

In the Matter of an Interest Arbitration

BETWEEN:

The Kingston Health Sciences Centre

and

Canadian Union of Public Employees and its Local 1974

Appearing for the Hospital:

Scott MacInnes, Labour and Employment Adjudication Lead and others

Appearing for the Union:

Susan Arab, Research Representative, CUPE and others

AWARD

Kingston Health Sciences Centre results from the amalgamation of the predecessor Kingston General Hospital and the Religious Hospitallers of St. Joseph's of the Hotel Dieu of Kingston in April 2017. On May 29, 2018, the Canadian Union of Public Employees, as a result of a decision by the Labour Relations Board consequent to an application pursuant to the *Public Sector Labour Relations Transition Act*, was designated bargaining agent for Service, Support and Clerical employees, and the parties have since met to bargain on several dates. November 2, 8, 9 and 22, December 10, 2018 and January 22, 23, February 12, 13, March 4, April 1 and 2, 2019.

The parties have successfully resolved a large number of issues, however certain issues remain outstanding and were placed before the Board. The parties provided submissions to the Board in respect of the outstanding issues, and in determining the outcome of these issues the Board has been guided by the usual principles of interest arbitration, in particular replication, and by the statutory criteria.

Our award is that the collective agreement shall consist of the matters previously agreed and the provisions resulting from this award. The Board notes that the template the parties will use in respect of 'Central Issues' is the central 'Combined full-time/part-time' template, with a term of September 29, 2017 to September 28, 2021, and inclusive of the matters previously agreed by the parties and those provisions below which constitute our award.

Our award in respect of the outstanding issues is as follows:

1. Wage Harmonization

a) Joint Job Harmonization Committee:

No later than four weeks following the date of the Arbitration award, the parties will form a Joint Job Harmonization Committee (JJHC) to review bargaining unit jobs. There will be up to six representatives appointed by each of the Hospital and the Union (and advisors for both parties). Each party shall appoint a co-chair for the JJHC. Meetings of this committee shall be held during normal working hours. Time spent attending such meetings shall be deemed to be work time for which the representative(s) shall be paid by the Hospital at his or her regular or premium rate as may be applicable.

The parties commit to hold at least six days of JJH committee meetings, unless the parties mutually agree that the business of the committee has concluded and further meetings are not necessary.

The parties will identify job classifications and positions whose core duties, responsibilities and educational requirements are substantially the same or similar and whose hourly wage rates are different and will move the hourly rates of pay of those job classifications and positions to the highest rate among them.

In the event of any dispute(s) between the parties arising from the job harmonization process such disputes will, no later than six months following the date of this award, be referred back to the local interest board for resolution by mediation and, if necessary, arbitration.

Any job classification in the wage schedule of any predecessor collective agreement with no incumbent as of May 29, 2018 and which continues to have no incumbent shall be removed from the Wage Schedule of the new collective agreement.

b) Retroactivity

All harmonized wage rates shall be effective and retroactive to the date of the award.

c) Wage Grid

The Board awards the structure of the legacy CUPE/KGH wage grid for the new collective agreement.

The wage grid will be set as follows.

- a) Where a legacy KGH/CUPE wage grid is agreed to or is awarded, the legacy KGH/CUPE grid will apply.
- b) Where a legacy OPSEU wage grid is agreed to or is awarded, the end rate of the legacy OPSEU grid will be the end rate of the new grid. The mid-rate and the start rate of the wage grid will be 94.997% and 90.247% of the end rate, respectively. For clarity, the intent is to mirror the differentials on the KGH wage grid.
- c) Where there is a unique legacy OPSEU classification, the end rate of the legacy OPSEU

grid will be the end rate of the new grid. The mid-rate and the start rate of the wage grid will be 94.997% and 90.247% of the end rate, respectively. For clarity, the intent is to mirror the differentials on the KGH wage grid.

Employees who transfer to a harmonized wage grid shall be placed on that grid at the point which just provides an increase.

2. Benefit Harmonization

Effective November 1, 2019, all full-time employees will be moved to the legacy Kingston General Hospital and CUPE 1974 Benefits plan with the following enhancement:

Annual maximum for physiotherapy will be \$1000 per year. Doctor's notes will be required for physiotherapy for claims in excess of \$375 per insured per year. Reimbursement of claims will be at the reasonable, usual and customary rate.

