

IN THE MATTER OF AN INTEREST ARBITRATION ESTABLISHED PURSUANT TO
THE BINDING ARBITRATION FRAMEWORK:

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO
(as represented by the Ministry of Health)**

(the “Ministry”)

- and –

THE ONTARIO MEDICAL ASSOCIATION

(“the OMA”)

BEFORE THE BOARD OF ARBITRATION:

Arbitrator: William Kaplan
Ministry Nominee: Dr. Kevin Smith
OMA Nominee: David Wright

May 6, 7 and 8, 2024

BOOK OF AUTHORITIES OF THE MINISTRY OF HEALTH

Craig Rix
Hicks Morley
Barristers & Solicitors
craig-rix@hicksmorley.com

Bob Bass
Bass Associates
bbass@bassassociates.com

Michele White
Bass Associates
mwhite@bassassociates.com

Tab	Authority
1	<i>Service Employees International Union and Local Unions v. A Group of 46 Hospitals</i> , June 1, 1981
2	<i>65 Participating Hospitals and CUPE</i> , Re, 1981 CarswellOnt 3551
3	<i>Ottawa (City) v Civic Institute of Professional Personnel</i> , 2022 CanLII 6819 (ON LA) [Ottawa]
4	<i>Dana Manor and Service Employees International Union, Local 201</i> , November 2 1994
5	<i>Participating Nursing Homes and Service Employees International Union Local 1 Canada</i> , September 27, 2012
6	<i>Dufferin County Board of Education and District 48 of the Ontario Secondary School Teachers' Federation</i> , March 19, 1979
7	<i>Ten London Area Nursing Homes and London and District Service Workers' Union Local 220</i> , May 19, 1987
8	<i>Participating Hospitals and London and District Service Workers' Union Local 220</i> , January 18 1982
9	<i>Metropolitan Toronto Boards of Education</i> , March 3, 1976
10	<i>Re Board of School Trustees, School District No. 1 (Ferne) and Fernie District Teachers' Association</i> , 1982 CanLII 5072 (BC LA), < https://canlii.ca/t/jmlj2 >
11	<i>Pembroke v. Pembroke Professional Fire Fighers' Association</i> , [2000] O.L.A.A. No. 612
12	<i>A Group of 46 Hospitals and Service Employees International Union, A.F. of L., C.I.O., C.L.C., Locals 183, 204, 268, 478, 532 and 777</i> , August 31, 1982
13	<i>Extendicare, Bestview Health Care and Diversicare and Ontario Nurses Association</i> , January 15, 1986
14	<i>Participating Hospitals and ONA</i> , July 20, 2023
15	<i>Service Employees International Union Locals 183, 204, 268, 478, 532, 777 and A Group of 43 Hospitals</i> , June 19, 1978

A-351

B-103

PLEASE RETURN

In The Matter of The
Hospital Labour Disputes Arbitration Act

Between: A Group of
46 Participating Hospitals

(the Hospitals)

And: The
Service Employees International Union and Local Unions

(the Union)

Board of Arbitration: Paul Weiler, Chairman
T.W. Sargeant, Hospital Nominee
Stephen Lewis, Union Nominee

For the Hospitals: R. Bass - Counsel

For the Union: S.E. Roscoe - Counsel

Hearings: April 13 & 14, 1981 - Toronto

Award: June 1, 1981 - May 31/82

A-351

A-351

I.

This Arbitration Board has been constituted to hear a dispute between the Service Employees International Union (the SEIU) and certain of its Locals on the one hand, and 46 Ontario Hospitals on the other hand. These Participating Hospitals, whose negotiations are coordinated by the Ontario Hospital Association (the OHA), engage in centralized bargaining with the SEIU for 10,000 service workers in these acute-care hospitals in Ontario. This year the parties have been unable to reach a new collective agreement. Under the Hospital Labour Disputes Arbitration Act, compulsory interest arbitration is the procedure for resolving such an impasse in settling the terms of the agreement. Hearings in this matter were conducted in Toronto on April 13 and 14th and this is our decision as to the issues in dispute at the central bargaining table.*

II.

The crucial issue in this arbitration is the amount of the basic wage increase. The SEIU has asked for a \$3.00 an hour increase in a one-year contract, a breathtaking 46% hike in the current average rate of \$6.21 an hour. Superimposed on this proposal are requests for substantial further adjustments to the higher rates¹ classifications within the unit, a full COLA clause which would guarantee the employees against any erosion by inflation of the immediate real value of the new wage levels, and some 30 additional demands for improvements

*As is customarily the practice, this award has been authored by the Chairman of this Board. Thus, while I have phrased our actual decisions about the issues in the plural, I have used the first person singular in my statement of the reasons, so as not to impute my views to my colleagues on the Board.

in fringe benefits and contract language. In total, the SEIU ^{would} position _A produce nearly a 100% jump in the overall compensation package, or an additional 150 million dollars in labour costs for these units alone at these 46 hospitals. On the surface this might seem a rather extreme position to advance. However the SEIU has presented a detailed and systematic case ~~XXXXXXXXXX~~ to document its claim that its members ^{have} _A fallen badly behind in their wage position and thus deserve a hefty contract settlement this year. The Hospitals themselves perceive that the SEIU units are entitled to a significant catch-up increase, although nowhere near the figure proposed by the SEIU. In this setting, it would seem appropriate for this Board to sketch the general principles of wage determination which has ^{governed} _A our disposition of this case.

The ideal towards which interest arbitration aims is to replicate the results which would be reached in a freely-negotiated settlement. Negotiators at the bargaining table typically work towards a figure which will protect the worker against unanticipated inflation and provide real income gains to the extent that these are permitted by rising productivity in the economy. It is important to emphasize that the rise in the cost of living--whether measured by the Consumer Price Index or otherwise--is not the be-all and end-all of rational wage determination. If there is real per capita growth in the economy, wage gains can and do exceed the rate of price inflation. That was the happy experience of Ontario workers in the Sixties and early Seventies, when real wage gains averaged 2% or so annually. Unfortunately the Ontario economy has not generated real per capita growth in recent years. Thus there has not been that type of economic surplus to distribute in collective bargaining. In fact, recently even the annual rate of price in-

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flation has not been met. The reason is that much of Ontario's inflation is due to unfavourable trends in its external terms of trade: whether because of higher energy prices which accrue primarily to the benefit of Albertans, because of the decline of the value of the Canadian dollar which affects the relative prices of its imports and exports, and so on. If the level of Ontario's Gross Provincial Product (GPP) is growing at no more^{than} 10 or 11% a year (in nominal terms) this establishes the parameters within which income gains are feasible for Ontario workers as a whole, irrespective of whether price inflation is now at a 12 or 13% pace (just as happened earlier in the decade when the converse was true and the GPP was rising faster than the CPI).

The implication I draw from this premise is that the key ingredient in interest arbitration must be movements in relative wages. Binding arbitration is very much the exception rather than the rule in Canadian industrial relations. The appropriate standard for decisions in this sphere should be drawn from external collective bargaining between sophisticated union and management negotiators whose bargains are shaped by these real economic forces.

The problem of course is to determine which external settlements are the relevant ones. The SEIU emphasized one comparison: between the "cleaner" rate in its unit and the janitor employed by the Toronto Board of Education, a benchmark which the Union claimed had been used in the 1974 hospital negotiations. Undoubtedly the gap has widened between these two rates in the last five years, though not as much as the SEIU calculates. But surely, as a matter of plain common sense, one cannot peg the wage

Increases for 37,000 unionized service workers in hospitals

all across Ontario (and, indirectly, for the other 90,000 hospital employees whose wages must bear some relationship to those in the service units) to a rate which happens to be established in bargaining between a single local union and a single public employer in one city, for one classification covering a hundred or so employees. That would be a classic example of a tiny tail wagging a huge dog.

In my view it is also fallacious to compare the actual wages paid to Ontario hospital workers to their counterparts in other provinces. It is what happens in the Ontario economy, and to other workers in this province which is most relevant to the claims of Ontario hospital workers who are paid from this economy and spend their wages in it. To the extent that inter-provincial comparisons are to be used, more sophisticated ratios must be calculated between hospital wages and the respective industrial composite average wage, in order to evaluate how fairly Ontario has treated its own. But even in this exercise, one must be careful to look at the time frame in which the different provincial agreements are negotiated and wage increases are implemented, before making judgments about whether the historical experience ^{has been} good or bad.

In the final analysis, Ontario hospital workers are entitled to compensation which is equitably related to what other Ontario workers (and taxpayers) earn. Appropriate guidelines for the hospital sector as a whole must be drawn from free collective bargaining conducted outside the shadow of binding arbitration (whether for hospital workers, policemen, firefighters, or what have you). Ideally the crucial pattern-setting negotiations (or arbitration) in any one bargaining round in the hospitals

should be based on wage gains and key rate comparisons within the unionized private sector, whose collective bargaining is directly exposed to these real-life forces and constraints of the market. The best source of such a reference point is foundⁱⁿ the settlement data compiled by the Ontario Ministry of Labour.

III.

If we were to concentrate simply on this factor, the relevant figures from the current Ministry data would permit just a 10% increase on the average rate across the SEIU unit, and 11% on the base rate in the previous contract. Two correctives must be supplied to use of this ^{single} criterion. First, it is quite unfair to look simply at comparative percentage increases negotiated within any one year. Such a narrow focus penalizes those units whose unfavourable experience in previous years has impacted on their actual wage rates to which such percentage figures are applied. Next, while wage movements in the Ontario economy must be the main reference point for the hospital sector as a whole, these external comparisons do not always dictate the actual results in a single set of negotiations for an individual bargaining unit. Individual relativities within the Hospital system are also terribly important. This point has been brought home vividly to this Chairman who is acting in the same capacity in the arbitration of the contract dispute between the Canadian Union of Public Employees (CUPE) and the 63 Ontario Hospitals with which that Union conducts centralized negotiations.

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There are some 235 public hospitals in Ontario employing approximately 125,000 people. About 75,000 of the latter are unionized. Two key unionized groups are the nurses, 26,000 of whom are represented by the Ontario Nurses Association (the ONA), and the service workers, 37,000 union members divided primarily between CUPE (17,000) and the SEIU (14,000). In terms of both law and management, their employers are the individual hospitals, who themselves operate within a variety of bargain structures (most under the auspices of the OHA). But in terms of finances, the ultimate paymaster is the Ontario government and the Ontario taxpayer, and everybody knows that. All ^{these} service workers have the same skills and do the same work within the broader acute care hospital system. If there is marked deviation in the wages and contract conditions as between one hospital and another, for no other reason than that the Unions and their negotiations are different, the sense of inequity felt by those who do worse is quite understandable (and it is reinforced within those hospitals, such as McKellar in Thunder Bay and St. Josephs in Toronto, whose service workers are actually divided between CUPE and SEIU locals, for special historical reasons). Thus, another vital objective which the ^{hospital} wage determination system must pursue (whether in negotiations or arbitration) is achieving essentially the same rates and benefits for such different unionized groups.

