terms:

c) The jurisdiction of the Market Supplement Adjudicator in determining a market supplement wage rate, or determining whether or not a market supplement is appropriate, shall be limited to consideration of the following labour market criteria:

- Service delivery impacts: service delivery impacts are analysed, including options for alternative service delivery models.
- Turnover rates: an annual turnover (loss of employees to other competitor employers) ratio to the existing staff complement in any given occupation. Local analysis of reasons for leaving will be necessary to determine any trends that may be emerging.
- Vacancy rate analysis: whereby the frequency and timing of vacancy occurrences (i.e. seasonal; always following an event; etc.) are analyzed for trends that may affect recruitment/retention efforts.
- Recruitment issue analysis: whereby issues such as length of recruitment times, training investments, licensing issues, supply and demand issues, etc. are analyzed for trends which may affect recruitment/retention efforts.
- Salary market conditions: affected employer's salary levels are lower than other employers that affected employers would expect to recruit employees from, or other employers that affected employees are recruited to. This may be local, provincial, regional or national depending on the occupation group and traditional recruitment relationships. Cost of living considerations may or may not be appropriate to factor into market salary comparisons.

Some of the difficulties of assessing the need for and calculating the appropriate value of market supplements can be appreciated from a review of this list.

One of these difficulties arises because of the volatility of market conditions, a factor which the parties have recognized by providing for annual review of the necessity for market supplements which were previously awarded. The skill shortages or other conditions which give rise to the kind of market pressures which market supplements are meant to address can alter dramatically within a short time.

As the material and argument presented to me in this case shows, a further difficulty is created by the differences in compensation structures, and in other terms of employment

which may substitute for compensation in some sense. The interchange between representatives of the parties concerning whether the maximum rates paid by the school boards is the most accurate point of comparison is a good example of this type of problem.

As the parties themselves point out, the use of market supplements to resolve problems with recruitment and retention is a complex and uncertain business. Employees make career choices for many reasons. These choices are certainly likely to be influenced by the level of compensation offered, but there are other factors which come into play, many of which cannot be controlled by any employer. Nonetheless, market supplements can be effective as an incentive to employees faced with the choice of accepting a particular position or searching for other employment.

It seems clear that the issue of recruiting and retaining members of many of the specialized health care professions represented by HSA has been an important one for the parties, and that this issue was a prominent one in the round of bargaining which led to the current collective agreement. The Union succeeded in obtaining significant wage increases for its member, including market supplements for a number of groups, at least in part, it would seem, because the Employer acknowledged the strong market position of these employees at that time.

The presentations made by the parties in this case, and their proposed resolutions to the issue of market supplements for the Speech Language Pathologists, did not fall neatly into the “final offer selection” format contemplated in the Letter of Understanding setting out my mandate.

This is understandable, given that this is the first reference to adjudication, and the parties are not to be faulted for providing me with extensive information about the context in which this issue arose. The arguments of the parties can ultimately be shaped into “proposals” as envisioned in my terms of reference, and I am, at the end of the day, required to choose one or the other.

For the reasons which I outlined earlier, the Employer submitted that it would not be appropriate to award a market supplement until there is an opportunity to gauge the effect on the recruitment and retention of Speech Language Pathologists of the sizeable increase which they achieved in the current collective agreement.

The Union proposal was that a market supplement should be paid which would create parity at the top of the scale between the salaries of Speech Language Pathologists employed by SAHO and the average salaries paid to Speech Language Pathologists by selected Saskatchewan school boards. In support of this proposal, Mr. Deren alluded to the omission by the negotiators for the Union to ensure that the Speech Language Pathologists received a market supplement as other groups did in the new agreement.

One has some sympathy for the position in which this particular group of employees was put by this lapse during that difficult set of negotiations. It is my view, however, that it

would be a mistake for me to second-guess the bargaining between the parties in the context of this process. There are many reasons why issues are pursued or dropped during negotiations, and I do not understand it to be within my jurisdiction to open up this bargaining process for examination.

The comparators selected for emphasis by HSA seemed to me to offer a realistic basis for assessing the adequacy of the compensation levels of the Speech Language Pathologists employed by SAHO to respond to pressures of the local market. Though there was some difference of opinion between the parties about specific aspects of these comparisons, the Employer also seemed, from the information provided to me, to think that the school board compensation levels were a good place to start.

The purpose of market supplements, however, is not to achieve parity for one group of employees with another. That is often an objective of collective bargaining, and it is true that wage levels elsewhere provide useful clues about the effects of the market in compensation. The fact that employees in another employment situation are being paid more is not, however, in itself sufficient to justify the award of a market supplement.

The information about wage levels elsewhere must be combined with a demonstration of the effects such wages maybe having on recruitment and retention of SAHO employees. Mr. Deren alluded to rumoured departures of Speech Language Pathologists to school board employment or to employment in Alberta. He also submitted a number of newspaper advertisements for vacant Speech Language Pathologist positions in the Saskatchewan health care system.

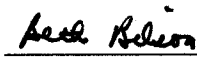
This information, though relevant, is not sufficient to provide a clear picture of whatever recruitment and retention problems SAHO may currently be experiencing with respect to Speech Language Pathologists. In order to draw a link between compensation in other settings and a reluctance to apply to or to stay on with the Saskatchewan health care system, I would have to have a clearer picture of such factors as the normal mobility of this group, the current vacancy rate, the choices those leaving SAHO employment are making, and the experience of other employers in recruiting into similar positions. It would also be helpful to know if the vacancy rate has changed in this classification since the conclusion of the current collective agreement. The list of factors from the Letter of Understanding provides a useful guide; though not all of the elements described there may be relevant in every case, it does point to the kind of analysis which is necessary to an understanding of the market position of any given group of employees.

I should underline that adjudication of market issues of this kind is not an exact science. I do not mean to suggest that I will make no decisions as to market supplements without exhaustive evidence which would positively and categorically establish all of the elements I have suggested. This would be unreasonable, and I understand that it will always be necessary for me to be prepared to draw inferences from data which will in some respects be incomplete or indirect. I should further acknowledge that I would expect co-operation between the parties to be a necessary condition for producing the fullest and most accurate information possible.

In this case, however, there is not sufficient evidence concerning the nature and scope of current recruitment and retention problems to allow me to conclude that a market supplement would be warranted. I am therefore accepting the proposal of the Employer that no market supplement be awarded at this time.

This situation may, of course, change over time, and it may change rapidly. As counsel for the Employer pointed out, there are mechanisms in place by which the Union may at any time renew its claim on behalf of the Speech Language Pathologists.

DATED at Saskatoon, the 2nd day of February, 2003.


Beth Bilson, Q.C.