

IN THE MATTER OF AN ARBITRATION
BETWEEN

PARTICIPATING HOSPITALS
("the Hospitals" / "the Employers")

- AND -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION
("the Union")

CONCERNING LOCAL ISSUES UNDER THE *HOSPITAL LABOUR DISPUTES
ARBITRATION ACT* FOR COLLECTIVE AGREEMENTS FOR THE PERIOD
MARCH 31, 2006 TO APRIL 1, 2009

BOARD OF ARBITRATION :

Christopher Albertyn – Chair
Angelo Pesce – Hospitals' Nominee
J. Cameron Nelson – Union Nominee

APPEARANCES

On March 26, 2007, Toronto:

Lakeridge Healthcare Corporation and OPSEU, Local 348:

For the Union:

Michèle Dawson Haber, Research Officer

For the Hospital:

Shane Smith, Counsel

Sault Area Hospitals and OPSEU, Local 620:

For the Union:

Michèle Dawson Haber, Research Officer

Chris Fera, Vice-President, OPSEU Local 620

Chair, Part-time negotiating team

Helene Henderson, Treasurer, OPSEU Local 620

Chair, Full-time negotiating team

Scott Kennedy, Staff Representative

For the Hospital :

Teresa D'Angelo, Director of Human Resources

On Tuesday, March 27, 2007 in Toronto:

Thunder Bay Regional Health Sciences Centre and OPSEU, Local 715

For the Union:

Michèle Dawson Haber, Research Officer

Claudio McNabb, Medical Laboratory Technologist

Debbi Gavin, Nuclear Medicine Technologist

Kathy Macdonald, Child Life Specialist

Tom Wood, Staff Representative Thunder Bay OPSEU

David Gibbons, Biomedical Technologist

For the Hospital :

W. Matthew Sutcliffe, Senior Employee Relations Consultant, OHA

Larry Dzijacky, Manager, Human Resources

Cornwall Community Hospital and OPSEU, Local 402

For the Union:

Michèle Dawson Haber, Research Officer

Nancy Sunday, Registered Technologist
Kathy Gareau, Health Information Management Professional
Bonnie Taillon, Lab Technician
Charlene Campeau, Mental Health Counsellor
Roger Haley, OPSEU Staff Representative
Caroline Goulet, Lab Technician
Chantal Herrington, Health Information Management Professional

For the Employer:

Greg Downing, Director of Human Resources
Cheryl Ramsay, Director of Human Resources
Nancy Loiselle, Director of Clinical and Rehabilitation Services
Stacey Clark, Manager Diagnostic Services

On Wednesday, March 28, 2007, Toronto:

Niagara Health System and OPSEU, Local 215:

For the Union:

Michèle Dawson Haber, Research Officer
Dan Belford, Charge Respiratory Therapist (NHS)
Pati Habermann, OPSEU, Staff Representative

For the Hospital:

Seann D. McAlleese, Counsel, Hicks Morley Hamilton Stewart Storie LLP
Christopher Cecchini, Consultant Human Resources

Ross Memorial Hospital and OPSEU, Local 309

For the Union:

Michèle Dawson Haber, Research Officer
Michael Culkeen, Sector Negotiator, OPSEU

Paul Beaumont, Respiratory Therapist

Katherine Glynn, Therapeutic Recreationist

For the Hospital:

Robert J. Atkinson, Counsel, Hicks Morley Hamilton Stewart Storie LLP

Andrew Scott, Student-at-Law, Hicks Morley Hamilton Stewart Storie LLP

Sandra Runk, Director of Human Resources

Shannon Rowe, Coordinator, Compensation & Benefits

Jodi Dunn, Program Director, Continuing Care

On Thursday, March 29, 2007, Toronto:

St. Joseph's Health Care (London) and OPSEU, Local 106

For the Union:

Michèle Dawson Haber, Research Officer

Robert Kinnear, OPSEU Staff Negotiator

Sandi Blancher, OPSEU Local 106 President

For the Hospital:

Frank A. Angeletti, Counsel, Filion Wakely Thorup Angeletti LLP

Sheldon Bumstead, Coordinator, Labour Relations

London Health Sciences Centre and OPSEU, Local 106

For the Union:

