

**IN THE MATTER OF AN ARBITRATION**

**BETWEEN:**

**THE MANITOBA NURSES' UNION  
(hereinafter referred to as the "Union")**

**And**

**LONG TERM CARE EMPLOYEES IN WINNIPEG  
(hereinafter referred to as the "Employer")**

**Grievance 2005-001**

**Diane E. Jones, Q.C., Chair of Arbitration Board  
Clive Derham, Nominee of the Union  
Paul D. Edwards, Nominee of the Employer**

**Tracey Epp on behalf of the Employer  
Mark Toews on behalf of the Union**

This matter came before the Arbitration Board pursuant to the terms and conditions of the Collective Agreement between the parties. At the outset of the hearing the parties confirmed that the Board was properly constituted and had the jurisdiction to determine the grievance before it. The parties also waived the applicability of any time limits to the extent necessary with respect to the issuance of this Award.

The grievance states:

The Union is grieving under the terms and conditions of the Collective Agreement that the Employer is charging nurses for copies of documents relating to their personnel file. This is a violation of Article 4 and 29, plus any other applicable Articles.

The Employer has denied the grievance.

The relevant clauses of the Collective Agreement are Article 2905 and Article 2906.

2905 A nurse shall be given the opportunity to examine any document which is placed in her/his personnel file, including, but not limited to, those documents which may be utilized to substantiate a disciplinary action against her/him, and her/his reply to any such document shall also be placed in her/his personnel file. Upon written request the nurse shall also receive an exact copy of such document.

2906 A nurse accompanied by a Union representative if she/he so elects may examine her/his personnel file upon request. A nurse shall have recourse to the grievance procedure to dispute any derogatory entry in her/his personnel file. The Employer agrees not to introduce as evidence any such derogatory entry at any hearing unless the nurse has been made aware of its contents at the time of filing or a reasonable time thereafter. Any nurse who has been terminated may consult her/his file and upon written request shall receive copies of specified documents so long as the

written request is made within sixty (60) days of her/his termination.

It was the position of the Union that the wording of Article 2905 is clear and unambiguous and an employee is entitled to receive a copy of her personnel file without charge. Further the Union's position was that this article has already been litigated, in the Union's favour, in Selkirk & District General Hospital (1998) M.G.A.D. No. 7 and that the facts of this case at bar cannot be distinguished from this settled law.

It was the position of the Employer that the wording of Article 2905 and Article 2906 entitles employees only to copies of certain documents. Further, the Employer says it relies on the particular wording of Article 401(a) of the Collective Agreement which entitles this Employer to implement policies as long as they are posted. Therefore, a reading of the Collective Agreement as a whole reveals that the Employer is entitled to limit what copies can be made and what can be charged.

The Union called as its only witness Tom Henderson, Labour Relations Officer and the Employer called Karen Medwid, Payroll and Benefits Manager for Middlechurch Homes.

It is not the Board's intent to recite all of the evidence and argument which it heard but to comment on its most salient points when necessary.

Tom Henderson is the Union's Labour Relations Officer assigned to Middlechurch Home. He has been assigned since the spring, 2003. Mr. Henderson said this grievance

arose when one of the Union's members, Janet Diamond, who was off on medical leave, was deemed by the Employer to have resigned. A grievance was filed and eventually resolved with her re-instatement. He said while her employment was terminated she filed a request that she receive a complete copy of her personnel file (Exhibit 3) and was advised by the Employer when the copy was ready for pick up. Mr. Henderson said that Ms. Diamond was told that the cost was \$1.50 per page and that there were 520 pages. (Exhibit 3)

Mr. Henderson testified in cross examination that he was not aware of any policy about copying, or, a policy manual, until it was brought to his personal attention in relation to this matter.

Karen Medwid has been the Payroll and Benefits Manager at Middlechurch for five years. She said she administers the payroll and benefits for approximately three hundred and twenty employees, both union and non-union, and has other human resource responsibilities including maintenance of personnel files.

Ms. Medwid said Ms. Diamond's request was brought to her attention shortly after it was received. Ms. Medwid said that she interpreted Ms. Diamond's request to be for two copies of her file – one for herself and one for Mr. Henderson. She said since Ms. Diamond was a nineteen year employee the file was very large, containing five hundred and twenty pages. Ms. Medwid further testified that the file was copied by a human resources assistant and took eleven hours to copy. She said this was because the file was

“...terribly thick, old, with lots of clipping and unclipping, tiny documents, notes and all types of things. It was quite a task to get it unclipped and back in order”.