This is an idea much easier to espouse than to achieve. There ¹² are ¹² trade unions operating in Ontario hospitals, having a total of 619 separate agreements with 127 hospitals. These contracts expire on many different dates, staggered throughout a bargaining round (whose starting and finishing point may itself be sometimes difficult to locate). In recent years there has been a movement towards centralized negotiations in the system, since the report

of the Johnston Hospital Inquiry Commission. In the service sector for example, CUPE now negotiates on behalf of 16,000 employees with 65 Participating Hospitals, while the SEIU negotiates on behalf of 10,000 employees with these 46 Participating Hospitals. As well, Local 220 of the SEIU negotiates on behalf of another 3,500 employees in 16 hospitals in Southeastern Ontario.

However, substantial the strides which have been made on this voluntary footing, the process is still far from complete. In particular, there is no prospect on the horizon for CUPE and the SEIU coming together in a single bargaining council. Each of these unions still jealously guards its autonomy and maneuvering room. As a result, while one union may settle at the bargaining table, another may go to arbitration. Even if both go to arbitration they may do so at different times; and unless they have agreed to a specific common expiry date, their contracts will expire one year from whatever happens to be the date of their respective awards (a result dictated by the Hospital Labour Disputes Arbitration Act).

Much of the inequity complained of by the SEIU in this case is attributable to precisely this structure. In 1974, both CUPE and the SEIU achieved breakthrough settlements to approximately the same level. Throughout the period of the Anti-Inflation Program, this parity was maintained. But the pattern was broken in 1979, the first set of negotiations free of wage guidelines. The SEIU and its hospitals ^{voluntarily} agreed to a two-year contract--from April 1, 1979 to March 31, 1981--containing an overall 72 cent wage increase. However, CUPE, whose agreement also expired on March 31, 1979, went to arbitration and did not agree to a two-year term. That meant its contract would expire a year from its award--as it turned out, on September 28, 1980. But the

arbitration board gave CUPE a 70 cents wage increase, about the same as had been won by the SEIU, but in an eighteen-month rather than a two-year agreement. As well, CUPE won a reduction in the weekly hours of work--from 40 to 37 1/2 hours--with no reduction in monthly salary. The latter change meant that the effective hourly rate in the CUPE contracts jumped another 6 1/2% for the time actually worked by each employee.

This year, the CUPE award, authored by the same Chairman as here, is being issued on this same day. That Arbitration Board had an opportunity to canvass essentially the same economic data as was presented to this Board. Notwithstanding the claims made by CUPE, it found only a modest erosion in the real relative hourly wages of CUPE members since 1975, itself justifying only a modest component in the wage increase. Assuming relative wage movements of 10-11% a year in Ontario (in the face of 11-12% anticipated annual inflation), the ultimate award to CUPE was for 80 cents and 85 cents a year in a two-year agreement in increments effective at different points in the life of the contract.

For reasons of internal wage relativities which I sketched above, it would be unfair to the SEIU members to hold them to these same arithmetic figures, let alone the percentages they represent (which themselves are somewhat higher than external wage gains in Ontario this year). To their credit the Hospitals and the OHA recognize that they must pay the immediate price in order to establish a sound, long-range connection between the CUPE and SEIU contracts. Thus, a substantial catch-up increase is warranted in this award.

In the first place, the existing 40 hour week in the SEIU unit must be reduced to the 37 1/2 hour norm established by the

Brown award in 1979, again without a drop in monthly pay. We award that this reduction in hours be made effective on July 1st, a one-month hiatus which we assume will give the hospitals time to plan for and implement the new system smoothly. This change alone will provide an effective 43 cent increase in the hourly rate paid to the average worker covered by this award.* Additionally, the SEIU members must receive 65 cents an hour effective on April 1, 1981 and another 15 cents an hour on June 1st of this year. The result of these changes will be to equate the wage gains won in the SEIU and CUPE units in the past 5 years (although not necessarily the wage rates in any one classification).

For the last part of this contract a further adjustment must be made, in the other direction. This SEIU collective agreement will expire on June 1st 1982, while the CUPE contract will endure until September 28, 1982. The SEIU members shall receive on October 1, 1981, the same 50 cent increase as is awarded to CUPE to protect against projected inflation throughout the remainder of the SEIU agreement. The CUPE Board has awarded a further 35 cent increase effective June 1st 1982, payable over the last four months of that contract. Needless to say, this increment will not be paid under the SEIU agreement which will have expired on May 31, 1982, leaving this Union free to negotiate whatever wage increases in that time frame seem appropriate in light of the prevailing economic conditions.

*In calculating the actual hourly increases due in each classification (because of this reduction in the work week with no reduction in weekly pay), these new hourly rates should be derived from the weekly salary levels which obtained on March 31, 1981, before the increments applied on April 1, 1981, and June 1, 1981. We do not intend that the wage increase which flows from the reduction in weekly hours should be escalated even further by being stacked on top of these additional wage hikes.

From one perspective this is a very sizable wage^{increase}, especially when viewed in pure percentage terms. We have awarded the SEIU increments of \$1.30 over the fourteen month life of the contract, to which must be added the 43 cents an hour increase which effectively flows ~~XXXXXXXXXX~~ from reducing the work week to 37 1/2 hours with no loss in weekly pay. This \$1.73 total

represents a 17.6% hike in the unit's average rate of \$6.21, and more than 30% on the base rate of approximately \$5.70 (and it is the latter figure, recall, which is comparable to the Ministry of Labour data referred to above). Reducing these figures to annualized terms, this award represents a 23% yearly increase in the average rate and 25% on the base. Such numbers embody a very substantial catch-up component indeed.

As we noted earlier, the Hospitals accepted the inevitability of increases of nearly this magnitude in order to bring the SEIU contract in tandem with that of CUPE. (And perhaps a more realistic way of appraising this award is to see it as actually encompassing a 20-month period, because it extends backwards in time to include the wage increase which is received by CUPE for its new contract in the period running from September 22, 1990 through March 31, 1991. A significant portion of this \$1.73 increase, though, stems from the 37 1/2 hour work week which had been won by CUPE in the 1979 Brown award, but not^{yet} achieved by the SEIU. There was a suggestion from the Union that this gain should not be treated as an improvement in its compensation package, because it does not put any more money in the weekly pay cheques of the employees. I doubt that the^{typical} Ontario worker (some of whom would be in SEIU units in the private sector),

he does
 if ^{unit} receive \$248.40 for a 40 hour work week (this being the
 SEIU average of \$6.21 an hour would so blithely disregard
 a 6 1/2% increase in his leisure time through introduction
 of a 37 1/2 hour week, while still ^{leaving him} with the same \$248.40
 weekly pay cheque. In any event, the actual wage ^{increments} of
 \$1.30 an hour still represents 17.4% and 19% a year increases
 in the average and base rates respectively, compared to the
 current Ontario ^{settlement} figures of 10% and 11% respectively.

The magnitudes of these wage hikes have led us to space the later
 increments over the life of the contract, during the same period
 when the service workers are experiencing the inflation for which
 these increases are meant. This feature of our award will reduce
 the actual money cost which must be absorbed by the Hospitals in
 the next year, while giving the SEIU members the end rate levels
 in their contracts which leave them fully caught-up to the real
 and relative value of the 1975-76 breakthrough plateau.*

*I have gone back and calculated the percentage increase in
 the Ontario Industrial Composite from both March 1975 and March
 1976, projected through to the end of this contract in May 1982.
 I have then compared this with the percentage increase in the SEIU
 hourly rates generated by this award by that date. The results
 leave the SEIU member slightly ahead of their counterparts in the
 Ontario work force during either the seven or the six year time
 frames. Thus, absent an entirely unanticipated take-off in wage
 inflation in the next 12 months, there can be no argument from
 the SEIU for catch-up the next time around.

There is another crucial ingredient of the wage issue. The Union seeks a cost of living provision to protect whatever wage increase^{it} wins in this award. The Hospital vigorously opposes the introduction of any such COLA clause. They point out that there are no examples anywhere in the Ontario Hospital sector of such a contract provision. That last argument has something of a dubious Catch-22 flavour to it as far as I am concerned. In effect, it is asserted that arbitrators should not order a COLA clause until and unless they find a precedent freely negotiated by a Hospital (or perhaps only by a number of Hospitals). But no Hospital, knowing that Ontario arbitrators are acting on this principle, would likely be persuaded to grant the first COLA clause at the bargaining table. In my view, Hospital arbitrators should now address the notion on its intrinsic merits, as a matter of industrial relations principle rather than pure hospital/arbitral precedent. Because debate about this topic usually attracts more heat than light, I shall examine it with rather more detail than usual.

Unquestionably a persuasive case can be made for some form of protection of hospital workers against the type of inflation which has been experienced in Canada in recent years. If at the outset of a contract the employer is prepared to pay its employees a certain real value for their services, why shouldn't these nominal dollars be adjusted to keep pace with future increases in the price of the goods upon which these workers must spend their pay cheques?

The real issue, though, is not about the necessity for adjustment of wages to price inflation. It concerns the mechanism by which this is accomplished. A COLA clause is not the only contract provision designed for this purpose. Only too often it

is forgotten that such is the primary role of the normal process of contract negotiations. Parties at the bargaining table sit down, make estimates of future inflation, and agree to wage increases which will accommodate them. If their estimates are off (either up or down) appropriate adjustments can be made in the next set of negotiations in their ongoing relationship.

I found it troubling that this Union's proposal totally ignores these simple facts of collective bargaining life. SEIU wanted a COLA clause which provided for monthly adjustments of 1% in the wage rate for each 1% increase in the CPI

during the life of the contract. But the major ingredient in the general wage increases which it sought (and the one which we awarded) was protection against anticipated inflation during that same period. Thus SEIU's COLA clause would in effect, double-count the inflation which took place throughout the collective agreement. The Union cannot have it both ways. If its members are to have the assurance of a total COLA provision against inflation as it occurs, then they are not entitled to any immediate fixed increase in anticipation of that same inflation. (And since the Ontario economy has not been growing in real per capita terms in the last several years, the only specific wage hike which would be warranted would be the once-and-for-all catch-up increase..

