

In a matter under the collective agreement

BETWEEN

Ontario Nurses' Association

and

Cornwall Community Hospital

Re: Holiday Schedule Grievance – Grv. #P-56-22/ONA File No. 202212932

Before: Matthew Wilson, Sole Arbitrator

For ONA:

Terence Wright, Counsel
Karina Saavedra, Labour Relations Officer
Patty O'Shaughnessy, BUP and Local Coordinator

For the Hospital:

Lennie Lejasisaks, Counsel
Brian Todd, Director, Human Resources
Crystal Roy, Manager, Staffing, Scheduling and Support Services

AWARD

1. This grievance, filed by the Ontario Nurses Association (“ONA”) asserts that Cornwall Community Hospital (“the Hospital”) has failed to pay premiums for shifts posted in the schedule during the holiday period. The Hospital has not paid such premiums in at least twenty years as it relies on the language to modify the schedule at the nurses’ request during the holiday period.
2. The parties presented me with an agreed statement of facts (“ASF”) that set out the relevant provisions and context. I was presented with will-say statements from Patty O’Shaughnessy, Bargaining Unit President for ONA, and Crystal Roy, Manager, staffing, Scheduling and Support Services for the Hospital. These individuals adopted their will-say statements and were subject to brief cross-examinations. They were both credible witnesses.

The Issue

3. Each year, from December 15 to January 10 (“the holiday period”), the Hospital can modify the schedule and take nurses off their rotation to satisfy requests made by the nurses to have more time off and consecutive days off. The master schedule is essentially replaced for that period with a new schedule with a six-week notice period. Part-time nurses can be utilized to accommodate the requests for time off.
4. These arrangements for greater time off during the holiday period are separate from vacation requests. Nurses are also entitled to take vacation time during this period.
5. The provisions surrounding the holiday period were negotiated in 2004. Except for some immaterial changes, the relevant language has remained intact since it was negotiated.
6. The Hospital has never paid premiums for shifts that were posted on the new schedule during the holiday period. It does pay premiums where they are triggered for new shifts that are picked up during the holiday period. ONA advises that it was not aware of the Hospital’s practice of not paying premiums.

The Collective Agreement

7. These parties negotiate their collective agreement as part of the central bargaining process. The local collective agreement contains provisions that are

specific to this particular hospital. Article E of the Local Provisions sets out the scheduling provisions. It contains 23 subsections that deal with the scheduling rules and payment of premiums.

8. Article E(i) is the provision in dispute. It reads as follows:

Christmas/ New Year's Scheduling

These scheduling regulations may be modified between December 15th and January 10th. Upon request, nurses will receive five or more consecutive days off at either Christmas or New Year's. Time off at Christmas shall include December 24, December 25 and December 26, and time off at New Year's shall include December 31, January 1 and January 2. Nurses may request additional days off at Christmas or New Year's, approval for such time off shall not be unreasonably denied. If requested, the Employer will continue to endeavour to schedule 7.5 hour tours on the above noted days.

The Employer shall advise each nurse of these days six (6) weeks in advance.

This provision shall not apply to any area where nurses normally work Monday to Friday and are not normally scheduled to work on paid holidays, however, these nurses may schedule vacation days off at this time, if it does not interfere with staffing needs of the Hospital.

The scheduling of time off at Christmas and New Year's shall be done on a nursing unit basis, provided that the complement of qualified nurses is maintained in the unit, in a manner as follows:

- i) On an alternating basis unless otherwise mutually agreeable between the parties.
- ii) In the event of conflicts, seniority will govern.

Note: For the self scheduling units during the period between December 15 and January 10 schedules will be prepared by staffing manager/delegate.