Ms. Medwid said that the Employer has had a Policy Manual in existence since 1994, before the Union was certified in 1997. She referred to excerpts that were filed as Exhibit 4, including Article 8 which dealt with “Access to Personnel Files” and a charge of \$1.00 per page copied. Ms. Medwid said that the Policy Manual was developed in coordination with managers and the Executive Director and policies were signed off by the Board of Directors. She further said that initially there were twenty-seven copies of the Policy Manual distributed throughout the faculty so that staff could have access, and that on hiring staff were to familiarize themselves with its contents. In 2003, she said, the number of Policy Manuals was reduced to three, with one copy being placed in the Executive Director’s office, one on a nursing unit and one in the medical records office.

Ms. Medwid noted that the charge for copying was increased in 1999 from \$1.00 per page to \$1.50 per page. She said a revised policy to this effect was distributed into the three manuals but was not posted as that was not the practice of the former Executive Director.

Ms. Medwid stated that it is the practice of the Employer to charge all employees for photocopying, although she said that there were not many requests for personnel files.

Ms. Medwid also stated that the Employer would not charge an employee for a copy of

his/her performance appraisal but would charge for providing a copy of an old resume, for example.

Ms. Medwid said that the ability to charge was important for the Employer because copying takes time to do and there are copier lease and service costs. These costs are then passed on to the employee who requests copies, she said.

In cross examination Ms. Medwid said that the Employer's personnel policies were in place for all staff and if there was conflict with the Collective Agreement, the Collective Agreement supersedes the policy and if the Collective Agreement was silent the Employer relied on the personnel policy. Ms. Medwid noted that the CUPE collective agreement had a specific charge of 50 cents per page copied but that in these circumstances the Union's Collective Agreement was silent.

Ms. Medwid confirmed that there were only one or two requests for a copy of a personnel file per year. She also confirmed that employees are not charged for a copy of performance appraisals because the Employer feels that employees are entitled to a copy, but that the Employer does not feel the same way about other components of the personnel file.

Ms. Medwid acknowledged that Exhibit 4 did not contain a copy of the policy changing the cost per page for photocopying from \$1.00 to \$1.50 per page. She said she was not involved in the decision to increase the charge and did not know how it was determined.

She also agreed that the actual cost to photocopy a page was “a whole lot less than \$1.50”.

No further witnesses were called.

Mr. Toews said that the facts of this matter were very straightforward. He said Article 2905 was a broader and more general clause than Article 2906 which, in part, dealt with the situation where a nurse has been terminated. Since Ms. Diamond considered herself to have been terminated she relied on Article 2906 when she requested a copy of her file, Mr. Toews said. Mr. Toews noted that the only obligation of an employee under Article 2905 is to make a written request and under Article 2906 is to make that written request within sixty days of termination.

It was the Union’s position that Article 2905 and Article 2906 entitle employees to copies without charge. Mr. Toews argued that the language used was clear and unambiguous and the Collective Agreement spoke for itself. He noted that there were no restrictions as to the number of documents that could be requested and he said that had the Employer wanted restrictions they could have been negotiated. In particular, Mr. Toews said the clause did not say an employee may request copies and may purchase them.

In support of the Union’s position Mr. Toews filed Selkirk and District General Hospital (1998)M.G.A.D. No.7, Re City of Toronto and CUPE, Local 79(Deadman) 81 LAC(4<sup>th</sup>)315; Re Lumber & Sawmill Workers’ Union, Local 2537, and KVP Co. 16

LAC 73; Re Consolidated Bathurst Inc., Bathurst Division and Canadian Paperworkers

Union, Local 120 19 LAC(3d)231; Re H.S.A.B.C. and C.E.P., Local 465 99

LAC(4<sup>th</sup>)337. Mr. Toews said that the Selkirk case dealt with the same situation with an identically worded article and the hospital had a policy of charging 20 cents per page. He said the board in Selkirk had found that the meaning of Article 2905 was clear, and not conditional on anything other than a nurse's written request.