By and large, employees do prefer the certainty of fixed contract increases (as do their employers who can plan their pricing decisions accordingly). Both sides then take the chance that their inflation projections will prove inaccurate, especially during a multi-year collective agreement. A COLA clause is a device for reducing this risk for the employees. But any such COLA provision will take quite a different form than the one proposed by SEIU. It

would be triggered only when inflation passes the level (here 11-12%) for which the built-in wage increase was designed. Following this logic, the trigger will often be set slightly above that inflation rate (perhaps at 13-14%). The reason is that if the inflation pace were to slow (to 9-10% from its current 12%), the COLA clause would not operate to cut the agreed wage increase. As well, much if not all of the wage increase is normally introduced at the start of the contract.

This means that the employees in question will enjoy substantial real income gains during much of the contract, gains which are only gradually eroded near its end. It is for these reasons that active wage earners operating with fixed increases under collective agreements fare somewhat better than do old age pensioners who rely solely on after-the-fact COLA increases.

Does this mean that a more sophisticated COLA clause, one designed with such a trigger, is warranted? Not necessarily. There are further complications in the process of inflation adjustment which must be confronted.

In particular there is the issue of what measure of inflation is to be used for revising the wage levels. The customary response is the consumer price index. But the fact that this is the practice does not make it economically sensible. There are two significant defects in undue reliance on the CPI. One is the fact that any measurement of the price of a fixed basket of goods takes no account, in the short run at least, of changing economic responses to sharp differences in relative prices which make up the overall price level. The GNE Price Deflator for Personal Consumption Expenditures is a much better measure of the actual

impact on consumers of rising prices (and I have advocated the use of the latter in the Ontario Workers' Compensation System).

Much more important is this problem. While either the CPI or the GNE Price Deflator may establish a prima facie claim for an income adjustment, neither of these guarantees that the economy is generating the wherewithal to pay for it. This is of obvious concern to the private employer which has no insurance that its own sales revenues will increase proportionately to general price inflation. Such an argument of simple inability to pay does not apply to the government which can use its compulsory taxing power to raise the monies which it needs to fund a COLA provision. But the underlying principle remains the same. As I noted earlier, the fact that domestic price inflation reaches a certain level does not mean that the Gross Provincial Product is increasing at the same rate. If the reason for the increased price of certain key consumer goods--now, energy in particular--is that wealth is being transferred from Ontario citizens to producers outside, such that our GPP is growing by only 10% while the CPI is rising at 12%, then the Ontario economy as a whole cannot provide everyone with an income increase which will match this inflation rate. In such unhappy circumstances, the Ontario citizenry as a whole must absorb an overall 2% cut in its real income. If some people avoid that result (perhaps because they enjoy a full COLA clause), then the rest have to tighten their belts even further to absorb this lucky group's share. Absent a special claim to a catch-up increase to make up ground lost to past inflation, it is hard to see why people who happen to work for the government should be entitled to this protection from inflation which

not everyone can have.

The fact that I am skeptical of the virtues of a simple guaranteed full COLA clause, tied to the CPI in this way, does not mean that I see no virtues in a more flexible mechanism for inflation adjustment. The high and volatile inflation we have experienced in Canada in the last decade has acted as a deterrent to the negotiation of relatively long-term collective agreements, which otherwise would provide valuable employment stability to employees, their unions and their employers. I have always been attracted to the notion of a limited wage reopener as a more balanced response to this problem. This provides the employees with the reassurance that if inflation suddenly spurts past the level which was anticipated by their union representatives when they negotiated their wage increase, they have the chance to achieve an additional adjustment. But the employer is not tied to a single CPI figure which may have no relation to the revenues which it needs to pay for such an adjustment. Instead, both sides must focus on the actual economic trends as of that point of time. What is the level of unanticipated inflation? Was it internally generated, in which case the government at least is likely to enjoy matching revenues from its current taxation rates, or was it externally produced, in which case some income shortfall will be needed? What has been the previous experience of this group of employers relative to inflation under earlier contracts? What is their actual level of current incomes, and do these leave them with such a relatively low level of discretionary income that the current inflation is inflicting particular hardship on them? None of the relevant questions are answered by a simple simplistic formula tied to the CPI. In my view the parties should retain

the flexibility to tailor their inflation adjustment to the complexities of their own concrete situation.

Of course, one price of the latter such mechanism is that it takes some time and effort. In the hospital sector, for example, as and when the provision was triggered at a certain level of unexpected inflation, negotiations would have to take place. If these were not completed according to a specified time table, arbitration would be required. I am satisfied that this could be accomplished relatively expeditiously, given the will on both sides to make it work. Ontario arbitrators should now give serious thought to this as a sensible alternative to the polar options now put to them: either a COLA clause or no inflation protection at all. But these simple logistical problems dictate that the device should only be used as the quid pro quo for a long-term contract for two years or more. Here, the collective agreement is to cover only 14 months, of which two have already passed and been taken account of. Our award is actually projected just 12 months into the future, during which time we have guaranteed these hospital workers wage increases which are based on anticipated price inflation of approximately 12% and average wage gains of about 10% during this time frame. Should even these estimates be overtaken by economic events, this would not happen until near the end of the contract. Given that, the parties can readily make allowances (in whichever direction this is warranted) in negotiations for renewal of the collective agreement. Thus, while I have dealt with the issue in some detail in this award, in deference to the arguments of the parties, our ultimate decision is to reject both a COLA clause and this wage reopener alternative.

Up to this point we have dealt with just the issue of the basic across-the-board wage increase for this bargaining unit, together with the problem of how best to cushion these wage gains against future inflation. As in any set of negotiations, there remain on the table a variety of demands for changes in contract language and improvements of contract benefits--some thirty or so items from the Union alone. Since these so-called fringe benefits now amount to fully 30% of the total labour costs for the hospital service worker, it is important to carefully scrutinize these remaining issues.

I have always thought it essential not to look at any such item in isolation. With rare exceptions any such proposed improvement looks plausible on its face. The Union can point to some number of bargaining relationships where this point has already been conceded. It may even be true that, taken one by one, no single revision will actually cost that much. But, cumulatively, these changes can mount up substantially. Thus, sophisticated parties in free collective bargaining look upon their settlement as a total compensation package, in which all of the improvements are costed out and fitted within the global percentage increase which is deemed to be fair to the employees and sound for their employer that year. In fact, the general wage hike itself generates corresponding increases in the vast bulk of the compensation package represented by the wages, since it increases the regular hourly rate upon which holidays, vacations, overtime and other premiums depend. This means that in any one negotiating round only limited room is left available for improvements in the

scope and number of these contract revisions, and the Union must establish its own priorities among ~~XX~~ these various fringe items.

These facts of free collective bargaining must be kept in mind if arbitration is, indeed, to try to replicate the results which would be achieved in the former setting. The reason is that the arbitration model does not inherently require the parties to make these tough choices in their negotiating positions. Inside the bargaining unit, for example, one group of employees may want higher pensions, another segment seeks longer vacations, a third is interested in a new dental plan, while others simply want as much higher take-home pay as possible (depending on their respective positions, ages, family situations, and so on). In the arbitration context, the Union does not have to worry that if it asks for too many things at once, the result will be a painful work stoppage. Indeed, the Union may be tempted--as also the Employer which has its own diverse constituencies which it does not want to alienate--to carry all of these initial demands forward to the arbitration hearing, on the theory that it has nothing to lose by asking. And perhaps a party may even hope that the more improvements it does ask for, the more will be given. Certainly it is essential to the integrity of arbitration that these latter assumptions not be reinforced.

Another important implication of the realities of collective bargaining is illustrated by the facts of this case. The main priority of the SEIU in this bargaining round has been its quest for a major gain in the wage schedule, on the grounds of catch-up. In this arbitration award, we have accepted the validity of the Union's basic argument, although not of its ultimate numbers,

and we have awarded a very substantial wage hike. If this Union were negotiating with one of its private sector employers, enjoying the right to strike in a system of free collective bargaining, we are sure that it would have had to, and would have been happy to, rest content with this achievement, accompanied perhaps by a number of marginal improvements in selective fringe benefits. But in this arbitration proceeding, the SEIU also asked for a 36-hour week (four 9-hour days) sharp increases in the length of vacations, an extra statutory holiday, five floating personal days off each year, a new notion of longevity pay, and on and on. In my view, to put it bluntly, this is not the year for any such giant steps forward (and I doubt that any year would be the right year for doing them all at once).

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Having said that, this Board is prepared to award a number of incremental changes to the existing benefit structure, some of which the Hospitals themselves have offered in negotiations:

(a) Vacations:

The current vacation entitlement is 2 weeks vacation after one year, 3 weeks after 4 years, 4 weeks after 12 years, and 5 weeks after 20 years. We award 3 weeks after 2 years, 4 weeks after 10 years, and 5 weeks after 20 years. We direct that no changes should be made in the language of this provision, nor in the way that vacation pay is currently calculated.

(b) Health and Welfare:

As of July 1, 1980, the employer's share of CHIP premiums should be raised to 100% wherever it is now

less than that, its contributions to the extended health care plan should rise from 50% to 75%, for group life insurance from 75% to 90%. As of October 1, 1981 the dental plan should be improved to the Blue Cross Plan Number 9, using the Ontario Dental Association Schedule for the current year, with 50% of the premiums to be paid by the hospitals.

(c) Bereavement Leave:

One day's paid leave should be granted in the case of the death of these in-laws: sister, brother, son, and daughter.

(d) Shift Premium:

As of June 1, the shift premium should be raised from \$1.65 an hour to \$2.10 an hour.

(e) Stand-By and Call-Back Pay

As of June 1, stand-by pay should be raised from \$1.00 an hour to \$1.25 an hour, it should be paid throughout the stand-by period even if the employee is called in to work, but the Hospital should be entitled to make as many calls during this period as are required.

(f) Education Leave:

The Hospital shall pay the cost of courses it requires for employment qualifications, and shall grant leave of absence with pay to write the examinations for such courses.

(g) Maternity Leave:
minimum

The ^A period of employment required before the expected date of birth should be reduced from 12 months to 10 months, the maximum length of leave should be

extended from 17 weeks to 6 months, competitive seniority (although not benefit seniority) shall accrue during this period, and the Hospital shall be entitled to 2 weeks notice as to when the leave is to begin, when it is to be extended, and when the employee proposes to return to work.

(h) Workers' Compensation:

Accrual of competitive seniority shall be maintained during absences of up to one year as a result of a compensable disability.

(i) Meals on Overtime:

When an employee is required to work overtime for three hours or more, he/she shall be entitled to a meal allowance of \$4.00.

