

Interest Arbitration Award

and

Agreed To Items

Between

HOTEL DIEU GRACE HEALTHCARE

(hereinafter referred to as the "Hospital")

And

**THE CANADIAN UNION OF PUBLIC
EMPLOYEES**

AND ITS LOCAL 1132-01

(hereinafter referred to as the "Union")

**Presented to Membership
August 25, 2020**

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

BETWEEN:

**CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL
1132**

(“CUPE” or the “Union”)

-and-

The Hotel Dieu Grace Hospital

(HDGH or the “Hospital”)

And in the matter in dispute between the parties in respect of the negotiation of a renewal collective agreement to the collective agreement between them that expired on September 28, 2017.

BOARD OF ABITRATION:

Christine Schmidt, Chair
Matthew Sutcliffe, Employer
Nominee Joe Herbert, Union
Nominee

APPEARANCES:

For HDGH: Matthew J. Mihailovich, Counsel

For CUPE: Jonah Gindin, Research Officer

Executive Session held on August 6, 2020.

Introduction

1. This is an interest arbitration under the *Hospital Labour Disputes Arbitration Act*, R.S.O. 1990, c. H.14, as amended ("HLDAA"). The arbitration board was appointed to adjudicate upon the issues in dispute between the parties in respect of the negotiation of a renewal collective agreement to the collective agreement between them that expired on September 28, 2017.

Background

2. The Hotel Dieu Grace Hospital is a 259-bed community hospital in Windsor, Ontario, offering services in Mental Health & Addictions; Rehabilitative Care; Complex Medical and Palliative Care; and Children and Youth Mental Health.

3. The Canadian Union of Public Employees (CUPE) represents approximately 101 full-time and 151 part-time employees in three classifications: Registered Practical Nurses (221), Certified Rehabilitation Assistants (28), and Non-Certified Rehabilitation Assistants (3).

4. The parties were, in collective bargaining negotiations, able to agree upon a number of matters in dispute. They have asked that the Board of arbitration incorporate the agreed upon items into this award.

5. The parties filed detailed written submissions electronically, addressing Bill 124 (*Protecting a Sustainable Public Sector for Future Generations Act, 2019*) as well as with respect to the remaining issues in dispute. The Board has carefully considered the legislative criteria set out in HLDAA, and the well-established principles governing interest arbitration, as well as the jurisprudence concerning non-participating hospital service units such as this one. We note that, were it not for the application of Bill 124, this Board would order salary increases which correspond to those voluntarily agreed in central negotiations between the Participating Hospitals and CUPE for the same classifications and the equivalent period. In addition to being limited to salary increases of 1% per year, we are also limited to an increase in total compensation of 1% (including salaries) per 12-month period.

Decision

6. The Board's determination with respect to the issues in dispute are reflected in the paragraphs below. We mention only those issues for which an award is made. Any proposal not expressly addressed is deemed to be dismissed. Unless otherwise specified, all changes are effective date of the award.

7. As noted, some issues have been agreed voluntarily by the parties, and we order that the agreed items be incorporated into the collective agreement.

Wage Increases

8. Increase wages for all classifications as follows:

Effective September 29th, 2017 – 1.0%
Effective September 29th, 2018 – 1.0%
Effective September 29th, 2019 – 1.0%
Effective September 29th, 2020 – 1.65%

9. Apply a Market Adjustment as follows:

Effective September 29th, 2020 – 1.4%

10. Retroactivity to identify total hours paid and to be paid within 4 pay periods of the issuance of this award.

Vacations

11. Effective date of the award, adjust Article 20.03 Vacation Entitlement as follows:

20.03 Vacation Entitlement

Employees within the bargaining unit will receive the following vacations with pay on completion of the following years of seniority:

One (1) year but less than five (5) years seniority	three (3) weeks
Five (5) years but less than thirteen twelve (4 312) years seniority	four (4) weeks
Thirteen Twelve (4 312) years but less than twenty- one (2120) years seniority	five (5) weeks
Twenty- one (2120) years but less than twenty-eight (28) years seniority	six (6) weeks
Twenty-eight (28) years or more	seven (7) weeks

12. The Board remains seized under subsection 9(2) of the HLDAA, including with respect to reopening of negotiations on compensation matters in the event that Bill 124 is declared unconstitutional by a competent court, or if the Bill is otherwise modified or repealed.