Mr. Toews said that this case cannot be distinguished in any material way from Selkirk. Therefore, he argued that this Board should follow the Selkirk decision since it was not wrong or patently unreasonable but was based on a sound and correct analysis. Mr. Toews said that to follow Selkirk created a certainty of law which in turn fostered harmonious relations. In this respect Mr. Toews directed the Board's attention to the Deadman case where that board held

Boards of Arbitration are not bound to follow decisions of prior Boards of Arbitration. Where the issues are the same, or substantially similar however, for purposes of consistency of application of collective agreement provisions, Boards of Arbitration generally follow such decisions unless the subsequent Board of Arbitration is of the view that an earlier decision was clearly wrong or patently unreasonable. Alternatively, the subsequent Board of Arbitration need not feel compelled to follow a prior decision where the matters decided, or the determinations made, were with respect to matters that were not central to the prior award, or were determinations in the nature of obiter dicta. (p.16)

Mr. Toews argued that the Employer had said it was concerned that the entire file had been requested and yet the evidence of Ms. Medwid was that if anything other than a performance appraisal was requested, the employee would have been charged. Mr.

Toews said that the case at bar was about the fact that the Employer was charging at all; and not that the whole file had been requested.

Mr. Toews also addressed the Employer's concern about maintaining its policy of charging and noted that Ms. Medwid had acknowledged that the Collective Agreement prevails if it conflicts with the policy. He said there was also a policy in Selkirk and that board had affirmed the entitlement created in Article 2905 and Article 2906 that a nurse "shall receive" copies requested.

Turning to the enforceability of the Employer's policy of charging for copies Mr. Toews relied on KVP and in particular the requisite that any rule or policy unilaterally introduced by the employer "... must not be inconsistent with the collective agreement".(p.10) He said the Employer's policy fails on that basis alone. In the alternative Mr. Toews cited the KVP requisite that any rule or policy must not be unreasonable. He questioned how the charge of \$1.50 per page was arrived at and said that Ms. Medwid did not know and was not able to justify it. Therefore, he argued that it is unreasonable that \$1.50 is an appropriate amount and it is excessive. Mr. Toews also noted that Exhibit 4 only refers to as charge of \$1.00 per page.

Mr. Toews also argued in the further alternative that the Employer had failed to bring to the attention of the employees the increase from \$1.00 to \$1.50 since the policy was not posted. Therefore he said the \$1.50 per page failed to meet the fourth criteria of KVP.

KVP also requires that a rule be "...consistently enforced by the company from the time it was introduced." and Mr. Toews said that the Employer had decided, contrary to its own policy to provide a free copy of an employee's performance appraisal, if requested. This, he said, was an arbitrary decision, not in the spirit of the Collective Agreement which said that a nurse is entitled to all documents requested.

In summary Mr. Toews said the case at bar was clear and straightforward: that a nurse had made a written request and Article 2905 and Article 2906 say that a nurse "shall receive" at no cost stipulated anywhere for any copies. Mr. Toews said there was no reason to depart from the arbitral jurisprudence in the Selkirk Hospital case. Mr. Toews asked that the grievance be allowed and the Employer be ordered to cease and desist charging for copies of documents properly requested by employees.

Ms. Epp directed the Board to the particularly unique features of this Collective Agreement including the Preamble where the parties agreed "...to provide the best quality of healthcare...through the successful operation of the HealthCare Facility as a service institution (in the Middlechurch Home of Winnipeg @ Middlechurch #116)..." She said this referred to economic success.

Ms. Epp argued that Article 401(a) was relevant:

Applicable @ Middlechurch #166:

401 The Union recognizes the sole right of the Employer, unless otherwise provided in this Agreement, to exercise its function of Management as set out hereunder:

(a) To determine and establish standards and procedure for the care, welfare, safety and comfort of the residents in the Facility, and to maintain order, discipline and efficiency and in connection therewith to establish and enforce reasonable rules and regulations, policies and practices from time to time to be observed by its nurses and to alter such rules and regulations.

Prior to implementing any rules, regulations, policies or practices or changes thereto, the Employer will post the same on the bulletin board.

This sets out, she said, the only Employer obligation, if the rules are not inconsistent with the Collective Agreement, that being to post prior to implementation.

Ms. Epp said the Employer disagreed with the Union's interpretation of Article 2905 and Article 2906. She said the relevant words in Article 2905 were that a nurse may examine any "document" placed in her "file". Ms. Epp argued that the two words do not mean the same thing and that Article 2905 goes on to say a nurse shall receive a copy of any such "document" not the "file". She said that Article 2906 speaks to receiving specified "documents" and not the "file". It was the Employer's position that the Collective Agreement distinguished between "file" and "document" and that there was one personnel file, as provided in Article 2907, with documents contained therein. Therefore, she said, a nurse may request copies of such documents in Article 2905 and specified documents in Article 2906 and based on that wording a nurse is not entitled to request an entire file but specific documents.

