

IN THE MATTER OF AN ARBITRATION brought pursuant to the Ontario *Labour Relations Act*,
1995, as amended
Re Grievance #2023-0439-0008 (Maggio)

BETWEEN:

BROCKVILLE MENTAL HEALTH CENTRE (Member of the Royal Ottawa Health Care Group)
(the “Employer”)

- and –

ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(the “Union”)

AWARD

Sole Arbitrator:

Marilyn A. Nairn

Hearing held (by videoconference):

November 25 and December 16, 2025

APPEARANCES

For the Union:

Emily Cumbaa

For the Employer:

Russell MacCrimmon

AWARD

[1] Broadly speaking, this grievance challenges the hours of work made available to Teresa Maggio (the "Grievor") while employed as a .5 FTE, regular part-time Pharmacy Technician, specifically during pay periods that include a holiday when the Pharmacy operated by the Brockville Mental Health Centre (the "Employer") is closed.

[2] The parties filed a partial Agreed Statement of Fact ("ASF") with accompanying documentary materials. *Viva voce* evidence was also received. The partial ASF provides:

1. On or around November 19, 2018, Ms. Maggio was offered a temporary full-time contract for a 2-year period, along with a permanent part-time (0.5 FTE) position, as a Pharmacy Technician in the Brockville Mental Health Centre.
2. On or around December 10, 2018, Ms. Maggio began her temporary full-time contract. Her permanent part-time position was posted and awarded to Tammy Glazer.
3. There are 4-5 Pharmacy Technicians who work Monday to Friday. Tabitha Burt was the Director of Pharmacy from July 2018 until recently.
4. During the period from December 2018 to April 2021, while Ms. Maggio held her full-time position, the part-time Pharmacy Technician in the 0.5 FTE position was regularly offered a shift when a full-time Pharmacy Technician was off sick, on vacation, or otherwise. The part-time Pharmacy Technician was also regularly offered a shift the day after a statutory holiday.
5. Ms. Maggio worked from 8am-4pm from approximately December 2018 to December 2020. In or around December 2020, following consultation and agreement by the Union, the Pharmacy hours were changed from 8am to 5pm., resulting in a change to Ms. Maggio's hours of work, along with all pharmacy staff. The changes were accepted and no grievances were filed by the Union.
6. On or around April 12, 2021, Ms. Maggio went to her permanent part-time position (RPT 0.5 FTE), her temporary full-time contract having ended. Ms. Maggio's pre-determined schedule is 5 days per pay period (Mon.-Wed.-Frid.; Mon. Frid.) under her permanent part-time position with the exception of when the pharmacy is closed. The Hospital confirmed that Ms. Maggio's rate of pay including lieu of benefits and vacation was unchanged. No grievances were filed by the Union in respect of her position, hours, or benefits.
7. Ms. Maggio's regular schedule is to work Monday, Wednesday, and Friday one week, and then Monday and Friday the next week.

8. In or around September 2021, Ms. Maggio addressed her concerns with Ms. Burta, who told her that she was not required to call Ms. Maggio in unless it was required for operational reasons.
9. In or around May 2022, Ms. Maggio again brought up the scheduling issue to Ms. Burta, who again told Ms. Maggio that she was not required to call her in unless there was an operational need.
10. Between September 2022 and December 2022, Ms. Maggio was scheduled to work in her normal manner. During this period, she regularly worked 3/2 irrespective of a holiday. She was regularly called in for operational reasons, as at least one full-time Pharmacy Technician was absent the day following a holiday, and did not suffer any loss during this period.
11. Following the statutory holiday observed on Monday, January 2, 2023, Ms. Maggio did not work on Tuesday, January 3, 2023. The Employer's evidence will be that the grievor was not available to work.
12. Following the statutory holiday on Monday, February 20, 2023, Ms. Maggio worked on Tuesday, February 21st, to cover an employee absence.
13. On or around March 9, 2023, the Union filed grievance #2023-0439-0008, dated March 6, 2023, on behalf of Ms. Maggio. No grievances were filed by the Union in respect of Ms. Maggio's hours of work, schedule or benefits between April 10, 2021 and March 9, 2023.
14. In support of the ASF, the parties agree to enter the following documents on consent:

Tab A – Teresa Maggio Grievance Form, March 6, 2023

Tab B – Step 1 Grievance Response, April 4, 2023

Tab C – Step 2 Grievance Response, May 3, 2023

Tab D – Personnel Action Form, April 11, 2021

Tab E – Email correspondence between Darlene Gordon and Teresa Maggio, April 16, 2021