3. Article 17.01 Vacation Entitlement

The Vacation grid in the legacy CUPE/KGH Central Agreement will be the vacation grid of the new collective agreement.

Notwithstanding the above, Employees from the former Hotel Dieu Hospital site hired on or before the date of the award will be grandfathered on the vacation grid of their predecessor collective agreement with respect to the service requirements for three (3) and four (4) weeks vacation.

4. Article 15.02 Definition of Overtime

The Board awards the following language:

When an employee at the request of, and approval of the Department Head under which he is employed, is required to work in excess of his normal hours of work in any one day or in any one pay period including paid sick time, statutory holidays and vacations, he shall be paid according to Article 15.03.

Notwithstanding the above, for the purposes of calculating overtime for part time employees, overtime shall be any authorized hours worked in excess of seven and one-half (7.5) hours in the day or seventy five (75) hours bi-weekly.

Letter of Understanding RE: Overtime in Departments with 7-hour shifts

Notwithstanding Article 15.02, the parties agree that in those departments where the normal shift is set at seven (7.0) hours per day, overtime for part time employees shall be calculated as authorized

hours worked in excess of seven (7.0) hours per day and seventy (70) hours bi-weekly.

Signed this _____ day of _____, 2019.

5. Article G – Scheduling

The new scheduling provisions will be effective the first scheduling cycle after September 15, 2019.

G1: POSTING OF SCHEDULE

The hours and days of work of each employee shall be posted in an appropriate place at least two (2) weeks in advance and will be for a period of at least **six (6)** weeks, **with the exception of the ambulatory clinics. Schedules in the ambulatory clinics will be posted two (2) weeks in advance for a period of at least four (4) weeks.** Nothing shall preclude the schedule being changed with the mutual consent of the employee and his Supervisor, provided also the Chief Executive Officer or designate in his absence shall have the right to alter the schedule in cases of emergency. The question of emergency shall be arbitrable.

The Hospital further agrees that there will be no "split shifts" **and no shifts of less than four (4) hours.**

Part-Time Employees:

All regularly available scheduled hours of work in the pay period shall be divided equally amongst all part-time employees in their department/work area/unit, within their classification, subject to the provisions of this Article.

Nothing in the above shall be construed as a guarantee of hours of work per day or days of work per week or per pay period.

G2: WEEKENDS OFF

Full Time Employees:

The Hospital will schedule two (2) weekends off in four (4), but if the employee is required to work on a third or subsequent consecutive weekend of duty, they shall be paid at the rate of time and one-half (1½) their regular salary for the hours involved

Part Time Employees:

The Hospital will schedule one (1) weekend off in four (4), but if the employee is required to work a fourth and subsequent consecutive weekend of duty, they shall be paid at the rate of time and one-half (1 ½) their regular salary for the hours involved.

Exceptions to the above apply when:

- (a) such weekend has been worked by an employee to satisfy specific days off requested by such employees; or
- (b) such employee has requested weekend work; or
- (c) such weekend is worked as a result of an exchange of shifts with another employee.

G3 NUMBER OF CONSECUTIVE WORK DAYS

No employee will be scheduled to work more than seven (7) consecutive days. The Hospital will make every reasonable effort to schedule two (2) consecutive days off for employees.

G4 TIME OFF BETWEEN SHIFTS

Full time employees:

The Hospital will schedule no less than sixteen (16) hours off between the ending of one shift and the commencement of another. Where the Hospital is unable to schedule sixteen (16) hours off between shifts, all hours that reduce the sixteen (16) hour time period will be paid at the rate of one and one-half (1½) times the employee's regular rate of pay except where it is as a result of an exchange of shifts between employees.

Part- time employees:

The Hospital will schedule no less than twelve (12) hours off between the ending of one shift and the commencement of another. Where the Hospital is unable to schedule twelve (12) hours off between shifts, all hours that reduce the twelve (12) hour time period will be paid at the rate of one and one-half (1½) times the employee's regular rate of pay except where it is as a result of an exchange of shifts between employees.