Ms. Epp said that Articles 2905, 2906 and 2907 are predicated on a review of the file by the nurse and if there is a dispute the nurse may request a copy. The case at bar has led to

an absurd result, Ms. Epp argued, because it is the epitome of laziness on an employee's part to bypass the review of the file and fail to make specific document requests and instead ask for a copy of her file. Ms. Epp said that there must be an air of reasonableness to the employee's request and that is why the opportunity to examine the file is given.

Turning to the issue of charging for copies, Ms. Epp said this must be considered in light of the Collective Agreement as a whole. She said that Article 2905 and Article 2906 are silent with respect to who pays for the copies and therefore the articles have to be read in conjunction with the Preamble and its stated agreement between the parties to consider economic matters and Article 401 which entitles the Employer to introduce policies not inconsistent with the Collective Agreement. Ms. Epp noted the Employer's only obligation is to post any policy on implementation or change.

Ms. Epp stated that nurses were aware of the \$1.00 per page charge. She said she accepts Ms. Medwid's evidence that the Employer failed to post the change to \$1.50 per page and therefore the Employer could only rely on the 1994 policy of charging \$1.00 per page copies.

Ms. Epp said it was the position of the Employer that in light of the specific wording in Article 2905, Article 2906, the Preamble and the management rights clause that it was entitled to rely on the 1994 copying policy (Exhibit 4).

Ms. Epp referred to Parkland Regional Health Authority and The Manitoba Nurses' Union (W.D. Hamilton, October 11, 2001) in the event the Board found there to be ambiguity in Articles 2905 and 2906. Ms. Epp specifically referred to Arbitrator Hamilton's conclusion that "...A past practice must be a uniform one, preferably surviving several negotiations, and be one that has been '... openly and without surreptition carried out...for a long period.'" (p.99) She said that other than performance appraisals the Employer's consistent practice had been to charge for copies.

Ms. Epp also argued that past practice can be used to establish estoppel without establishing an ambiguity in the clause (Parkland p.111) and that in the case at bar the Union is estopped from enforcing its strict rights. The evidence shows, she said, that the Employer has had the policy and practice of charging for copies in place since 1994 and the Union, has failed to challenge the policy or negotiate a change in it. Therefore, she argued, the policy must continue until the expiration of the *Collective Agreement* in 2007.

Ms. Epp said with respect to the KVP criteria relied on by the Union, that Article 401 allows the Employer to put policies in place so long as the policies are posted and that therefore ends the matter. Further she said, Article 401 says the Employer may establish and enforce "reasonable" rules so long as they are not inconsistent with the *Collective Agreement*. The Employer's position was that the 1994 policy with respect to charging for copying was not inconsistent with the *Collective Agreement*, was reasonable and was posted.

Ms. Epp distinguished the Selkirk case by saying that the issues were not substantially the same and that there was no reference in Selkirk to a similar Preamble or management rights clause.

Ms. Epp concluded that if the Board found \$1.00 per page to be an unreasonable charge it could find that the policy to charge for copying was reasonable and it could direct to the Employer to revise the amount charged for copying.

Ms. Epp asked that the grievance be dismissed.

In reply Mr. Toews argued that the Preamble does not override the terms of the Collective Agreement. He questioned Ms. Epp's assertion that "successful" means economic success or profit.

Mr. Toews said that Article 401 must be read in the context of the Collective Agreement as a whole, which included Article 402 which said that "Management's rights, as set out in this Agreement, must be exercised fairly, without discrimination, and in accordance with the Agreement." Obviously he said, Article 401 cannot abrogate the responsibility of management imposed in other clauses of the Collective Agreement.

Mr. Toews said there was no doubt what Ms. Diamond wanted when she made her written request. (Exhibit 3) He said she asked for "a complete copy of my personal file".

Mr. Toews said it was obvious she meant all the documents in her file and the Employer knew that was what she meant because that is what they copied.

Mr. Toews was of the view that past practice was only used where the wording of a clause is ambiguous and Article 2905 and Article 2906 were not ambiguous so there was no need to consider past practice.