Dated at TORONTO this 7th day of August 2020.



Christine Schmidt,
Chair "I concur"

Matthew Sutcliffe, Employer Nominee

"I concur"

Joe Herbert, Union Nominee

AGREED TO ITEMS

ARTICLE 8 – LAYOFF

- 8.01 (b) A layoff shall not include a reassignment of an employee from her or his classification or area of assignment who would otherwise be entitled to notice of layoff provided:
- (i) reassignments will occur in reverse order of seniority;
 - (ii) the reassignment of the employee is to an appropriate permanent position with the employer having regard to the employees skills, abilities, qualifications and training or training requirements;
 - (iii) the reassignment of the employee does not result in a reduction of the employees wage rate or hours of work; **for the purpose of this article placing an employee in a lower rated classification and red-circling their rate constitutes a reduction in the employee's wage rate;**
 - (iv) the job to which the employee is reassigned is located at the employee's original work site or at a nearby site in terms of relative accessibility for the employee;
 - (v) the job to which the employee is reassigned is on the same or ~~substantially similar~~ shift or shift rotation; and
 - (vi) where more than one employee is to be reassigned in accordance with this provision, the reassigned employees shall be entitled to select from the available appropriate vacancies to which they are being reassigned in order of seniority provided no such selection causes or would cause a layoff or bumping.

ARTICLE 10 - JOB POSTINGS

- 10.01 (c) It is understood that once an employee has been successful in securing a new position through the posting or transfer file, and has been notified by the Hospital, the following procedure will apply:
- (i) The successful applicant when applying for a part-time position from full-time status or vice-versa, shall confirm in writing to the Hospital of her/his decision on acceptance within ~~forty-eight (48) hours~~ **twenty-four (24) hours** of notification of appointment.

10.04 The successful applicant shall be given a trial period of ~~thirty (30)~~ **fifteen (15)** days worked. Conditional upon satisfactory service, the employee shall be

assigned the position after the period of ~~thirty (30)~~ **fifteen (15)** days worked. In the event the successful applicant proves unsatisfactory in the position during the trial period, or if the employee is unable to or unwilling to continue to perform the duties of the new job classification, he/she shall be returned to his/her former position, wage or salary rate, without loss of seniority. Any other employee promoted or transferred because of the rearrangement shall also be returned to her former position, wage or salary rate, without loss of seniority.

It is mutually agreed that within the trial period an evaluation will be made of the employee, so the Hospital can assess the employee's performance in the new position and the employee will be made aware of any deficiencies.

ARTICLE 17- HOURS OF WORK, OVERTIME AND OTHER WORKING CONDITIONS

17.01 (b) The normal daily tour shall be seven and one-half (7 1/2) consecutive hours in any twenty-four (24) hour period exclusive of an unpaid one-half (1.2) hour meal period, **it being understood that at the change of tour there will normally be additional time required, prior to shift commencement, for reporting which shall be considered to be part of the normal daily tour, for a period of up to fifteen (15) minutes duration. Should reporting time extend beyond fifteen (15) minutes, however, the entire period shall be considered overtime for the purposes of payment under Article 17.08.**

17.04 It is understood that employees shall not be required to take time off in regular hours to equalize any authorized overtime worked unless employees request the following option. Employees who work overtime may accumulate ~~up to a maximum of three (3) days~~ lieu time instead of receiving payment for overtime worked. Such lieu hours will be taken at a time mutually agreeable between the employee and the Employer. The Hospital shall revert to payment of premium rate if time off is not taken ~~or is not able to be given within ninety (90) calendar days.~~ **by the final pay period of each calendar year.**

17.06 (a) Distribution of Scheduled Shifts

The Union and the Hospital agree that scheduled shifts for part-time employees shall be distributed equitably among the part-time employees assigned to a Unit.

