

IN THE MATTER OF AN ARBITRATION

Pursuant to the *Labour Relations Act*, 1995, S.O. 1995, c. 1, Sch. A

BETWEEN:

NORTHUMBERLAND HILLS HOSPITAL

("Employer")

– and –

ONTARIO NURSES' ASSOCIATION

("Union/ONA")

(Grievances #2023-02, 2023-04, and 2023-05
Re Premium Payment)

SOLE ARBITRATOR:

Jasbir Parmar

On Behalf of the Employer:

Steven Menard, Legal Counsel

Lola Obomighie, Vice President, People Culture, Organizational Effectiveness

Sara Richards, Manager, Human Resources

Kelly Watson, Payroll Coordinator

On Behalf of the Union:

Terence Wright, Legal Counsel, ONA

Amanda Lent, BUP, ONA

Catherine McDonald, ONA

Monique Korzeniewicz, Grievor

Heather McNair, RN

Cindy Sandercock, RN

Hearing held in this matter via videoconference on March 3, March 30, and May 25, 2026.

ISSUE

- [1] I have been appointed to determine two individual grievances, filed by Ms. Korzeniewicz, and one Union grievance. All three grievances relate to entitlement to the consecutive shift premium under Article G.4.e of the collective agreement. Specifically, the issues are:
- i) Whether a nurse is entitled to premium pay as a result of picking up additional shifts after the schedule has been posted, and
 - ii) Whether a specific type of shift, known as a “drop-in shift”, is to be considered in determining eligibility for the consecutive shift premium.

FACTS

- [2] The parties filed an Agreed Statement of Facts. They also called a number of witnesses. The Employer called Sara Richards, the Manager of Human Resources, and Kelly Watson, the Payroll Coordinator. The Union called: Amanda Lent, Bargaining Unit President since 2022; Cindy Sandercock, Bargaining Unit President from 2007-2017; and Catherine McDonald, the ONA Labour Relations Officer.
- [3] The material facts are not in dispute.
- [4] The dispute relates to nurses working a two-day/two-night (2D/2N) schedule. This schedule is based on a nurse working four consecutive days (two 11.25-hour day shifts and two 11.25-hour night shifts), followed by five days off. The collective agreement requires the Employer to post the schedule no less than four weeks in advance, covering a four-week period (known as the “posted schedule”). After the schedule is posted the Employer offers shifts as the need arises and nurses may voluntarily pick up these additional shifts.
- [5] Specifically at issue is Article G.4.e. It sets out exceptions to the general scheduling provisions, adapting them to the specific circumstances of the 2D/2N schedule. It states:
- e) The scheduling provisions contained in Article G.3 in its entirety are applicable save and except for the following:
 - i) Employees shall not be required to work more than four (4) consecutive tours. Where schedules do not conform to this, the employee shall be paid a premium pay for the fifth (5th) consecutive and subsequent day until a day off is scheduled.

- ii) Once the scheduling template is established and weekends are pre-established any change to a full-time employees' weekend will be paid at premium save and except where:
 - A) Such weekend has been worked by the employee to satisfy specific days off required by such employee; or
 - B) Such employee has requested weekend work; or
 - C) Such weekend is worked as a result of an exchange of shifts with another employee.

The part-time shall follows the current language in Article E.2.

- iii) The parties agree that additional hours are required to be added to the 2D2N schedule in order for full-time nurses to fulfil the 1950 hour annual requirement. It is understood that these hours shall not incur premium pay or be scheduled on a weekend and/or Statutory Holidays.

