IN THE MATTER OF AN ARBITRATION BETWEEN:

THE CORPORATION OF THE TOWN OF OAKVILLE

(“the Employer")

-and-

UNIFOR, LOCAL 1256

(the “Union”)

AND IN THE MATTER OF A POLICY GRIEVANCE REGARDING LIEU TIME BANK FOR MAINTENENACE EMPLOYEES

Louisa M. Davie Sole Arbitrator

<u>Appearances</u>

For the Union: Paul Shiels

For the Employer: Daryn Jeffries

Award

This grievance raises issues regarding an employee's entitlement to bank overtime worked as lieu time pursuant to the collective agreement between the Corporation of the Town of Oakville ("the Employer") and UNIFOR, Local 1256 ("the Union"). The issue involves only the entitlement of maintenance employees.

This matter was heard in the town of Oakville on May 23, 2019. At the commencement of the hearing the parties agreed I was properly seized and did not raise any issues with respect to my jurisdiction to hear and determine the matters in dispute.

At the commencement of the hearing the parties agreed to use the mediation/arbitration provisions of the *Labour Relations Act*. They did so in their mutual effort to further harmonious labour relations between them. Both parties also sought to avoid lengthy, costly and potentially acrimonious litigation with uncertain results.

During the course of the mediation/arbitration process it was evident that many of the facts were not in dispute.

The predecessor collective agreement between the parties was effective from February 1, 2014 to January 31, 2018 and contained the following Article 11.12 (o):

> At a maintenance employee's request and with the Corporation's approval an employee may be paid for all hours worked as defined in Article 11.12 or accumulate, at a rate equal to time and time half the actual time worked to a maximum of 32 hours of lieu time which may then be utilized if service requirements permit.

It would appear that pursuant to that Article a practice had developed whereby some employees banked 48 hours of lieu time. The employees did so on the theory or understanding that the reference to 32 hours was a reference to 32 hours overtime worked, thus generating 48 hours lieu time.

The current collective agreement is effective February 1, 2018 to January 31, 2022 and contains the following article:

> At a maintenance employee's request and with the Corporation's approval an employee may be paid for all hours worked as defined in Article 11.12 or accumulate, at a rate equal to time and time half the actual time worked to a maximum of **forty (40) hours in total, of lieu time** which may then be utilized if service requirements permit.

The bolded amendments to the Article were negotiated in part because the Employer did not share the Union's view or understanding that the predecessor language enabled the maintenance employees to bank 48 hours of lieu time. It was the Employer's position that the language was clear and unambiguous and permitted a lieu bank only "to a maximum of 32 hours of lieu time." The bank was not based on 32 hours of overtime worked. Rather the maximum number of lieu time hours which could be accumulated in the bank was 32 hours.

Following negotiations and ratification of the new collective agreement the Employer has strictly applied the language of article 11.12 (o) so that the total hours which can be accumulated in the lieu time bank is 40 hours.

The Union asserts that the total hours which an employee should be able to accumulate in their lieu time bank is 60 hours. This is consistent with the Union's understanding of the interpretation and application of the language of the predecessor collective agreement that the reference to 32 hours (now 40 hours) refers to overtime hours worked and not lieu time hours.

I have determined that the grievance must be dismissed because the Employer's interpretation and application of the disputed language is correct.

Article 11.12 (o) does not refer to banking overtime hours "worked". It refers to a maximum accumulation of lieu hours. The concept that the Article is not dependent on overtime "worked" is made more explicit in the current collective agreement and the reference to a "total" number of lieu time hours which can be accumulated.

Frankly, the fact that under the predecessor collective agreement some employee were apparently permitted to accumulate more than 32 hours lieu time was not supported by the language of that collective agreement. The fact employees did so was a benefit to which they were not entitled under the 2014 – 2018 collective agreement. Any past practice which the Union could perhaps rely upon to continue that practice was clearly brought to an end by the Employer's notification that it disagreed with the Union's interpretation that the 32 hours referred to 32 overtime hours worked.

In the circumstances the parties therefore negotiated clear, explicit and unequivocal language that reflects their agreement that the maximum and total lieu time hours which may be accumulated is 40 hours. In so doing each party obtained something. The Union obtained an improvement in so far as it confirmed that an additional 8 hours of lieu time could be accumulated. The Employer obtained the benefit of unambiguous language which caps the total lieu hours which can be accumulated in the bank.

For all of these reasons the grievance is dismissed.

Dated at Mississauga this 27th day of May, 2019

Louisa Davie

Louisa M. Davie