Tab F – Email correspondence between Tabitha Burta and Teresa Maggio, September 24, 2021

Tab G – Email correspondence between Tabitha Burta and Teresa Maggio, May 27, 2022

Tab H – Collective Agreement

[3] The Grievor testified that Monday, Wednesday and Friday are the busier days in the Pharmacy. She reviewed the various duties and responsibilities of the Pharmacy Technician ("PT") on each weekday, describing different assignments completed on different days. She testified that

following a Monday holiday, Tuesday's workload was heavier as unit deliveries and methadone dispensing typically done on the Monday would be done on Tuesday, in addition to that day's regular work. She described that the Tuesday after a holiday was always the busiest day. In response to being asked why she was not being provided with an additional scheduled day following a holiday, the Grievor testified that she was told by the Employer that it was not required to bring her in after a holiday.

[4] The Grievor acknowledged in cross-examination that nothing in the Personnel Action Form indicated that she was to be scheduled particular days in a pay period, or that she was either guaranteed a shift on Mondays or a make-up shift following a holiday that fell on one of her scheduled days of work. She agreed that she could be called in to work over and above her scheduled shifts for the week, based on the Employer's operational requirements. She further agreed that in most cases preceding the filing of the grievance she had received five shifts over a pay period, which could include shifts she picked up based on the Employer's operational requirements. As the Grievor is the only regular part-time PT, she is offered any additional hours prior to those hours being offered to the casual PT.

[5] Over the relevant period, Tabitha Burta was the Director of Pharmacy, responsible for the pharmacies at the Employer's Brockville and Royal Ottawa Hospital sites. Pharmacy Technicians reported directly to her, and she was responsible for staffing, including scheduling. Scheduling, according to Ms. Burta, had always been based on operational requirements. Typically the schedule was posted a month in advance and duties rotated among the PTs. Ms. Burta noted that the schedule was not changed in those months that included a holiday, even while they were aware of the holiday. It stayed the "core template". That schedule changed, according to Ms. Burta, based on various operational considerations, such as vacations, illness, changes in admissions, problems with IT, or project work. She understood that compensation for any holidays was included in the percentage in lieu paid to the Grievor.

[6] In April 2021 a Team Lead position was introduced, although it did not increase the PT complement. Ms. Burta noted that Pharmacist hours had increased. As well, there had been a lengthy transition to the use of new and additional technology and the implementation of a unit dose medication distribution system, which required additional work in the context of implementation, but all of which have resulted in efficiencies, and a reduction in the overall workload for the PTs.

[7] There was additional evidence pertaining to prior holidays, and the scheduling accorded to her colleague, Ms. Glazer, while the Grievor was working the temporary FT placement. Ms. Glazer was regularly offered a shift on the day following a holiday, but the evidence did not establish that those or other additional shifts were offered based on the Employer adjusting the schedule to ensure five working shifts during a pay period that included a holiday. Even apart from Ms. Burta's evidence that certain shifts should have been marked green on the schedule, indicating an additional shift offered and accepted, a review of the schedules indicates that Ms. Glazer's assigned schedule over many months was not consistent and variously included scheduled shifts on Tuesdays and Thursdays. There was no evidence as to the terms of Ms.

Glazer's commitment in the part-time role. Overall, the evidence is insufficient to draw a conclusion that there was a practice whereby, regardless of other considerations, the Employer adjusted the part-time PT's schedule to ensure that they were scheduled for five shifts in those pay periods containing a holiday when the Pharmacy was closed.

[8] Rather, the evidence indicates both that the overall workload was higher and/or there were additional staffing challenges during the period that Ms. Glazer was in the part-time role, and that a review of the Employer's workload requirements was conducted by Ms. Burta such that additional shifts were offered to the part-time PT (whether Ms. Glazer or the Grievor) based on operational needs resulting from staff absences, workload, or other operational considerations.

[9] Relevant provisions of the collective agreement provide:

3.02 In this Agreement "Full-time Employee" means an employee who is regularly scheduled to work the hours of a full-time employee referenced in Article 18.

3.03 In this Agreement "Part-time Employee" means an employee who regularly works less than the normal hours of a full-time employee referenced in Article 18 and who has made a commitment to be available for work on a regular predetermined basis and in respect of whom there is a pre-determined schedule.

...

18.01 Work Week and Work Day/Overtime

The normal or standard work day will be seven and one-half (7.50) hours as determined by the Hospital. The normal or standard work week will be thirty-seven and one-half (37.50) hours as determined by the Hospital.

