

**IN THE MATTER OF AN ARBITRATION
BETWEEN:**

ORILLIA SOLDIERS' MEMORIAL HOSPITAL

(the "Employer")

- AND -

ONTARIO PUBLIC SERVICE EMPLOYEES' UNION

(the "Union")

**AND IN THE MATTER OF THE GRIEVANCE REGARDING COMPENSATION
OPSEU # 2018-383-003**

ARBITRATOR

LOUISA M. DAVIE

APPEARANCES

FOR THE UNION

Lauren Tarasuk

FOR THE EMPLOYER

Julia Nanos

Award

This is a group grievance in which a number of employees employed at Orillia Soldiers' Memorial Hospital ("the Employer") assert that the Employer has violated the Compensation and Superior Benefits provisions of the collective agreement to which the Employer and the Ontario Public Service Employees Union, Local 383 ("the Union") are bound. The Employer has denied any violation of the collective agreement.

This grievance was heard in the City of Orillia on September 23, 2019. At the commencement of the hearing the parties agreed I was properly seized and did not raise any issues regarding my jurisdiction to hear and determine the matters in dispute.

At the commencement of the hearing the parties also agreed to use a mediation/arbitration process in their mutual efforts to deal with the issues in dispute in an expeditious and efficient manner. They also agreed upon a mediation/arbitration process recognizing that costly and potentially acrimonious litigation with uncertain results would not further harmonious labour relations between the parties.

In context of the mediation/arbitration process I heard extensive submissions from counsel for the Employer and counsel for the Union about the facts upon which each side relied in support of their respective positions. In addition, certain agreed-upon documents were tendered in evidence.

At its core this grievance revolves around the compensation owing to certain employees. Many of the facts are not in dispute. Thus, it is agreed that for many years certain employees have been paid as Senior Technologists (MRI and Ultrasound). The Employer maintains this was done in error. In February 2018, after the Employer became aware of this error, it sought to correct it and notified the Union and the individual employees affected that their rate of pay was in error and would be red circled until such time as it aligned with the proper pay scale.

Having regard to the facts and evidence before me and the matters agreed upon during the arbitration/mediation process I hereby order and direct as follows:

1. All current employees paid as Senior Technologists on February 20, 2018 shall be red circled in accordance with the letters issued to the affected employees. Those employees will continue to receive the Senior Technologists red circled rate appropriate to their placement on the wage scale until such time as their current rate of pay aligns with the rate of pay for those in the Technologists classification (MRI and Ultrasound) also having regard to their placement on the wage scale.
2. Employees covered by paragraph 1 herein are not entitled to receive any compensation increases which may be negotiated or imposed through interest arbitration until such time as the rate for those in the Technologists classification exceeds or surpasses the rate of pay paid to the employee.
3. The Employer shall not seek to recover in any fashion any alleged overpayment which it claims was made in the past or during the period of time when an employee's rate of pay is red circled.

4. This award is without prejudice to the right of any individual employee to file a grievance in which he/she asserts that he/she has been improperly classified as a Technologist and properly should be classified as a Senior Technologist or Charge Technologist. If such a grievance is filed by any current employee who was employed on February 20, 2018 the Employer may not rely on any timeliness arguments or take the position that the grievance should be dismissed by reason of delay or that it was not filed in a timely manner.

I will remain seized with respect to the interpretation, implementation and enforcement of this award.

Dated at Mississauga this 23rd day of September, 2019.

Louisa Davie
Louisa M. Davie