HUNTER-LIBERATORE-LAW

Healthcare Update – November 2023

a) Premium Pay – Nurse was entitled to premium pay for working a 5th consecutive shift

- ***Ontario Nurses' Association v Quinte Health Care Corporation*** **(Albertyn, October 19, 2023)**

This grievance concerned yet another claim for premiums related to working an extra shift.

The Local Agreement between the parties states that:

> No more than four (4) consecutive shifts shall be scheduled. The four (4) consecutive shifts will consist of two (2) eleven and one-quarter (11.25) hour days immediately followed by two (2) consecutive eleven and one-quarter (11.25) hour nights followed by five (5) consecutive days Premium will be paid, as per Article 14.03, for a fifth (5th) tour and subsequent tours save and except where:
>
> A) The fifth (5th) extended tour is worked to satisfy specific requested days off requested by the employee; or,
> B) The fifth (5th) extended tour is the result of an exchange with another employee.

The grievor was scheduled for four consecutive shifts on a Saturday, Sunday, Monday and Tuesday. The Hospital offered her an additional shift on the Friday preceding her scheduled shifts. She accepted the additional shift.

The grievor was paid a premium for her Friday shift and was paid at straight time on Saturday through Tuesday.

ONA filed a grievance claiming that the grievor was entitled to premium pay for the Tuesday, since it was the fifth day in a row that the grievor would be working. The Hospital argued that this would constitute pyramiding, and that the grievor was not entitled to premium pay for 2 shifts within the same 5-day period.

The arbitrator found that it does not matter that the nurse was asked to come in and work, and that she voluntarily accepted the shift, stating:

> [39]It cannot be that the parties have agreed that a nurse will waive an entitlement to the 5th and subsequent consecutive extended shift premium just because the shift was not scheduled.

The grievor was entitled to premium pay for the Tuesday shift. The pyramiding provisions did not apply since the premiums were not paid twice for the same shift.

b) Wage Classification – No agreement reached between the parties at job evaluation meeting

- ***Royal Ottawa Health Care Group v Canadian Union of Public Employees and its Local 942*, (Albertyn, November 7, 2023)**

The hospital added two new positions to the bargaining unit: the Operational Stress Injury (OSI) Program Assistant and the Ontario Structured Physiotherapy (OSP) Community Program Assistant.

The hospital and the union conducted a joint job evaluation meeting with two representatives each from the management and the union. Based on a number of factors, the parties engaged in a scoring exercise and determined that the two roles fell within the range of wage band 10.

At the end of the meeting, the hospital indicated that it would have to go and check the scoring by making comparisons for equity purposes with other positions in the hospital.

The union claimed that there was a binding agreement to place these positions in wage band 10. The hospital claimed that there was an understanding that the scoring exercise was not finalized until the equity comparisons were completed.

The hospital reassessed the scoring in light of other job evaluations that had been completed in recent years, and determined that the new positions should be placed at wage band 9. The hospital asserted that no agreement had been reached and that it was entitled to place the employees at wage band 9.

The arbitrator agreed with the hospital that no agreement had been reached:

> [46] I conclude from the above that the Union never considered Ms. Sargent's proposed revisions to be a violation of a firmly concluded agreement resolving all issues associated with the job grading of the two positions. The Union was aware of the process, of the need for consistency across the bargaining unit, and for a comparison to be done with the scoring of other comparable positions.

The issue was remitted back to the parties for further discussion.

c) Rate of Pay – Grievor with voluntary demotion was allowed to be paid at a rate that did not reflect her experience

- ***Canadian Union of Public Employees Local 1623 v Health Sciences North, 2023 CanLII 105756*, (Schmidt, November 13, 2023)**

The hospital's wage grid was arranged into a system of wage classifications, based on the type of role, and Year classifications, based on the employees' experience.

The grievor successfully bid for a full-time permanent OR Tech role. The hospital set her wage rate at the first step of the higher classification that was greater than the employee was receiving immediately prior to promotion. This was the Year 1 rate where she was in the Year 3 rate in the lower rated position. There was evidence that the grievor previously held the OR Tech role and had worked her way up to the Year 3 rate. The union argued that she was entitled under the collective agreement to earn the Year 3 rate for the OR Tech position and should not be required to start again at the Year 1 rate.

The collective agreement contained the following provisions:

> 9.07(B) PORTABILITY OF SERVICE
>
> An employee hired by the Hospital with recent and related experience may claim consideration for such experience at the time of hiring on a form to be supplied by the Hospital... Where in the opinion of the Hospital such experience is determined to be relevant, the employee shall be slotted in that step of the wage progression consistent with one (1) year's service for every one (1) year of related experience in the classification upon completion of the employee's probationary period. It

is understood and agreed that the foregoing shall not constitute a violation of the wage schedule under the collective agreement.

20.03 – PROMOTION TO A HIGHER CLASSIFICATION

An employee who is promoted to a higher rated classification within the bargaining unit will be placed in the range of the higher rated classification so that he shall receive no less an increase in wage rate than the equivalent of one step in the wage rate of his previous classification (provided that he does not exceed the wage rate of the classification to which he has been promoted).

The hospital argued that since the grievor previously opted to transfer into a lower classification, nothing in the collective agreement language required her to maintain her Year 3 rate in the OR Tech position.

The arbitrator found that the collective agreement provisions relating to "recent and related experience" only applied to new probationary employees, and not to the grievor.

The arbitrator found that the collective agreement did not require that the grievor be placed at the higher end of her wage classification, stating, "such results are arguably unfair and anomalous, but they are not absurd." It is simply a situation in which the terms bargained for by the parties led to an unforeseen result. The grievance was denied.

d) Interest Arbitration- Arbitrator awards settlement voted down by the membership

- ***London Hospital Linen Service Inc. (LHLS) v Unifor, Local 27*, (Albertyn, November 6, 2023)**

The employer, a hospital laundry services provider, and Unifor, drafted a Memorandum of Settlement for a renewal of the parties' collective agreement.