...

ARTICLE 20 – PAID HOLIDAYS

20.01 A regular full-time employee shall be entitled to the following paid holidays each year:

[12 holidays listed]

20.02 (Applicable to Regular Full-Time Employees)

- (a) An employee required to work on any of the designated holidays listed in the Collective Agreement shall be paid at the rate of time and one-half (1 1/2) her regular straight time rate of pay for all hours worked on such holiday, subject to Article 20.03.

In addition, she will receive a lieu day off, at a mutually agreed time, with pay in the amount of her regular straight time hourly rate of pay, times the number of

hours in a normal or standard work day of seven and one half (7.5) hours or seven and one-quarter (7.25) hours, as defined in Article 18.

(b) ...

(c) **(Applicable to Regular Part-Time and Casual Employees)**

An employee required to work on any of the designated holidays listed in the Collective Agreement shall be paid at the rate of time and one-half (1 1/2) her regular straight time rate of pay for all hours worked on such holiday, subject to Article 20.03.

...

30.03 New Benefits Eligibility

(a) Part-time and casual employees - Benefits and Percentage in Lieu

A regular part time or casual employee shall receive in lieu of all fringe benefits (being those benefits to an employee, paid in whole or part by the Hospital, as part of direct compensation or otherwise, including holiday pay, sick leave, long-term disability and all insured health and welfare benefits, save and except salary, vacation pay, standby pay, call back pay, reporting pay, responsibility allowance, jury and witness duty, bereavement pay and maternity supplemental unemployment benefits) an amount equal to fourteen percent (14%) of her regular straight time hourly rate for all straight time hours paid.

(bold in original)

* * *

[10] In summary, it is the Union's position that the Grievor has been denied her full .5 FTE during any pay period with a holiday and that, to meet the .5 FTE contractual commitment, she is entitled to be scheduled for another shift in the pay period if the Pharmacy is closed on one of her regularly scheduled days. The Union asserts an interpretation of the collective agreement that considers the definitions of part-time and full-time employee, the hours of work provision, and the management rights clause. In the alternative, the Union asserts that the Employer is estopped from changing its practice of scheduling an additional shift.

[11] It is the Employer's position that neither the collective agreement nor past practice provide a guarantee of hours of work as asserted by the Union. Nor could the Union point to any other agreement that would constitute such a guarantee, it argued. While not disputing the general rules of contract interpretation relied on by the Union, including that the collective agreement must be considered as a whole, the Employer argued that it has the management right to establish the work schedule unless that right is abridged by another provision of the collective agreement. The Employer relied on the payment of the percentage in lieu to part-time employees as incorporating compensation for the holiday. Finally, the Employer argued that the

evidence did not establish that there was a consistent practice of scheduling another shift during a pay period with a holiday. Rather, any additional shifts were scheduled following an operational assessment, on an as-needed basis.

[12] In reply, the Union noted that the collective agreement guaranteed that full-time employees were paid their regular pay for holidays not worked in accordance with their full-time hours of work. The .5 FTE is similarly the guarantee for this part-time employee, it argued, even while that required additional work. While the .5 FTE did not guarantee availability for a Tuesday shift, acknowledged the Union, the Personnel Action Form must have meaning, it argued. While the Employer is entitled to determine scheduling, it is subject to other agreements. The Grievor was losing 20% of her FTE each time she was not scheduled for a shift because it fell on a non-working holiday, an amount not captured by the percentage in lieu, the Union argued.

[13] I was referred to and have reviewed the following:

