IN THE MATTER OF AN ARBITRATION PURSUANT TO THE HOSPITAL DISPUTES ARBITRATION ACT BETWEEN:

HOTEL-DIEU GRACE HEALTHCARE

("Hospital")

and

ONTARIO PUBLIC SERVICE EMPLOYEES' UNION, LOCAL 101

("Union")

Stephen Raymond	Chairperson
Larry Robbins	Union Nominee
Patricia Balfour	Hospital Nominee

Appearances for the Hospital:

D. Brent Labord	Counsel
Sheri McGeen	Director of HR and Occupational Health and Safety
Justin Turkington	Manager of Labour Relations
Cory Saunders	Director Children's Mental Health
Mary Benson-Albers	Chief Human Resources Officer
Sherri Laframboise	Director of Finance

Appearances for the Union:

Marc Casey	Research Officer
Michele Dawson Haber	Senior Research Officer
Marisa Forsyth	Staff Representative
Jennifer Ganley	Acting Staff Representative
Gary Van Nest	Local President
Todd Dutot	Local Vice-President
Neil Billson	Negotiations Committee
Karl Peterson	Negotiations Committee
Stephanie Robinson	Negotiations Committee

A Hearing in this matter was held in Windsor on June 8, 2016 and an executive session in Toronto on September 28, 2016.

AWARD

This is a dispute between the Union and the Hospital pursuant to the Hospital Labour Disputes Arbitration Act. The Hospital is a fully accredited hospital operating 269 beds of which 169 are for complex care, 60 are for rehabilitation and 49 are for mental health. In doing so, the Hospital provides all post-acute care services to the citizens of the City of Windsor. The Hospital also operates the Regional Children's Centre (RCC) which is an accredited children's mental health centre. The Union represents a bargaining unit of paramedical employees of the Hospital.

Our role is to replicate free collective bargaining. In doing so, we must have regard to the settlements that have been negotiated as well as the bargaining positions of the two sides. It is never easy nor simple to determine the trade-offs that would have been made by the parties had they, in fact, collectively bargained and completed a collective agreement.

The term of the agreement before us is two years commencing April 1, 2014. Regrettably, the term of the agreement is now over.

The history of collective bargaining is very relevant to the dispute before us so we will set it out in some detail.

This bargaining unit is new. It is made up of approximately 283 employees, the majority of whom were previously employees at Windsor Regional Hospital. As a result of realignment of services, approximately 258 paramedical employees were transferred from Windsor Regional Hospital to this Hospital. The bargaining unit also contains approximately 25 employees who remained at the Hospital after the realignment of services.

The Union and Windsor Regional Hospital negotiated a collective agreement for the period April 1, 2004 to March 31, 2006. In that agreement, the parties, for the first time, set out two different wage schedules. One, Schedule A was for those positions who are subject to Global Hospital funding, the other, Schedule B, was for those positions that are in the "Other Votes Programs"

and the Cardiac Wellness Program. In that collective agreement, the parties agreed that there would be substantial wage increases for Schedule A employees to place those employees in line with Central rates of pay. Those increases ranged from 8.4% to 34.0%. The Schedule B employees did not receive the substantial wage increases. In doing so, the parties understood that the funding for the Schedule B employees was on a different basis than the Hospital itself. The parties also agreed to significant job protection for the Schedule B employees in that there were to be no layoffs in the Other Votes or Cardiac Wellness Programs. That arrangement continued through four successive rounds of bargaining which were concluded either by freely negotiated settlements or interest arbitration.

In this round of bargaining, the Union seeks a normative wage increase of 1.4% in each year for all employees. In addition, it seeks special adjustments for the employees in Schedule B ranging from 11.7% to 29.6% in order to eliminate Schedule B and place all employees on the same salary schedule. The Hospital opposes the special adjustments.

We have carefully considered the position of the parties and must, in the end, reject the special adjustments sought. We do not do this because the demand is without merit. In fact, it has merit. There is merit, for instance, in employees performing the same or similar tasks for one employer to be paid the same. Here, though, the Union freely entered into an agreement to create two classes of employees. One class received a significant wage increase. The other received significant job protection. The Union is now prepared to forego that significant job protection in exchange for significant wage increases. The Hospital is not. It argues that it does not have the wherewithal to pay those increases without significant cuts to services. Parties who have freely negotiated a system and continued it through four successive collective agreements must, in our view, at first try to freely negotiate out of that system. This is the Union's first attempt to move away from the two schedule system and at least one further attempt at bargaining a solution is called for. The parties themselves are in the best position to find a solution.