G6 CHRISTMAS SCHEDULING

- a) It is agreed by the Parties that scheduling of employees off at Christmas will allow employees who were not scheduled off for Christmas in odd numbered years to have preference for Christmas in even numbered years. After this procedure has been followed, remaining available time off at Christmas will be scheduled by seniority.
- b) The Hospital will make every reasonable effort to provide each full-time employee with five (5) consecutive days off at either Christmas or New Years' each year, including either Christmas day or New Years' Day unless such an employee requests not to be scheduled off.
- c) The Hospital will make every reasonable effort to provide each part-time employee with two (2) consecutive days off at either Christmas or New Years' each year, including either Christmas day or New Years' Day unless such an employee requests not to be scheduled off.

- d) Additionally, the Hospital will make every reasonable effort to not schedule the employee to work after 1900 on December 24 or December 31 for staff whose holiday it is to be off.

G8: PART-TIME SHIFT CANCELLATION

Part-time employees shall receive a minimum of twelve (12) hours' notice of any shift cancellation. Failure to receive such notice shall result in the Hospital utilizing the provisions of Article 15.05 (Reporting Pay).

NEW LOU: Extended Tours

LETTER OF UNDERSTANDING

BETWEEN

KINGSTON HEALTH SCIENCES CENTRE

(the "Hospital")

AND

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1974

(the "Union")

Re: EXTENDED TOURS ARRANGEMENTS

The purpose of this Memorandum of Agreement is to vary certain terms of the Collective Agreement for the implementation, scheduling and discontinuation of an extended tour schedule. With the exception of specific variations set forth in this Memorandum of Agreement, all other conditions and terms of the Collective Agreement shall remain in force and in effect. It is understood that insofar as any provision of this Memorandum of Agreement is in conflict with any provision of the Collective Agreement, the provision of this Memorandum of Agreement shall prevail.

Introduction Process

Where it is requested that an extended tour arrangement be implemented within a classification within a department/unit, the Hospital and the Union agree to meet with the affected employees to discuss the request.

The following conditions must be met for the trial of an extended tour arrangement to proceed:

- a draft of the schedule for the classification in the department/unit is developed

(either the traditional or 2D2N model) and posted in the work area; and

- a vote in favour of implementing extended tours, by secret ballot, with all employees working the schedule (both full and part time) in the classification in the affected unit/department eligible to vote; and
- the vote must be at least sixty percent (60%) of those eligible individuals casting a ballot in favour of an extended tour arrangement; and
- the cost to the Hospital of having the extended tour arrangement will be the same as for normal tour scheduling; and
- the Hospital agrees to the extended tour arrangement. It is understood that such agreement will not be withheld in an unreasonable or arbitrary manner;

Where the above conditions are met then the extended tour arrangement will be introduced until the end of the scheduling period closest to six (6) calendar months. Upon completion of the trial period a vote, by secret ballot, will be held to determine whether the employees want the extended tour arrangement to be maintained or discontinued. The extended tours will be continued when:

- at least sixty percent (60%) of those eligible individuals casting a ballot vote in favour of an extended tour arrangement; and
- the Hospital agrees to continue with the extended tour arrangement. It is understood that such agreement will not be withheld in an unreasonable or arbitrary manner; and
- the cost to the Hospital of having the extended tour arrangement will be the same as for normal tour scheduling.

If the employees vote to discontinue the extended tour arrangement the employees will work extended tours for one additional scheduling period during which time the Hospital will develop and post the new schedule.

Notwithstanding the above, a vote will not be held unless six (6) calendar months has elapsed from the date of the last vote on extended tour arrangements within the classification in the unit/department.

Discontinuation Process

Extended tours may be discontinued in a classification in a unit/department when;

- a vote in favour of discontinuing extended tours, by secret ballot, with all employees working the schedule (both full and part time) in the affected classification in the unit/department eligible to vote; and
- the vote must be at least sixty percent (60%) of those eligible individuals casting a ballot in favour of discontinuing the extended tour arrangement; and
- the Hospital agrees to the discontinuation. Such agreement shall not be withheld in an unreasonable or arbitrary manner.

OR

- the Hospital decides to discontinue extended tours because of:
 - adverse effects on patient care; or
 - inability to provide a workable staffing schedule, or
 - other reasons which are not unreasonable or arbitrary.