9. The various shift premiums are found in different areas of the collective agreement, but the majority of premiums are found in Article E.8. They read as follows:

E.8 A nurse will receive premium pay:

- (a) For all work performed after working seven (7) consecutive days of work without days off until such days are scheduled.
 - (b) For all work performed on her third and consecutive weekend save and except where:
 - i) such weekend has been worked by the employee to satisfy specific days off requested by such employee; or
 - ii) such employee has requested weekend work, including by application for a posted position which includes only weekend work; or
 - iii) such weekend is worked as a result of an exchange of occasional shifts with another employee.
 - (c) For all work performed as a result of failure to schedule two consecutive tours off between a change of tour or at least 48 hours off following a period of night duty when tours of duty are changed.
 - (d) Where a full time or part time nurse chooses equivalent time off under 14.09, such time off must be taken no later than March 31st of each year. Any request for time off in lieu shall not be unreasonably denied.
 - (e) Part time nurses will be allowed to bank overtime hours, and use such accumulated time in situations of low census, short term layoffs or where they want to supplement a pay period.
10. There are other premiums found in the collective agreements such as Article E.17 and various Letters of Understanding. In the interest of brevity, I have not reproduced these provisions in this award.

The Evidence

11. In addition to the agreed statement of facts, two witnesses were called to adopt their will-say statements and answer questions in cross-examination.
12. Patty O'Shaughnessy, the bargaining unit president, sat on the negotiating team for the first collective agreement in 2004. The collective agreement was negotiated out of an amalgamation between Cornwall General Hospital and Hotel Dieu Hospital. Ms. O'Shaughnessy explained that the language was informed by the previous Cornwall General Hospital collective agreement.
13. The language was changed in 2016 collective agreement. Prior to this renewal, the language required that all nurses were to be granted 5 days off. Ms. O'Shaughnessy advised that not all nurses wanted the 5 days off because they did not want to use their vacation or stats to compensate during those days.

Thus, the language was changed so that nurses could request 5 days off during the holiday period.

14. Ms. O'Shaughnessy first became aware that the Hospital was not paying premiums for shifts posted on the schedule during the holiday period when a part-time employee raised the issue in November 2022. At that point, ONA filed this grievance challenging the Hospital's interpretation.
15. Ms. O'Shaughnessy acknowledges that there have been discussions with the Hospital about premiums during the holiday period, but she could not recall if those discussions occurred during collective bargaining or during HAC.
16. Crystal Roy, the Manager, Staffing, Scheduling and Support Services at the Hospital has been responsible for staffing and scheduling since 2002 and also participated in collective bargaining since 2004.
17. Ms. Roy stated that nurses can be granted time off during the holiday period through their vacation requests or under Article E.1(i). She estimated that she receives requests from about half the nurses in any unit to modify their schedule to allow for five consecutive days off. It is not always necessary to modify the schedule as it depends on the nurse's request and whether they choose to take vacation time.
18. Ms. Roy stated that when the language was negotiated, she had a conversation with Ms. O'Shaughnessy and Heather McDonell, the Labour Relations Officer, about the language. According to her evidence, she was told by Ms. O'Shaughnessy and Ms. McDonell that this "...this language would waive the premiums where schedules were modified to grant the five (5) consecutive days off at Christmas or New Year's." Ms. Roy stated that if this assurance had not been made, the Hospital would not have agreed to the provision because of the associated costs.
19. Ms. Roy stated that waiving the scheduling regulations (which included the premiums) also meant that the restrictions on shift switches were also waived to give nurses more flexibility.
20. Ms. Roy stated that these scheduling practices have been in place for approximately 20 years and that the Hospital has never paid premiums where schedules were modified due to the holiday scheduling language.

The Parties' Positions

21. ONA's position is that Article E.1(i) must be read to waive only the scheduling rules during the holiday period but does not waive the premiums that would otherwise apply. Specifically, it argues that Article E.1(i) does not modify the

application of E.8 as those premiums would continue to apply even where the schedule has been modified to accommodate nurses' requests during the holiday period. According to ONA, the provision allows nurses to request time off over the holiday period and the Hospital can modify the master schedule to facilitate such requests. However, the scheduling of such shifts over the holiday period may still attract the premiums that are described elsewhere in Article E.

22. The Hospital contends that Article E(i) provides an exception to the scheduling rules and that phrase "scheduling regulations" includes waiver of the premiums found in Article E. It argues that Article E(i) was negotiated to enable the Hospital to grant the nurses' request for time off by modifying the master schedule accordingly without incurring additional costs through premiums.