Mr. Toews argued that there was no estoppel upon past practice founded on these facts. In support of this he cited Consolidated Bathurst which said "...it is necessary to establish the existence of a long standing and consistent practice....clear and unambiguous..."(p.9) and H.S.A.B.C. which said there must be "...a clear and unequivocal practice that has been followed." (p.10) Mr. Toews said that the evidence was that although the policy had been in existence since 1994 it was rare for there to be a request for copies, at best one or two per year. Therefore, he said, you cannot create a clear, unambiguous longstanding policy. Mr. Toews noted that the Union didn't know about the policy and Ms. Medwid did not know if the Union had been told. It cannot be said that the policy is clear and unambiguous if the Union did not know. In addition Mr. Toews said the policy was not consistently enforced since copies were made without charge for performance appraisals, and, it cannot be said that the policy is consistently enforced with exceptions because the exception is not noted in the policy.

The Board has carefully reviewed the material filed, evidence and argument presented. The Employer has attempted to found its ability to charge in the general wording of the

Preamble and management rights clause. We are not persuaded by this. While Article 401 does vest in management the right to establish “reasonable rules” for “efficiency” and the Preamble does contemplate a “successful operation” at Middlechurch, Article 402 explicitly states those rights must be exercised in accordance with the Collective Agreement. Here, the wording of Articles 2905 and 2906 is clear and unambiguous: a nurse shall receive copies of documents upon written request. There is no charge for copies specified in either article or anywhere else in the Collective Agreement. Even though the management rights clause applicable to Middlechurch may be unique it is not sufficient to persuade the Board that it should reach a conclusion different than what was determined in the Selkirk Hospital case.

We note as well that the Employer’s own Policy Manual also states that “...where a collective agreement is in effect, the specific provisions of such collective agreement will take precedence over the general provisions contained in these Personnel Policies”.


(Exhibit 4). The Collective Agreement does not provide for any charge for copies and therefore it takes precedence over the Policy Manual. Having made this determination it is not necessary for the Board to embark on the issue of the questionable reasonableness of a charge of \$1.50 or even \$1.00 per page of photocopying.

We wish to comment on one other matter raised by counsel for the Employer in argument. Ms. Epp has argued that the nurse did not personally review her file or request documents. The opportunity for review of the file is given to the nurse in both articles. While in some instances it may be prudent to do so, there is no requirement that the nurse

avail herself of the opportunity. Turning to the Employer's assertion that there was no request for documents, we are of the view Ms. Diamond's written request for "a complete copy of my personnel file" is clear. Having been terminated, she wanted all of the documents in her personnel file. The Employer understood this and we are satisfied that her written request in these circumstances complied with the requirement imposed on her in Article 2906.

For the above reasons we allow the grievance and declare that the Employer immediately cease and desist charging for copies of documents properly requested by nurses.

Dated this 6<sup>th</sup> day of March, 2006 at the City of Winnipeg.

  
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Diane E. Jones

  
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Clive Derham

Dissent attached  
Paul D. Edwards

**IN THE MATTER OF AN ARBITRATION**

**BETWEEN:**

**THE MANITOBA NURSES' UNION**  
(hereinafter referred to as the "Union"),

- and -

**LONG TERM CARE EMPLOYERS IN WINNIPEG**  
(hereinafter referred to as the "Employer")

**GRIEVANCE 2005-001**

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**DISSENT OF THE EMPLOYER'S NOMINEE**

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With respect, I disagree with the majority decision in this matter.

This is a policy grievance brought under a Collective Agreement governing a number of long-term health care facilities. The grievance arises out of one of those facilities, the Middlechurch Home, ("Middlechurch"). Accordingly, where the Collective Agreement, (Exhibit I), contains provisions specific to Middlechurch, as it does, they must be noted and given effect in the determination of this grievance.

In particular, I note that the Preamble and Article 4.01 contain wording specific to Middlechurch. I believe that the unique wording in these two provisions are relevant in determining this grievance.

In the Preamble, the wording, in part, applicable to Middlechurch reads as follows:

"Whereas, it is the desire of both parties to this Agreement to recognize a mutual obligation to provide the best possible quality of health care **through the successful operation of the Health Care Facility as a service institution ...**",  
(emphasis added)

The comparable Preamble wording applicable to other institutions does not include the language set out in bold above.