- [6] This provision was initially bargained in 2006, and there has been no change to it in any of the multiple successive collective agreements.
- [7] The Union alleges the Employer breached the collective agreement on two separate occasions.
- [8] On the first occasion, at the time the schedule was posted, the grievor was scheduled to work her 2D/2N rotation on January 21, 22, 23, and 24. Sometime after the schedule was posted, the grievor was offered and voluntarily agreed to work two additional day shifts, on January 19 and 20. She did work on both those dates, although she left early on the 20th, after five hours, due to illness.
- [9] As a full-time nurse, she was paid overtime for her shifts on January 19th and 20th. The Union asserts that she should have also been paid a premium for her shifts on January 23 and 24 in accordance with Article G.4.e(i), on the basis that those were the fifth and sixth consecutive days she worked. The Employer did not pay the premium, asserting that only shifts on the posted schedule are to be considered in determining whether the premium under this provision applies.
- [10] On the second occasion, at the time the schedule was posted the grievor was scheduled to work on February 15, 16, 17, 18, 19, and 20. February 15 was a drop-in shift. She ultimately worked on all those dates except for February 20, which she did not work due to illness.
- [11] The grievor was paid overtime pay for her shift on February 16. The Union asserts the grievor should also have been paid a premium for her shift on February 19, in accordance with Article G.4.e(i), on the basis that was the fifth consecutive day she worked. The Employer did not pay

the premium, asserting that drop-in shifts are not to be considered in determining whether a premium applies, pursuant to Article G.4.e(iii).

- [12] The grievances were all filed by or before March 8, 2023. After the filing of the grievances, the parties engaged in bargaining for the renewal of the collective agreement and exchanged bargaining proposals. One of the Employer's proposals was to eliminate Article G.4.e(i). A new collective agreement is now in effect, and the provision remains unchanged.

DECISION

- [13] The dispute is about the proper interpretation of Article G.4.e.
- [14] In interpreting collective agreement language, the goal is to give effect to the mutual intention of the parties as expressed in the words of the contract (*Sattva Capital Corp. v. Creston Moly Corp.*, [2014] 2 S.C.R. 633). Accordingly, I have given due consideration to the widely-accepted principles of collective agreement interpretation, as outlined in *Re Ontario Power Generation*, 2012 CanLII 81972:

17. 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 read in context that a different or special meaning is intended, or the plain and ordinary meaning result would be illegal or absurd. 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.

18. Although as a matter of general principle collective agreements must be interpreted in a manner which preserves the spirit and intent of the collective agreement, it is the words that the parties have agreed to use to express their intention which are of primary importance. The parties to a collective agreement are presumed to say what they mean and mean what they say. Allegedly missing words or terms cannot be implied under the guise of interpretation unless it is absolutely essential to the clear mutually intended operation of the collective agreement, or to make the collective agreement consistent with legislation which the parties cannot contract out of. Although much has been written about purpose, fairness, internal anomalies, administrative cost or feasibility, and what "should be", such considerations only come into play when the language is truly ambiguous and the arbitrator must apply established labour relations principles in order to choose between two or more equally plausible interpretations. The rights arbitrator's task is to determine what the collective agreement provides or requires, not what he or either party thinks it should say. If the language is sufficiently clear it must be applied as written regardless of any associated costs or administrative difficulties, or any apparent fairness of the effect on either party or the bargaining unit employees. The parties are entitled to no more or less than what the collective agreement stipulates,

and the wording of the collective agreement trumps all considerations other than legislation.

