

**In the Matter of an Arbitration
Under the *Labour Relations Act, 1995***

BETWEEN:

**Ontario Public Service Employees' Union / Syndicat Des Employes de
la Fonction Publique de L'Ontario**

(The "Union")

AND

Corporation of the County of Frontenac

(The "Employer")

(Grievance of Richard Bowlby)

Before: Adam Beatty

Appearances

Ontario Public Service Employees' Union

Emily Cumbaa – Regional Grievance Officer
Andrew Gagnon – OPSEU Local 462 President
Richard Bowlby - Grievor

Corporation of the County of Frontenac

Mark Mason – Counsel
Barb McCulloch – Director of Human Resources
Lisa Moreland – Human Resources Generalist
Marc Goudie – Paramedic Chief
Dean Popov – Paramedic Deputy Chief
Jeremie Hurtubise – Paramedic Deputy Chief

I. Introduction

1. The grievor, Mr. Richard Bowlby, is a full-time Primary Care Paramedic ("PCP") in the County of Frontenac's (the "County" or the "Employer") Paramedic Service (the "service"). Within the County's Paramedic Service there are two types of paramedic: the PCP and the Advanced Care Paramedic ("ACP"). For the purposes of this decision, I need not spell out all of the differences between ACPs and PCPs. It is sufficient to note that they are separate classifications in the collective agreement and that an ACP has a broader scope of practice than a PCP. In short, an ACP is qualified to do all of the tasks assigned to a PCP, but a PCP is not qualified to do all of the tasks assigned to an ACP.

2. Paramedics are scheduled within a platoon and assigned to a station or base. Platoons are essentially a shift of workers working at any given time. Some postings include specific hours, others have a day/night rotation. Each platoon has float positions. Floats are fulltime paramedics used to backfill absences (due to sick leave, vacation and the like) before part-time paramedics are called in. Each ambulance has two paramedics.

3. From time to time, the County will carry out a service wide rebid process. Again, the reasons why the County may choose to do so is not germane to this grievance. When the County initiates a service-wide rebid process, the postings in the bargaining unit are vacated. The County circulates a list of all of the postings to all of the paramedics (both PCP and ACP). The full-time paramedics are contacted, in order of seniority, and asked to choose their posting. Following the rebid process, contract spots may be offered to cover vacancies created by someone being on a leave. Temporary contracts must be at least 12 weeks in length. They are open to

ACPs and PCPs. Service-wide rebids have occurred in 2016, 2020, 2023, and most recently 2026.

4. The grievor filed a grievance, dated June 21, 2023, concerning the 2023 rebid process. During the 2023 rebid process, vacant positions were designated as either PCP or exclusively ACP. As a result, PCPs could not choose ACP positions during the rebid.

5. The grievance alleges that organizing the rebid process in this manner violated Article 2.02 (Employer Responsibilities) and 16.06 (Promotions and Staff Changes) of the Collective Agreement. The Union did not pursue the allegation of a breach of Article 2.02 during the hearing. As such, the only remaining allegation is that the 2023 rebid process breached Article 16.06. Article 16.06 states as follows:

Seniority shall be the deciding factor when filling job vacancies, schedule picks, and overtime. Vacancies will be offered in order of seniority to full-time employees first as a transfer. If the vacancies remain unfilled, then part-time staff will be offered in order of seniority.

6. The parties filed an Agreement Statement of Facts ("ASF"). The only *viva voce* evidence was from the Grievor. The County did not call any *viva voce* evidence.

