IN THE MATTER OF AN ARBITRATION
Pursuant to the *Labour Relations Act,* R.S. 1995

BETWEEN:

KINGSTON HEALTH SCIENCES CENTRE

("Employer")

- and –

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1974

("Union")

(Grievance 2016-12-46)

SOLE ARBITRATOR: Jasbir Parmar

On Behalf of the Employer:

Scott MacInnes, Labour and Employment Adjudication Lead
Damiano Lorrichio, Director, Workplace Planning and Utilization
Peggy Buchan, Manager, People Service Centre
Colleen Cross, Employee and Labour Relations Advisor

On Behalf of the Union:

Wassim Garzouzi, Counsel, Raven, Cameron, Ballantyne & Yazbeck LLP
Barb DeRoche, Local President, CUPE 1974

This matter was heard on September 1, 2020.

INTERIM ORDER

[1] I have been appointed to determine a grievance, dated September 27, 2016, alleging the Employer violated the collective agreement by allowing managers to do work of the scheduling department. The parties have agreed for this matter to proceed by way of section 50 of the *Ontario Labour Relations Act*.

[2] In an Interim Order dated January 7, 2020 ("the Original Order"), I determined it was appropriate for the parties to engage in a ninety-day period during which managers' access to the ability to edit within the ESP module of Kronos was withdrawn. As noted in the Original Order, this period was to have no impact on either party's position with respect to the merits of the grievance.

[3] The Employer commenced compliance with the Original Order on February 3, 2020. On March 24, 2020, the Hospital wrote to the Union advising that effective immediately, and as a result of the COVID-19 pandemic and the introduction of related legislation and regulations applicable to health service providers, the Hospital was restoring ESP access for managers.

[4] The Union submits that the Hospital was in breach of the Original Order, arguing that the applicable legislation did not authorize the Hospital to take such action. Alternatively, the Union submits that compliance with the Original Order was frustrated as a result of unexpected intervening events – namely a pandemic. In either case, the Union asserts the appropriate remedy is have a new ninety-day period so that the intent of the Original Order can be effected.

[5] The Hospital submits that its actions, in restoring ESP access, were authorized by the legislation. The Hospital objects to a new ninety-day period. Alternatively, the Hospital submits that if I were to conclude that compliance was still required, February 3 to March 24 should serve as part of the ninety-day period. In other words, the Hospital

should only have to withdraw managers' ability to edit within the ESP module for an additional period of time, which when February 3 to March 24 is included, would total ninety days.

[6] There is no dispute that the Original Order was not fully complied with as a result of intervening events. There is absolutely no suggestion the Hospital was not acting in good faith. But clearly the objective behind the Original Order, that instituting this practice for a ninety-day period and then providing the parties an opportunity to discuss this experience may help the parties in reaching a resolution to the grievance without litigation, has not had a chance to come to fruition.

[7] In my view, in the circumstances it is appropriate for the ninety-day period to restart. While the Hospital suggested the February to March period should be counted as part of those ninety days, the intent of the Original Order was that the scheduling practice envisioned therein would be in place for a continuous period of time – hence the reference to a ninety-day *period*.

[8] Accordingly, I have determined it is appropriate to issue another interim order, as follows:

> For a ninety-day period, commencing September 14, 2020, the Employer must withdraw from managers the ability to edit within the ESP module of Kronos. At the end of the ninety-day period, the parties must meet to discuss any concerns that arose during this period with respect to scheduling. At either party's request, the parties will also meet forty-five days after the commencement of this period to discuss any concerns that arise with respect to scheduling.

[9] The fact that the ninety-day period will restart will not negatively prejudice either party. Nothing that occurred during the February 3 to March 24, 2020 period as well as the ninety-day period commencing September 14, 2020 will impact either party's position

with respect to the merits of the grievance. This interim order does not limit the Employer's ability to reinstate such managerial ability after this ninety-day period.

[10] The grievance is scheduled to continue via Zoom on April 29, 2021.

Dated this 1st day of September 2020.

"Jasbir Parmar"

JASBIR PARMAR