

IN THE MATTER OF AN ARBITRATION  
Pursuant to the *Hospital Labour Disputes Arbitration Act*

Between:

**WINDSOR REGIONAL HOSPITAL**  
(the Employer or the Hospital)

- and -

**ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 101**  
(the Union or OPSEU)

**AWARD**

Board of Arbitration

Paula Knopf - Chair  
Matthew Sutcliffe - Employer Nominee  
Helen Nowak - Union Nominee

Appearances:

For the Employer: Jodi Gallagher Healy  
Julia Ferreira

For the Union: Michèle Dawson Haber  
Christian Down  
Rosa Zetler

The Hearing of this matter was held by way of video-conference on  
April 29, May 10 and July 6, 2021.

This is an Interest Arbitration Award dealing with the terms and conditions of the Parties' Collective Agreement for the period April 1, 2019 to March 31, 2022.

The Employer is the 11<sup>th</sup> largest hospital in Ontario and the province's third largest community teaching hospital. It serves the people in the Windsor and Essex County and provides tertiary and quaternary care to a broader population. The Union represents a bargaining unit of approximately 646 allied health professionals in 47 classifications, including, but not limited to, Pharmacy Technicians, Medical Laboratory Technologists, Regulated Respiratory Therapists, Medical Radiation Technologists, Lab Assistants and Pharmacists.

This Award has been decided on the basis of two key pieces of legislation. The first is the *Hospital Labour Disputes Arbitration Act*. Section 9 mandates the criteria that must be applied to the Board of Arbitration's consideration of the Parties' positions:

1. The employer's ability to pay in light of its fiscal situation.
2. The extent to which services may have to be reduced, in light of the decision or award, if current funding and taxation levels are not increased.
3. The economic situation in Ontario and in the municipality where the hospital is located.
4. A comparison, as between the employees and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.
5. The employer's ability to attract and retain qualified employees.

The issues in dispute also have to be resolved in compliance with the *Protecting a Sustainable Public Sector for Future Generations Act, 2019* [Bill 124]. Bill 124 initiated a three-year period for "salary moderation" and compensation limits upon various public sector employees, including the members of this bargaining unit. At the outset of these proceedings, it became apparent that the Parties' inability to achieve a Collective Agreement on their own through bargaining was hampered by their different views about how compensation increases should be costed under Bill 124. The Board was asked to issue an Interim Award to resolve that question. According, a "bottom line"

Award was issued to the Parties on June 16, 2021. The Board of Arbitration concluded, with the Hospital's nominee dissenting, that when or if compensation items are implemented on a staggered basis during a 12-month period within the moderation period, the costing of the item must be calculated on the basis of the actual cost to the Employer within that 12-month period. In other words, each 12-month period should be treated separately. The Interim Award with its rationale was issued on August 23, 2021.

The monetary items in this Award that follows have been determined by adopting the costing methodology outlined in our Interim Award and taking into consideration the Parties' agreed upon and detailed calculations for each item that would impact each 12-month period. We have relied upon those calculations to ensure that the monetary impact of this Award aligns with the letter and the spirit of Bill 124. Further, we have phased in any monetary items in accordance with similar patterns accepted by the Treasury Board Secretariat in the many previous Interest Arbitrations cited by the Parties during these proceedings.

If Bill 124 was not in place, the Board would have been able to be far more flexible in applying the arbitral principle of replication and we would have been more able to meet the goal of awarding provisions that would better reflect what the Parties might have been expected to agree upon in a free collective bargaining era, especially in light of the challenges the Parties have faced as a result of the COVID-19 situation.

We have given great weight to the submissions of the Parties and their extensive materials filed. They provided us with a fulsome picture of the Parties' history of bargaining, the make-up of the bargaining unit, the unique operational characteristics and needs of this Hospital and this bargaining unit, as well as the relevant comparator data with respect to other Hospital employees and similar bargaining units. All this information has been factored into the conclusions that follow.

We have also considered the items and issues that the Parties were able to agree upon with respect to this Collective Agreement. The agreed upon items were important to put the outstanding issues in context and to allow the Board to take a "total compensation" approach to this case. We appreciate the importance of the Parties working with a

Collective Agreement that represents a balanced and principled approach to employment conditions and patient care.

Despite the thoughtful rationale provided by the Union, we have not accepted all the proposals that it tabled. None of the requests were frivolous or unreasonable. However, given the constraints of Bill 124 and the arbitral principles that are applied to Interest Arbitration, we have only awarded improvements or changes that are appropriate or available at this time. Therefore, we wish to make it clear that all the proposals that were not awarded or agreed upon have been carefully considered, but declined by this Board either because they would not comply with Bill 124 or because they would not be in accordance with the arbitral principles that govern this process at this time.