Distribution of Extra Shifts

Where an extra shift is being offered to a Full-time or Part-time employee, they shall be called by the employer to be offered the shift. Where it is less than twenty- four (24) hours prior to the commencement of the shift and the employee cannot be reached, the employer shall not provide a waiting period for the employee to return the phone call to indicate their acceptance or decline of the shift(s). Where the commencement of the shift is greater than twenty-four (24)

hours the staff member will be given ~~fifteen (15)~~ **ten (10)** minutes to return the phone call to accept or decline the shift.

The employee may provide one (1) telephone number to be used by the employer for the purpose of call-in. Once a call has been placed to an employee to offer a shift at straight time and the employee has either declined, or was not reachable as outlined above, they shall not be called again should the shift be later offered at overtime.

17.07 Assignment of Overtime

When overtime is deemed, there being no other employee at straight time, it will be offered within the Unit first according to integrated full-time/part-time seniority in rotation, then to employees within the program/campus, then to any employee within the bargaining unit available to work.

It is understood by the parties that overtime will be offered first to employees who are eligible for premium pay at time and one half and should no one accept the shift, it may then be offered to employees who are eligible for premium pay at double time.

17.18 Weekend Premium/Shift Premium

Shift Premium - All employees in the bargaining unit who work shifts between 2300 hours and 0730 hours will be paid a night shift premium of one dollar thirty-five cents (\$1.35) per hour for hours worked **where the majority of the shift hours occur in that time frame** and all employees in the bargaining unit who work shifts between 1500 hours and 2330 hours will be paid an evening shift premium of one dollar and fifteen cents (\$1.15) per hour for hours worked **where the majority of the shift hours occur in that time frame.** (~~effective September 29, 2011~~).

17.21 Add (d) Responsibility Pay:

Whenever an employee is assigned additional responsibility to direct, supervise or oversee the workflow in the department/area, the employee shall be paid a premium of one dollar and forty cents (\$1.40) per hour in addition to her or his regular salary and applicable premium allowance.

ARTICLE 18 – EXTENDED TOURS

18.02 (e) An employee shall be scheduled to work a Paid Holiday Monday or Friday connected to the scheduled Saturday/Sunday tour unless mutually agreed upon.

All provisions in Article 17 will apply to employees working extended tours unless

expressly amended above.

ARTICLE 19 - PAID HOLIDAYS

NEW LANGUAGE:

19.05 Employees may receive lieu time-instead of receiving payment for Paid Holidays. Such lieu hours will be taken at a time mutually agreeable between the employee and the Employer. The Hospital shall revert to payment if time off is not taken by the final pay period of each calendar year.

ARTICLE 21 – LEAVE OF ABSENCE

21.04 (a) Pregnancy Leave

An employee who is pregnant and who has been employed for at least thirteen (13) weeks immediately preceding the estimated date of her delivery, shall be entitled to a pregnancy leave of up to seventeen' (17) weeks in duration.

The employee shall give written notice at least two (2) weeks prior to the date upon which she intends to commence the pregnancy leave, and provide a certificate from a legally qualified medical practitioner stating the expected birth date. If special circumstances arise out of the pregnancy and it is not possible to meet the obligation for notice, such notice as referred to above must be provided within two (2) weeks of stopping work.

An employee may begin her pregnancy leave no earlier than seventeen (17) weeks before the expected birth date. The pregnancy leave continues for seventeen (17) weeks after it began. The employee may end the leave by giving at least four (4) weeks written notice of the day she intends to return.

An employee on pregnancy leave as provided under this Agreement who is in receipt of Employment Insurance pregnancy benefits pursuant to Section 22 of the Employment Insurance Act, shall apply for and be paid a Supplemental Employment Benefit **for a period not exceeding fifteen (15) weeks. The supplement shall be equivalent to the difference between ninety-three percent (93%) of her normal weekly earnings and the sum of her weekly unemployment insurance benefits and any other earnings. Receipt by the Hospital of the employee's unemployment insurance cheque stubs shall constitute proof that she is in receipt of Employment Insurance pregnancy benefits.**

The employee's normal weekly earnings shall be determined by

multiplying her regular hourly rate on her last day worked prior to the commencement of the leave times her normal weekly hours plus any wage increase or salary increment that she would be entitled to receive if she were not on pregnancy leave.

In addition to the foregoing, the Hospital will pay the employee ninety-three percent (93%) of her normal weekly earnings during the first one (1) week period of the leave while waiting to receive Employment Insurance benefits.