II. Rebid Processes

7. As set out above, there have been service-wide rebid processes in 2016, 2020, 2023 and 2026. The parties addressed these rebid processes in the ASF where they agreed as follows (attachments excluded):

18. Such a rebid process happened in 2016. During that rebid process, positions were designated as either PCP or exclusively ACP. As a result, PCPs were unable to choose ACP positions in the rebid. The outcome of that rebid process is attached at Tab 5.
19. No grievances were filed regarding the 2016 rebid process, and specifically the designation of ACP positions.
20. Another rebid process happened in October 2020. During that rebid process, the desired minimum and maximum number of ACPs on each platoon was indicated and ACPs were restricted from bidding into permanent positions together, but no positions were exclusively designated as ACP positions. PCPs were able to bid on their desired position, with seniority being the prevailing factor, subject to the requisite minimum & maximum number of ACPs occurring on each platoon. An email confirming the details of that rebid is attached at Tab 6.
21. No grievances were filed regarding the restrictions on ACP positions noted in paragraph 20 above, regarding the 2020 rebid.
22. The Employer's evidence is that in the Employer's opinion, the rebid was not successful in ensuring relatively equal distribution of ACPs across all platoons, stations and/or shifts. The outcome of that rebid process is attached at Tab 7.
23. Another rebid process took place in April 2023. In that rebid process, positions were designated as either PCP or exclusively ACP. As a result, PCPs were unable to choose ACP positions in the rebid. At the end of the rebid, the Employer posted vacant ACP spots as temporary contract positions. These temporary contracts were open to both ACPs and PCPs. The outcome of that rebid process is attached at Tab 8.
24. The Grievor's grievance was filed as a result of the 2023 rebid process.
25. In January 2026, the parties concluded another rebid process. In this rebid process, positions were designated as either ACP or PCP in the same manner as occurred in 2016 and 2023. These positions will take effect in May 2026.

III. Position of the parties

A. Position of the Union

8. The Union argues that designating certain positions as ACP positions and others as PCP positions over-rides bargaining unit members seniority rights by limiting the positions they can apply for during a rebid in violation of article 16.06 of the Collective Agreement. The Union submits the language in article 16.06 establishes that seniority is the deciding factor when filling vacancies, schedule picks and overtime. Limiting the positions PCPs can apply for, regardless of their seniority, violates their seniority rights.

9. The Union argued that this case comes down to an interpretive question. The Union noted that when interpreting a Collective Agreement, arbitrators assign the words their ordinary and plain meaning. The words should be read in context, harmoniously with the scheme of the Collective Agreement and the intention of the parties.

10. The Union argued that the language in article 16.06 is somewhat rare because it establishes that seniority is the sole factor to be considered. The Union contrasted the language in article 16.06 with the language found elsewhere in the Collective Agreement. For example, article 16.08 (e) speaks of the "senior most qualified" paramedic being awarded a temporary position. Similarly, in the "Specialty Teams" Letter of Understanding (the "LOU"), the parties agreed to language that limited the applicability of seniority. Paragraph 2 of the LOU states that certain positions will be awarded to the employee with the greatest skill and ability and that when the skill and ability are equal it will then be awarded to the employee with the highest seniority. This paragraph was contrasted with the language in article 16.06 to demonstrate the unfettered application of seniority in that article. As pointed out by the Union, article 16.06 does not make any

reference to skill and ability. It simply states that seniority will be the deciding factor in a number of specific situations, including schedule picks.

11. The Union relied on *Dare Foods Ltd. v. B.C.T., Local 264*, (2004) 128 L.A.C. (4th) 331. In that decision, Arbitrator Beck discussed similar language in the context of transfers and job vacancies. In *Dare Foods*, the Arbitrator contrasted those provisions in the collective agreement where the parties had agreed to award vacancies on the basis of seniority alone with those provisions that included other requirements. Arbitrator Beck concluded that if the parties have agreed, through the language chosen, to make seniority the sole criterion for filling a vacancy, then that is what must be given effect to. The Union argued that the same outcome should occur on the basis of the language in article 16.06.