As a result of all these considerations, we therefore order that the following provisions, together with the provisions to which the Parties have already agreed, shall form the renewal collective agreement between the Parties. Accordingly, we order as follows:

#### **1. Article 15.04 - Posting of Schedules for all Employees**

The current language calls, in part, for a four (4) week schedule to be posted two (2) weeks in advance of the commencement of the work schedule. The Union's submissions revealed that frustration has arisen because of inconsistent practices among departments, late posting of schedules and the problems some employees face who leave work before the schedules have been posted on bulletin boards and who do not have access to the information on the Hospital's internal share drive from their homes. The Union sought a deadline for the posting of schedules and to have them issued electronically in a way that would deliver the information to the bargaining unit members. Further, the Union asked that the Collective Agreement codify the current practice of advising the staff and Union President if extenuating circumstances create a delay in the issuing of the schedules. The Hospital resisted these requests, arguing that the proposal was not supportable on the basis of replication or demonstrated need. Further, the

Hospital expressed concern over generating a new avenue for grievances and creating undue operational demands.

We have concluded that the Union has established a demonstrated need for the amendment. Further, given the availability of technology and the legitimacy of employees wanting timely information about their schedules, the Union's requests are both practical and appropriate. We were not persuaded that this would create an onerous burden on the Hospital's administration. We also trust that the Union will not file grievances when extenuating circumstances exist.

Accordingly, we order that Article 15.04 be amended to read as follows:

For clarity, the Hospital will endeavor to post on the department bulletin board, electronically in the share drive and by email the work schedule on Friday no later than 1600 hours unless unable to do so due to extenuating circumstances. In the event that the Hospital is unable to post a schedule by that time, a notice will be sent to the staff and the Union President to indicate the delay and the date by which the schedule will be posted.

## **2. Article 22 - Shift and Weekend Premiums**

The Union is seeking a fifteen cent (\$0.15) increase in the shift premiums and some changes to the language of Article 22. We are not convinced that any language changes are required or needed. The Hospital has opposed any increases to the shift premiums, arguing that the present rates are consistent with the principle of replication and expressing concern about violating Bill 124.

Given the agreed upon information provided to us regarding costing and the relevant comparators, we are satisfied that it is appropriate to increase the shift premiums available under this contract and that they can be implemented in compliance with Bill 124 if they begin to come into effect during the first year of this contract in the first pay period after July 1, 2019.

Accordingly, we order that the Collective Agreement be amended to reflect the following shift premiums, effective the first pay period after July 1, 2019:

Afternoon Premium	\$1.95
Night Premium	\$2.35
Weekend Shift	\$2.50

Given the timing of when this amendment comes into force, the employees who worked these shifts are therefore entitled to its retroactive effect.

**3. Article 14.03 (b) and (d) - Employment Insurance (EI) Waiting Period During Pregnancy and Parental Leave**

The Collective Agreement currently contains details concerning employees' obligations, rights and entitlements in the event of pregnancy and parental leave requests. It includes a Supplemental Employment Benefit that generates 84% of regular weekly earnings. The Union sought an improvement to this provision that would require the Hospital to pay 84% of an employee's regular weekly earnings during the first week of the leave while awaiting receipt of EI benefits. The Union's rationale for this request is that it mirrors the provision in the Central contract between OPSEU and the 50 Participating Hospitals in the Province's Hospital Sector Central Agreement. This Hospital opposes this demand, pointing out that only two of the eight bargaining units at this Hospital have such a provision. The Hospital also expressed concern about violating Bill 124 because of the cost. Further, the Hospital argued that the proposal should not be awarded because it would amount to a "breakthrough monetary provision".

From the materials and information provided to us, the Union's request should not be considered a "breakthrough" item. The request does have monetary impact. However, it reflects the norm in the province's Hospital sector for this type of bargaining unit. Further, while it may not be available to the majority of other bargaining units at this Hospital, it is also not novel to this workplace. Further, we consider the granting of this request to be in keeping with the goal of ensuring equity in the workplace and promoting societal goals. The concern about cost and Bill 124 can be addressed by the timing of implementation.

Accordingly, we order that in Year 2 of this contract, effective the first pay period following June 10, 2020, Article 14.03(b) and (d) shall be amended as follows:

In addition to the foregoing, effective June 10, 2020, the Hospital will pay the employee who otherwise qualifies for top-up eighty-four percent (84%) of their regular weekly earnings during the first week of the leave while waiting to receive Employment Insurance Benefits.

Any employee whose first week of leave occurred after June 10, 2020, and has not received this payment shall be entitled to the retroactive payment and the effect of this amendment.

#### 4. **Article 18 - Benefits**

The Union sought improvements and additions to the existing extended health benefits, arguing that they are particularly appropriate due to the challenges the bargaining unit members met to cope with the impact of COVID-19. The Hospital opposed the requests, pointing out that if they were all awarded, they would surpass what is available to other employees at this facility.