- Bell Technical Solutions Inc. v. Unifor*, 2025 CanLII 123038 (Kelly)
- Manitoba (Department of Family Services and Housing) and C.U.P.E., Loc. 2153 (Murdock) (Re)*, 2005 CanLII 94119 (Peltz)
- Mackenzie Consumers Co-operative Association v. United Food and Commercial Workers Union, Local 1518*, 2024 CanLII 57537 (Foy)
- Express Airborne v. T.C.U.*, 1995 CarswellQue 2626, 40 C.L.A.S. 408, 50 L.A.C. (4th) 271 (Frumkin)
- Gemini-SRF Power Corp. and Unifor, Local 89-04 (Labonte), Re*, 2022 CarswellOnt 12522, 2022 C.L.A.S. 836 (Bernhardt)
- Toronto District School Board v. Canadian Union of Public Employees, Local 4400, Unit D*, 2013 CanLII 82645 (Luborsky)
- Brown, D.J.M., Beatty, D. M., & Beatty, A.J. (Eds.). (2024). *Canadian Labour Arbitration*, 5th ed., Thomson Reuters pgs. 5-81 to 5-83
- Royal Ottawa Health Care Group v. Canadian Union of Public Employees, Local 942*, 2020 CanLII 671 (ON LA) (Albertyn)
- Health Employers' Association of British Columbia-Fraser Health Authority v. Facilities Bargaining Association*, 2025 CanLII 30375 (BC LA) (Noonan)
- Re Commonwealth Holiday Inns of Canada Ltd. (Holiday Inn of Don Valley) and Hotel and Restaurant Employees' and Bartenders' International Union, Local 75*, 1983 CanLII 4839 (ON LA) (Brent)
- International Association of Machinists And Aerospace Workers Local Lodge 99 v. Finning Canada (Finning International Inc.)*, 2021 CanLII 46105 (AB GAA) (Bartel)
- Ontario Public Service Employees Union, Local 331 v. Ontario Shores Centre for Mental Health Sciences Union/Policy Grievance*, 2011 CanLII 22682 (ON LA) (Trachuk)
- Cardinal Transportation B.C. Inc. and C.U.P.E., Loc. 561 (Re)*, 1997 CanLII 25143 (BC LA) (Devine)
- Re Domglas Ltd. and United Glass and Ceramic Workers, Local 203* [1980] O.L.A.A. No. 78, 26 L.A.C. (2d) 94 (Burkett)

-Re Ontario Public Service Employees Union and Ontario Public Service Staff Union, [1987] O.L.A.A. No. 27 (Saltman)

-International Alliance of Theatre Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada v. Ed Mirvish Enterprises Ltd. (Sheedy Grievance), [2009] O.L.A.A. No. 433 (MacDowell)

[14] For the following reasons, I find that the collective agreement (or being hired as a .5 FTE) does not require the Employer to offer and/or schedule the Grievor for an additional shift in those pay periods containing a holiday so as to ensure she works five shifts during that pay period.

[15] A Personnel Action Form, an administrative document completed on return to the Grievor's part-time role following the temporary full-time assignment, records that her "Employment Type" is regular part-time at a 0.5 FTE. In accordance with Article 3.03 of the collective agreement the Grievor regularly works less than the normal hours of a full-time employee. Further to that same provision, she has made a commitment to be available on a regular pre-determined basis. That is a commitment required of the Grievor. Her commitment is consistent with a .5 FTE – that is, five shifts over a pay period instead of the full-time commitment of ten shifts per pay period.

[16] Also like a full-time employee, and unlike a casual part-time employee, the Grievor's commitment to be available on a pre-determined basis sets the basis for her pre-determined schedule referred to in Article 3.03 of the collective agreement. The full-time schedule contemplates five weekly shifts, Monday to Friday. In effect, in order to hold that status, a full-time employee makes a commitment to be available according to that schedule. The Grievor has committed to being available on an alternating basis, Monday, Wednesday, and Friday, and then Monday and Friday the following week. That commitment is reflected in, and by her work schedule.

[17] Having regard to her pre-determined commitment, the Employer could not, for example, unilaterally schedule the Grievor to work a Tuesday shift following a holiday, as that would contravene the terms of the Grievor's regular part-time commitment under the collective agreement. Any such change would require the Grievor's agreement to work that alternate schedule, as she has not made any commitment to be available on those alternate days. As acknowledged by the Union, the Grievor must agree to work that shift, for unilaterally scheduling such a shift would result in the Employer violating the terms of the collective agreement. That the Grievor may agree to working a shift on a day that is not part of her pre-determined commitment does not require the Employer to offer such a shift.

[18] The Union argued however that the FTE was a guarantee of hours and that the parties had not agreed that the Grievor would get fewer hours of work in a week with a holiday.

[19] There is nothing in Articles 3 or 18 of the collective agreement that provide a guarantee of work for full-time or part-time employees. A full-time employee is one "regularly scheduled to work" (Art. 3.02) the "normal or standard work week" of 37.5 hours (Art. 18). A part-time

employee is one who regularly works less than the normal hours of a full-time employee (Art. 3.03).