The bargaining unit members overwhelmingly voted not to ratify the collective agreement that had been presented for their approval.

The employer and Unifor proceeded to interest arbitration.

Both the employer and Unifor argued that the Minutes of Settlement be incorporated into the arbitrator's final award, without modification of any kind.

The arbitrator found that the Memorandum of Settlement was a clear indicator of what could be accomplished during free collective bargaining. He found that the goals of replication were achieved by adopting the Memorandum of Settlement, and that the proposed terms represented significant financial improvements for the bargaining unit. He imposed a collective agreement, containing the terms set out in the Memorandum of Settlement, for a 3-year term.

e) Interest Arbitration – Standby employees not entitled to 10 hours of time off

- ***Royal Victoria Regional Health Centre, Barrie v Ontario Nurses' Association*** **(Price, October 31, 2023)**

The board of arbitration was convened to determine whether standby employees should have their entitlement of time off increased from 8 hours to 10 hours.

The board dismissed ONA's proposal and upheld the 8-hour status quo. Based on the practices of other hospitals, the board determined that the replication principle favoured the practice of 8-hour time off entitlements:

> [13] In our view, the principle of replication weighs against granting ONA's proposal. In this regard, we note that a relatively small minority of the collective agreements at other hospitals throughout the province provide for 10 hours or more off between the end of a call-back shift and the nurse's return to regular duties. Moreover, with only one exception, RVH's comparators in nearby communities provide for the same eight (8) hours' off between call-back shifts and the return to regular duties that is reflected in the current provision. We also agree that the evidence fails to establish a demonstrated need to amend the standby provision, which was freely negotiated during collective bargaining for the 2011-2014 contract.

The union's 10-hour time off proposal was rejected in favour of maintaining the status quo.

f) Interest Arbitration – Wage band changes ordered

- ***Grand River Hospital v Ontario Nurses' Association*** **(Price, October 24, 2023)**

The arbitrator in an interest arbitration ordered that the Resource Nurse and Charge Nurse positions be moved to a higher wage classification, per the union's proposal.

The arbitrator decided that awarding the union's proposal would best satisfy the principle of replication since it mirrors changes made by other hospitals:

> [11] In the case at hand, the principle of replication weighs heavily in favour of granting ONA's proposal. In this regard, we note that by the date of the hearing, ONA and 16 other hospitals had freely negotiated comparable changes to their Charge Nurse/Permanent Team Leader wage rates. This is not surprising because it simply does not make sense to pay those providing oversight and/or having overall responsibility for patient care as part of their permanent roles less than those who fill in for them on a temporary basis.

Nurse positions with oversight responsibilities were entitled to be placed higher on the wage grid.

g) Interest Arbitration – Increases of 7.5% over 2 years

- ***United Food And Commercial Workers, Local 175 v Homewood Health Centre*****, (Randazzo, November 13, 2023)**

The employer and the union disagreed over the appropriate general wage increase for employees.

While the employer is a private addiction and mental health facility, the board of arbitration determined that public hospitals are appropriate comparators to use.

The board stated that increased inflationary pressures must be taken into consideration when determining the appropriate wage increases.

The board ordered a 2-year collective agreement with general wage increases of:

- 3.5% effective July 17, 2022;
- 0.5% effective January 1, 2023, and;
- 3.5% effective July 17, 2023.

The board further approved special increases of:

- $2.00 per hour for Registered Practical Nurses effective the first full pay period following the date of the award, and
- 6% for employees in skilled trades effective July 17, 2022, in addition to the general wage increase described above.

Other outstanding issues were remitted back to the parties for further consideration.

h) Interest Arbitration – Proposals for scheduling changes

- ***Joseph Brant Hospital v Ontario Public Service Employees Union, Local 206*, (Schmidt, November 13, 2023)**

There were two issues upon which the parties remained in dispute:

- The hospital posts a 6-week shift schedule on 4 weeks' notice. The union sought to have a 10-week schedule posted on 6 weeks' notice.
- The hospital identifies evening shifts as being from 3:30pm-11:30pm and night shifts as being from 11:30pm-7:30am. The union sought to define separate hours for the Lab and the Diagnostic Imaging departments.

The union argued that both proposals were supported by past practice which had since been terminated. The board rejected this argument, stating that the union could not rely on practices that used to exist when the hospital's position was normative.

The union's proposal for a 10-week schedule was dismissed. The union failed to show a demonstrated need for this proposal.

The board also declined to award the union's proposal relating to evening and night shifts. The board was not convinced that this proposal would

replicate an agreement that would have been reached by the parties in free collective bargaining.

i) Interest Arbitration – Wage increases of $8.25 over two years

- ***Brightshores Health System v Ontario Public Service Employees Union, Local 260 (Service)*, (Steinberg, November 20, 2023)**

The board of arbitration ordered the following collective agreement terms for a 2-year collective agreement terminating on September 30, 2023:

- General wage increases of 4.75% in October 2021 and 3.5% in October 2022;
- $2.00 wage increase for all Personal Support Workers effective April 2022;
- $2.00 increase in the maximum Registered Practical Nurse rate effective August 2023;
- Increase of shift premiums from $1.20 per hour to $2.26 per hour;
- Increase of weekend premiums from $1.20 per hour to $2.77 per hour;
- Increase vision benefits from $300 every 24 months to $450 every 24 months, and;
- Introduce mental health services by a Psychologist, Registered Psychotherapist or Social Worker (MSW) covered up to a maximum of $800 annually.