In the Matter of an Adjudication Concerning
the Interpretation of Letters of Understanding Concerning
Market Supplemented Wage Rates

Between:

Health Sciences Association of Saskatchewan

-and-

Saskatchewan Association of Health Organizations

Before: **Beth Bilson, Adjudicator**

Appearances: **For HSAS:** **Gary Bainbridge**

For SAHO: **Jolene Horejda**

Date of Hearing: **December 15, 2017**

Decision of Adjudicator

The Health Sciences Association of Saskatchewan (HSAS) and the Saskatchewan Association of Health Organizations (SAHO) are parties to the collective agreement which governs the terms and conditions of employment of a number of classifications of employees in the health care sector. Appended to the collective agreement are two Letters of Understanding (LOU #12 and LOU #13) outlining a process for considering and implementing market supplemented wage rates for these classifications. My authority and function as an adjudicator is set out in those Letters of Understanding.

In the wage table setting out wage rates for employees represented by HSAS, under the heading "Emergency Medical Services", there are seven classifications listed:

> Emergency Medical Technician (EMT)
> Emergency Medical Dispatcher (EMD)
> Emergency Medical Technician (Co-ordinator)
> Emergency Medical Technician Advanced (EMTA)
> Emergency Medical Technician Advanced (Co-ordinator)
> Emergency Medical Technician Paramedic (EMTP)
> Emergency Medical Technician Paramedic (Co-ordinator)

Under the process set out in the LOUs, it is open to either party on an annual basis to request that consideration be given to adding a market supplement to the wage rate for any classification. In May 2014, HSAS made a submission to the Market Supplement Review Committee (MSRC) requesting that a market supplement be added to the wage rate of the EMT and EMTA classifications. In a decision dated July 15, 2014 (revised on September 19, 2014), the MSRC found that a market supplement was not warranted at that time.

HSAS referred the issue to adjudication, and in a decision dated June 21, 2015, I decided that a market supplement was justified. Following this decision, the parties began negotiations concerning the amount of the market supplement. They were unsuccessful in reaching an agreement, and referred the quantum issue to adjudication. Before an adjudication hearing was held, however, they did reach an agreement that a market supplement of 3.43% was appropriate, and further agreed that it should apply to the two co-ordinator classifications related to the EMT and EMTA classifications.

The question before me is whether, in addition to the four classifications explicitly covered by their agreement, the 3.43% market supplement should also be applied to the remaining three Emergency Medical Services classifications (EMD, EMTP and EMTP Co-ordinator). The parties have raised this question because they have been unable to agree on the interpretation of clause 4 of LOU #12, which reads as follows:

> In the event a market supplement wage increase is applied to a classification, the existing percentage wage differential between the said classification receiving the market supplement increase and any level above, in the same classification series, shall be considered and maintained where appropriate.

The union takes the position that this clause clearly means that, as the wage rates of the EMT, EMT Co-ordinator, EMTA and EMTA Co-ordinator classifications had risen, the other three classifications in the Emergency Medical Services group should be adjusted accordingly to preserve the size of the gap between

them. Counsel argued that this clause must be intended to serve some purpose, and that purpose is evidently to ensure that there is a logical progression in the wage rates in the group. Otherwise classifications at the higher end of the group will be losing ground in relation to lower classifications. It is true that the EMTP and EMTP Co-ordinator had been granted a market supplement in 2002, and again in 2004, and there were no market supplements applied to the EMT or EMTA classifications, this was also a logical application of clause 4, as the readjustment of the percentage differential is only intended to work "from the bottom up."

Counsel for SAHO argued, on the other hand, that the phrase "where appropriate" is an acknowledgment that there may be other considerations to take into account besides the maintenance of a particular differential in the wage rates. She said that the base wage rates set out in the collective agreement are pegged to educational levels; this feature of the wage system was underlined by Arbitrator Ish in his decision in *Saskatchewan Association of Health Organizations v. Health Sciences Association of Saskatchewan (Midwives Rates of Pay Grievance)*, (2016) S.L.A.A. No. 9 (*Midwives* decision). One of the implications of this is that there may be different "markets" for employees in classifications that have different educational requirements, even though there may be similarities in the jobs they perform. An example she used was that of the Psychologist group, where Ph.D. level psychologists were given a market supplement at one time, and Master's level psychologists got one at a different time; this separation was based on the fact that they were in two separate markets.

A related argument was that, since the award of a market supplement requires the consideration of a number of specific market-related criteria, such as vacancy rates and comparison with wages in other jurisdictions or in the private sector, an adjudicator should hesitate to add a market supplement in the absence of data demonstrating how the market has affected the classification to which the supplement will apply. In the case of the EMD, EMTP and EMTP Co-ordinator positions, such data was not put before the MSRC or the adjudicator, and there is thus no basis for concluding that a market supplement is warranted at this time. Should HSAS wish to put forward such data, there is an opportunity for them to make further submissions to the MSRC.

It is not surprising that the parties have been unable to agree on the implications of clause 4 in this situation. There are a number of things that make it difficult to arrive at a definitive interpretation, and the confidence with which the respective parties put forward their respective readings of the clause is itself an indication that the meaning may not be as obvious as one might think.