Analysis

23. As these parties are aware, collective agreements in the hospital sector have complex scheduling provisions that cover an array of shift lengths, combination of shifts, and frequency of scheduled and available shifts. This reflects a careful balancing of the Hospital's staffing needs and the nurses' preferences. This can be more challenging over the holiday period when nurses seek more time off, and yet the Hospital must still maintain staffing levels. These parties have struck a bargain to allow the Hospital to make changes to the schedule in favour of the nurses' desire to have more time off during the holiday period.
24. There is no dispute that Article E.1(i) of the collective agreement permits the Hospital to modify scheduling regulations during the holiday period so that the Hospital can grant nurses' requests for greater time off. It is also agreed that Article E.1(i) applies to all schedules and their enabling regulations under the collective agreement, including Extended Tours (Article E.17), 7.5 Hour Tours (Article E.1), and 2D2N patterns (LOU Re: Non-Traditional/Traditional Extended Tour Rotation (formerly 2Day/2 Night)).
25. The parties agree that shifts picked up after the schedule is posted *can* trigger local premiums, where applicable, during the Holiday Period. The focus of the dispute is the availability of local premiums in the creation of the posted schedule during the Holiday Period where such modifications would otherwise trigger a premium.
26. Article E.1(i) was negotiated following the amalgamation and creation of the Hospital in the collective agreement that expired in 2004. The Hospital advises that it has never paid premiums for shifts included in the posted schedule during the holiday period since the language was negotiated. While ONA does not dispute that premiums have never been paid, ONA takes the position that it was not aware of this practice until November 2022.

27. The analytical principles were not in dispute. As many arbitrators have said, words must be given their plain and ordinary meaning. In *Lakeridge Health Corporation v. Ontario Nurses' Association* 2012 CanLII 81964, Arbitrator Surdykowski explained as follows:

29. The fundamental rule of collective agreement interpretation is that the words used must be given their plain and ordinary meaning unless it is clear from the structure of the provision or the collective agreement read as a whole that a different or special meaning is intended, or the plain and ordinary meaning result would be illegal, absurd or clearly inconsistent with the overall scheme and structure of the provision in issue or the collective agreement read as a whole. All words must be given meaning, different words are presumed to have different meanings, and specific provisions prevail over general provisions. Both the words that are there and the words that are not there are significant.

28. It is also important that the words be read in the entire context. An interpretation that reads harmoniously with the scheme of the agreement is preferred. I was referred to *Hamilton Health Sciences v Ontario Nurses' Association*, 2021 CanLII 102684 (ON LA), where Arbitrator Gedalof adopted the description in *Brown and Beatty* at 4:2000 as follows:

In the interpretation of collective agreements, their words must be read in the entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the agreement, its object and the intention of the parties.

29. Relying on these principles, ONA argues that the phrase “scheduling regulations” must have a different meaning than “premium pay” and therefore treated as distinct provisions. It argues that premiums are not tied to the scheduling provisions. The reference to “scheduling regulations” cannot be interpreted as including the premiums.

30. It is a trite principle that different words are to be given different meanings. However, the analysis is more complex than simply resting the conclusion on assigning different meanings to different words. The language used by these parties to describe scheduling and premium rules varies throughout the collective agreement. Article E has several examples of different terms being used to describe scheduling and premium rules.

31. The issue before me is whether “scheduling regulations” broadly includes scheduling rules *and* the application of premiums. An interpretation of “scheduling regulations” must have regard to the generally accepted principles of contract interpretation as they apply to the words used by these parties.