(j) Reporting Pay:

The new standard clause proposed by the Union is awarded, with the added condition that reporting pay will not apply if the employee receives notice not to report for work at least one hour before the scheduled start starting time.

(k) Uniforms:

The clause in the SEIU Local #220 agreement shall be adopted here, requiring the hospital either to supply and launder uniforms or to provide a uniform allowance of \$40 a year.

(l) Size of the Negotiating Committee:

We award the payment of time spent on central negotiations in accordance with the language of the CUPE agreement, up to a maximum of 7 designated members of the Union's central committee, to be effective the

next set of negotiations.

These are the changes in monetary benefits which we have decided to award this year. The others sought by the Union are rejected. There were a number of revisions requested in pure contract language as well, of which we award as follows:

(a) Promotion to Higher Classifications:

We award the language ultimately proposed by the Hospitals in their brief.

(b) Straight Time Rate of Pay:

We award the standard definition as proposed by the Hospitals, on the understanding that this was not intended to affect the nature of and entitlement to additional premiums.

(c) Change of Carrier:

We award the Hospitals the standard contract language it seeks to permit substitution of carriers in its benefits package, provided the benefits are substantially the same/and on our assumption the latter would be an arbitrable issue under the contract.

(d) Leaves of Absence:

We award the contract language proposed by the Hospitals which essentially provides for accrual of seniority and service during unpaid leaves of absence for up to 30 days, suspending further accrual after that, with the exception of cases of maternity leave and compensable disability which were dealt with above.

VII

There are several other items which warrant further comment over and above our eventual disposition of them:

(a) Shift Changeover

The Union was concerned about the impact of shift changeover

on the length of time normally enjoyed off work on the weekly schedule, and sought language which would guarantee a fixed minimum number of hours between the end of one shift and the beginning of the next. We are not in a position to confirm or to reject the Hospital's concern that this is simply unworkable given the current manpower levels. It is clear, though, ^{that} the introduction of the new 37 1/2 hour week will generate new problems of scheduling in its own right, ^{and} we are satisfied that the current contract period must be devoted to sorting out these. If shift changeover remains or grows in difficulty,

this should be documented by the Union and brought to the bargaining table (or the arbitration forum) in the next round, at which time the feasibility of its proposals can be appraised in a more informed fashion.

(b) Pension Plan Representative: The Union seeks to have a representative of all the hospital unions appointed to the Hospitals of Ontario Pension Plan Committee. We endorse the view that the hospital workers deserve some voice in the affairs of a system which deals with large amounts of their compensation package (as the Hospitals' brief itself characterizes pension contributions) and which vitally affects their post-retirement income security. Unfortunately, there is considerable doubt whether this arbitration board has jurisdiction over an institution which affects many other hospitals and trade unions. We understand that the Ontario Ministry of Labour is now attempting to develop arrangements by which the Hospitals and the Unions in this sector will agree to an adequate form of employee representation. We believe that these voluntary, informal efforts should be given the chance to succeed (and we are pleased to note that the Hospitals

and the OHA both endorsed this Ministry effort). Only if it does not should the matter be brought back to the forum of binding arbitration in the future, where the technical jurisdictional issues may have to be sorted out.

(c) Sick Leave and Transfer to HOODIP: The Union sought a substantial improvement in the sick leave plan in those Hospitals where it now exists: in particular to increase the accumulation of sick leave credits to 1 1/2 days per month up to a maximum of 150 days (from the current levels which range up from a minimum of ^{one} day per week and a 90 day maximum). However, it appears to be conceded by both sides that HOODIP, ^{an} integrated disability plan which now exists in the other Hospitals, is much the better scheme for attacking the problem of income maintenance during illness.

Thus it would a retrograde step to expend part of this year's overall compensation package to improve the inferior sick leave notion. In our view the only change that should be made in the current system is to allow the employees in each Hospital unit not yet covered by HOODIP a fixed period under the new contract to decide whether they wish to transfer to the latter plan.

(d) Contracting Out:

Here the positions of the parties were ^{diametrically} opposed. The Union wanted a total ban on any contracting out of its bargaining unit work, while the Hospitals wanted the deletion of any reference to contracting out wherever it now appears in a local Hospital agreement. In my view the Union position is a species of overkill. There are many reasons why subcontracting of jobs by a hospital makes good sense in organizational and/or technological terms, and where it has no affect at all on the job security of the hospital employees themselves. Even where a subcontract does result in the layoff of one or more hospital

workers, this means ^{the} that work is performed by other service workers (ironically, many of whom are members of the SSIU itself). True, the hospital employee does have a legitimate claim to be cushioned against this disruptive impact (and a variety of contract measures can be and have been devised for that purpose). Still, I am not persuaded ^{that} the hospital bargaining unit should be protected by an absolute barrier against any such incursions, no matter what the relative economic gains for the system as a whole.

On the other hand, I have always been troubled by subcontracts which are motivated solely by lesser wage rates and contract benefits paid to new workers who now perform these jobs, often inside the employer's premises. Whatever be the legality of this action under the standard interpretation of the collective agreement, this does seem to me to be a form of bad faith in ^{the} negotiation of the contract (or a threat to the system of arbitration if the latter was the source of these contract benefits). Again, the difficulty faced by this arbitration tribunal is that we have no clear sense at all of either the dimensions ^{of} or the reasons for the current pattern of subcontracting in Ontario Hospitals. In this situation we are inclined to move cautiously. At a minimum, the Union should be notified by the Hospital of any contracting out of work normally performed by bargaining unit members, so it can investigate and document the circumstances. Secondly, where any such subcontract would result in the layoff or downgrading of current employees, the Hospital must meet 30 days beforehand with the Union to consider steps to minimize the adverse affects upon the employees concerned. Upon this footing, we assume the Union should be in a much better position to evaluate the true serious-

and
ness of this problem to develop a case for further measures if
these do seem warranted.

VIII

The matters discussed so far in this award concern ^{the} collective agreement for full-time employees. As is customary in the acute care hospitals sector, a substantial number of part-time employees work in these Hospitals. Of the 46 Participating Hospitals in these centralized negotiations, there are a total of 30 part-time bargaining units represented by the SEIU, some of them with their own separate collective agreements, others with ^{to the} addenda ^{to the} full-time agreements. Much of the contract structure designed for the full-time group is applicable to the part-timers. Not surprisingly the latter present distinctive problems of their own. A number of such issues were left to this arbitration board to deal with.

The Union sought to establish the basic principle that all provisions of the full-time collective agreement must apply to part timers except ^{where} specifically noted. It also wanted part-time employees to take with them all seniority rights if and when a full-time position was obtained (and vice versa). We are not prepared to award these blanket provisions. These are the types of issues that should be fully explored in negotiations with all of the ramifications laid bare. Ideally, the parties would reach agreement on the issues presented but, if not, those still in dispute would have been isolated for fully-informed judgment by the arbitration board. This did not happen this time around. Indeed, the only point about part-timers which the parties did agree to was inconsistent with the thrust of the Union's proposal: i.e., to the effect that the full time call back and standby provision was to apply only to part-time employees actually

placed on standby by the Hospitals (and we confirm this clause in this award). For this bargaining round at least, we will leave the current situation as it is, and award that the revisions in this award shall apply to part-time employees in the same form ^{and} A to the same extent that the basic provisions now apply to the latter in their respective collective agreements.

There was a second very important issue raised regarding part-time hospital workers. The vast majority of fringe benefit and schemes in the full-time agreements do not now apply to part-time employees: in particular, sick leave, the pension plan, and the health and welfare package. In just about all of the Hospitals where the part-time employees are represented, they are given a payment in lieu of such benefits, sometimes 20 or 30 cents an hour, but usually 10% of their hourly wage rate. This is done both to ensure that part-time employees actually receive fairly comparable total compensation for doing the same work which is performed by full-time employees, and also to protect the compensation package which the Union has negotiated for the full-timers from erosion through excessive use of part-timers. While maintaining this basic principle, the Hospitals seek to change the form of payment by which it is achieved A. The Hospitals propose a new arrangement whereby the part-time employees will be given an opportunity to participate in the group plans, with the Hospitals paying a pro rata share of the premiums (proportionate to the number of hours worked by each part-timer relative to the full-time schedule).

There are admitted virtues to this concept. Those part-timers who would like to have the advantages of the benefits in a group

plan, one which almost invariably is cheaper than coverage for a single person, would be given the opportunity to do so. On the other hand, those part-time employees who choose not to participate in the plans would not be paid at a rate that is higher (now 10%) than the wage rates paid to permanent employees for doing the same work; since some permanent employees may well have chosen to stay out of the plans (to save their share of the premium cost when their spouse has already obtained the family benefit elsewhere).

However, there is a major practical difficulty with this Hospital proposal, whatever its abstract virtues. Take the case of the dental plan, for example. The Hospital now pays 50% of the premiums. If a part-time employee regularly works only 1/3 of the full-time work week, the Hospital under its proposal would pay only 1/6 of the premium (1/3 of 1/2). To take advantage of this Hospital offer, the part-timer would have to pay the other 5/6 of the premium from a monthly salary which is just 1/3 the norm. The same would be true of OHIP, extended health care, life insurance, and the pension plan (as and when the latter is brought into the Hospital scheme). Inevitably the part-timer could and would take advantage of only one or two of these fringe benefits, ^{the ones} if that. As to the others, which were not opted for, the employee would lose the entire benefit of the Hospital contribution, thus defeating the basic purpose of Hospital payment for this part of the compensation package which is represented by fringe benefits.

Just as is true in other parts of this award, we believe this Board should be conservative in altering an established principle such as this one which now obtains in the part-time agreements. I want to make clear that I am not suggesting that the novel approach brought by the Hospitals is undesirable in principle

Indeed, the parties may well want to turn their minds to alleviating the basic difficulty which I have noted. If a "cafeteria" approach were adopted to fringe benefits for part-timers, the latter might well be allowed to select a single preferred benefit and have the entire cost of the employers' overall premium contributions for full-timers rolled into this one plan (one which might not be available at the spouse's place of work). But for this year, the current practice of paying ^a percentage in lieu of benefits should continue. Given that the quality of these fringe benefits and the employer's share of the premiums has been enhanced somewhat for full-timers, the employers payment in lieu for part-timers should be increased: from 10% to 12%, and in corresponding amounts for those hospitals which now pay on a different basis.

