

IN THE MATTER OF AN ARBITRATION

BETWEEN:

Haldimand War Memorial Hospital

-and-

**Grand River Valley Health Care Employee's Union,
Local 305, affiliated with the Christian Labour Association of Canada**

Interest Arbitration under the *Hospital Labour Disputes Arbitration Act*

Arbitration Board:

**Lorne Slotnick, Chair
Ted Capstick, Employer Nominee
Shalom Schachter, Union Nominee**

Representing the Union – Kevin Gates

Representing the Employer – Damian Borrelli

Hearing – Hamilton, Ont., September 29, 2014.

A W A R D

This is an interest arbitration under the *Hospital Labour Disputes Arbitration Act*. This award will settle a first collective agreement for each of two bargaining units at the Haldimand War Memorial Hospital in Dunnville, Ontario. One bargaining unit is comprised of service employees, including registered practical nurses, clerks, housekeeping staff, tradespeople and personal support workers. The other is a paramedical unit, including laboratory and ultrasound technologists, and pharmacy and X-ray technicians.

The employer is a small 39-bed hospital. The union was certified to represent the service unit, with about 70 employees – 15 full-time and the rest part-time and casual – on December 12, 2012. Certification of the paramedical unit, with about 25 employees, followed shortly after, on January 15, 2013. There was an existing unit of registered nurses at the hospital, represented by the Ontario Nurses' Association. The hospital also operates an adjoining long-term care home, Edgewater Gardens, where service employees are represented by the Ontario Public Service Employees Union.

The service and paramedical units bargained with the hospital separately during 2013, settling some issues. However, when the outstanding issues were referred to arbitration, the parties agreed to have this arbitration board deal with all issues in both bargaining units together. The parties met this board in mediated discussions on April 23 and September 9, 2014. On those dates and in subsequent discussions, the parties were able to settle almost all the remaining issues, leaving only wage increases for the service unit, retroactivity, and bargaining unit placement and pay for one classification. Bargaining a first collective agreement is almost

always a complex process and the board commends both parties for their efforts in settling the vast majority of these two first agreements; their discussions have laid the basis for a productive relationship in the future.

The parties presented thorough briefs on the outstanding issues at the hearing on September 29, 2014. The board met in executive session on October 22, 2014. In determining the issues, the board has considered the parties' representations and the criteria set out in Section 9 (1.1) of *Hospital Labour Disputes Arbitration Act*, as well as the general principles applicable to interest arbitration, including the importance of replicating the agreement the parties would have made had bargaining succeeded. In examining comparators, the board took particular note of pay rates at Ontario hospitals with less than 100 beds. In addition, as the parties were able to come to an agreement on the wage rates for the paramedical unit (subject to one exception discussed below), the changes to pay in that group were, in our view, relevant to the issue of replication in the service unit. Also relevant to some members of the board was the hospital's most recent voluntary settlement with OPSEU, covering the service employees at the Edgewater Gardens long-term care centre. The board also took into consideration the financial challenges for a hospital of this size, including provincial funding constraints.

The board makes the following orders:

1. Agreed Items

All matters previously agreed to and signed off by the parties are to be incorporated into the respective collective agreements. These are contained at Tab 9 (paramedical) and Tab 10 (service) of the union's brief. Any issues not specifically addressed in this award are deemed to be withdrawn.

2. Duration

The parties have agreed on the duration of the paramedical collective agreement. They have not agreed on the duration for the service collective agreement. Therefore, pursuant to Section 10 (11) of the *Hospital Labour Disputes Arbitration Act*, the service agreement will have a two-year term from the date of notice to bargain, that is, from January 4, 2013 to January 3, 2015.

3. Start Rate

Except for the classification of lab patient technician, addressed below, the parties have agreed to the structure of the pay grid in both bargaining units. The employer proposed a new start rate at 97 per cent of the current Step 1 for all classifications in each bargaining unit. This would apply to employees hired subsequent to this award. The union stated at the hearing that it agreed. The board orders this new start rate as part of each of the two collective agreements.

4. Lab Patient Technician

There are four employees in this classification – one part-time and three casual. It is a new classification, brought into the hospital after the union was certified to represent the two bargaining units. The employees had been working for a separate family health team which leased space at the hospital. When the family health team discontinued the services these employees performed, the hospital took on the employees in May, 2013. At that time, the four employees received a significant hourly pay raise.