Article 401(a) as applicable to Middlechurch reads as follows:

"401 The Union recognizes the sole right of the Employer, unless otherwise provided in this Agreement, to exercise its function of Management as set out hereunder:

- (a) to determine and establish standards and procedure for the care, welfare, safety and comfort of the residents in the Facility, and to

**maintain order, discipline and efficiency and in connection therewith to establish and enforce reasonable rules and regulations, policies and practices from time to time to be observed by its nurses and to alter such rules and regulations. (emphasis added)**

The comparable Article 401 wording applicable to other institutions reads as follows:

"401 The Union recognizes the sole right of the Employer, unless otherwise provided in this Agreement, to exercise its function of management under which it shall have, among others, the right to maintain efficiency and quality of patient care; the right to direct the work of its nurses; the right to hire, classify, assign to nursing positions and promote; the right to determine job content and the number of nurses in a nursing unit; the right to demote, discipline, suspend, layoff and discharge for just cause; the right to make, alter and enforce rules and regulations in a manner that is fair and consistent with the terms of this Agreement."

The decision in Selkirk and District General Hospital, (Re), [1998] M.G.A.D. No. 7, was relied upon heavily by counsel for the Union in this case in support of the grievance, and my fellow panel members in support of the majority decision. I do not take issue with the correctness of that decision. Rather, in my opinion, it is clearly distinguishable.

In the Selkirk decision, Article 2905 was considered and found to be at odds with, and to effectively override, an employer policy requiring payment for photocopies contained in an employee's personnel file. However, I note that in commenting on Article 2905, the panel stated the following:

"32. The Board has carefully considered the grievance before it and has reviewed all of the evidence and argument. The words of Article 2905 should be viewed in their normal or ordinary sense unless that leads to inconsistency or absurdity. **Further, these words should be read in the**

context of the particular section and the collective agreement as a whole. Bearing these cardinal rules of construction in mind, we are of the opinion that the meaning of Article 2905 is clear that a nurse shall receive an exact copy of such documents in her/his personnel file. It is not conditional upon anything other than the nurse's written request. We have reviewed the collective agreement as a whole and have concluded that to interpret Article 2905 in this way does not lead to an inconsistency or absurdity." (emphasis added)

In my opinion, the Selkirk decision does not stand for the proposition that Article 2905 bars an employer from ever charging a reasonable fee for copies. Rather, it confirms that a nurse has a right to "receive" copies of documents from his/her personnel file, and that within Article 2905 this right is not made conditional upon anything other than the nurse's written request. The Selkirk decision correctly notes that Article 2905 must be read in the context of other relevant provisions of the collective agreement. However, in that case, there was no other wording within the collective agreement applicable to the employer as exists in this case in the preamble and Article 401 in respect of Middlechurch.

The Preamble wording applicable to Middlechurch adds, as a desire of both parties, "the successful operation of the Health Care Facility as a service institution". This is in addition to recognition by the parties of a mutual obligation to provide the best possible "quality of health care", which concept governs all institutions. That is, in respect of Middlechurch the parties added a mutual commitment beyond and in addition to "health care" concerns.

Similarly, with respect to the Article 401 wording applicable to Middlechurch, management rights are extended beyond concerns about the "care, welfare, safety and comfort of residents", to those of "efficiency". As with the Preamble wording, these concepts unique to Middlechurch are added to the comprehensive wording applicable to other institutions dealing with quality of health care and/or patient care.

It is my opinion that the wording unique to Middlechurch contained in the Collective

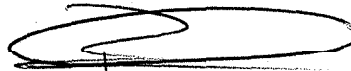
Agreement recognizes that Middlechurch is a privately controlled and operated facility. In this context it makes eminent sense that the parties would include wording recognizing the need for a "successful operation" and "efficiency" in addition to wording related directly to health care and/or patient care concerns.

The Collective Agreement wording applicable to Middlechurch, (Article 401), makes clear that, in the interests of operational efficiency, the employer may "establish and enforce reasonable rules and regulations, policies and practices from time to time to be observed by its nurses and to alter such rules and regulations". This, in my view, could include reasonable reimbursement from an employee for photocopies requested from that employee's personnel file. I do not read Articles 2905 or 2906 as barring any such policy, nor do I read the Selkirk decision as suggesting so. As long as the Collective Agreement is not contradicted, an employer is entitled to put in place, and enforce, such reasonable policies.

With respect to the reasonableness of the \$1.00 per page fee, in my view there was not sufficient evidence put forward to determine this in this case. To do so would have required evidence of actual cost to the employer, (which may have included costs of additional clerical support, etc.).

In conclusion, I would have dismissed the grievance in that it grieves on a policy footing that any charge for copies of documents relating to a nurse's personnel file is a violation of the Collective Agreement. In the event the employer sought to enforce such charges in any future circumstances it would need to defend them as reasonable.

DATED this 28<sup>th</sup> day of February, 2006.



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PAUL EDWARDS - EMPLOYER NOMINEE