12. The Union also relied on *Intertek Testing Services v. I.L.W.U., Local 514*, (2002) 111 L.A.C. (4th) 97 where Arbitrator Blasina noted that absolute seniority clauses are rare. The discussion in *Intertek* took place in the context of layoffs. The arbitrator noted that absolute seniority clauses amount to a significant encroachment on management rights and that as such, specific language would be required. The Union argued that article 16.06 was an example of the kind of specific language Arbitrator Blasina had in mind.

13. The Union contrasted the rebid process in 2023 with the rebid process in 2020. According to the Union, positions were available to all paramedics during the 2020 rebid process. Rather than designating specific positions as either PCP or ACP, the Employer assigned every platoon a range of ACPs. As such, in 2020, the Grievor could bid on any unclaimed position and seniority prevailed. By contrast, in 2023, certain positions were designated ACP.

Those positions were off-limits to the Grievor. As such he could not use his seniority to bid on those positions. The Union relied on *C.U.P.E., Local 561 v. Coquitlam School District No. 43*, 2010 CarswellBC 2062, in support of this position. In *Coquitlam School District*, Arbitrator Dorsey found that the employer in that case did not have authority under the terms of the collective agreement to depart from the agreed upon process for filing a vacant position. The Union argued that the same held true on the facts of this case.

B. Position of the Employer

14. The Employer began by noting first, that the grievance before me is an individual grievance, not a policy grievance. Second, the County noted that no grievances were filed with respect to any of the previous rebids, including the 2016 and 2020 rebids. The Employer emphasized that the parties agreed in the ASF that in both the 2016 and the 2023 rebids certain positions were designated exclusively as ACP positions and that as such PCPs could not choose those positions.

15. In addition, according to the County, the 2020 rebid included restrictions on seniority, albeit different from the restrictions in the 2023 (and 2016) rebids. In 2020, the Employer set global minimum and maximum thresholds for the number of ACPs on each platoon. As such, there would come a time in that rebid process where, once the thresholds had been met, PCPs could be restricted from bidding on a position, irrespective of their seniority. In short, the Employer takes the position that all of the rebids included restrictions, beyond seniority, on PCPs ability to bid on a position. The Employer argued that on the Union's theory of the case all of these restrictions would breach the Collective Agreement.

16. Third, and most importantly, the Employer argued that the language in the Collective Agreement simply did not support the Union's position. According to the Employer, the language in the Collective Agreement gives it the right to set the schedule, to determine how the work is done and to determine classifications (amongst others). Included in that right is the right to determine whether certain positions will be designated as ACP exclusively. The Employer emphasized that the Union's position effectively read the management rights clause out of the agreement.

17. Article 2.01 sets out Management Responsibilities. The Employer argued that article 16.06 needs to be read with article 2.01 in mind. The Employer emphasized that article 2.01 conferred broad rights on the Employer. The Employer noted that the language in Article 2.01(e) and (h) was particularly important. Those provisions state that it is the exclusive function of the Employer to:

- (e) determine the nature and kinds of business to be conducted by the Employer, the kinds and locations of equipment to be used, the methods and techniques of work to be used, job classifications, the content of all jobs, job assignments and the standards of performance for all employees;

...

- (h) generally to manage the employer's operations without restricting the generality of the foregoing, plan, direct and control operations, determine the number of employees to be employed, the schedule of work, starting and stopping times,

and overtime required and all other matters concerning the Employer's operation not otherwise specifically dealt with elsewhere in the Agreement.

18. The Employer took the position that when article 16.06 is read in light of article 2.01, it is clear that the 2023 rebid process did not violate the Grievor's seniority rights. According to the Employer, article 2.01 allows the Employer to set the schedule of work, including the location of the work, the time of the work, the number of paramedics on each ambulance, and the certification level required of each paramedic. Once the schedule has been set, the employees then get to exercise their seniority to choose the shifts they want. Reading the provisions in this manner does justice to both provisions.