The parties disagree on whether this group belongs in the service unit or in the paramedical unit; they also disagree on pay raises for this group. The employer asks that they be put in the service unit. The union seeks their inclusion in the paramedical unit, and argues that this board has no jurisdiction to settle their pay, as the parties have already agreed on pay raises for the paramedical unit.

Having reviewed the job postings for this position and other documentation, it is our view that the core duties of this position are the same as those who at other hospitals are classified as phlebotomists. Therefore, the classification of lab patient technician and the employees in that classification will be put in the paramedical unit.

However, we disagree with the union's argument that we have no jurisdiction to determine a pay rate for the lab patient technicians that differs from the raises agreed to for the rest of the paramedical unit. In our view, the employer's agreement to tie pay rates for the paramedical unit

to the rates in the OPSEU central paramedical agreement with participating hospitals was without prejudice to its argument that the lab patient technicians should not receive the OPSEU rates even if they ultimately were placed in the paramedical unit.

This position's counterpart in the OPSEU central agreement is Technician 2. (Technician 2 in the OPSEU agreement specifically includes phlebotomists.) The parties have settled paramedical pay rates based on implementing OPSEU central rates as of April, 2013 a year later, in April 2014. The four-year rate for Technician 2 in the OPSEU agreement, effective in April, 2013, is \$26.07 hourly. The patient lab technicians are currently paid \$18.57 hourly. However, unlike the rest of the paramedical employees – who have not received any pay raises since 2010 – the patient lab technicians received a substantial increase in 2013, as noted above.

In our view, the pay gap between the lab patient technicians and the OPSEU comparators is so large that it would be unduly onerous for the hospital to bridge it entirely in this first collective agreement. We will order the gap closed half way, and leave it to the parties to negotiate further on this issue in upcoming rounds of bargaining.

The board therefore orders:

- Lab patient technicians will be included in the paramedical bargaining unit.
- Pay for each employee in this group will be raised to \$22.32 per hour, effective April 1, 2014.
- The pay grid in the paramedical unit for lab patient technicians will be the same as the OPSEU central agreement Technician 2 grid that was in effect as of April 22, 2013,

minus \$3.75 per hour on each step. Because there is already a start rate in that grid, the 97 per cent start rate noted above will not apply.

5. Wages (Service Unit)

The union seeks a 2.5 per cent increase across the board in each of the two years of the agreement, retroactive to the start of the agreement. In addition, it seeks a special adjustment for all clerks, registered practical nurses and personal support workers, of 50 cents per year after the general increase. These special adjustments would benefit about 45 of the 70 members of the bargaining unit.

The employer has offered an across the board increase of .5 per cent effective April 1 in each year, plus lump sums equivalent to .5 per cent, also in April of each year. It has also offered a 50 cent per hour adjustment for RPNs.

We note again that members of this bargaining unit have not received any pay increases since January, 2010, an increase that was retroactive to October, 2009. We have examined comparator positions in other small hospitals and have determined that the greatest gap is with respect to the RPNs. Having considered all of the parties' representations, the board orders the following:

- Across the board increase of 2 per cent, effective January 4, 2013.
- Additional across the board increase of 2.25 per cent, effective January 4, 2014.

- 50 cent per hour adjustment in each year for RPN rates, to be applied after the general increase.

6. *Retroactivity for Wage Increases (both units)*

New wage rates are to be implemented by the end of the 2014 calendar year. The employer will endeavour to pay retroactivity to current employees on wage increases on the basis of hours paid by the end of 2014, but in any event shall make the retroactive payments by January 15, 2015.

Retroactivity shall be paid on wage increases, including any payments based on the wage rate (for example, the percentage in lieu of benefits, vacation pay).

The Employer will contact former employees at their last known address on record with the Employer by the end of 2014, to advise them of their entitlement to retroactivity.

Former employees will have a period of five full pay periods from the date of the notice to claim such retroactivity and, if they fail to make a claim within the five full pay periods, their claim will be deemed to be abandoned.

7. Board to Remain Seized

As specified in Section 9 (2) of the *Hospital Labour Disputes Arbitration Act*, we will remain seized of and may deal with all matters in dispute between the parties until each of the two collective agreements are in effect between the parties.

October 28, 2014



Lorne Slotnick, Chair

“Ted Capstick”

I concur - Ted Capstick, Employer Nominee

“Shalom Schachter”

I concur – Shalom Schachter, Union Nominee