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Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851

IN THE MATTER OF the Pension Benefits Act, R.S.O. c. P.8 (the "Act");

AND IN THE MATTER OF the decision of the Superintendent of Pensions for Ontario dated January 13, 1997, with respect to the transfer of assets from the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851 (the "Pension Plan") to the St. Joseph's Health Centre Pension Plan, the Providence Centre Pension Plan, and the Morrow Park Plan (the "New Plans");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act.

BETWEEN:

**THE CANADIAN UNION OF PUBLIC EMPLOYEES,
LOCALS No. 1144 and 1590**

Applicant

-and-

**SUPERINTENDENT OF PENSIONS,
THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF
TORONTO IN UPPER CANADA, ST. MICHAEL'S HOSPITAL,
ST. JOSEPH'S HEALTH CENTRE and PROVIDENCE CENTRE Respondents**

BEFORE: C.S. (Kit) Moore, Chair
M. Elizabeth Greville, Member
David E. Wires, Member

APPEARANCES: **For the applicant:**
Mr. M. Zigler
Mr. R. Tomassini
For the Superintendent of Pensions:
Ms. D. McPhail
For the respondents:
Ms. F. Kristjanson
Ms. R. Grant
Mr. F. Stopar

HEARING DATE: July 27, 1998, Toronto, Ontario

DECISION

RELEASED: September 9, 1998

REASONS FOR DECISION

Nature of the Application

The Superintendent of Pensions for Ontario (the "Superintendent") refused to grant relief requested by the Canadian Union of Public Employees Locals No. 1144 and 1590 ("CUPE"), including a request by CUPE that the Superintendent issue an order under s. 87(1) of the Act that the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851 (the "Pension Plan") and its successors constitute a multi-employer pension plan (a "MEPP"). In a letter written to the Superintendent and other interested parties, CUPE indicated its intention to appeal certain decisions of the Superintendent. Subsequently, a Request for Hearing under s. 89 of the Act was submitted to the Pension Commission of Ontario (the "Commission").

Following an initial pre-hearing conference and telephone conference call among the parties, a further pre-hearing conference was held at which a preliminary question arose as to whether the Commission had jurisdiction to conduct the hearing. The parties agreed to argue the issue of jurisdiction in advance of the merits. The Commission received written submissions on the matter, heard oral argument and advised the parties, by way of letter dated March 13, 1998, that it had determined that the Commission had jurisdiction to determine whether the pension plan is a MEPP under the Act. Written reasons were published in an amended decision released May 13, 1998 (the "May 13th Decision"). Where appropriate, reference is made to that decision in describing the background and reasoning for our subsequent decisions regarding the Commission's jurisdiction in these matters.

At the hearing on jurisdiction, the hearing panel was also asked to determine its jurisdiction in respect of four other issues relating to division of the Pension Plan, transfer of assets, section 80 and section 81 of the Act. In a subsequent letter dated May 29, 1998, the Commission advised the parties that it did not then have jurisdiction to hold a hearing under s. 89 of the Act regarding any of these four issues. Written reasons were published in a decision released May 29, 1998.

At a further pre-hearing conference held June 15, 1998, the parties agreed that certain disclosure of documents requested by CUPE was contested and required a hearing before the full panel. This written decision sets out the results of that hearing.

The Facts

Reference should be made to the May 13th Decision for certain facts set out in that decision.

The Issue

In a written submission prepared for the initial pre-hearing conference held July 21, 1997, CUPE asked the Commission to order the respondents to disclose documents relating to 16 listed items.