We turn now to the other matters in dispute.

We award the following wage increases:

Effective April 1, 2014	-	1.4%
Effective April 1, 2015	-	1.4%

Retroactive payment shall be made in accordance with the provisions of the central OPSEU collective agreement.

All other amendments to the collective agreement set out below are to be made as of the date of the award, except as specifically stated otherwise below.

We award the Union's proposal in respect of the placement on the wage grid of the Crisis Worker I and II.

We award the Union's proposal on retiree benefits and its proposal on benefits for employees age 65 and older both of which are set out in the Union's proposed Article 21.12. While the changed early retiree benefit is applicable to employees who retired on or after April 1, 2014, the new premium cost-sharing benefit is effective from the date of the award onwards.

On the issue of Sick Leave Penalty Clause, we award 15.03 of the Central Agreement which was a trade-off for retiree benefits.

The parties agreed on the issue of "Sick Leave – Right to Grieve", Union proposed 17.04, at the hearing and we so award.

On the issue of payment of sick leave credits, we award the Union's alternative proposal at page 95 of its brief. The effect is to "grandparent" the 25 members of this bargaining unit who had worked previously at this Hospital, not Windsor Regional Hospital, under the terms of Article 17.06 of the former Local 142 collective agreement to ensure that the employees do not lose any sick leave credits that may have accumulated.

We award the Union's proposal in respect of Education Leave pursuant to Article 17.04 (e).

We award the Union's proposal in respect of Bereavement Leave pursuant to Article 17.06.

The Letter of Understanding in respect of Fiscal Responsibility is renewed by agreement of the parties.

We award the renewal of the Letter of Understanding re: Schedule B.

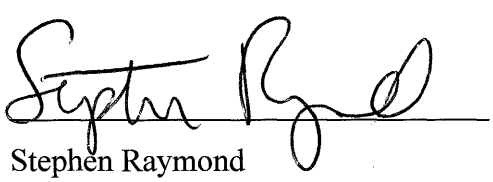
Both parties were seeking changes to the recognition clause. In our view, this matter is best remitted back to the parties for resolution and we do so. We remain seized in the event of any dispute.

We specifically remit the disputes in respect of Stand-by Pay back to the parties to be more fully considered in their next round of bargaining.

All other proposals are denied.

We also award all previously agreed to items. We remain seized with respect to the implementation of this award until a collective agreement is in place.

Dated at Toronto, this 23rd day of December, 2016.



Stephen Raymond

"See Addendum Attached"

Patricia Balfour

"Dissent attached"

Larry Robbins

IN THE MATTER OF AN ARBITRATION BETWEEN:

HOTEL-DIEU GRACE HEALTHCARE

and

OPSEU LOCAL 101

RE: PARAMEDICAL EMPLOYEES

H.L.D.A.A.

DISSENT

I have reviewed the Award of the chairperson in this matter. While I can agree with the disposition of most of the matters in dispute, I would have addressed the Union's request for special adjustments for the Schedule B employees differently. This was clearly the key matter in dispute between the parties in this case, and I regret that no award was made on the issue.

One of the basic principles in labour relations is that employees performing what is effectively the identical job for the same Employer should be paid the same rate of pay. "Equal pay for equal work."

In this case, the Parties themselves agreed that at least six of the classifications in Schedule B (namely: psychologists, psychometrists, social workers I and II, Kinesiotherapists, and Therapeutic Recreation Specialists) were interchangeable with their Schedule A counterparts for purposes of job posting and bumping rights. The difference in pay was solely due to different funding.

As a general rule, differences in funding do not trump comparability and especially the principle of "equal pay for equal work" within a hospital.

I recognize that there is a history here which must be considered. However there is also a key change, one that puts the history in a different light. The current bargaining unit has a significantly different composition from the bargaining unit that had agreed to the two-schedule system in 2004 and in subsequent agreements. In this bargaining unit, Schedule B employees actually form a slight majority of the bargaining unit. All of the former "active treatment" employees who were a part of the Windsor Regional Hospital bargaining unit did not come over to the Hotel Dieu Hospital but stayed with WRH.

The current bargaining unit made it very clear that they were not prepared to accept the prior arrangement any longer, and even indicated that the membership viewed this as a "strike issue" had the parties been in the "right to strike" sector. In my view, under these circumstances, the Union would have been highly unlikely to simply fold its tent and go home had the Employer simply said no under a system of "free collective bargaining".

I agree with the chairperson that as a general rule, the parties are in the best position to find a solution to difficult issues. However if one side simply says "no" and refuses to budge then we as a board of arbitration have to step in and make what we view as the best decision for the parties.