When the notice of discontinuation is given by either party in accordance with the above process the parties shall meet within two (2) weeks of the notice or outcome of the vote, to review the request for discontinuation. Where it is determined that the extended tours will be discontinued, affected staff will be given sixty (60) calendar days notice before the schedules are amended. The Hospital will post the new schedule for the unit/department within thirty (30) calendar days of the decision to discontinue the extended tours.

General Scheduling Provisions

1. The normal extended tour shift length will be eleven and one-quarter (11.25) hours, exclusive of a total of forty-five (45) minutes of unpaid meal time.

There shall be forty-five (45) minutes of paid rest time during the extended tour. The scheduling of the paid and unpaid time shall be determined by the manager after consulting with the affected employees.

2. Overtime shall be payable at the rate of one and one-half (1 ½) times the employees regular straight time hourly rate of pay for all hours worked in excess of eleven and one-quarter (11.25) hours in a day and/or as per Article 15.02 averaged over the schedule.

The no pyramiding provisions of Article 15.03 apply to extended tour arrangements.

3. The schedule will be posted two (2) weeks in advance.

4. The Hospital will not schedule an employee to work more than four (4) consecutive extended shifts. Where schedules do not conform to this, the employee shall be paid at the rate of one and one-half (1 ½) times the employee's regular straight time hourly rate of pay for all hours worked on the fifth (5th) consecutive shift.
5. A period of twelve (12) consecutive hours off shall be scheduled between tours.
6. A period of twenty-four (24) hours off shall be scheduled when an employee is changing from day shift to night shift and forty-eight (48) hours off shall be scheduled when changing from night to day shifts.

Where an employee has been scheduled to work with less than the twenty-four (24) or forty-eight (48) hours off outlined above, she shall be paid at the rate of one and one-half (1 ½) times the employee's regular straight time hourly rate of pay, save and except where:

- (a) such hours are worked by the employee to satisfy specific days off requested by the employee; or
- (b) the hours are worked as a result of an exchange of shifts with another employee.

7. It is understood that for scheduling purposes, a weekend consists of sixty (60) consecutive hours off work. This weekend period commences 1900 hours on the Friday shift until 0700 hours on the Monday shift.
8. Employees working an extended tour day shift will receive shift premium for three and three-quarter (3.75) hours.
9. Full time employees working extended tours shall be eligible to receive vacation on the following basis:

- 2 week entitlement – 75 hours
- 3 week entitlement – 112.5 hours
- 4 week entitlement – 150 hours
- 5 week entitlement – 187.5 hours
- 6 week entitlement – 225 hours
- 7 week entitlement – 262.5 hours

For part time employees they will be entitled to the equivalent unpaid time off. The vacation pay calculation will be as per 17.01 (b).

Extended Tour Model (Traditional Model)

The following provisions only apply to Traditional extended tour model.

G2: WEEKENDS OFF

Full Time Employees:

The Hospital will schedule two (2) weekends off in four (4), but if the employee is required to work on a third or subsequent consecutive weekend of duty, they shall be paid at the rate of time and one-half (1½) their regular salary for the hours involved.

Part Time Employees:

The Hospital will schedule one (1) weekend off in four (4) but if the employee is required to work a fourth and subsequent consecutive weekend of duty, they shall be paid at the rate of time and one-half (1 ½) their regular salary for the hours involved.

Exceptions to the above apply when:

- (a) such weekend has been worked by an employee to satisfy specific days off requested by such employees; or
- (b) such employee has requested weekend work; or
- (c) such weekend is worked as a result of an exchange of shifts with another employee.

1. Full time employees working extended tours shall be eligible to receive twelve (12) lieu days off to consist of seven and one-half (7 ½) hours each.

Employees may request to take eleven and one-quarter (11.25) hours of banked holiday lieu time when requesting a shift off. The scheduling of the holiday lieu time will be in accordance with Article H-2 of the Collective Agreement.

Full time employees working extended tours shall be scheduled balancing time off every twelve (12) weeks.

2. An employee requesting night tours on a permanent basis may be granted such request where deemed appropriate by the manager.

Extended Tour Alternate Model (2D2N Model)

Note: the following are scheduling exceptions to the Traditional Extended tour model (above). These exceptions apply only to full-time employees working the 2D2N model.

The following provisions only apply to 2D2N model only.

