

IN THE MATTER OF AN ARBITRATION

Between:

Norfolk General Hospital,

Employer,

- and -

Ontario Nurses' Association,

Union

BEFORE: Michael Bendel, Arbitrator

APPEARANCES: For the Union:

Rob Dobrucki, Counsel
Brayden Redgers, Bargaining Unit President
Stacey Brown, Grievor
Danielle Czernecki, Labour Relations Officer

For the Employer:

Robert Hickman, Counsel

Heard by videoconference on April 3, 2024, and October 16, 2025. Written submissions completed on November 11, 2025.

ARBITRAL AWARD

I

The union has presented two grievances, one on behalf of Ms. Stacey Brown, the other on behalf of Ms. Loralie Ferreira, which were heard together, as they raise, essentially, the same issue of the interpretation of certain of the vacation leave provisions in the collective agreement.

The only evidence presented was in the form of an Agreed Statement of Facts, which it is not necessary to reproduce in full.

The facts can be summarized as follows:

1. Ms. Brown, a nurse, worked a shift schedule known as a “DDNN”, which meant that she worked two day shifts followed by two night shifts, and then had five days off. This shift pattern was expressly provided for in the Local Appendix to the Central Collective Agreement.
2. Ms. Ferreira, also a nurse, worked a shift schedule known as a “Continental”, which meant that, over a two-week period, she worked 12-hour shifts on each of Monday, Tuesday, Friday, Saturday and Sunday in one week, and 12-hour shifts on each of Wednesday and Thursday in the next week. This pattern was also expressly provided for in the Local Appendix.

3. For the summer of 2023, Ms. Brown requested vacation leave for July 28 & 29, August 25, and September 1, 2 & 3. Her request for August 25 was denied, while her request for the other dates was approved.
4. For the summer of 2023, Ms. Ferreira requested vacation leave for several days. Her request was granted in part only, with the employer denying it in respect of June 28, July 12 & 13, and August 4, 5, 6, 9, 10 & 20.

The union claims that, as a result of the partial denials of the grievors' requests for vacation leave, the employer had not granted each of them two weeks of vacation leave during the summer months, in violation of Article H-1 (g) of the Local Appendix, which reads as follows:

H-1 Full and Part time vacations will be scheduled as follows:

...

(g) Full-time nurses may take a maximum of two (2) weeks of their vacation entitlement off during the summer months. When all full-time nurses have had the opportunity to schedule their 2 weeks off then any time remaining will be granted on the basis of seniority.

II

Most of counsels' initial arguments dealt with the question of how to interpret and apply Article H-1 (g) in the case of employees working the DDNN or the Continental shift schedules. The main focus was how the word "weeks" should be interpreted in respect of these employees. The union argued that this provision guaranteed that every full-time employee could take 75 hours of paid vacation during the summer months every year. It maintained that the two grievors were

denied this right when the employer rejected their requests for time off work on certain of the days for which they had sought leave.

In pre-hearing discussions between counsel and the arbitrator, there had been a suggestion that the language of Article H-1 (g) was ambiguous and that extrinsic evidence would be called. At the hearing, however, the parties renounced that suggestion, and no extrinsic evidence was presented.

Following the hearing, I wrote to counsel to ask for their further submissions on a matter that had not been squarely addressed at the hearing. I pointed out that the first sentence in Article H-1 (g) appeared to establish the maximum vacation leave that an employee could be granted during the summer period. I asked them to explain how there could possibly have been a violation of that provision by reason of the employer not granting the grievors all the vacation leave days they had requested. The union's initial submissions, I observed, appeared to assume that the provision established a minimum summer vacation entitlement rather than a maximum entitlement. I asked for their written submissions on this question.

III

In the written submissions filed at my request, Mr. Dobrucki, counsel for the union, argued that, when the whole scheme of the collective agreement was considered, the word "maximum" in Article H-1 (g) of the local agreement referred to "the limit up to which ONA members most often may go with respect to weeks of vacation in the summer period out of the greater quantum that

every ONA member is entitled to under Article 16.01 [of the Central Collective Agreement].” He continued:

To interpret the word “maximum” as simply being a contrast to the “dictionary opposite” of “minimum” would be to fail to recognize the context in which the word is used in just one of the two sentences of Article H-1 (g), let alone the scheme of the entire collective agreement [...]

The first sentence [of Article H-1 (g)] should be read in conjunction with the second sentence in the same paragraph [...] as such, the word “maximum” as it appears in the first sentence could not have been intended to be understood as an absolute limit within the summer period, given that the parties clearly contemplated that there might be times when some or all of the ONA members may be able to use more than two weeks of vacation in the summer months [...]