- [15] Both parties submit the collective agreement language is clear. However, they disagree as to its meaning, and specifically whether the premium applies when nurses pick up additional shifts after the schedule is posted.
- [16] The Union asserts that it does. The Union submits the two sentences in Article G.4.e(i) must be read together. The first sentence sets out a rule: nurses working 2D/2N schedules “shall not be required to work” more than four consecutive shifts. The Union notes that “required to work” has been interpreted to include both shifts on the posted schedule and additional shifts picked up after the schedule has been posted. The second sentence sets out the trigger for payment of a premium: “Where schedules do not conform to this”, the “this” being the prohibition set out in the first sentence. The Union submits that this means the premium is payable when a nurse works a fifth or subsequent consecutive day, regardless of whether she worked it because it was on the posted schedule or because it was an additional shift.
- [17] The Employer’s position is that the premium is only payable when more than four shifts are scheduled by the Employer at the time of scheduling (i.e. the posted schedule). The Employer submits that under Article G.4.e(i), the trigger for payment of the premium is not whether a shift is worked. Rather, the Employer submits, it is based on the “schedules”, and that the premium is payable for the fifth and subsequent consecutive shift “until a day off is scheduled”. The Employer submits that the specific word chosen is significant because it indicates the parties’ intention as to when premium pay applies. The Employer submits that in Article G.4.e the parties chose “schedules” and “scheduled” to describe when the premium is payable, and effect must be given to the choice not to tie payment of this premium to simply working a particular day. The Employer submits that its interpretation is further supported by the preamble in Article G.4.e (“the scheduling provisions contained in Article G.3 in its entirety are applicable save and except for the following”), arguing this means Article G.4.e is really about scheduling by the Employer.
- [18] I agree with the Union’s interpretation, and find it to be the only reasonable interpretation of this provision, when read in its entirety in the context of the collective agreement as a whole. In other words, I find the provision to be clear and unambiguous.
- [19] Article G.4.e(i) begins with a rule: employees shall not be “required to work”. As noted by the Union, this phrase has been widely and consistently held to include work that is offered to and voluntarily worked by a nurse after the schedule has been posted: see *Sault Area Hospital – and*

- *Ontario Nurses' Association*, (February 10, 2004) (Levinson); *MICs Group of Health Services – and - Ontario Nurses' Association*, 2012 CanLII 51944 (Rose); *The Ottawa Hospital – and - Ontario Nurses' Association*, 2018 CanLII 34647 (Slotnick); *Kingston General Hospital – and - Ontario Nurses' Association*, (September 5, 1995) (Knopf); *North Bay Regional Health Centre and CUPE, Local 139*, 2018 CanLII 39768 (Parmar); and *Halton Healthcare Services Corp. – and - Ontario Nurses' Association*, 2022 CanLII 41 (Gedalof). Given this caselaw pre-dates 2006, when this provision was added to the collective agreement, the parties can be presumed to have been aware of this when they negotiated the provision.

[20] The second sentence of Article G.4.e(i) sets out the trigger for payment of a premium: “where schedules do not conform to *this*”. In using the word “this”, the trigger is defined by reference to and incorporation of the rule set out in the first sentence. This can only logically mean the trigger for the premium is where “schedules” do not conform to the requirement that employees will not be required to work more than four consecutive shifts. It is also notable that the parties used the noun “schedules” to identify what must conform to the rule. As a noun, the focus is on the existence of a thing, rather than how that thing came to be. I find that in using the plural noun “schedules”, the parties meant the actual work schedule of the employee as well as the posted schedule. If the word “schedules” only referred to the posted schedule, as suggested by the Employer, that would not capture the full scope of the rule the parties agreed to in the first sentence of Article G.4.e(i). It makes no sense that the parties would have set a broad rule, defined the trigger for payment of the premium as non-conformity with that broad rule, but then intended the premium to be triggered only for some breaches of that broad rule.

[21] As for the fact that the consequence for the triggering event in Article G.4.e(i) is that the premium is to be paid for the fifth and subsequent consecutive day “until a day off is scheduled”, that speaks to how the payment of the premium comes to an end. In my view, the parties’ use of the word “scheduled” in defining when the premium payment ends is not a sufficient basis, when the provision is read in its entirety in the context of the collective agreement as a whole, to conclude that payment of the premium is triggered only by shifts scheduled by the Employer on the posted schedule and does not apply when additional shifts are picked up. For the purposes of the present case, it is sufficient to note there is no dispute that the days for which the grievor seeks premium payment were not days that were scheduled as days off, whether that be on the posted schedule or the grievor’s actual work schedule.

[22] In arriving at this interpretation, I have considered the fact that the parties used different language in dealing with consecutive shift premiums for nurses working extended tours. I refer to Article G.3.d, which states:

An employee shall not be required to work more than three (3) consecutive tours, unless otherwise mutually agreed. An employee shall be paid a premium rate of pay, as per Article 14 of the Central document, for a fourth (4th) subsequent and consecutive day of work until a day off is granted.