IX

Another important issue presented to this Board concerned special rate adjustments to certain classifications. In particular the Union sought a dollar an hour increase in the maintenance classification and for ambulance attendance, a 70 cents an hour increase for Registered Nursing Assistants, and reclassification of Cooks as a trade, equivalent to a Painter, which would generate approximately a dollar an hour increase for this group. The Union did not favour us with an estimate of ^{the} cost implications ^{of} these adjustments. My rough calculation (assuming these classifications comprise some 40% of the bargaining unit and the weighted hourly average of the adjustments is 80 cents) is that this would entail another 5% increase in the total wage increase from the current rates. And, needless to say, the Union proposes that these adjustments should be awarded on top of the general

wage increase, already amounting to 27% by the end hourly rate.

In my view this is an entirely misguided approach to wage determination, whether in collective bargaining or interest arbitration. I do not deny that the Union has made a case that its top-graded classifications have fallen somewhat behind their counterparts outside the hospital: e.g., the maintenance trades and construction units, and the RNA's and the Registered Nurses. This is an inevitable result of the Union's collective bargaining philosophy of consistently pursuing cents-per-hour, across-the-board wage increases. No matter how fairly the unit as a whole is treated, its higher classifications are going to lag behind ^{under} such an approach (and, of course, its lower-rated classifications are going to move ahead). ^{The} A standard tack in Hospital negotiations is to calculate an overall percentage increase in wages ^{one} which hopefully is fair in terms of relative wage movements, inflation, real growth in the economy and so on, and then to apply this percentage to the average hourly rate to the unit as a whole (here \$6.21). Then the parties (or the arbitrators) grant the single cents-per-hour figure which they ^{have} _A calculated to all of the classifications in that unit. Inevitably the electrician at \$2.00 or the RNA at \$7.00 is not going to preserve the real wage position which is being sought for the unit as a whole, while the Maid-Aide, now paid at about \$5.75 an hour, is going to make much higher real gains. Presumably the Union believes this result to be fair, in that the lower-paid jobs in each unit should be given higher percentage increases than the higher-rated ones. But if that is its point of view, and if it persuades the Hospitals to accede to it, then the Union should not be surprised that the top rate in the RNA classification is persistently lagging

behind the Registered Nurse whose union, the ONA, typically negotiates percentage increases.

The solution to this problem is not to be found in negotiating a general wage increase along one track, and then seeking to stack sizable rate adjustments on top, in amounts which have been developed along a totally different track. If the treatment of the higher-rated classifications in this unit is believed to present a real problem, the solution must be found in a different approach to distributing the overall compensation increase which appears to be justified for the bargaining unit. The members of the SEIU must realize that in an era when all, or nearly all, of the ~~XXXXXX~~ wage increase is designed to keep workers even with the rate of inflation (because there has been little or no real, per capita increase in the Gross Provincial Product), the persistent use of flat, cents-per-hour increases inevitably means that the RNA's are being asked to take a real wage cut every year to afford the Maid-Aide a real wage gain. Now that the Union has succeeded in its major catch-up effort in this bargaining round, it may want to rethink this philosophy for the next set of negotiations.

For these reasons we reject the Union's demand for this set of major rate adjustments. However, we do note that in the CUPE award (as in its original memorandum of settlement) there are adjustments totaling 30 cents for the ^{skilled} maintenance trades. True, as the Hospitals here point out, the SEIU trade rates would be essentially in tandem with those of CUPE at the end of this contract without such an adjustment. However, we are reluctant... to deny the SEIU any benefit from this trade adjustment on these grounds, since other SEIU rates (most notably, the RNA rate) are lower than CUPE's and the overall average in its contract

would thus lag behind. This is the solution which appears to us to be the most sensible. We award the SEIU the value of the CUPE maintenance adjustment, discounted to 25 cents an hour because of the shorter length of the SEIU agreement (of which 15 cents is to be payable on April 1st and 10 cents on October 1st). We invite the parties to meet and to negotiate about the disposition of this additional component in the overall compensation package, perhaps to remedy other rate discrepancies such as for the RNA (in amounts which are suitably weighted to the differences in the hours worked in the RNA classification as a whole, relative to the maintenance trades). Absent agreement by the parties to such an alternative by July 1 (or such other date as the parties reach and agree to for their discussions), we order that the skilled trades' rates be increased in the amounts and at the times noted above.

X

A final problem with which this Board must deal is produced by the still tenuous state of centralized bargaining in Ontario Hospitals. The terms of the collective agreement vary a great deal XXXXXXXXXXXX across individual Hospitals. It is a lengthy process to standardize the level of benefits and relevant contract language. This means that some employees are ahead (at least as to one contract provision) while others are behind (though perhaps the latter fare better in other respects). Nor is it the case that when the parties agree on a uniform standard in their centralized negotiations that this inevitably matches the highest plateau reached at any of the Hospitals. Thus the problem of "superior benefits". Should they be cut back to the common level at the same time that others are being raised up to the norm?

Or should they be preserved--"red-circled" as it were--until the other hospital units catch up, presumably using the superior benefit as their target?

Understandably the Hospitals object to the latter being the automatic result. From their point of view, centralized bargaining should be seen as involving some give and take on the part of both sides. If everything moves in only one direction, if no hospital is able to improve its contract language to levels earlier obtained by its counterparts, what incentive would be left to the employers to join in centralized bargaining with the Union.

There is a good deal to that argument as a matter of logic, but less in terms of pragmatic industrial relations. Like it or not, once a group of workers achieve a plateau, they stick to it stubbornly, unwilling to retreat from it, and certainly not without themselves receiving some gain in return. And it is terribly difficult to persuade a group of service workers in an Ottawa hospital, for example, to dilute a benefit level which they have enjoyed for some time, simply because another hospital, in Thunder Bay, for example, is ~~XXXXXXXXXX~~ prepared to improve that benefit for its local Union. If the latter tack is insisted on simply because negotiations are centralized, the inevitable result will be to feed dissident opposition to ratification of the ultimate settlement.

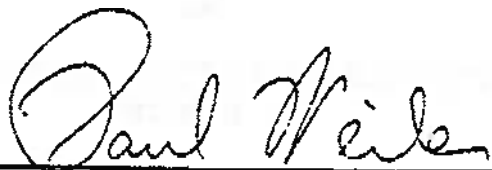
While I do believe in a strong presumption in favour of preserving superior benefits, I do not favour writing this into the contract as an automatic unyielding rule, as the Union proposed here. There is a practical difference between a tangible contract benefit, regularly enjoyed by a number of employees in a unit--

where the better provisions should be red-circled--and the development of technical contract language which only remotely and indirectly affects the current employees--where standardization should be able to be pursued in mature collective bargaining. Examples of the latter in this award are the language in the standby clause about the number of recalls, the requirement of two weeks notice in the maternity leave provision, the condition that reporting pay is not payable if notice is given not to report, the definition of straight-time rate of pay, the new clauses for promotion to a higher classification,^{and} for change of carrier, and the general language regarding preservation of seniority and unpaid leaves of absence. In all of the other revisions which we hereby award, superior benefits are to be maintained where they do exist.

XI

This award is to be effective on June 1, 1930. The new wage rates and the higher payments in lieu of benefits for part-time employees are to be retroactive to April 1st of this year in the amounts specified. These retroactive increases are to be paid in respect of all work done within the unit since that date. As to employees who have terminated their employment since April 1st, notice should be given by their respective hospital to the last known address, and the employee in question should have 30 days within which to claim the retroactivity payment. As is customarily the case under the Act, this Board remains seized of the case until a collective agreement has been drafted and put into effect, in order to deal with any disputes which may arise under this award.

June 1, 1981



Paul C. Weiler
Chairman

"T. W. SARGEANT"

Tim Sargeant
Hospital Nominee

MR. SARGEANT CONCURS SUBJECT TO
THE OBSERVATIONS IN THE STATEMENT
ATTACHED.

"STEPHEN LEWIS"

Stephen Lewis
Union Nominee

DISSENT TO FOLLOW -
SEE ADDENDUM

IN THE MATTER OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT

A GROUP OF 46 PARTICIPATING HOSPITALS
("the Hospitals")

AND

THE SERVICE EMPLOYEES INTERNATIONAL UNION AND LOCAL UNIONS
("the Union")

ADDENDUM

As the Chairman makes clear in the award, when he has written in the singular, those are his personal views and should not be imputed to his colleagues. Thus, while I am in agreement with the award, I am not in agreement with all the reasoning expressed by the Chairman in the award, especially his views on cost-of-living, contracting out, and benefits in lieu for part-timers.

Having stated that and indicating that I am not in disagreement with the Chairman as to the final award, I think two comments from my point of view are appropriate.

First, I would have preferred to see in the award some type of pro rata formula applied in relation to the benefits credited to part-timers rather than a straight percentage in lieu. However, the Chairman has indicated that this issue may be resolved in the future by some variation on the Hospitals' proposal and it is my hope that this indeed may come about.

Second, in relation to wages, as the Chairman has pointed out in his award, this is a very major award in percentage terms and in real terms. While I am concerned with the amount of the award granted, the Chairman has made it clear that he has based this award on the award that he has made in the C.U.P.E. arbitration, and on a consideration that parity of rates between these two bargaining groups (i.e., C.U.P.E. and S.E.I.U.) was justified. With this latter objective I am in complete agreement. Thus, given the wages awarded to C.U.P.E. and given the objective of parity of rates between these two bargaining groups (as argued by the Hospitals), I cannot disagree with the wage settlement as proposed for this group. I have thus signed this award based on these considerations.

T. W. Sargeant

May 20, 1981.

ADDENDUM FROM STEPHEN LEWIS, PRELIMINARY TO DISSENT

For reasons most will understand, I have not had an opportunity in the last couple of weeks to draft the dissent which this award demands. When I do so, I intend to differ with the chairman on several specific matters, chief among them the question of wages.

Everyone had hoped that Professor Weiler would provide the definitive award. He has not done so. Despite the learned analysis, and unusually lucid presentation, all that has been accomplished is to reduce the levels of inequity. The award is still a long, long way from economic justice.

Sadly, the hospital workers, even with the increases in this award, are simply restored to the approximate levels of 1975-76 relative to other organized workers in Ontario. No additional money has been provided to compensate them for the substantial losses in real income which they suffered in the interim. That is entirely unacceptable.

The Chairman, albeit a distinguished arbitrator has, on this occasion, done little for the cause of compulsory arbitration. Indeed, the reputation of the arbitration process has been dealt another blow.

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A-350

B-102

In The Matter of The
Hospital Labour Disputes Arbitration Act

Between: A group of
65 Participating Hospitals

(the Hospitals)

And: The
Canadian Union of Public Employees and Local Unions
(the Unions)

Board of Arbitration: Paul Weiler, Chairman
S.E. Dinsdale, Hospital Nominee
A.S. Tirrell, Union Nominee

For the Hospitals: Yves Campeau
Robert Bass

For the Union: P.J. O'Keefe
W.F. Brown

Hearings: April 6 & 7, 1981 - Toronto

Award: June 1, 1981 - *Sept 30/82*

A-350

I.