ONA contends that the preferable approach to understanding the intent of the parties when the collective agreement is read in its full context is that the phrase “a maximum of two weeks of their vacation entitlement” in the first sentence [...] is that two weeks is the maximum portion of the greater vacation benefit entitlement that ONA members most often are entitled to take during the subset of the year in the summer months, once the ONA member has completed at least nine months of employment with the Hospital (and thus has more than 2 weeks of vacation entitlement under Article 16.01 (a)).

In support of the approach to the interpretation of Article H-1 (g) he advocated, Mr. Dobrucki cited Re Imperial Oil Strathcona Refinery and C.E.P., Loc. 777, 2004 CanLII 94735 (Elliott), where the arbitrator, in addition to endorsing the use of the principles of statutory interpretation in interpreting collective agreements, emphasized the importance of interpreting words in a collective agreement “within their entire context in order to figure out the scheme and purpose of the agreement”. Counsel also referred to Re Rizzo & Rizzo Shoes Ltd., [1998] 1 S.C.R. 27, and to Eli Lilly & Co. v. Novopharm Ltd., [1998] 2 S.C.R. 129.

Mr. Hickman, counsel for the employer, stated, in the written submissions which I had solicited, that he agreed with my suggestion that, except where the second sentence of Article H-1 (g) came into play, the provision established a maximum period of time that an employee could take as vacation leave during the summer months, and not a minimum. He also agreed with my

tentative suggestion that the whole purpose of Article H-1 (g) appeared to be to ensure equitable access to vacations during the coveted summer months. Mr. Hickman reviewed several dictionary definitions of the word “maximum”, and he drew my attention to the use of the word “maximum” 21 times in the Central Collective Agreement, as well as to its use once in the Local Appendix. There was no basis for interpreting the word “maximum” in Article H-1 (g) to mean “minimum”. He also observed that union counsel, while referring several times to the “scheme of the collective agreement”, had failed to describe what that scheme was or where it was to be found. Counsel further drew attention to the parties’ use of the expression “two weeks of their vacation entitlement” in the first sentence of Article H-1 (g), as opposed to the use of the expression “2 weeks off” in the second sentence.

IV

Much could be written about the validity of the “contextual approach” to the interpretation of collective agreements described in Re Imperial Oil Strathcona Refinery, *supra*, upon which Mr. Dobrucki heavily relied. That award held that the rules of statutory interpretation applied to the interpretation of collective agreements, an opinion that is controversial. In particular, see the following comments of arbitrator Laskin, as he then was, in Re Sudbury Mine Mill & Smelter Workers, Local 598, and Falconbridge Nickel Mines Ltd. (1955), 6 L.A.C. 56, at page 58:

[T]here is a fundamental, not to say obvious, distinction between a collective agreement, or any consensual document which purports to embrace the accord of bargaining parties, and a statute which articulates a legislative policy. It may be that similar rules of interpretation or similar kinds of material may be brought to bear on agreements and statutes when one is seeking to expound their meaning, but they have different origins and purposes, and these are weighty factors in assessing meaning.

In my view, however, the meaning of Article H-1 (g) in the present context is so clear and obvious that, whichever principles of interpretation were applied, the result would be the same, and there is thus little point in pontificating on the preferred interpretative approach.

I see no valid reason for giving the words used in Article H-1 (g) anything other than their straightforward meaning, which can be stated as follows:

- 1) In the first instance, full-time nurses may opt to take no more than two weeks of their vacation entitlement during the summer months;
- 2) If, after all full-time nurses have had the opportunity to exercise that option, the employer can accommodate additional vacation leave absences during the summer months, requests for those absences are to be granted on the basis of seniority.

There is no justification, in my view, for distorting the plain meaning of the provision in the manner advocated by the union. The word “maximum”, used in the first sentence of the provision, cannot be read as meaning “minimum”, in my view. The first sentence is not a guarantee that every full-time employee who wants two weeks of vacation leave during the summer months will be successful in that regard. The two weeks of vacation mentioned in the first sentence constitute the upper limit of what employees can take. The obvious purpose of the first sentence of the provision is to ensure that access to a basic level of summer-time vacation leave should be made available equally to all employees, regardless of seniority, and the obvious purpose of the second sentence is to ensure that, if the employer has the possibility of accommodating further summer-time vacations, seniority should be the criterion for ranking employees’ requests for the further vacation days. There is no need, and no scope, for engaging in any exercise of identifying the

“scheme” of the collective agreement when the meaning of a provision is so straightforward and obvious, and where the purpose of the provision is so self-evident. While the “scheme” of the collective agreement can perhaps be used to resolve uncertainty in the meaning of a provision, I am confident that, on no reading of any of the cases cited, can the “scheme” be used to create uncertainty in an otherwise straightforward and unambiguous provision.

I am satisfied that there has been no violation of Article H-1 (g) by the employer, and that the grievances must be dismissed.

DATED at Thornhill, Ontario this 5th day of January 2026.

“Michael Bendel”,
Michael Bendel,
Arbitrator