[23] The Employer submits that Article G.3.d demonstrates the parties know how to express their intention that the payment of a premium is to be based simply on the fact that a particular number of consecutive days are worked. The Employer submits that the interpretive principle that different words are presumed to have different meanings should be applied here, and that I should find the fact that the parties' choice of different words to address premium payment in G.4.e means they intended a different trigger than the nurse simply working the day.

[24] However, I am not persuaded that the language difference between Article G.3.d and Article G.4.e warrants a different conclusion with respect to the proper interpretation of Article G.4.e. The interpretive exercise must always be focused on the words used by the parties. Broad principles cannot override the plain and ordinary meaning of the words actually used, which must always be given "primary importance" (see *OPG*, above). That is why the interpretive principle that different words mean different things is described as a presumption. In the present case, the parties agreed to two separate consecutive shift premium provisions for extended tour nurses and for 2D/2N nurses. The need for a separate provision is obvious; 2D/2N nurses' schedules are structured around their working four consecutive extended tours, and so, but for a separate provision, premium payment would be triggered for 2D/2N nurses for each and every rotation they work. Notably, in the first sentence of both of these premium provisions, the parties articulated the same rule using the same words. In both cases, the parties agreed to place a limit on the number of consecutive shifts the nurses can be "required to work". In the case of the extended tour nurses, in Article G.3.d, the parties went on to define the trigger for the premium as a "fourth (4th) subsequent and consecutive day *of work*". While it is true that the parties defined the trigger for 2D/2N nurses in Article G.4.e using different words, they did so, as I already noted above, by referencing and incorporating the rule in the first sentence. That is, they defined the trigger for the premium as non-conformity with the rule that a nurse is not to be "required to work" more than four consecutive shifts. To put it another way, both triggers refer to work. I conclude the parties found different words to effect the same result: the triggering of a premium when the nurse's

actual work schedule, as a result of being required to work, has more than the set number of consecutive shifts, regardless of how those shifts came to be added to her actual work schedule.

- [25] I also do not find persuasive the Employer's submission that the fact Article G.4.e begins with the phrase "the scheduling provisions contained in Article G.3... are applicable" means that Article G.4.e is really a provision that speaks to scheduling done by the Employer (i.e. the posted schedule). The content of Article G.4 clearly goes beyond how the Employer prepares the posted schedule. I refer in this respect to Article G.4.e(ii), which clearly provides for a premium when there is "any change" to a full-time employee's weekend. Furthermore, Article G.4.e(i) is clearly intended to operate in place of G.3.d, which obviously applies to circumstances outside of the scheduling done by the Employer in preparing the posted schedule.
- [26] I note that my conclusion as to the proper interpretation of Article G.4.e(i) is supported by and consistent with the finding in *MICs Group of Health Services, above*, where the arbitrator was considering the exact same issue with the same collective agreement language for 2D/2N nurses and the same collective agreement language for extended tour nurses. The Employer contended that case was distinguishable on its facts, submitting that in that case the nurses' additional shifts were added to the posted schedule. With respect, that is, in my view, a misreading of the case. In fact, the employer in that case relied on the fact that there had been no change to the nurses' 2D/2N schedule (at p. 17). However, the arbitrator concluded there was a breach of the collective agreement on the basis that "their actual schedules of work did not conform to the [required] standard". Their "actual schedules of work" were the schedules that included additional shifts picked up after the schedule was posted.
- [27] That was the only case cited by either party which involved the same language that is before me. The cases cited by the Employer all had different language.
- [28] In *Peterborough Regional Health Centre and ONA*, 2012 CanLII 66188 (Parmer), the premium was triggered "if an employee is scheduled by the Health Centre", and the issue was whether an employee who voluntarily accepted a shift offered by the Health Centre had been "scheduled by the Health Centre".
- [29] In *Grand River Hospital Corp. and ONA*, [2007] O.L.A.A. No. 444 (Chauvin), there were two provisions at issue. In one, the rule was that no more than a set number of consecutive shifts "shall be scheduled", and the trigger for the premium was "for a fifth tour and subsequent tours". In the other, the rule was that "employees will not be scheduled to work more than" a certain number of tours, and the trigger was "should an employee work more than what is outlined above".