Michèle Dawson Haber, Research Officer

Robert Kinnear, OPSEU Staff Negotiator

Sandi Blancher, OPSEU Local 106 President

For the Hospital:

Brian O'Byrne, Counsel, Fasken Martineau DuMoulin LLP

Angela Burtch, Labour Relations Consultant

Northumberland Healthcare Corporation and OPSEU, Local 344

For the Union:

Michèle Dawson Haber, Research Officer

Barry Casey, Sector Negotiator

Wendy Scott, Unit Steward / Med. Radiation Tech

Kim Zoldy, Steward / Occupational Therapist

Donna Newton, Steward / Lab. Tech

For the Hospital:

Mr. W. Matthew Sutcliffe, Senior Employee Relations Consultant,
Ontario Hospital Association

Elizabeth Vosburgh, Director, Human Resources

Myonne Allan, Director, Laboratory Services

Hearings held as described above. Executive sessions held on April 10 and May 16,
2007.

Award issued on May 16, 2007.

AWARD

1. This is an interest arbitration under the *Hospital Labour Disputes Arbitration Act*, in respect of a collective agreement effective from March 31, 2006 to April 1, 2009.

2. The parties bargain centrally. The parties agree which issues are to be determined centrally. Those issues that are not agreed to be determined centrally are dealt with in local negotiations. The issues negotiated locally, which are not resolved, are the subject of this award for the hospitals and local unions referred to herein.

3. The parties made their submissions at the scheduled hearings, supported by written briefs. We have carefully considered all of the submissions, taking account of all of the relevant statutory and jurisprudential factors, particularly demonstrated need, comparability and replication.

Agreed upon items

4. As requested by the parties, all items agreed by the parties themselves are incorporated into their local collective agreements.

Lakeridge Healthcare Corporation and OPSEU, Local 348

5. Certain procedural matters were resolved between the parties and the hearing of the issues between them was adjourned to a later date.

Sault Area Hospitals and OPSEU, Local 620

6. There are five issues between the parties: local President's leave; the averaging of overtime hours; the master rotation schedule; hours off between shifts; short shifts.

Local President's leave

7. The status quo is that the local Union President or highest ranking Union

officer is entitled to 1.5 days leave every 3 months. The Union seeks an increase to 4 hours a week. The Hospital wishes to maintain the status quo.

8. We take account of the amount of activity required of the local Union President, the comparison with other hospitals, the time required to prepare for labour relations meetings with management, and the difficulty in backfilling for the local President. We award 2 days every 3 months.

Averaging of overtime hours

9. The Union proposes a provision at the end of Article 16.01 which will guarantee the practice of 9, 10 or 11 scheduled shifts per two-week period. The Employer wishes to maintain the status quo.

10. As an alternative, the Union suggests we direct the formation of a joint scheduling committee to address the issue, failing which we remain seized to deal with it. We are persuaded, from the parties' submissions, that further, joint investigation and discussion of the issue by the parties may result in their reaching an agreement on it.

11. We therefore refer the issue back to the parties for this purpose for them to deal with, within 3 months, failing which the parties will liaise with us to re-schedule the hearing of the matter so that the issue can be determined by us in light of the additional information and insight gained by the parties during the 3-month period.

Master rotation

12. The Union proposes a new Article to provide for a master rotation. We award the following language for a new Article 16.11 – Hours of Work, to read:

The Hospital will create and maintain a Master Rotation in all departments. Posted schedules (working schedules) shall, where operationally feasible, be reflective of the Master Rotation. Scheduling should be done in a fair and equitable manner.

Hours off between shifts

13. The Employer proposes a reduction from 24 hours to 20 hours of the time between the commencement of scheduled shifts for employees. We award the

Employer's proposal, with modifications. Article 17.08 will read:

Notwithstanding the above, with respect to part-time employees, the references to 24 hours shall be 20 hours, provided that:

- a) the employee concerned consents in writing;
- b) such consent can be withdrawn in writing at any time, and such withdrawal will be effective from the next posted schedule;
- c) the employee will have at least 12 hours break between the end of one scheduled shift and the start of the next scheduled shift.

