

**In the Matter of an Interest Arbitration under the Hospital Labour  
Disputes Arbitration Act**

**Between**

**The Ontario Public Service Employees Union, Local 143 [Union]**

**And**

**The Windsor Regional Hospital [Employer]**

**Before: M. Brian Keller, Arbitrator  
Larry Robbins, Union Nominee  
Brian Nolan, Employer Nominee**

**Appearances: Adrienne Pires and Steve Crossman, for the Union  
George King, for the Employer**

**Hearings in Windsor held on August 7, 2009 and April 16, 2010 followed by  
various written submissions. Executive Session held on August 24, 2010.**

## AWARD

Windsor Regional Hospital is a large multi-site hospital in Windsor Ontario that provides acute and continuing care services. The employer also owns and operates the Windsor Regional Children's Center - A mental health facility serving children, adolescents and their families in the Windsor and Essex communities. The Center is located in a separate building which is owned and operated by the hospital and is located on the grounds of the Western campus.

There are also a number of smaller programs, some of which are funded in unique ways and are integrated into the general services offered at the hospital. These kinds of programs are known colloquially as "other votes". These programs and the employees of those programs are identified in "Schedule B." of the collective agreement.

In addition to the bargaining unit represented by this union, there are seven other bargaining units. These bargaining units cover nurses, clerical staff, registered practical nurses, service staff, skilled trades and laboratory and radiology technologists. Radiation therapists at the Cancer Center are represented by the Professional Institute of the Public Service of Canada.

The OPSEU bargaining unit comprises just under 400 full-time, part-time and casual members. Of this number, 115 work in "other votes" and Children's Center programs. All, however, are part of the one bargaining unit.

On August 7, 2009, this Board of Arbitration met with the parties in a mediation session. Subsequent to that, the Board issued an interim award dealing with some of the issues in dispute. The matter of the second year of the collective agreement was remitted back to the parties to negotiate once the decision of the Gray Board was issued. That Board issued an award covering 8000 hospital professionals working in 44 hospitals across the Province. That award is known, for the purposes of this award, as the Central Award. The Central Award was issued on November 4, 2009. These parties were unsuccessful in resolving the remaining differences requiring this Board to issue this award.

Prior to dealing with the merits of the dispute between the parties, two preliminary matters need to be dealt with. The first deals with the submission of the employer that, in light of the Public Sector Compensation Restraint to Protect Public Services Act, this Board ought to deny any requests from the union for increases in salary. The employer notes that while the Act does not legislatively apply to bargaining unit employees, there are significant implications to the collective bargaining process that cannot be ignored. The union opposed the submission of the employer, arguing that this arbitration should proceed in the normal fashion. In the second submission that the Board has to deal with, the employer submitted that this Board should adjourn its scheduled executive session pending consultation, as announced, between the government and the union to deal with fiscal restraint measures effective April 1, 2010.

With respect to the first issue, a recent arbitration award was issued dealing with the very matter raised by the employer.

Arbitrator Rick McDowell in the matter of Sunnybrook Hospital and S.E.I.U., Local 2, decided to proceed with the hearing and issued an award. The arbitrator took the position that there was no legislative basis for the position of the employer. This Board accepts the conclusion of Mr. McDowell and adopts his reasoning.

Additionally, it should be pointed out that the collective agreement which is the subject of this interest arbitration commenced April 1, 2008, almost two full years prior to the Province's March 25, 2010 budget.

With respect to the question of whether the Board should adjourn its executive session, we declined to do so and the parties were so informed. The Board was not of the view that an invitation to consult on matters that postdate the collective agreement should have any bearing on whether this Board should proceed or not. Additionally, we were not of the view that the request to adjourn was, in substance, any different from the first issue dealt with and, therefore, there should be no different result. It should be noted that other arbitrators, including arbitrators Burkett and Jesin, facing similar requests, also declined to adjourn.

This award incorporates, by reference, all matters agreed to by the parties up to date of the issuance of this award.

As agreed by the parties, this collective agreement covers the two-year period commencing April 1, 2008, and expiring March 31, 2010.

Interest arbitration is not new. It has been used as a means for settling disputes in the modern labour relations regime in Ontario since the late 1940's. In those 70 years certain basic principles have emerged and have been applied, consistently. Those principles have been enunciated in countless arbitration awards. In the instant case, both parties although emphasizing different principles, have explicitly recognized those principles and have based their arguments, essentially, on them. In addition, the Hospital Labour Disputes Arbitration Act, mandates the consideration of certain criteria.

In determining the appropriate resolution of the matters in dispute, the Board has considered the criteria in the Act and has applied the principles enunciated and applied by arbitrators.

Prior to dealing with the specific issues in dispute individually, the Board wishes to deal with two matters that are, ultimately, the basis for this award.

The first is the ability to pay argument put forward by the employer. Clearly, ability to pay is one of the criteria that, pursuant to the Act, needs to be considered and, as indicated above, we have noted the financial information provided by the employer. We considered that financial information and the arguments of both parties as to how that information should be looked at in the context of this dispute. Ultimately, we reached the conclusion that the employer's argument cannot be the determinative basis for the award.

The funding of this employer, at least for the vast majority of its employees, is on the same basis, generally, as other hospitals in the Windsor area and the Province. Each hospital in this Province exists on the basis of the funding it receives from the Province, and on the

decisions it makes as to how that money is to be spent. The way some of the money is to be spent is mandated, but the majority is not.

The important point is that this hospital is really no different from other hospitals elsewhere in the Province. The local economic climate does not change the basic Provincial funding model for this hospital. Therefore, while we accept the financial information provided by the employer that cannot, in our view, "trump" all other considerations.