1. Full-time Employees shall not be scheduled to work more than three (3) consecutive weekends. If any full-time employee works on a fourth (4th) consecutive weekend she shall be paid at the rate of one and one-half (1 ½) times the employee's regular straight time hourly rate of pay for the hours involved, save and except when:
 - i) Such weekend has been worked by the employee to satisfy specific days off required by such employee; or
 - ii) Such employee has requested weekend work; or
 - iii) Such weekend is worked as the result of an exchange of shifts with another employee.
2. All schedules will be done on the basis that each full-time employee will be scheduled for 1950 hours per year. The Hospital will schedule twelve (12) additional balancing tours to achieve these hours.

Dated at Kingston this _____ day of _____ 2019 .

6. Article AA – Preceptorship/Student Supervision

The Board awards the following:

Registered Practical Nurses may be required, as part of their regular duties, to supervise activities of students in accordance with the current College of Nurses of Ontario Practice Guidelines – Supporting Learners. Nurses will be informed in writing of their responsibilities in relation to these students and will be provided with what the Hospital determines to be appropriate training. Any information that is provided to the Hospital by the educational institution with respect to the skill level of the students will be made available to the nurses recruited to supervise the students. Upon request, the Hospital will review the nurse's workload with the nurse and the student to facilitate the successful completion of the assignment.

When a nurse is assigned nursing student supervision duties, the Hospital will pay the nurse a premium of sixty cents (\$0.60) per hour for all hours spent supervising nursing students.

7. RPN Adjustment

Having a view to the Local Issues Award between Participating Hospitals and CUPE, the Board declines to award a wage adjustment to the Registered Practical Nurses Wage rate.

8. Temporary Vacancies

LETTER OF UNDERSTANDING RE: COVERING TEMPORARY VACANCIES

1. When a temporary vacancy arises which is expected to last up to, but not longer than, two (2) weeks, the shifts will be distributed in accordance with the provisions of this collective agreement.
2. When a temporary vacancy exceeds, or is expected to exceed, two (2) weeks but not longer than six (6) months, such vacancy shall be offered within the department and in order of seniority to part time employees in the classification, who have been oriented to and are qualified and willing to perform the work.

Where a temporary vacancy exceeds, or where it is reasonably expected that the vacancy will exceed six (6) months, the initial vacancy shall be posted as per Article 9.05. Subsequent vacancies arising from the first posting will be offered within the department and in order of seniority to the part time employee in the classification, who have been oriented to and is qualified and willing to perform the work.

9. Mobility between Sites

Letter of Understanding: Mobility between Sites

1. When an employee who normally works at either the KGH or HDH site is temporarily assigned to a satellite site (which is defined as a site outside of the City of Kingston) of the Hospital, he or she will be paid for his or her travel time and reimbursed for his or her travel expenses in accordance with the KHSC travel policy.
2. When an employee who normally works at one or two satellite site(s) of the Hospital is temporarily assigned to a site other than his/her home site(s), she/he will also be paid for their travel time and reimbursed for their travel expenses in accordance with the KHSC travel policy.
3. The Hospital acknowledges that it currently has no plan to schedule employees to regularly work at both the KGH and HDH sites. If, in the future the Hospital chooses to organize its operations to have positions that work at both sites, representatives of the Hospital will meet with the Union to discuss ways to mitigate the impact on affected employees.
4. Should employees be required to work at both sites, the Hospital agrees to first canvass for volunteers and then to schedule in reverse order of seniority from among the employees qualified to perform the work.

5. Nothing in the foregoing prevents the Hospital from posting new positions that have work schedules at both sites. Nor does anything in the foregoing prejudice the Union from asserting any rights provided under Article 9 of the collective agreement.

The terms of the local agreement shall consist of the terms agreed to by the parties, as amended in accordance with this award. Any Union or Employer proposals that have not been agreed to and are not explicitly addressed by this award are deemed dismissed. We remain seized with respect to the implementation of our award and in accordance with s.9 of the Hospital Labour Disputes Arbitration Act.

Dated at Toronto this 29th day of May, 2019

“Eli Gedalof”

Eli A. Gedalof, Chair

“I dissent in part”

Brian O’Byrne, Employer Nominee

“I dissent in part”

Joe Herbert, Union Nominee