Short shifts

14. The Hospital proposes the introduction of 4-hour shifts. The Union contends we do not have jurisdiction to address the issue. We agree. Appendix "C" of the Memorandum of Conditions for Joint Bargaining concluded between the Participating Hospitals and the Union and its participating bargaining units contains a list of the issues the parties agreed would be appropriate for central bargaining. Among those issues, at No. 11, is hours of work and overtime (except scheduling). The Employer's short shifts proposal concerns hours of work, not scheduling. If granted, it would have the effect of amending the hours of work provision of the central agreement. We have no jurisdiction to consider doing so.

Thunder Bay Regional Health Sciences Centre and OPSEU, Local 715

15. The parties have four issues in dispute: the number of stewards; consecutive days of work; consecutive days off; and the wage for the child life specialist classification.

The number of stewards

16. The Union proposes an amendment to Article 4.01 of the collective agreement to provide for a maximum of 18, rather than 15, stewards. We award what the Union seeks.

Consecutive days of work and consecutive days off

17. In our view these proposals are connected. The consecutive days off proposal is from the Employer; the consecutive days of work proposal is from the Union. These two issues are referred back to the parties for further negotiation. Unless the parties agree otherwise within 3 months, the status quo will apply.

The wage rate for the child life specialist classification

18. We have a number of rates to set for different classifications in different hospitals. The wage rate for the child life specialist in Thunder Bay is one of several. We have been struck by the following: it seems that many hospitals have similar classifications besides those which appear in the central agreement, yet the rates for these common classifications are being negotiated locally as part of the local agreements. In our view, the parties to the central negotiations should give serious consideration to trying to identify those positions that are present in many hospitals and then consider whether the wage rates for such positions should be part of the central negotiations; in other words, whether it would make sense to expand the list of classifications which are dealt with centrally.

19. Although the child life specialist position has received significant classification upgrading in recent years, the position is still not accurately classified. In our view, the position should be classified at the Technician 5 level in the central agreement. We therefore award this classification, effective from April 1, 2006. In addition, we award the incumbent an additional amount of \$5,000 for the fact she has, for a very long time, been under-classified.

Cornwall Community Hospital and OPSEU, Local 402

20. There are four issues in dispute between the parties: the wage rate of the registered polysomnographic technologist (“the RPSGT”); the wage rate of the health records practitioner; the part-time and temporary definitions; and the minimum travel allowance for call back.

The RPSGT wage rate

21. The position is now at the central technician 5 level. We are persuaded that the position is akin to that of respiratory therapist and that it should be paid the equivalent of a registered technologist (ultrasound, echocardiographer, MRI technologist, respiratory therapist) under the central agreement. We award this reclassification, effective from April 1, 2006.

The wage rate of the health records practitioner

22. We decline to award any change in this wage rate.

Part-time and temporary definitions

23. For Article 11.01, we award the following definitions of Full Time, Regular Part-time and Casual Part-time, and the following scheduling provision:

Full Time

A full-time employee is one who is regularly scheduled to work the normal full-time hours.

Regular Part Time

A regular part-time employee is one who makes a commitment to be available on a regular predetermined basis and as scheduled. A regular part-time employee may be scheduled to work more than 24 hours per week and remain classified as a regular part-time employee.

This provision will not be used to avoid employing employees on a full-time basis.

Casual Part Time

A casual part-time employee is one who is employed on a call basis and as circumstances demand.

Any hours beyond 24 hours shall be offered to regular part-time employees up to 37.5 hours on the basis of seniority, it being understood that the Employer may schedule the most junior qualified employee for required hours if there are insufficient volunteers.

24. As regards temporary employees, we award the following for Article 11.04, regarding temporary employees:

- a) Employees may be hired for a specific term not to exceed 6 months to perform a special non-recurring task.
- b) Employees may be hired for a specific term of up to 12 months to replace an employee who will be on approved leave of absence, absence due to WSIB disability, sick leave, long-term disability or pregnancy / parental leave.
- c) These terms may be extended a further period of up to 6 months on the mutual agreement of the Union, the employee and the Hospital. The Union's consent will not be unreasonably withheld.
- d) The period of employment will not exceed the absentee's leave.
- e) The release or discharge of such persons shall not be the subject of a grievance or arbitration.
- f) The Hospital will outline to the Union and the employees selected to fill such temporary vacancies the circumstances giving rise to the vacancy and the special conditions relating to such employment.