- [30] In *UFCW, Local 175 and Homewood Health Centre*, [2023] O.L.A.A. No. 115 (Kugler), the rule was that “employees on the extended tours shall be scheduled off every third weekend” and the trigger for the premium was “should the employee be scheduled to work”.
- [31] In *Kingston General Hospital and ONA*, [2001] O.L.A.A. No. 256 (Kennedy), the rule was that no more than a set number of consecutive shifts “may be scheduled”, and the trigger for the premium was “where an employee has been scheduled to work outside the regulations outlined above”.
- [32] None of these cases involved a rule using “required to work” along with a premium trigger using the noun “schedule” with incorporation of that rule. For that reason, I find them to be of little assistance.
- [33] In the event I found that the Employer’s interpretation of Article G.4.e was not the correct interpretation, the Employer submits, in the alternative, that extrinsic evidence supports its interpretation of the provision.
- [34] As noted by the Supreme Court of Canada in *Sattva Capital Corp.*, the task of interpreting a contractual provision must always be grounded in the text. To that end, objective evidence of the surrounding circumstances known to both parties at or before the execution of the contract may be considered. However, this evidence cannot be used to overwhelm the wording of the collective agreement, only to shed light on the mutual and objective intentions of the parties as expressed in the words of the contract.
- [35] This approach is consistent with that set out in *John Bertram & Sons Co. Ltd. – and - I.A.M., Local 1740* (1967), 18 L.A.C. 362, the seminal case addressing the use of past practice as an aid to interpretation. The arbitrator noted that evidence of past practice may shed light on the meaning of the provision as mutually intended by the parties, but cautioned that its use should acknowledge a party’s “opportunity to have the neutral interpretation of the terms of the agreement which it bargained for”. To that end, the arbitrator noted that past practice should only be used to aid in interpretation when there is “no clear preponderance in favour of one meaning, stemming from the words and structure of the agreement as seen in their labour relations context”.
- [36] Keeping those principles in mind, I turn to the evidence which the Employer seeks to rely on in support of its position as to the proper interpretation of Article G.4.e(i).
- [37] The Employer points to the evidence of Ms. Sandercock, who was the bargaining unit president from 2007-2017. She testified that it was her opinion that the Article G.4.e(i) premium did not apply to nurses who picked up additional shifts immediately before and contiguous to their 2D/2N rotation. While that may be Ms. Sandercock’s opinion, there is no evidence that she was involved

in bargaining when Article G.4 was added to the collective agreement; no evidence how she came to that opinion; and no evidence that she ever discussed this opinion with the Employer. As such, her opinion is not objective evidence of the background facts known to both parties at the time of bargaining and therefore does not displace the unambiguous language of the collective agreement: see *Sattva*, *above*.