We have not adopted the Union's full menu of requests. However, we have concluded that improvements to Chiropractic and Massage services, as well as Orthodontic, denture, implants and crown coverage are appropriate at this time and that they are in line with the other regulated professionals' bargaining units at this and other similar Hospitals. The costing provided to us also gives assurance that the cost to the Hospital will comply with Bill 124 if the increases take effect in Year 3 of the Collective Agreement on June 24, 2021. Accordingly, we order that effective the first pay period following June 24, 2021, the following benefits shall be available to this bargaining unit:

- Chiropractic increased to a maximum of four hundred dollars \$400
- Massage Therapy increased to a maximum of four hundred dollars \$400
- Orthodontic coverage increased to a lifetime maximum of \$2000
- Add: Complete and partial dentures and implants and crown on an implant at 50/50 co-insurance to \$1,000 maximum per person annually

## 5. Wages

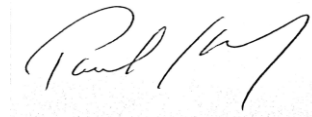
The Union sought a 1.75% increase in wages for each year of this three-year Collective Agreement. The Employer proposed a 1% increase for wages. Bill 124 imposes constraints on this Board that cannot be ignored, but it does allow for a 1% general wage increase. Given the rises in the cost of living, the devastating effect that the last three years have had on the economic lives of this community and the work that this bargaining unit performs, a 1% per year increase may be hard for the bargaining unit to find acceptable. However, we are limited to awarding the following:

- April 1, 2019 - 1% General Wage Increase
- April 1, 2020 - 1% General Wage Increase
- April 1, 2021 - 1% General Wage Increase

In accordance with the Collective Agreement, the current employees on staff as of the date of this Award will be paid retroactivity within four (4) pay periods from the date of this Award on the basis of hours paid. Former employees shall be notified and paid in accordance with the existing provisions in the Collective Agreement.

We remain seized with respect to the implementation of our Award and in accordance with section 9 of the *Hospital Labour Disputes Arbitration Act*.

Dated at Toronto this 25th day of August, 2021



---

Paula Knopf – Chair

I dissent in part - See Attached

---

*“Matthew Sutcliffe”*

Matthew Sutcliffe - Employer Nominee

I dissent in part - See Attached

---

*“Helen Nowak”*

Helen Nowak - Union Nominee



## **Partial Dissent of Employer Nominee - Matthew Sutcliffe**

I have had the opportunity to review the award of the majority in this matter, and must dissent, in part, from the result. While I am satisfied that the relevant HLDAA criteria, in addition to the foundational principles governing interest arbitration, were applied to the circumstances of the matter before this Board, I would have concluded differently on the awarding of several items by the majority. Primarily, I am concerned that as a result of the impact of Bill 124 upon the labour relations environment, increases to total compensation that may not have been normally awarded (largely owing to shortcomings in replication or demonstrated need, in my view) have made their way into the result.

Apart from compensation items awarded, the awarding of the scheduling language is particularly problematic, in my respectful view. The closest example of relatively comparable language that addresses similar subject matter appears in the Hospital's ONA collective agreement. Far from replicating that language, this award provides the opposite conclusion (the ONA agreement prohibits the emailing of schedules). From a replication perspective then, this internal comparator suggests the opposite result. Regardless of whether the awarding of this language is a burden on the employer or not, without replication or demonstrated need (for a specific 4:00 deadline for a schedule that addresses work two weeks in the future), I would not have awarded this proposal.

In terms of the items awarded that have an impact upon total compensation, I would only note that I would have reached different conclusions on a number of them for similar reasons. The addition of one week of top-up to pregnancy/parental leave waiting periods would typically be considered a breakthrough provision that I would not expect to see awarded. A minority of other collective agreements at the Hospital (only 2 of 8) contain a similar entitlement, and there was no demonstrated need provided for such a change, in my view.

Similarly, while a comparator does exist within the Hospital with respect to a number of the benefits-related items sought by the union, there were a number of other agreements that did not contain the changes sought by OPSEU. I would have concluded that the overall compensation package did not require the extent of adjustment awarded in this case, which would have better replicated the relative positions of other groups of unionized employees at the Hospital. I believe that the shift premium issue falls into this characterization as well: despite current premiums being ahead of all but one internal comparator, I believe that this proposal should not have been awarded, or at a minimum, should have been more incremental in nature.

I remain concerned about the implications of the costing methodology awarded by the majority of this Board (and the atypical implementation dates that result from OPSEU's desire to maximize the remainder of the one percent of total compensation awarded in each 12-month period), but I believe that I have commented as much as necessary as to those concerns in my dissent in that Interim Award.

All of which is respectfully submitted

#### **Partial Dissent on Wages of Union Nominee - Helen Nowak**

As has been addressed in the full decision of this award, bargaining in the context of Bill 124 has hindered the ability of the parties to negotiate as they would have under normal circumstances. In particular, several important issues raised by the Union, that I believe ought to have been awarded, could not be addressed due to the constraints placed on total compensation by Bill 124. This is an unfortunate outcome, particularly given that this bargaining unit has fallen behind the central OPSEU Hospital pattern. While this Board is constrained by the legislation, Charter challenges are before the courts and will hopefully remedy the inequities that have arisen as a result of Bill 124.