One of the principles considered by arbitrators is comparability. That is, we must compare the terms and conditions of employment of employees in this bargaining unit with those of employees similarly employed in other hospitals in the Province. We must also look at, and compare, how the employer has treated other employees, in other bargaining units at this hospital, for the same period.

The former comparison is important because of, among other reasons, the principle of equal pay for work of equal value. In other words, this Board must consider terms and conditions of employment of employees who perform similar work at other hospitals in the Province for the same timeframe. Given the nature of the business of the employer, and the method of funding, one of the questions that must be considered is why employees of this hospital should be treated differently than their peers employed elsewhere?

The latter comparison [internal] is important because it is instructive to see how the employer has treated other of its employees over the same period. The question that comes out of this comparison is, if substantial numbers of employees are treated in one fashion, what is the compelling reason to treat another group of employees any less favourably over the same period of time?

The second general issue to be dealt with is the effect of the Central Award on this dispute, even though the parties have chosen not to participate in central bargaining. Almost from the beginning of central bargaining, arbitrators have demonstrated a bias towards awarding central bargaining results to disputes even where the parties are not part of central bargaining.

It has been said that simply to emulate a Central Award is an abrogation of the jurisdiction, independence and responsibility of a Board such as this one. It is also been said that it is bad labour relations. We strongly disagree.

From the outset of the collective bargaining regime in North America, certain large, industrial unions and employers have been engaged in what is known as sectoral pattern bargaining. The best-known, but far from unique, has been the auto industry. The UAW, and latterly the CAW, would pick one of the "big three" to commence negotiations and a collective agreement would ultimately be concluded with that employer. The terms of that agreement would then become the collective agreement template for the two remaining companies. Ultimately, that template would spread its tentacles to the whole of the automotive industry. In all cases, of course, those matters which were specific or particular to a plant or company would be negotiated separately or locally. But issues of common interest such as wages, shift premiums and pensions were not left to local negotiations.

Central bargaining is just another phrase for sectoral negotiations. A union and the majority of employers in a sector negotiate and conclude a collective agreement. That agreement deals with those issues and matters that are common to the industry given that the employees covered by the collective agreement are doing the same work throughout the industry. There is, of course, a reserve to each separate employer to negotiate local, specific matters.

In our view, it is good labour relations to prefer a central pattern where one exists. Employees are in the same industry. They perform the same work. Their core issues are essentially the same. Absent something which suggests that the central pattern is not appropriate, in our view arbitrators should exercise their jurisdiction, after exercising due consideration, to preferring the central pattern.

---

The Board awards that the new collective agreement shall consist of the expired collective agreement, as amended by the items agreed upon by the parties, by the Board's interim

award dated August 17, 2009, and by the Board's decision on all the remaining matter in dispute as follows:

### Wages

This award deals with the period from April 1, 2009 to March 31, 2010. The Board notes wage increases given to other employees in the hospital for this period, wage increases given to employees elsewhere performing the same work and further notes that the union is not asking for wage parity for schedule A and B employees. Nor is it looking for "catch up". It is looking, however, for the same across the board increases as granted to other employees within the hospital and employees employed elsewhere performing the same work.

Accordingly, the board awards a 2.5% across-the-board wage increase for Schedule A employees and, in keeping with the earlier interim award, a 3.5% across-the-board wage increase for Schedule B employees.

The Board declines to award the renewal of the Letter of Understanding regarding the "me-too" with Hotel-Dieu hospital which, accordingly, expires on March 31, 2010. We are satisfied that there is no longer a need for such a provision given the wages at the two hospitals. Any adjustments which would apply prior to March 31, 2010 as a result of the operation of this clause are still valid.

The Letter of Understanding regarding the continuation of the no layoff clause for schedule B employees was awarded in the interim award and the Board has no jurisdiction to amend the award.

With respect to **Retroactivity**, the union language at page 86 of its brief is awarded. Any changes to the collective agreement other than to wages shall be effective the date of the award unless otherwise indicated.

**Displacement Procedure**

No award is made.

**Notice of Layoff**

The Board notes the employer's acceptance of the union's revised proposal.

**Early Retirement and Voluntary Exit**

The Board awards it on the basis that it applies to hospital employees only and not Other Votes.

**Bereavement Leave**

The Board notes the employer's acceptance of the union's revised proposal.

**Weekends Off**

The Board awards the language found at the top of page 105 of the union's brief commencing with [b]. This shall replace the bolded language in Article 18.03 (a) on Page 101 of the Union's brief. The parties shall draft the resulting provision.

**Rest Periods**

No award is made.

**Meal Voucher**

The Board awards an increase to seven dollars commencing the date of the Award.

### **Holidays**

Although the Board acknowledges the union proposal reflects the Central language, it declines to award any change to the existing provision.

### **Vacations With Pay**

Effective the date of this Award, the union proposal found at page 113 of its brief is awarded. Employees who currently benefit from the provisions of former article 20.07, will maintain their vacation already accrued.

### **Extended Health**

The union proposal regarding the **dispensing fee** increase to nine dollars per prescription, which reflects the Central language, is awarded.

The Board declines to award any change regarding the **dental plan**.

### **Vision Plan**

The Board awards the union proposal, which reflects the Central language.

### **Mileage Rates**

No award is made.

### **Standby Pay and Call-in Pay**

The Board awards the union proposal, which reflects the Central language.

**Shift and Weekend Premiums**

The Board awards the premium increases proposed by the union as they reflect the Central language. No change to the wording of the articles is awarded.

**Pay Equity Letter**

The Board declines to award this proposal.

The Board remains seized of any issue that may arise in the implementation of this award.

Ottawa, this 1<sup>ST</sup> Day of October, 2010.



---

M.B. Keller, Arbitrator

"Partial Dissent to Follow"

Brian Nolan, Employer Nominee

"I concur"

Larry Robbins, Union Nominee