Following that pre-hearing, the respondents agreed to disclose some of the requested documents, and CUPE reduced the extent of its request regarding some of the remaining documents. The respondents have refused to disclose the following documents requested by CUPE:

- a. Operating Plans for each of the Hospitals for the years 1993/1994 and 1995/1996;
- b. Any financial documents relating to the funding of the Hospitals by either the government or the Sisters and in the possession or control of either the Sisters or the Hospitals for the years 1992 to 1995;
- c. Minutes of all meetings of the Sisters' Board of Directors relating to the operation and administration of the Plan from 1992 to January 1, 1995;
- d. Minutes of the Board meetings of St. Joseph's in connection with St. Joseph's participation in the Plan from 1992 to January 1, 1995;
- e. Minutes of the Board meetings of Providence Centre in connection with Providence Centre's participation in the Plan from 1992 to January 1, 1995, and;
- f. Minutes of the Board meetings of St. Michael's in connection with St. Michael's participation in the Plan from 1992 to January 1, 1995.

Relevant Rules

Rule 4 of the Commission's Rules of Practice for Proceedings under Section 89 of the Act states that the Commission may order any party to provide to it or to any other party such particulars as are necessary for a satisfactory understanding of the issues in the proceeding. Sub-Rule 4.2(5) reads as follows:

4.2(5) The Commission may order a party to disclose in advance of the hearing any document or thing, other than privileged information, which is:

- a. identified by the party requesting the order with reasonable specificity and
- b. relevant to the subject matter of the proceeding which may be admissible at the hearing.

The Arguments

The respondents argue that the disclosure at issue lacks relevance and specificity, and object to the additional costs and time required to retrieve and copy the documents requested. In this regard, the hearing panel heard testimony from one witness, Sister Marcella Iredale, who presented evidence regarding the confidential nature of the documents in question, and the amount of time required to delete portions of the minutes relating to members' personal issues and not relevant to these Commission proceedings.

CUPE argues that the documents requested are identified with reasonable specificity, and that the portions of the minutes requested are limited to those relevant to the Pension Plan and to the hospitals' organization and structure.

The Superintendent disputes the relevance or necessity of the additional disclosure, given the extensive disclosure already made. In the Superintendent's view, the Commission should order any documents containing confidential information to be sealed, as the most effective way of protecting confidentiality interests in this matter.

Reasoning and Result

Regarding operating plans requested by CUPE, the hearing panel notes that such plans have already been disclosed for the fiscal year 1994/1995 for each hospital, and the panel was not made aware of any reason, other than inconvenience, for not providing operating plans for the other two years requested.

Additional financial documents relating to funding of the hospitals were also requested for the years 1992 - 1995. The hearing panel is of the opinion that any such documents relating to the matter in this proceeding should be disclosed to CUPE to allow them a satisfactory understanding of the issues.

Disclosure regarding both the operating plans and the relevant financial documents shall be treated as confidential by the parties.

Given the written and oral submissions of the respondents, and the evidence presented by the witness, the hearing panel recognizes that the minutes requested by CUPE may contain personal member information not relevant to the hearing on the merits, and that considerable time will be required of Sister Marcella Iredale to delete those personal references before disclosing the minutes. Notwithstanding these concerns, the hearing panel is of the opinion that the relevant portions of such minutes should be disclosed to CUPE, in the interests of allowing a satisfactory understanding of the issues. Such information shall be treated as confidential by the parties and shall not be used for any purpose other than those of this proceeding, unless otherwise ordered by the Commission.

Order

The Commission orders that all documents sought by CUPE and relevant to the issues to be determined in the hearing on the merits shall be disclosed by the respondents as requested by CUPE. The panel is sympathetic to the Sisters' concern regarding the confidentiality of certain documents, and would entertain written submissions regarding the sealing of any such documents when those documents are disclosed.

Such disclosure shall be made on or before September 30, 1998, to counsel for the other parties to this hearing, on the understanding that it shall not be used for any purposes other than those of this proceeding. All materials disclosed under this Order shall be treated as confidential unless

otherwise ordered by the Commission.

Dated this 9th day of September, 1998 at the City of Toronto, Province of Ontario.

C.S. (Kit) Moore, Chair

M. Elizabeth Greville, Member

David E. Wires, Member