Travel allowance

25. We award a minimum of \$3.25 each way.

Niagara Health System and OPSEU, Local 215

26. Tab 1 to the Employer's brief, containing a Memorandum of Settlement dated October 5, 2006, is awarded.

27. The issue in dispute between the parties concerns time off for the Union's Local President to perform union duties, and his filing cabinet. The Union seeks an increase in the paid time off from two 7½-hour shifts per month to one such shift per week. Having regard to ratios of union time to membership in the other bargaining units in the hospital, we make this award. We also award that the Hospital provide the bargaining unit President with a lockable filing cabinet at his work location.

Ross Memorial Hospital and OPSEU, Local 309

28. There are four issues in dispute between the parties: re-classification of the recreation therapist; a Union office; parking; and the uniform allowance.

Re-classification of the recreation therapist

29. The recreation therapist is currently classified as a Technician 3. The parties negotiated this classification with effect from April 1, 2000. It was previously classified below this level. As a consequence of this upgrading the incumbent received significant wage increases in the 1999 to 2001 period. Taking this into account, particularly that the parties agreed that Technician 3 was the appropriate classification for the position, the Hospital opposes the Union's proposal that the position be re-classified to receive the Technician 5 wage rate.

30. The recreation therapist should be paid at the Technician 4 rate. In determining this rate we have had regard to the rates paid to recreation therapists in other hospitals. The Technician 4 rate would place the position roughly at the mean rate for this position provincially. We award this rate improvement from April 1, 2006.

Union office

31. We decline to award a union office.

Uniform allowance

32. The Union wishes to have the Hospital reimburse employees for the cost of two uniforms a year. The Union explains that employees prefer to wear scrubs at work for a number of reasons. Currently the Hospital provides lab coats and operating room greens at its cost to those employees required to wear them. The Hospital opposes the Union's proposal because, it says, employees not required to wear scrubs may do so, but this should not be at its expense.

33. There are two primary reasons for an employer to pay for a uniform: if it serves a health or safety purpose or to distinguish the employee from others for some operational reason. The Union's proposal fails on both grounds. We decline to award it.

Parking

34. The Union proposes that the Employer provide paid parking for all employees in the bargaining unit. We decline to award this.

St. Joseph's Health Care (London) and OPSEU, Local 106

35. There is one issue in dispute: the mileage rate. The Union would like it to increase to 40c per kilometre for travel on approved Hospital business. The Employer proposes the greater of 38c or corporate policy. We award the Hospital's proposal.

London Health Sciences Centre and OPSEU, Local 106

36. There are two issues between the parties: the transportation allowance and the Letter of Understanding on mandatory training.

37. The Union seeks to have Article 17.06 – Transportation Allowance – amended to increase the rate from 30c per mile to 40 cents per kilometre. The Employer proposes that the rate be 22c per kilometre, with a minimum of \$5 to a maximum of \$25 round trip. We award 38c per kilometre or corporate policy, whichever is higher.

38. The Hospital would like to renew the Letter of Understanding concerning

mandatory training. The Union opposes the renewal. We award the renewal, subject to the removal of the words, “endeavour to”, in No.1 thereof.

Consequently No.1 thereof will read:

1. Where possible, the Hospital will schedule mandatory training and in-service programs during the employees’ regularly scheduled hours.

Northumberland Healthcare Corporation and OPSEU, Local 344

39. There is one issue in dispute between the parties: uniform allowance. The Union proposes there be a \$200 per year uniform allowance. Currently the collective agreement provides that the Hospital will continue the existing policies with respect to the provision of uniforms or protective clothing. We award a uniform allowance of \$125 per year. Our decision here is different from that in Ross Memorial Hospital, above, because other units in this hospital, particularly ONA, get uniforms or a uniform allowance for the whole bargaining unit and the same should apply to OPSEU.

40. We remain seized with respect to the interpretation or implementation of this award.

DATED at TORONTO on May 16, 2007.



Christopher J. Albertyn

Chair: board of arbitration

I concur:

“Angelo Pesce”

Angelo Pesce

Hospitals' Nominee

I concur:

“J. Cameron Nelson”

J. Cameron Nelson

Union Nominee