The employee does not have any vested right except to receive payments for the covered unemployment period. The plan provides that payment in respect of guaranteed annual remuneration or in respect of deferred remuneration or severance pay benefits are not reduced or increased by payments received under the plan.

The Hospital may request an employee to commence pregnancy leave at such time as the duties of her position cannot reasonably be performed by a pregnant woman or the performance of non-performance of her work is materially affected by the pregnancy.

(b) Parental Leave

An employee who has been employed for at least thirteen (13) weeks is eligible for parental leave, whether they become a parent through the birth of their child, through adoption, or if they are in, or enter into, a relationship of some permanence with a parent of a child, and they intend to treat the child as their own.

Such leave must commence within thirty-five (35) weeks of the day the child was born, or becomes into custody, care and control of the employee for the first time.

Parental leave for an employee who has taken pregnancy leave must commence at the end of the pregnancy leave unless the child has not come into the care of the parent by that time. An employee must give at least two (2) weeks' notice of the date that the parental leave is to begin. Where the child comes into the custody, care and control of the employee for the first time sooner than expected, the leave will begin on the day the employee stops working, and notice must be provided within two (2) weeks of stopping work.

Parental leave ends eighteen (18) weeks after it began or on an earlier day if the employee gives the Hospital at least four (4) weeks written notice of that day. In the case of adoption, the employee who is an adoptive parent may request the parental leave to be extended to twenty-

four (24) weeks duration.

Effective on confirmation by the Canada Employment Insurance Commission of the appropriateness of the Hospital's Supplemental Unemployment Benefit (SUB) Plan, an employee who is on parental leave as provided under this Agreement who has applied for and is in receipt of Employment Insurance parental benefits pursuant to Section 22 of the *Employment Insurance Act*, shall be paid a supplemental unemployment benefit for a period not exceeding eleven (11) weeks. That benefit shall be equivalent to the difference between ninety-three percent (93%) of the employee's normal weekly earnings and the sum of his or her weekly Employment Insurance benefits and any other earnings. Receipt by the Hospital of the employee's employment insurance cheque stub will serve as proof that the employee is in receipt of unemployment parental benefits.

Where an employee elects to receive parental leave benefits pursuant to Section 12(3)(b)(ii) of the *Employment Insurance Act*, the amount of any Supplemental Unemployment Benefit payable by the Hospital will be equal to what would have been payable had the employee elected to receive parental leave benefits pursuant to Section 12(3)(b)(i) of the *Employment Insurance Act*.

The employee's normal weekly earnings shall be determined by multiplying the employee's regular hourly rate on his or her last day worked prior to the commencement of the leave times the employee's normal weekly hours, plus any wage increase or salary increment that the employee would be entitled to if he or she were not on parental leave.

In addition to the foregoing, the Hospital shall pay the employee ninety-three percent (93%) of his or her normal weekly earnings during the first one (1) week period of the leave while waiting to receive Employment Insurance benefits.

The employee does not have any vested right except to receive payments for the covered unemployment period. The plan provides that payment in respect of guaranteed annual remuneration or in respect of deferred remuneration or severance pay benefits are not reduced or increased by payments received under the plan.

- (c) Where an employee has given written notice to begin either a pregnancy or parental leave, that notice may be changed to an earlier or later date by the giving of at least two (2) weeks' notice.

Where notice to end a leave has been given, that notice may be changed

to either an earlier or later date if the employee gives at least four (4) weeks' notice.

- (d) Employees will continue to be enrolled in all pension and benefit plans included in Article 22 of this Agreement unless the employee gives the Hospital written notice that the employee does not intend to pay the employee's contribution, if any, to such benefit plans. The Hospital will continue to contribute its share of any premiums for such benefits while the employee continues absence on pregnancy or parental leave, unless the employee gives written notice that they do not intend to pay their contribution, if any.

Employees who choose to pay their portion, if any, of the premium for such benefit plans may make such arrangements with the Hospital as are mutually satisfactory, but failing such arrangements, it would be expected that the employee would make such payments by postdated cheques.

