

**IN THE MATTER OF AN INTEREST ARBITRATION UNDER THE *HOSPITAL
LABOUR DISPUTES ARBITRATION ACT (HLDA)***

BETWEEN:

Ontario Shores Centre for Mental Health Sciences

(the “Hospital” or “Centre”)

-and-

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, Local 331

(“OPSEU” or the “Union”)

BEFORE: Christine Schmidt, Chair

APPEARANCES:

For the Union:

Rick Janson, Staff Representative
Johnathan Leung, Vice President
Michèle Dawson Haber, Senior Research Officer
Glynnis Marcus, Negotiating Committee
Paul Carnaroli, Negotiating Committee
Denise Wagler- Allan, Negotiating Committee
Leanne Beaudry, Negotiating Committee
Avery Thurman, Negotiating Committee

For the Centre:

Rhoda Beecher, Director, HR
Camille Thomas, Manager, HR, Occupational Health, Safety and Wellness
Sanaz Riahi, Senior Director, Professional Practice & Clinical Informatics
Mark Rice, Senior Director, Adolescent Program
Vincci Tang, Deputy CFO and Director, IT & Decision Support
Jennifer McDonald, Manager, Nutrition & Food Services
Melanie Kelly, Clinical Manager, Geriatrics
Jennifer Moogk, Lead, Labour Relations

The Mediation/Arbitration was held in Ajax on December 14, 2017.

AWARD

Introduction

This Board of Arbitration is duly constituted and convened under the *Hospital Labour Disputes Arbitration Act* (“HLDA”). The Board has been appointed to adjudicate upon the issues that remain in dispute between the parties in respect of the negotiation of a renewal collective agreement between them. The parties agreed to a mediation/arbitration process, which took place in Ajax. The parties are agreed that this collective agreement will run from April 1, 2017 to March 31, 2020.

Background and General Considerations

The Centre is a specialized regional psychiatric hospital based in Whitby, Ontario. There are about 1,200 staff at the Centre, most of whom are in one of three bargaining units represented by OPSEU – the registered nursing unit (321 members); the office clerical, service and maintenance unit (247 members), and the paramedical/professional unit, including RPNs (505 members). All three bargaining units are covered by a single collective agreement. The remaining staff at the Centre is non-union.

The Union sent notice to bargain January 16, 2017. The parties met in negotiations on May 23, 24 and June 20 and 22, 2017. Conciliation took place on September 25 and 26, 2017, after which a no-board report was issued.

The parties were able to agree upon a number of matters. They have asked the Board to incorporate the agreed upon items into this Award. A number of issues remained outstanding. The two most significant issues were the improvements sought by the Union on vacation entitlement and the Centre’s proposal to amend the sick leave provision to reflect what is normative in public sector collective agreements. Each party vehemently opposed the other’s proposal on these issues. The Board’s Award reflects the sort of compromise that the parties would have made in bargaining.

In assessing the merits of the outstanding issues in dispute, the Board has carefully considered the parties submissions. It has been guided by the legislative criteria. It has also been governed by long accepted principles developed in the interest arbitration jurisprudence of demonstrated need and total compensation. The Board's primary task, however, is to replicate the agreement that would have been reached had the parties reached their own resolution if bargaining took place in the context of free collective bargaining, with comparability as the primary tool to effect such a resolution.

The Board directs the parties to enter into a collective agreement and to incorporate all of the items agreed by the parties themselves, as well as the following awarded issues. Except as noted otherwise, all amendments to the collective agreement terms are effective the date of this award. Any proposal not explicitly dealt with in this Award is denied.

WAGES

- Year One: 1.4% general wage increase effective April 1, 2017
- Year Two: 1.4% general wage increase effective April 1, 2018
- Year Three: 1% general wage increase effective April 1, 2019, 1% general wage increase effective October 1, 2019.

Psychologist

Effective the date of this Award, Steps 5 and 6 on the Psychologist wage grid shall each be adjusted upwards by \$1.00.

ARTICLE 12.18 – Violence in the Workplace

To be amended to read as follows:

Workplace violence shall be defined as any incident in which an employee is abused, threatened or assaulted during the course of their employment. The Centre agrees that these incidents will not be condoned in the workplace. The Centre shall endeavour to take all reasonable measures to protect employees from violence at work.

In consultation with the Union, based on the recommendations of the site specific JHSC, the Centre will:

- a) conduct annual risk assessments or more often as necessary with a full-time union member chosen by the union from that unit or program, where applicable.

Results are shared with the Joint Health and Safety Committee and posted in the unit or department;

- b) maintain a violence prevention policy;
- c) maintain and review safe work practices and procedures to eliminate or minimize violence;
- d) maintain procedures for reporting, investigating and recording of incidents of violence; and
- e) provide information and training to employees on the recognition of potentially violent situations and diffusion of violent situations.

ARTICLE 25 – Sick Leave/Short Term Disability – Full-Time Employees Only

Amend article 25.01 Sick Hours Accumulation to add the following (c) and (d):

- (c) where an employee is on sick leave of absence which commences in one (1) calendar year and continues into the following calendar year, they are not entitled to refresh their annual sick leave bank, until the employee has returned to work for a period of fifteen (15) consecutive working days. For clarity, such an employee is not entitled to sick leave of absence with pay for more than 130 working days in the 2 calendar years combined, unless the employee has returned to work for a period of fifteen (15) consecutive working days prior to being entitled to further sick leave.
- (d) Fifteen consecutive working days may be reduced at the discretion of the Employer.

ARTICLE 27 – Vacation

Article 27.01 to be amended as follows – effective January 1, 2018

- Up to 1 year – vacation earned at a rate of 9.375 hours for each completed calendar month of service with pay to a maximum of 112.5 hours per calendar year.
- 1-3 years: 3 weeks of vacation – maximum hours of 112.5
- 4-13 years: 4 weeks of vacation – maximum hours of 150
- 14-21 years: 5 weeks of vacation – maximum hours of 187.5
- 22-27 years: 6 weeks of vacation – maximum hours of 225
- 28 years +: 7 weeks of vacation – maximum hours of 262.5

NEW ARTICLE – Workload

The Parties have a mutual interest in the provision of quality patient care. Therefore, when an employee, or group of employees, who provide direct clinical patient care covered by this agreement have cause to believe that they are being asked to perform more work than is consistent with proper patient care it is agreed by the parties that such concerns will first be raised with their immediate manager/designate. Where a resolution is not reached, such workload problems may be discussed by the Labour Management Committee.

If no consensus can be reached at Labour Management Committee the parties will meet with the VP, Clinical Services within thirty (30) days of referral to present the issues. The VP, Clinical Services will notify the Union of the decision in writing within fourteen (14) days.

Only wages are subject to retroactivity in this Award. In that regard the Centre shall pay retroactive wages in respect of the April 1, 2017 wage increase on the basis of all paid hours from April 1, 2017. Any retroactive payments will only be paid to current employees, employees who retired, voluntarily resigned or were terminated during the term of this agreement, employees on approved leave, or employees who were laid off by the hospital during the term of this agreement. Payment is to be made within sixty (60) days of the date of this Award. For eligible employees who have left the employ of the Hospital, a letter shall be sent to their last known address. Where such an employee does not respond to such a letter within sixty (60) days of it being sent by the Hospital, such employee shall have no claim to retroactivity.

The Board remains seized until such time as a collective agreement is in effect between the parties.

Dated at TORONTO this 21st day of December, 2017.



Christine Schmidt, Sole Arbitrator