This issue is not going to simply disappear. It should have been dealt with in this award, and now it will need to be dealt with as soon as possible. For all of these reasons, I would have at the very least provided a substantial adjustment to Schedule B employees.

Respectfully Submitted,

DATED AT TORONTO, this 21st day of December, 2016

"Larry Robbins"
Larry Robbins, Union Nominee

Addendum of the Employer Nominee

I concur with the Chair's award. However, I wish to add my reasons for denial of the major issue in dispute, the Union's proposals to eliminate Schedule B and to provide special adjustments for Schedule B employees.

The Chair states that the Union's proposal for special adjustments has merit.

Most bargaining proposals put forth by seasoned negotiators have merit and, typically, some precedent. However, free collective bargaining, the regime which an arbitration board must strive to replicate, is inherently a pragmatic exercise in which parties must weigh the merit of any given position within the entire context of the labour market realities that they confront. And thus, in 2004, the Windsor Regional Hospital and OPSEU weighed the merit of the continuance of a single wage schedule against the significant differences in the various funding regimes from which the compensation of the employees is paid.

Rarely is an interest arbitration board presented with such solid evidence against which it can meaningfully determine what the parties would negotiate in a round of hard bargaining with the sanctions of strike and lockout looming in the background, as was presented to this Board. For this Board had the benefit of the parties' own stated rationale for the creation of the two wage schedules with their significant wage differences. In 2004, the Windsor Regional Hospital and OPSEU committed to written record their rationale in two Letters of Understanding, which have been renewed in all successive collective agreements and are renewed by this Board. I quote the parties' own words from these Letters:

> *"Windsor Regional Hospital and OPSEU both understand and agree that Windsor Regional Children's Centre and those programs operated by Windsor Regional Hospital termed "Other Votes" are funded either by a different Ministry and/or funded on a different basis than the Hospital itself. OPSEU also understands that Windsor Regional Children's Centre and "Other Votes" face financial difficulties different from other Hospital operations".*
>
> .....
>
> "*The parties agree and understand that all Other Vote Programs and Cardiac Wellness are funded either by a different Ministry and/or funded on a different basis than the Hospital itself".*

These differences in funding compelled Windsor Regional Hospital and OPSEU to make tough choices. Interest arbitration is not intended to insulate any party from making hard, realistic decisions. Furthermore, as is oft stated by arbitrators, the role of an interest arbitration board is not to sit in judgment of the challenging decisions previously made by experienced negotiators, armed as they uniquely were with all relevant facts necessary to make those decisions.

While the Union cloaks its proposal to eliminate Schedule B in terms of 'equity', 'fairness' and 'merit', it is the parties' own hard bargained 2004 outcome that must form the most significant guidepost to this Board of Arbitration in objectively replicating free collective bargaining, absent very compelling changes in the relevant circumstances. Where, as in this case, parties have clearly outlined the critical rationale for their prior decisions, the compelling changes in circumstance necessary to depart from those decisions must relate to that rationale.

No such change in circumstances has occurred. This Board did not hear any evidence that the different funding regimes which compelled the creation of two different wage schedules have changed. There was no evidence before us that the Windsor Regional Children's Centre and "Other Votes" are now in receipt of regular global Hospital funding as are the post acute care components of the Hospital. There was no evidence before this Board that the financial difficulties uniquely confronted by the Regional Children's Centre and Other Votes programs, as cited by Windsor Regional Hospital and OPSEU in their Letters of Understanding, have changed or resolved. Indeed, the Employer presented evidence as to the many years of 0% increases in base funding for the Regional Children's Centre as well as to the substantial layoffs that would occur in the Children's Centre if Schedule B is eliminated.

Although the Union argued before this Board that 'Schedule B' employees are employed by a Hospital and ought therefore to receive Hospital wage rates, so too were the Schedule B employees employed by a Hospital in 2004. The basis for the creation of the two wage schedules was not the 'institutional identity' of the Employer, but rather, the differences in the funding regimes that support the compensation of the employees. Similarly, the assertion that the job duties for some of the classifications in Schedule A are the same or similar to those of classifications in Schedule B is not a changed circumstance: such similarities existed in 2004. In their bargaining history since 2004, the differences in funding sources and realities prevailed over any similarities that may exist in job duties.

I therefore conclude that the only meaningful application of the replication principle in these circumstances must result in the denial of the Union's proposals to eliminate Schedule B and to award special adjustments to Schedule B employees.

All of which is submitted this 22nd day of December, 2016

"Patricia Balfour"