- (e) The employee shall be re-instated when the leave ends to the position the employee most recently held, if it still exists, or to a comparable position, if it does not.
- (f) It is understood that during pregnancy leave or parental/adoption leave, seniority shall continue to accrue. Credit for service for the purpose of vacation entitlements shall be accumulated, however, sick leave credits for part-time employees will not accrue during such period and vacation pay would be proportional to hours worked in the vacation year.

- 21.09 (c) Both the Hospital and the Union recognize their joint responsibility and commitment to provide, and to participate in, in-service education. The Union supports the principle of its members' responsibility for their own professional development and the Hospital will endeavor to provide programs related to the requirements of the Hospital. Available programs will be publicized, and the Hospital will endeavor to provide nurses with opportunities to attend such programs during their regularly scheduled working hours.

When an employee is on duty and authorized to attend any in-service program within the Hospital and during regularly scheduled working hours, she shall suffer no loss of regular pay. When an employee is elected or appointed to a Hospital Committee, during his/her regularly scheduled working hours, she/he will suffer no loss of regular pay. If the meeting commences prior to her tour of duty or extends beyond her tour of duty, she/he shall be paid at straight time. Such hours to be submitted in writing to the Department Head by the employee. **Where staff is required to attend an in-service or required training outside of working hours (e.g. day off etc.) they shall be paid at straight time rate of pay for the number of hours they are actually in the training session/in-service.**

For the purposes of scheduling said education, the Hospital may schedule an employee for a shift of less than seven and one-half hours.

Where the Hospital requires e-learning, it will make reasonable efforts to enable Hospital e-learning requirements during an employee's regular working hours. Where a nurse is unable to complete required Hospital e-learning during regular working hours and is required to complete Hospital e-learning outside of her/his regular working hours, the Hospital will identify in advance the time that will be paid at her or his regular straight time hourly rate of pay.

The delegation of added nursing skills and sanctioned medical acts (special procedures) to nurses shall be in accordance with guidelines established by the College of Nurses from time to time and any approved Hospital policy related thereto.

ARTICLE 26 RPN QUALIFICATIONS

26.01 A Registered Practical Nurse shall be one who is currently Registered with the Ontario College of Nurses and is employed as an R.P.N. A Registered Practical Nurse is required to present to his/her Unit Manager by the 15th of February of each year his/her currently registration certificate.

26.02 Registered Practical Nurse Professional Development/Scope of Practice

Continuous professional development is a hallmark of professional nursing practice. As a self-regulating profession, nursing recognizes the importance of maintaining a dynamic practice environment which includes ongoing learning, the maintenance of competence, career development, career counselling and succession planning. The parties agree that professional development includes a diverse range of activities, including but not limited to formal academic programs; short-term continuing education activities; certification programs; independent learning committee participation. The parties recognize their joint responsibility in and commitment to active participation in the area of professional development, including scope of practice.

Where Registered Practical Nurse professional development is not specifically addressed at any existing joint committee, the Hospital's Chief Nursing Officer and Human Resources Officer will meet with the Union on a quarterly basis to discuss professional responsibility and scope of practice issues.

In any event, the parties will be guided by the following key principles:

- Professional development will be recognized;
- All Registered Practical Nurses will have access to professional development opportunities;
- Responsibilities for professional development will be shared between the individual and the Hospital
- Employee needs, hospital needs, and department/program requirements will be considered.

ARTICLE 30 - GENERAL

30.06 Delete and replace with

30.06 VIOLENCE

The Hospital and the Union agree that they have a shared goal of a workplace free of violence.

To that end, the local parties will determine appropriate solutions to promote health and safety in workplaces, including, but not limited to:

- Violence in the Workplace (include Verbal Abuse)
- In particular, the local parties will consider appropriate measures to address violence in the workplace, which may include, among other remedies:
 - i) Electronic and visual flagging;
 - ii) Properly trained security who can de-escalate, immobilize and detain/restrain;
 - iii) Appropriate personal alarms;
 - iv) Organizational wide risk assessments assessing environment, risk from patient population, acuity, communication, and work flow and individual client assessments; and
 - v) Training in de-escalation, “break-free” and safe immobilization/detainments/restraint.

“Workplace violence” means:

- (a) The exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the

workers;

- (b) An attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker, and**
- (c) A statement or behavior that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.**