[20] The described FTE must be interpreted and understood in the context of the terms of the collective agreement. It cannot stand independently of, and in contradiction to the terms of the collective agreement to create a commitment by the Employer to guarantee the stated percentage of the full-time regular hours of work. A full-time employee under this collective agreement does not receive such a guarantee of hours of work. Any part-time equivalency must mirror that character of full-time employment in order to meet the definition of a part-time employee under the collective agreement. That is, a part-time employee “regularly” works less than the normal hours of a full-time employee but, like a full-time employee, makes a commitment to work a pre-determined schedule.

[21] The language of this collective agreement can be contrasted with and distinguished from the collective agreement language found in the cases relied on by the Union.

[22] In *Bell Technical Solutions, supra*, the collective agreement expressly guaranteed regular part time employees a minimum number of days of work per pay period (either two or four, depending on the season, to be worked on Saturday and/or Sunday). The Employer cancelled scheduled work for some part-time employees on two holidays that fell on a Saturday. While it paid those employees their regular pay for the holiday, the decision finds that they were entitled to work the day (which would have attracted a premium rate of pay).

[23] In essence, their guaranteed scheduled days of work had been unilaterally and improperly cancelled contrary to the terms of that collective agreement (see paras. 40-43). Those parties had negotiated the collective agreement guarantee specifically for part-time employees in order to provide greater stability to the part-time workforce which comprised about 40% of the bargaining unit. There is no such language providing a guarantee of hours of work in this collective agreement.

[24] Similarly, the collective agreement considered in *Re Manitoba, supra*, was found to provide a guarantee of hours of work. In that case, the grievor’s letter of employment stated, “You are a permanent employee with a guarantee of 64 hours per biweekly pay period”. That guarantee was provided on the basis that 50% of her hours were to be worked on evenings and weekends. The letter of employment had been provided pursuant to a letter of understanding in the collective agreement stipulating that permanent employees “will be guaranteed hours in accordance with the following principles...”.

[25] Article 15.03 of that collective agreement stated, “The Employer agrees to provide *a guarantee for the number of hours of work assigned per week.*” (emphasis added). The arbitrator determined that the parties had intended there to be a guaranteed minimum number of working hours per week. Thus, hours paid as holiday pay, but not worked, were found not to be included as part of that guaranteed minimum (see pages 187-188).

[26] In this case, the collective agreement merely stipulates that employees “regularly work” the “normal or standard work week”, not that they “always” or are “guaranteed” to work that standard work week.

[27] The decision in *Mackenzie Consumers, supra*, deals with the limited and different question of whether a part-time employee may be scheduled for more hours during a week in which a holiday falls. While that collective agreement placed limits on the scheduling of a full-time employee, it expressly contemplated that a part-time employee might work more than 32 hours in a week containing a holiday (or 24 hours if two holidays) by recognizing an entitlement to premium pay should those hours of work exceed 40.

[28] The decision in *Express Airborne, supra*, deals with the alteration of the standard work week for certain employees following a merger. A 40-hour work week was changed to a 37.5-hour work week to align with the merged operation. However, the collective agreement continued to apply, and the standard work week was therein defined as 40 hours per week. Also, full-time employees were defined as those scheduled to work 40 hours per week. The employer argued that these definitions could not act as a guarantee of work, a proposition that was not disputed. Rather, the union in that case argued that the change effectively altered the definition to the detriment of full-time employees.

[29] The arbitrator found that the employer had, in effect, “modified the working conditions concerning hours of work of the grievors so that these would conform to hours of work of other employees working under another collective agreement” (para. 13). Notwithstanding reference to modifying the ‘work schedule’ at paras. 17 and 19, the decision deals with what constitutes ‘normal’ hours of work and does not speak to a guarantee of hours of work or the treatment of holiday pay. The arbitrator concluded that the employer had improperly modified the parties’ definition of full-time employee, unilaterally modifying the definition of the normal work week (para. 16).

[30] Finally, the decision in *Gemini-Srf Power Corp., supra*, is also distinguishable. In that case, the grievor was scheduled to work the Canada Day holiday. The employer cancelled his shift expressly to avoid paying the associated premium, such that the grievor received only his regular pay for the day instead of the three times premium pay and a lieu day that he would have received had he worked the shift. Unlike here, the employer carried on its normal operations on the holiday, and as well, this was the first time that the employer had run the shift with only one operator instead of the usual two operators.

[31] The arbitrator found that the parties had negotiated limits on the employer’s ability to change the schedule. A letter of understanding incorporated into the collective agreement provided that the shift schedule would remain in place and would “not impact the number of hours you work in a regular week” (para. 80). In those circumstances the arbitrator found that the employer had breached that collective agreement by putting the grievor off work contrary to his “regular work schedule”.