- [38] The Employer also points to evidence about how it has applied Article G.4.e(i) since it was added to the collective agreement in 2006. The evidence indicates there have been numerous instances where 2D/2N nurses picked up additional shifts before their scheduled four consecutive shifts and the Employer did not pay the Article G.4.e(i) premium. This includes not paying that premium in that circumstance to members of the Union executive, including the bargaining unit president. During this time, the Union has never raised any objection and no grievance has ever been filed – until the instant grievances. In fact, there have been no discussions between the Union and the Employer about this provision between the time it was added to the collective agreement and the filing of the instant grievances.
- [39] In my view, the collective agreement language is clear, and the fact that the Employer applied the provision in a manner inconsistent with its clear meaning, without objection from the Union, does not change that. However, that evidence may be useful in establishing an estoppel. In fact, the Employer, in the further alternative, submits the Union should be estopped from relying on its strict legal rights.
- [40] The elements necessary to establish estoppel are not in dispute. There must be a representation by one party that they will not strictly enforce their legal rights; the representation must have been intended to be relied upon by the other party; and the other party must have relied upon the representation to its detriment.
- [41] In the present case, I find that all the elements have been met. The Employer had a long-standing practice of not paying the consecutive shift premium to 2D/2N nurses who picked up additional shifts, and the Union raised no objection. I find that the Union must have been aware of this practice, given the Union executive members were some of the nurses who were not paid this premium in this situation. All employees received or had access to paystubs indicating both their regular and premium pay for each pay period. I do not accept the Union's argument that the paystubs were "less than clear" just because they did not detail the reason for the premium. The nurse would have worked the shift and known what the premium was for. Conduct can constitute a representation, and I find that, in the present case, the Union's silence did just that. I also accept that the Employer relied on this representation to its detriment. This is not speculation. In the

bargaining round that followed the filing of these grievances, the Employer tabled proposals relating to Article G.4.e. This evidence is a reasonable basis to infer that they would have done the same earlier if they had known the Union intended to assert its legal rights under the collective agreement.

[42] I turn now to the first grievance. I find that Article G.4.e(i) entitles the grievor to the premium for her shifts on January 23 and 24, 2023. These were the fifth and sixth consecutive days of her actual work schedule. However, I find that estoppel applies to bar the Union from asserting her rights under that provision.

[43] As for the second grievance, there is no dispute that the grievor worked more than four consecutive shifts and that these shifts were on the posted schedule. However, the Employer submits that the first of those shifts should not be counted in determining whether she was required to work more than four consecutive shifts because it was a drop-in shift, referring to the additional hours 2D/2N nurses are periodically scheduled to work. The Employer relies on Article G.4.e(iii), which I set out again for ease of reference:

The parties agree that additional hours are required to be added to the 2D2N schedule in order for full-time nurses to fulfil the 1950 hour annual requirement. It is understood that these hours shall not incur premium pay or be scheduled on a weekend and/or Statutory Holidays. *[Emphasis added]*

[44] The Employer submits that, because “these hours”, meaning the drop-in shift, “shall not incur premium pay”, the drop-in shift cannot be used to establish entitlement to a premium.

[45] I find that the agreement that “these hours shall not incur premium pay” means that a nurse cannot claim a premium for “these hours”. It does not mean that a nurse cannot claim a premium for other hours: see *Niagara Health System – and – Ontario Nurses’ Association* (January 4, 2005) (Devlin). The grievor’s drop-in shift was on February 15. She claims entitlement to premium pay for February 19. That was her fifth consecutive day, and Article G.4.e(i) requires her to be paid premium pay for that day.

[46] The Employer submits that the Union should also be estopped from asserting its rights in respect of this grievance, relying on the evidence that the Employer has never paid the Article G.4.e(i) premium. However, the evidence is the Employer has never paid this premium because the Employer intentionally does not schedule more than four consecutive shifts in making the posted schedule. Ms. Richards testified that even drop-in shifts are scheduled in a way that they do not attach to the consecutive two days and two nights, and that if it did happen then it would have

been an error. In other words, there is no evidence of any practice of the Employer scheduling nurses more than four consecutive shifts and not paying the premium.

DISPOSITION

- [47] The grievances are upheld in part.
- [48] Article G.4.e(i) entitles a nurse to premium pay when she works more than four consecutive shifts, regardless of whether those are shifts scheduled on the posted schedule or they are additional shifts picked up after the schedule is posted.
- [49] The grievor is not entitled to a remedy for her first grievance, relating to her claim for premium pay for January 23 and 24, 2023, because estoppel applies.
- [50] The grievor is entitled to premium pay for her shift on February 19, 2023.
- [51] I remain seized with respect to any issues relating to implementation.

DATED THIS 8th DAY OF SEPTEMBER, 2026.

"Jasbir Parmar"

JASBIR PARMAR, Sole Arbitrator