As counsel for SAHO pointed out, the term "classification series" is not used elsewhere in the collective agreement. The term "occupational group" is defined, and is used, for example, in Article 21 of the agreement, where the term "occupational grouping" is also used. In its submissions, SAHO expressed a view that "classification series" and "occupational group" referred to the same thing, which was the group of classifications listed under a heading in the wage table. Although counsel for HSAS did not refer explicitly to this issue, it follows from his argument that he accepts this equivalence.

What is more unclear is whether this understanding has been used by the parties in the past to trigger the kind of readjustment of the wages attached to classifications in an entire classification series (or occupational grouping).

In the *Midwives* decision, Arbitrator Ish described the factors that have affected the evolution of the wage table as it currently appears. He found that the base wage rates for the classifications were linked to educational qualifications, and this education-based scale formed the basic grid. The wage levels for

individual classifications might be affected by a number of other factors: market adjustments, which are arrived at through the process of collective bargaining between the parties; market supplements, which are awarded through the process outlined in LOU #12 and LOU #13; a reclassification process which is described in the collective agreement; designation as a member of a "unique" classification which is outside the normal wage grid; and membership in the "senior" category within an occupational group, which is based on duties actually performed by an employee. These factors, alone or in combination, may alter the wages for individual classifications and the relationship between different classifications.

These consequences may be seen in the case of the Emergency Medical Services group itself. The EMD classification, which has less demanding educational requirements than other classifications in the group, was at one time awarded a market supplement, and had a wage rate higher than the EMT classification. This market supplemented wage rate was eventually overtaken by the economic increases gained in collective bargaining, as well as a market adjustment for all classifications in the group. The market supplement is no longer reflected in the wage table, and the wage rates for this classification are equivalent to the EMT rates at all steps. I should note, parenthetically, that although the EMD classification was included among the classifications to which HSAS proposed a market supplement be added, it is hard to see how this classification is "above" the EMT classification within any possible reading of clause 4; the wage rates are equivalent, and the educational requirements and scope of duties for the EMD classification appear to be less rigorous. Given the conclusion I have reached in this decision, it is not necessary to determine this specific issue.

The EMTP and EMTP Co-ordinator classifications received market supplements in 2002 and 2004, and these are still reflected in the wage table. Presumably the award of these market supplements altered the relationship of the wage rates in these classifications and the other classifications in the group. Counsel for HSAS noted that the interval between classifications in this group, prior to the agreement that led to the 3.43% market supplement being added to the EMT, EMT Co-ordinator, EMTA and EMTA Co-ordinator classifications, was a uniform 8%. One must question, however, whether the pristine elegance and proportion he sees in this pattern is a result of accident rather than design.

Counsel for HSAS argued that it is important for the integrity of the wage system that the relationships between wage levels be maintained in order to prevent the undervaluing of classifications that have more stringent educational requirements or a wider range of duties. I appreciate the strength of this argument, and agree that this sentiment is evident in the wording of clause 4.

His basic argument is, however, that clause 4 has the effect of automatically adding a market supplement to classifications higher in the classification series, once a market supplement has been awarded to a lower classification. I have concluded that a close reading of the clause does not support this interpretation. The clause requires that the existing percentage wage differential "shall be considered and maintained where appropriate." The position of HSAS is essentially that the clause should be interpreted to mean that the differential "shall be maintained" come what may.

In my view, the phrase "shall be considered and maintained where appropriate" has somewhat different implications. The overall effect of the clause is to remind the MSRC or an adjudicator, where an application has been made for the addition of market supplements to a series of classifications, that the differential between the classifications is a factor to be considered, and that the differential may be important to the integrity of the wage grid.

The starting point is not that the differential is to be maintained, but that it is to be considered – and maintained where appropriate. This interpretation, which I believe to be the correct one, means that the proponent of a market supplement is not relieved of the obligation to demonstrate how the market-related criteria in set out in LOU #13 apply to each classification. Though one can speculate that in many cases the outcome would be the maintenance of existing percentage wage differentials, the decision-maker must be given an opportunity to "consider" whether it is "appropriate" that the differential be maintained. The interpretation advanced on behalf of HSAS would have the effect of short-circuiting the step in the process where the desirability of maintaining the differential is considered. This consideration may include the factor that was the basis of SAHO's argument, the question of whether different classifications are in fact in different markets; it is possible to imagine that there might be other factors that would affect the outcome. In any case, I have determined that clause 4, properly understood, does not have the effect of automatically bumping up wages in higher classifications once a market supplement is awarded, but leads instead to a consideration, as part of a decision-making process, of whether the gap in wages between classifications should be maintained.

I was asked by the parties to provide an interpretation of clause 4 and to comment on its possible application to the agreement between the parties to add market supplements to four classifications within the Emergency Medical Services group. In this decision, I have outlined my interpretation and given my reasons for it. If the three remaining classifications in the group are to have their wages augmented by market supplements, this must be achieved through negotiation, or through following the process laid out in LOU #12 and LOU #13.

DATED at Saskatoon, the 5th day of January, 2018.

Beth Bilson

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