This Arbitration Board has been constituted to hear a dispute between the Canadian Union of Public Employees (CUPE) and certain of its Locals on the one hand, and 65 Ontario hospitals on the other hand. These Participating Hospitals, whose negotiations are coordinated by the Ontario Hospital Association (the OHA), engaged in centralized bargaining with CUPE for 6,000 service workers in these acute care hospitals in Ontario. This year the parties have been unable to reach a new collective agreement. Under the Hospital Labour Disputes Arbitration Act, binding interest arbitration as the procedure for resolving such an impasse and settling the terms of the agreement. Hearings in this matter were conducted in Toronto on April 6th and 7th and this is our decision as to the issues in dispute at the central bargaining table.

II.

The events which led up to this arbitration were highly-publicized and well-known. Normally I would be reluctant to narrate the emotional details here. However, some of this background is directly relevant to the issues which we must resolve. Thus, I shall recite the events which are pertinent to this case.

The hospitals and CUPE were parties to a collective agreement which expired on September 28, 1980. Negotiations for its renewal began in July of 1980. With the assistance of a conciliation officer provided by the Ministry of Labour, the parties reached agreement on September 26 for a new two-year pact. Without getting into the details of the settlement, suffice it to say that the key elements were across-the-board increases of 65 cents and 65 cents in each year of the contract, replacement of

the sick leave system with a long-term disability benefit program, and a number of minor adjustments in fringe benefits. In total, the package amounted to approximately a 20% increase in the Hospitals compensation package over the two years.

Needless to say, this memorandum agreement was subject to ratification by both the Hospitals and their employees. In early October, the Union membership rejected the settlement by a resounding 91% margin.

No final agreement having been reached by the negotiators, the next step under the Act was binding arbitration. The Hospitals moved to institute that procedure. The Union resisted. Under the auspices of the Ministry of Labour the parties went back to the bargaining table in early December. However, the Hospitals were unwilling, at this stage at least, to do any more than restructure their offer within the confines of the 20% compensation package. The Union still refused to name its nominee for arbitration and instead conducted a province-wide strike^{vote} among its members. By a wide margin of those voting, the CUPE membership endorsed an illegal strike. A strike did take place in some 40 hospitals in late January, in the face of orders from the Ontario Labour Relations Board and the Ontario Supreme Court. The work stoppage did not produce a settlement of the contract dispute and the Union and its members now face a variety of legal proceedings and disciplinary measures.

More significant for our purposes, the parties did get back to the bargaining table once more, in a midnight-hour effort to head off the confrontation. By this time the Union had returned to its original demand of a \$2 an hour increase in each year of the collective agreement, plus a cost of living clause and

a host of other changes in the collective agreement. A special mediation team eventually did elicit some movement from the parties. The Unions demands dropped to \$1.25 an hour in each of two years. The Hospitals moved up to 75 and 70 cents an hour respectively. However, no further progress was made, the strike took place, it lasted for a week, and now this arbitration has ensued. By the time of the hearing, the parties had retreated to their respective positions: 65 cents a year from the Hospitals and \$2 a year (plus a full COLA clause) sought by CUPE.

III.

The significance of these events to the issues facing us will be developed shortly. However, as a preliminary to this Board's analysis of the problem, I believe it worthwhile to articulate the general principles from which we will begin. It is true, as has often been pointed out, that wage determination can never be an exact science, whether conducted through collective bargaining or binding arbitration. A large element of human judgment is inevitable. But in a dispute which has generated the emotion and the trauma of this one, it behooves us to develop with care that general reasoning which leads us to our ultimate disposition of the key matters in dispute.

The ideal towards which interest arbitration aims is to replicate the results which would be reached in a freely-negotiated settlement. The negotiators at the bargaining table typically work towards a figure which will protect the worker against unanticipated inflation and provide real income gains to the extent these are permitted by rising productivity in the economy. It is important to emphasize that the rise in the cost of living--whether measured by the Consumer Price Index or otherwise--is not

the be-all and end-all of rational wage determination. If there is real per capita growth in the economy, wage gains can and do exceed the rate of price inflation. That was the happy experience of Ontario workers in the Sixties and early Seventies, when real wage gains averaged 2% or so annually. Unfortunately, the Canadian economy has not generated real per capita growth in recent years. Thus, there has not been that type of economic surplus to distribute in collective bargaining. In fact, recently even the annual rate of price inflation has not been met. The reason is that much of Ontario's inflation is due to unfavourable trends in its external terms of trade: whether because of higher energy prices which accrue primarily to the benefit of Albertans, or because of the decline in the value of the Canadian dollar which affects the relative prices of its exports and imports. If the level of Ontario's Gross Provincial Product (GPP) is growing at a rate of 10 or 11% a year (in nominal terms), this establishes the parameters in which income gains are feasible for Ontario workers as a whole, irrespective of whether price inflation is now at a 12 or 13 percent pace (just as happened earlier in the decade when the converse was true and the GPP was rising faster than the CPI).

The implication I draw from this premise is that the key ingredient in interest arbitration must be movements of relative wages. Binding arbitration is very much the exception rather than the rule in Canadian industrial relations. The appropriate standard for decisions in this sphere should be drawn from external collective bargaining between sophisticated union and management negotiators whose bargains are shaped by these real economic forces.

The problem of course is to determine which external settlements are the relevant ones. Traditionally the Ontario Hospital Association has emphasized the internal pattern found within the hospital sector itself. There is some plausibility to this view. There are 235 hospitals in Ontario employing some 125,000 workers. Of these, 75,000 employees are represented by 12 different trade unions: some professional, some craft, some industrial in persuasion. A total of 619 separate collective agreements have been signed with 187 hospitals. The bulk of the 37,000 unionized service workers are divided between two major unions, the Canadian Union of Public Employees and the Service Employees International Union (the SEIU). On the face of it, the Hospital employers are on the other side of the bargaining table, operating within a wide variety of bargaining structures. But everybody knows that the ultimate paymaster for the system is the Ontario government and the Ontario taxpayer. If there are marked deviations in the wage and contract conditions which obtain between one hospital and the other, perhaps even as between workers in the same hospital, those adversely affected naturally feel this is inequitable if it stems simply from the fact of separate negotiations and/or arbitration.

Still one cannot concentrate solely on internal relativities as between one group of hospital workers and another. Such a focus gives us no purchase on how the hospital compensation as a whole is or should be moving. It is one thing for an arbitrator, faced with a single hospital or union whose negotiations are taking place late in the bargaining round this year, to dispose of his case by reference to the general pattern which has been established

in the sector. But this tack will not prove terribly helpful to the arbitrator who must adjudicate the dispute in one of the three or four major centralized bargaining structures (or, as is the case of this Chairman, who is dealing with two of them, both CUPE and the SEIU). The fact is that all of these negotiations are conducted under the shadow of binding arbitration as the ultimate mechanism for impasse resolution. For arbitrators to religiously follow precedents within that sector would be a rather incestuous reasoning process, since these precedents are themselves fashioned by arbitrators, or by negotiators who are anticipating what an arbitrator might do to them. Thus, the parameters of change in the Hospital system as a whole must be drawn from and be compatible with the external world of collective bargaining in the Province.

This sentiment is reinforced from another side. In recent years there has been some concern about the pace-setting character of public sector bargaining (whether it be subject to arbitration or subject to the threat of strike). The argument is that such negotiations are distorted to some extent by the fact that the government is the employer, and it is subject to political as opposed to purely economic considerations. I have argued elsewhere that this case is somewhat overdrawn. Still I do believe that private sector negotiations should play the dominant role in wage determination, at least as far as interest arbitrators are concerned. If the results of free collective bargaining are to be the norm, we should look to the compensation bargains which are struck by unions and employers who are directly exposed to the forces in the market economy, in whichever direction this standard may take us. (And for that reason I personally find the pattern of economic settlements in Ontario's commercial sector to

be considerably more persuasive than those produced by hospital negotiators in other provinces.)

IV.

In this case, though, the Hospitals argued that this Arbitration Board had available to it a better index of the type of compensation package which would flow from free collective bargaining: the memorandum of agreement which actually was signed by the Union and Hospital negotiators on September 26, 1980. This settlement was the result of intense negotiations by the parties over a period of two months, it embodied reciprocal compromises in the position of both sides, and, indeed, the key wage item was the final settlement proposal of the experienced negotiators of the Union itself. The Hospital's basic position at the arbitration hearing was that the Board should impose this tentative settlement on the parties, irrespective of its rejection by the employees (although the Hospitals were prepared to make certain refinements which might make it more palatable to the latter).

There is considerable arbitral authority for that position. Indeed, in each of the 9 cases in the Ontario Hospital sector in which this issue has been presented, that has been the action taken by the Arbitration Board in question. Three of these cases have involved rejection of the settlement by the Board of Trustees at the Hospital, and it was the trade union which relied on this principle. Indeed in the most recent such decision, Arnprior and District Memorial Hospital (1980--Brown), the Canadian Union of Public Employees itself vigorously and successfully asserted that the arbitrator must adhere to a voluntary settlement, produced by able and experienced negotiators, after intensive sessions

which included a great deal of compromise on each side. Thus, unquestionably there is force in the Hospital argument here that the eventual consensus of negotiators at the bargaining table is the best index of the appropriate terms of the new contract, not the judgment of a number of outsiders on an Arbitration Board whose exposure to the issues come simply from two days of listening to and discussing the briefs written by the parties.

Still, I do not think that this result should be automatic. Each of the arbitrators who have addressed this problem has been careful to phrase his reasoning in terms of a general presumption, rather than a binding rule. Almost all of the cases where the issue has been posed have involved single hospitals where one side or the other wanted to deviate from a pattern of settlement which had already emerged in the sector. The one situation where this was not true involved centralized bargaining in 1978 between CUPE and 55 of these Participating Hospitals. However, not only had that settlement, the one which had been rejected by the CUPE membership, already been accepted by the SEIU that year, but it also embodied the maximum compensation increase which was permitted by the Anti-Inflation Guidelines. Thus, the decision of Kevin Burkett, the arbitrator in that case, to impose the settlement in his award took place in quite a different setting than this one; where this tentative agreement was one which would cover 65 Ontario Hospitals and 16,000 service workers, but would also establish rather than reflect a standard for the entire round of Hospital negotiations which ultimately will set the terms of employment for 75,000 unionized hospital workers in 180 hospitals in the Province.