19. In further support of this position, the Employer noted that article 16.06 speaks of seniority as the deciding factor for, amongst other things, "schedule picks". This language presupposes the existence of a schedule to pick. The creation of the schedule occurs, according to the Employer, under article 2.01. It includes classifying the positions that fill the schedule as either PCPs or ACPs. Once that occurs, seniority is the deciding factor for schedule picks. The Employer argues that that is exactly what happened in this case and that as such there was no breach of the Collective Agreement.

20. There is nothing in article 16.06 (or anywhere else in the Collective Agreement) that gives the Union the right to determine the content of the schedule. Schedule picking and setting the schedule (including who will be working when and with what certifications) are distinct concepts. The County relied on the decision in *New Vista Care Home and British Columbia Nurses' Union*, 1988 CanLII 927 in support of this distinction.

21. The County also relied on *U.F.C.W., Local 175 and Pinty's Delicious Foods Inc.*, (2012) 219 L.A.C. (4th) 197 and *Peel (Regional Municipality) and U.F.C.W., Local 175*, 2018 CarswellOnt 22763 in support of its argument.

IV. Analysis

22. There is no dispute that seniority is one of the most fundamental and important benefits for bargaining unit members. Seniority can have wide-ranging implications for any number of employment situations, including but not limited to, lay-off, vacation scheduling, and as is the case in the instant matter, schedule selection.

23. Nor is there is any dispute that management rights are an important employer right. As is the case in the instant Collective Agreement, in general, management rights provisions set out that absent restrictions found in the Collective Agreement, management has a broad right to run its operations. Seniority is clearly recognized as one such restriction on management rights.

24. Finally, the parties agree that in interpreting the Collective Agreement, an arbitrator is required to give the words their plain and ordinary meaning, and, to read the terms harmoniously in the context of the Collective Agreement as a whole.

25. Applying these principles to the case at hand, I am satisfied that the 2023 rebid process did not breach the Grievor's seniority rights. I have reached this conclusion largely for the two following reasons. First, I agree with the Employer, that the right under 16.06 to pick a schedule on the basis of seniority presupposes the existence of a schedule to pick. In this case,

the right to create the schedule lies exclusively with the Employer under article 2.01. There is nothing in the language of article 2.01 or article 16.06 that limits the Employer's right to create the schedule. To the contrary, article 2.01 also includes a number of additional rights, including the right to determine "job classifications, the content of all jobs" as well the right to "direct and control operations, determine the number of employees to be employed, the schedule of work ... and all other matters concerning the Employer's operation not otherwise specifically dealt with elsewhere in the Agreement" that could all apply to varying degrees, to the creation of the schedule. Relying on this provision, I am satisfied that the Employer has the right to create a schedule, including a schedule that specifies that certain positions will be exclusively reserved for ACPs.

26. Of course, that is not the end of the analysis because, based on the language of article 2.01 the Employer's ability to create a schedule may be constrained by any other article in the Collective Agreement. There is no such article here. As argued by the Employer, article 16.06 presupposes the existence of a schedule, before it can then be picked on the basis of seniority. It does not give employees the right to create their own schedule.

27. The Employer's interpretation of articles 2.01 and 16.06 allows for a harmonious interpretation of the two articles. It gives the words used an interpretation that is consistent with their plain and ordinary meaning, and perhaps most importantly, it still recognizes the significance of employees' seniority rights in choosing shifts as part of the rebid process.

28. Second, I agree with the Employer that the Union's position has implicitly accepted that the employee's seniority rights under 16.06 are not the only consideration. The Union noted that it accepted the 2020 process.

However, I am satisfied that the end result of that rebid process is not meaningfully different from the 2023 rebid process. Under the 2020 rebid process employees would eventually come up against a minimum or maximum designation that limits their ability to bid on certain shifts within the schedule. That limitation is unrelated to their seniority and is not materially different than the limitations in the 2023 rebid process.

29. Accordingly and for all of the foregoing reasons this grievance is dismissed.

Dated this 19th day of May 2026.

“Adam Beatty”

Adam Beatty, Arbitrator