[32] The Employer's Pharmacy is closed on holidays. When a holiday falls on a day that is otherwise a scheduled day for the Grievor, the Employer has no work for the Grievor that day. That is the same for a full-time employee. A holiday would similarly fall on a regularly scheduled day for a full-time PT. Yet they do not perform work as the Pharmacy is closed. Neither works their pre-determined commitment.

[33] The scheduling treatment for full-time and the Grievor is the same. Although both are "on the schedule" for the day, neither works the holiday. The Grievor, like a full-time employee, receives a holiday.

[34] As noted by the Employer, the Union does not assert that a full-time employee is entitled to another day of work as substitute for losing work on the holiday because the Pharmacy is closed. The Union would assert that the full-time employee is paid for the day and does not lose compensation by virtue of having not worked the holiday. The full-time employee receives holiday pay. The collective agreement, however, expressly contemplates that both full-time and part-time employees receive holiday pay. The difference between the full-time and part-time employee is how they are compensated for the holiday.

[35] Pursuant to Article 20.01 of the collective agreement, a full-time employee is entitled to 12 paid holidays. They receive their regular day's pay if not required to work the holiday. That constitutes the payment of holiday pay. In the case of a part-time employee, Article 30.03 (a) of the collective agreement provides that a part-time employee receive 14% in lieu of fringe benefits for all "straight time hours paid". The percentage in lieu expressly includes holiday pay. That inclusion of holiday pay in the percentage in lieu indicates that the parties expected that part-time employees might take paid holidays, otherwise there would be no need to set out a means for compensating them for those holidays.

[36] The inclusion of holiday pay in the percentage in lieu also supports the conclusion that there is no guarantee of work, as the parties have expressly accounted for the part-time employee receiving holiday pay should they not work the holiday, notwithstanding their regular schedule, their FTE, or their pre-determined commitment.

[37] A full-time PT is paid their regular rate of pay for the holiday. Unlike the more straightforward calculation of full-time compensation, that portion of the percentage in lieu attributable to holiday pay is earned over time. It is the case that the Grievor may earn less in a pay period which includes a holiday than in a pay period without a holiday. Rather than receiving pay for 5 days of work as well as the 14% in lieu for those paid hours, she receives pay for 4 days of work with the additional 14%. As well, she receives a paid holiday, paid from the accumulated receipt of the percentage of lieu which includes holiday pay.

[38] A week-to-week comparison does not reflect the nature and manner of the overall compensation paid to a part-time employee. The Union's assertion of a 20% loss in a pay period fails to recognize this longer-term attribution and thereby reflects a false dichotomy. Like a full-time PT, the Grievor receives a paid holiday on an otherwise scheduled day of work. She is paid

for not working, that payment having been earned over time through receipt of the percentage in lieu. That paid holiday also accords with and meets the .5 FTE.

[39] In conclusion, I find that the Employer is not required to offer or schedule the Grievor for an additional shift of work during those pay periods in which a holiday falls based on the FTE. There is also no such requirement in the collective agreement. Any decision whether to offer such additional work rests with an exercise of management rights based on an assessment of operational needs. In the result, I find that the Employer did not violate the collective agreement in not offering or scheduling the Grievor an additional shift of work during a pay period in which there was a holiday and the Pharmacy was closed.

[40] The Union's alternative argument was that the Employer was estopped from changing its practice. However, having regard to the evidentiary findings at paras. 7 and 8 above, there is no relevant practice on which the Union can found an estoppel. The Employer is entitled to offer additional shifts based on operational need, thus the reason for offering a shift is relevant to establishing a practice that would support a conclusion that a representation had been made by the Employer intended to be relied on by the Union. The evidence does not support a conclusion that the Employer scheduled and/or offered an alternate shift *for purposes of replacing* a scheduled shift that fell on a holiday.

[41] The fact that shifts were offered and not scheduled also supports a conclusion that they were offered based on operational need and not to meet a guarantee of hours of work. Guaranteed hours of work are inconsistent with an entitlement of the employee to turn down that offer of work, and it was acknowledged that the Grievor would be entitled to turn down an offer of a shift that did not fall on her pre-determined schedule. I find therefore that the requisite elements for establishing an estoppel have not been made out.

[42] Having regard to the findings at paras. 39 and 41 above, this grievance is hereby dismissed.

Dated at Toronto, Ontario this 21st day of May, 2026.

"Marilyn A. Nairn"

Marilyn A. Nairn, Arbitrator.