In my view it would not be desirable to establish in the jurisprudence of interest arbitration an unyielding doctrine that a tentative memorandum of settlement should always be the basis for the arbitrator's award. The first and most important reason is that such a doctrine would eviscerate the process of membership ratification of the contract terms by which they are to be governed. The members could vote to ratify the settlement, but never, effectively, to reject it. Unquestionably employee rejection of a compensation package which has been labouriously produced at the bargaining table can be a traumatic experience for the employer, which is deprived of the settlement that it thought it had, for the Union officials whose judgment has been repudiated, and for the general public, which may experience the cost of further impasse. It is also true that the employees can be unrealistic in their expectations, or even that they may be manipulated by other Union officials who are not responsible for the agreement. (We shall have some further things to say about this settlement in that regard.) But this is the price to be paid for industrial democracy and for ultimate membership control of the actions of their Union leaders. In the outside world of industrial relations, workers jealously guard their right to meaningful ratification votes, and, if they reject a tentative contract, they have the right to try to persuade the employer to give them something more or something different (perhaps with the pressure of a strike). Hospital workers should not have taken away from them the right to persuade their arbitrator that the initial bargain, however bona fide in its inception, was and is clearly inappropriate now.

A further reason for such ^{an} escape hatch is to be seen in the unfortunate scenario which overtook this set of negotiations. Suppose a group of hospital workers fervently believes that the settlement negotiated by their leadership is patently unfair. The forum in which the law tells them they should make that case is binding arbitration. But the arbitration fraternity is now to tell them (through this jurisprudence) that the tentative agreement will be imposed on them nonetheless. In that setting, the only recourse which may seem open is illegal (and uncontrolled) strike action, endangering patient safety and eroding the fabric of law in the industrial community.

The still-fragmented state of Hospital labour relations is another factor. The CUPE negotiators represent only their 16,000 members in this industry. Even if, despite the above, one were prepared to disenfranchise the CUPE membership in the ratification process, that arbitration doctrine would not apply to the other service workers represented by the SEIU, the nurses represented by the Ontario Nursing Association, and so on. These unions would still be entitled to argue that the CUPE settlement was misguided, and, if they could persuade their arbitrators that it was, to achieve different terms in their award. Granted that, and also the Hospital's own concern about internal relativities as between different hospital workers irrespective of their Union, and it would seem to make even less sense to deny as large a group of workers as this one the opportunity to make the same case to their Arbitration Board.

The point of these considerations, though, is simply to show why it would be unsound industrial relations for an interest

arbitrator automatically to ratify a tentative settlement reached at the bargaining table, no matter how dubious its terms may look in retrospect. In no way do they blunt the force of the Hospital's underlying point that the initial memorandum of agreement must be a major factor in our deliberations. If seasoned representatives produce a comprehensive package out of the give and take at the bargaining table, in pattern-setting negotiations which obviously were seen as significant as were these ones, the product of their work must be treated as strong prima facie evidence of an economically-sound bargain. In the world of fully free collective bargaining, where Union members do have the option of rejecting such a settlement, everyone knows that any further improvements will take place within the general parameters of this initial package. It would be counterproductive for the Union negotiator to return to the table with his first lengthy shopping list of demands, many of which he had already dropped or compromised, and also to adopt a radically different view of an appropriate wage increase. This would be a recipe for an immediate breakdown in talks and a lengthy strike. The Ontario hospital worker may not be able to strike, but he also does not have to strike in order to win a new contract. Thus, as and when the Union goes to arbitration, it should not be able to treat the initial memorandum as just the plateau from which it now presses a host of additional, rich concessions. The arbitrator, like the negotiators themselves, should treat the settlement as fixing the ballpark figures for the new contract. For reasons which I have already developed, the arbitrator should be prepared to scrutinize the terms of the tentative agreement, perhaps find that certain items are misguided, or at least that others have been overtaken by changing

economic conditions. But he should begin that inquiry from the premise that the terms actually agreed to by the representatives of the parties are a sound and workable basis for the new contract, to be revised only if and where this is clearly shown to be warranted.

V.

With these preliminaries I now turn to the most important item in negotiations in this arbitration--the basic wage increase. As I mentioned earlier, the memorandum of settlement provided for two wage increases: 65 cents an hour on September 15, 1980, and another 65 cents an hour on September 29, 1981. In simple percentage terms, the \$1.30 wage hike represented a 19.6% increase in the previous contract rates (and with a special trade adjustment amounted to a 19.7% increase in wages). If the two 65 cent increases are compounded over the two years, the parties in effect agreed to a 9.8% increase in the existing rate in the first year, and an 8.9% increase in the new rates in the second year.

This settlement was negotiated during August and September, 1980. At that time, the prevailing inflation rate in Canada, at least as measured by the CPI, was 10.7%. More important is the level of collective bargaining settlements. The data then available from Labour Canada for the second quarter of 1980, for units of 500 employees or more across Canada, indicated that new settlements were being negotiated at a level of 11.1% for contracts without COLA provisions. The second quarter Ontario Ministry of Labour figures, which include all settlements in this province for units of 200 employees or more, indicated an average 9.6% increase in contracts without COLA clauses. Each of these sets of percentage figures are calculated on the base rates in the collective agreements

in question, not on the average hourly rates as I have put the Hospital settlement above. This makes a real difference since the memorandum contained an across-the-board cents per hour increase. Assuming the base rate in the previous CUPE contract to be \$6 an hour, the relevant percentage increase in the memorandum in these terms is 10.8% in the first year and 9.18% in the second year. Thus, given the prevailing economic trends of last summer, the CUPE-Hospital settlement was quite a respectable one (abstracting for the moment from any argument about catch-up).

Since that time, the pace of inflation has picked up considerably. The CPI is now running at a shade over 12% annually. Labour Canada's contract settlements are now averaging 11.6% (and 12% a year in two year agreements), while the Ontario Ministry figures jumped up to 11.3% in the third quarter, though they settled back to 10.9% in the fourth quarter. The ratio which we assume these parties intended between their September settlement and the then available data on price and wage inflation has been eroded somewhat in light of these recent trends. Presumably it was in light of these factors that the Hospitals were ready to improve their offer in early 1981 to 75 cents and 70 cents an hour, albeit under the pressure of an illegal strike. If one were to translate this new offer into the terms already used, a \$1.45 increase in two years would be 21.8% of the current average hourly rate of \$6.64 and 24.2% of the current base rate of \$6 an hour. Compounding the increases over the two years, this Hospital proposal amounted to 11.3% and 9.5% increases respectively on the average hourly rates, and 12.5% and 10.4% on the base rates. Relative to what other Ontario workers have been able to achieve in the last several months, this compares

very favourably indeed (including, I might add, with recent contracts negotiated by CUPE for its members in the Cities of London, Guelph, Niagara Falls, Peterborough, and Waterloo, none of whom won increases this large, notwithstanding that they do enjoy the full right to strike under the Ontario Labour Relations Act).

VI.

The position of CUPE in this arbitration seems situated in a different economic universe. Notwithstanding that its representatives had signed a settlement for 65 cents a year, the Union's official position in this arbitration returned to its pre-negotiating demands of \$2 an hour per year; 30.1% per year on the average hourly rate and fully 33.3% a year on the previous base rate of \$6 an hour. In the course of the arbitration hearing, the Union spokesman did acknowledge that they had retreated during the strike negotiation to \$1.25 a year for each of the two years. Still, this would amount to 18.8% on the average rate and 20.8% on the base rate in the first year, and overall to 37.6% and 41.7% respectively. When one recalls that the Ontario contract settlements generally, and CUPE municipal settlements in particular, are now hovering near the 11% mark in base rate increases, this would seem to be a startling position indeed.

Not surprisingly the position of CUPE is that such percentage comparisons of wage gains in any one year are deceiving. They assume the validity of the existing base rates upon which such percentages are calculated, and thus they ignore the impact of unfavourable treatment in the past. The thrust of the CUPE argument is that the economic position of the Ontario hospital worker has been badly eroded by the interest arbitration system

(and the Anti-Inflation Board) in the last several years.

If the Union's case were granted on this point, then one might justify in the award a sizable catch up component over and above the 11-12% or so which is needed to keep the hospital worker even with price inflation and wage relativities. Since the Union's claims become so highly publicized in the last several months, it behooves this Board to canvass the relevant data with care.

The most difficult judgment to make in any such historical analysis comes right at the beginning: the selection of the relevant time frame. For example, if one were to extend the period as far back as a decade ago, the fact is that the CUPE hospital member enjoyed an overall increase in weekly earnings of 193% from September 1970 through September, 1980, while the CPI went up 120% and Ontario average weekly wages increased by 139%. The Seventies as a whole was a period of major real and relative wage gains for Ontario hospital workers.

The Hospitals themselves conceded that such a comparison would be deceiving. At the beginning of the Seventies the hospital employee was badly underpaid. This fact was finally recognized by the Ontario government in 1974 and major breakthrough settlements were won that year establishing a much fairer relationship between hospital service workers and their external counterparts. Thus, both sides in this arbitration tacitly recognize that the appropriate period of comparison was the five years from mid-1975 through mid-1980, and the bulk of their data was directed at this time span.

The following was the basic argument made by the Union about this period. Using the Registered Nurses Assistant (the RNA) as the key contract rate, the maximum monthly RNA rate was \$939 in

September 1975 and \$1,143 in September 1980, a total increase of 36.2%. During the same period the CPI rose by 52.2% while the industrial earnings composite in Ontario went up by 52.0%. The result is that the wages of Ontario stayed essentially even with the price inflation during the last half of the Seventies, while the hospital worker lost 10.5%. Putting it another way, the Union claimed that the RNA's monthly earnings had actually declined to \$751 in 1975 dollars. In that perspective one might appreciate the membership's unhappiness with another settlement which not only reinforced the existing situation, but actually added to the erosion of the real earnings of the RNA. Assuming 12% annual inflation for the next two years, implementation of the memorandum of agreement would leave the RNA earning \$723 in 1975 dollars by September 1982, as compared with the \$839 paid in September 1975.

On the surface, these figures would seem to make a powerful case. However, when one probes behind them, a rather different picture emerges. The first questionable assumption concerns the selection of the RNA maximum rate. With the exception of the maintenance tradesman, this is the top-rated classification in the CUPE unit, paid at an hourly rate of \$7.93, as compared to the average hourly rate of \$6.64 across the unit. The significance of this fact is that CUPE typically negotiates an across-the-board cents-per-hour increase for its members. Suppose these increases are at the prevailing rate of wage and price inflation in percentage terms for the unit as a whole. The inevitable result still will be that the RNA will receive less than the inflation rate, while the maid-aide at the bottom of the unit receives more (and that will be true of the current award as well). However,

having chosen this form of settlement for its own reasons, CUPE can now hardly look back at such contracts from the point of view of the RNA classification alone, to try to make a general case about the overall erosion of real earnings. Rather, a fair appraisal of hospital contracts must trace average earnings in the entire unit, not in one selected classification.