32. In my view, the only way to read this provision in a manner that makes sense for the entirety of the article is to interpret “scheduling regulations” as applying to all provisions of Article E, including the premiums.
33. Article E.1(i) must be read in a manner that is consistent with the other provisions of the collective agreement. It is undisputed that Article E.1(i) applies to other provisions in Article E. For example, in order for the schedules to be modified during the holiday period, Article E.3 must be modified. This provision stipulates the parties’ agreement on master rotations. It is obviously modified during the holiday period by application of Article E.1(i).
34. I note that other articles, such as Article E.4 and E.5, must be modified. For example, the schedules are not posted 4 weeks in advance because Article E.1(i) stipulates that the Hospital must advise the nurse 6 weeks in advance. For the purpose of preparing the schedule during the holiday period, E.7 must be modified.
35. The point is that Article E.1(i) is not restricted to Article E.1 and its sub-provisions. It applies to the entire Article. It would make no sense to restrict Article E.1(i) to only those provisions in Article E.1. A consistent analysis must be applied to Article E.8 to read the entire article in a harmonious way.
36. I note that in this collective agreement the scheduling language and premiums are combined in the same article and occasionally sub-article of the collective agreement. Although Article E is titled “Scheduling Provisions”, it contains some of the rules that trigger premiums and a description of which premiums apply.
37. Article E.8 contains both references to premiums and scheduling rules. Article E.8(d) addresses requests for time off in lieu and Article E.8(e) addresses banked time for part-time nurses. A further example of intertwining scheduling rules and premiums is Article E.17 where there are rules about Extended Tours and the payment of premiums.
38. Another example of the overlap between scheduling rules and premiums is found in LOU Re: Non-Traditional/Traditional Extended Tour Rotation (formerly 2Day/2 Night). The LOU sets out a process for nurses on a unit to work a 2-day, 2-night rotation. The LOU sets out the scheduling rules and the premiums in the same paragraphs of the LOU.
39. It is apparent that these parties have not separated the premiums from the scheduling rules. The scheduling and premium rules are integrated in the same articles, sub-articles, and even a Letter of Understanding. This is an important contextual factor that must be considered when interpreting the impugned language. Thus, when the parties agreed that “scheduling regulations” could be modified, they were not limiting the interpretation to scheduling rules, as argued by ONA. The meaning of “These scheduling regulations may be modified” is broader than just the scheduling rules.

40. Although not necessary for the interpretation, a purposive analysis of Article E.1(i) supports a broader interpretation of “scheduling regulations”. The provision states that the scheduling regulations *may* be modified. It was acknowledged that the provision benefits the nurses who seek greater time off during the holiday period. In order to achieve this objective, there must be changes to the nurses’ existing rotations as well as part-time nurses working shifts that they may not normally be scheduled. These parties agree that the language used to allow for such modifications applies to all schedules and their enabling regulations including Extended Tours (Article E.17), 7.5 Hour Tours (Article E.1), and 2D2N patterns (LOU Re: Non Traditional/Traditional Extended Tour Rotation (formerly 2Day/2 Night)). It would create a disincentive for the Hospital, and undermine the parties’ objective, if the Hospital had to pay premiums to accommodate the nurses’ requests during the holiday period.
41. Although it has been unnecessary to rely on the evidence of the witnesses in reaching my conclusion on the appropriate interpretation of the language, I note that the evidence favours the Hospital’s interpretation.
42. First, Ms. Roy specifically recalls the conversation with Ms. O’Shaughnessy and Ms. McDonell where there were assurances that the language meant that the premiums would be waived. Ms. Roy was firm in her testimony about the details of the conversation and that it occurred at the time the language was negotiated. Ms. O’Shaughnessy does not deny that that the conversation occurred; she could not remember.
43. Second, Ms. Roy testified that the Hospital has never paid the premiums when the schedules were modified during the holiday period. Ms. O’Shaughnessy testified that she was not aware that the Hospital was not paying the premiums until it was brought to her attention by a part-time nurse. To be clear, there was no evidence tendered that challenged Ms. Roy’s testimony. It seems clear that the practice is exactly as described by Ms. Roy and such a practice aligns with the Hospital’s interpretation of the language.

Summary

44. I find that a plain and ordinary meaning of “scheduling regulations” as that phrase is used in Article E.1(i), includes both the scheduling rules and the premiums that would apply to a posted schedule during the holiday period. Thus, the scheduling rules and the related premiums may be modified during the holiday period. This interpretation aligns with the purpose of the provision, is consistent with the parties’ practice dating back more than two decades, and aligns with the evidence tendered about the negotiations. The Hospital has confirmed its practice that shifts picked up after the schedule is posted do trigger local premiums and nothing in this award should change that practice.

45. For these reasons, the grievance is dismissed.

Dated this 23rd day of September, 2025.

A handwritten signature in black ink, appearing to read 'Matthew Wilson', written over a horizontal line.

Matthew Wilson
Sole Arbitrator