Another difficulty with the Union's analysis comes in the precise definition of the five-year time frame. In particular, CUPE has compared the RNA wage rate after the increase in September 1975, and before the increase which would come into effect in September 1980 (whether at the figure in the memorandum of settlement or higher). The sound comparison should be before each of these two contract increases; in effect from August 1975 through August 1980. The reason is that a primary role of wage increases in this day and age is to protect the workers from anticipated inflation. This is a major function of the increase in September, 1975. The actual wage and price inflation which took place in the period just after September 1975 was counted in the Union's comparative percentages. So also must be the wage hike that month--of just under 5%--which was designed to protect the Hospital worker during that same period.

The final soft spot in the Union's data consists in its use of the monthly, rather than the hourly rate. This is significant precisely because an arbitration board in 1979 awarded CUPE a reduction in weekly hours from 40 to 37 1/2 hours with no reduction in overall salary. In effect the hourly rate went up an additional 6.5%, which is not reflected in a comparison of just the monthly rates in 1975 and 1980. In substance, that Arbitration Board awarded a part of its contract improvements in

increased leisure for the CUPE members, rather in actual take-home pay. That this was a real benefit achieved by the CUPE membership is shown sufficiently, perhaps, by asking whether they would have traded this for the contract of the SEIU counterparts whose similar monthly rates have been paid for 40 hours work every week.

Suppose one were to look at the last five years of the CUPE contracts on the contrary assumptions: i.e., by comparing the average hourly rate, across the unit as a whole, in the five year period from August 1975 through August 1980. During this period the CPI went up 51.2%, while the CUPE contract rates rose by 51.3%, leaving its members essentially even in real terms. Meanwhile, the industrial composite of average earnings in Ontario went up 50.2% which gave the CUPE members a relative earnings gain of 1% during the same five years. As the Hospital representatives argued vigorously to this court, no persuasive case for a special catch-up increase can be found in these statistics.

From another point of view, though, these latter figures are slightly deceiving. First of all, while the 1979 award did reduce the province-wide average from 40 to 37.5 hours a week, many CUPE locals had already achieved that level. Apparently the province-wide average was 38.9 hours before the Brown award. Thus, to count the entire 2 1/2 hours in calculating the hourly wage gains in that year somewhat overstates its impact. As well, it is apparent that some of the September 1975 increase was intended to be part of the 1974 catch-up settlement, rather than simply to preserve the status quo against subsequent inflation. My final judgment, contrary to the Hospitals, is that the position achieved by CUPE members in 1974-1975 breakthrough has been eroded a modest amount, but nowhere near the extent asserted by the Union.

Let me summarize the results of this lengthy review of the data. The initial memorandum of settlement, which provided increases of 65 cents a year for two years, was a reasonable estimate of what was needed to offset wage and price inflation as seen at that time, assuming that no catch-up was appropriate. Subsequent economic trends have overtaken the initial figures somewhat, and, for the reasons given, some further modest catch-up is warranted. I noted earlier that wage determination is not a mathematical science. My judgment is that increases at 80 cents and 85 cents a year through the two years of this contract would be appropriate. This will provide a 12% increase in the average hourly rate in the first year and 24.8% overall. In relative terms, this is a substantial hike, amounting to 13.3% in the base rate for the first year (compared to the current Ontario average of just under 11%). In light of this fact, and since much of this increase is intended to offset developing inflation, it would seem appropriate to stage these increases throughout the life of the contract, thus reducing somewhat the actual pay-out by the Hospitals (and by the Ontario taxpayer). Thus, our precise award is for a 65 cents an hour increase effective September 29, 1980, another 15 cents an hour increase payable on June 1, 1981, another 50 cents an hour payable on September 29, 1981, and a final 35 cents payable on June 1, 1982. And having awarded that, I want to make clear my judgment, at least, that this does restore to the CUPE hospital members the ground which they have lost relative to other Ontario workers since 1975.

VII.

There is another crucial ingredient of the wage issue. The

Union seeks a cost of living provision to protect whatever wage increase ^{it} wins in this award. The Hospital vigorously opposes the introduction of any such COLA clause. They point out that there are no examples anywhere in the Ontario Hospital sector of such a contract provision. That last argument has something of a dubious Catch-22 flavour to it as far as I am concerned. In effect, it is asserted that arbitrators should not order a COLA clause until and unless they find a precedent freely negotiated by a Hospital (or perhaps only by a number of Hospitals). But no Hospital, knowing that Ontario arbitrators are acting on this principle, would likely be persuaded to grant the first COLA clause at the bargaining table. In my view, Hospital arbitrators should now address the notion on its intrinsic merits, as a matter of industrial relations principle rather than pure hospital/arbitral precedent. Because debate about this topic usually attracts more heat than light, I shall examine it with rather more detail than usual.

Unquestionably a persuasive case can be made for some form of protection of hospital workers against the type of inflation which has been experienced in Canada in recent years. If at the outset of a contract the employer is prepared to pay its employees a certain real value for their services, why shouldn't these nominal dollars be adjusted to keep pace with future increases in the price of the goods upon which these workers must spend their pay cheques?

The real issue, though, is not about the necessity for adjustment of wages to price inflation. It concerns the mechanism by which this is accomplished. A COLA clause is not the only contract provision designed for this purpose. Only too often it

is forgotten that such is the primary role of the normal process of contract negotiations. Parties at the bargaining table sit down, make estimates of future inflation, and agree to wage increases which will accommodate them. If their estimates are off (either up or down) appropriate adjustments can be made in the next set of negotiations in their ongoing relationship.

I found it troubling that this Union's proposal totally ignores these simple facts of collective bargaining life. CUPE wanted a COLA clause which provided for monthly adjustments of 1% in the wage rate for each 1% increase in the CPI (or fraction thereof) during the life of the contract. But the major ingredient in the general wage increases which it sought (and the one which we awarded) was protection against anticipated inflation during that same period. Thus CUPE's COLA clause would in effect double-count the inflation which took place throughout the collective agreement. The Union cannot have it both ways. If its members are to have the assurance of a total COLA provision against inflation as it occurs, then they are not entitled to any immediate fixed increase in anticipation of that same inflation. (And since the Ontario economy has not been growing in real per capita terms in the last several years, the only specific wage hike which would be warranted would be the once-and-for-all catch-up increase).

By and large, employees do prefer the certainty of fixed contract increases (as do their employers who can plan their pricing decisions accordingly). Both sides then take the chance that their inflation projections will prove inaccurate, especially during a multi-year collective agreement. A COLA clause is a device for reducing this risk for the employees. But any such COLA provision will take quite a different form than the one proposed by CUPE. It

would be triggered only when inflation passes the level (here 11-12%) for which the built-in wage increase was designed. Following this logic, the trigger will often be set slightly above that inflation rate (perhaps at 13-14%). The reason is that if the inflation pace were to slow (to 9-10% from its current 12%), the COLA clause would not operate to cut the agreed wage increase. As well, much if not all of the wage increase is normally introduced at the start of the contract (as was true of the memorandum of settlement agreed to by these parties). This means that the employees in question will enjoy substantial real income gains during much of the contract, gains which are only gradually eroded near its end. It is for these reasons that active wage earners operating with fixed increases under collective agreements fare somewhat better than do old age pensioners who rely solely on after-the-fact COLA increases.

Does this mean that a more sophisticated COLA clause, one designed with such a trigger, is warranted? Not necessarily. There are further complications in the process of inflation adjustment which must be confronted.

In particular there is the issue of what measure of inflation is to be used for revising the wage levels. The customary response is the consumer price index. But the fact that this is the practice does not make it economically sensible. There are two significant defects in undue reliance on the CPI. One is the fact that any measurement of the price of a fixed basket of goods takes no account, in the short run at least, of changing economic responses to sharp differences in relative prices which make up the overall price level. The GNE Price Deflator for Personal Consumption Expenditures is a much better measure of the actual

impact on consumers of rising prices (and I have advocated the use of the latter in the Ontario Workers' Compensation System).

Much more important is this problem. While either the CPI or the GNE Price Deflator may establish a prima facie claim for an income adjustment, neither of these guarantees that the economy is generating the wherewithal to pay for it. This is of obvious concern to the private employer which has no insurance that its own sales revenues will increase proportionately to general price inflation. Such an argument of simple inability to pay does not apply to the government which can use its compulsory taxing power to raise the monies which it needs to fund a COLA provision. But the underlying principle remains the same. As I noted earlier, the fact that domestic price inflation reaches a certain level does not mean that the Gross Provincial Product is increasing at the same rate. If the reason for the increased price of certain key consumer goods--now, energy in particular--is that wealth is being transferred from Ontario citizens to producers outside, such that our GPP is growing by only 10% while the CPI is rising at 12%, then the Ontario economy as a whole cannot provide everyone with an income increase which will match this inflation rate. In such unhappy circumstances, the Ontario citizenry as a whole must absorb an overall 2% cut in its real income. If some people avoid that result (perhaps because they enjoy a full COLA clause), then the rest have to tighten their belts even further to absorb this lucky group's share. Absent a special claim to a catch-up increase to make up ground lost to past inflation, it is hard to see why people who happen to work for the government should be entitled to this protection from inflation which

not everyone can have.

The fact that I am skeptical of the virtues of a simple guaranteed full COLA clause, tied to the CPI in this way, does not mean that I see no virtues in a more flexible mechanism for inflation adjustment. The high and volatile inflation we have experienced in Canada in the last decade has acted as a deterrent to the negotiation of relatively long-term collective agreements, which otherwise would provide valuable employment stability to employees, their unions and their employers. I have always been attracted to the notion of a limited wage reopener as a more balanced response to this problem. This provides the employees with the reassurance that if inflation suddenly spurts past the level which was anticipated by their union representatives when they negotiated their wage increase, they have the chance to achieve an additional adjustment. But the employer is not tied to a single CPI figure which may have no relation to the revenues which it needs to pay for such an adjustment. Instead, both sides must focus on the actual economic trends as of that point of time. What is the level of unanticipated inflation? Was it internally generated, in which case the government at least is likely to enjoy matching revenues from its current taxation rates, or was it externally produced, in which case some income shortfall will be needed? What has been the previous experience of this group of employers relative to inflation under earlier contracts? What is their actual level of current incomes, and do these leave them with such a relatively low level of discretionary income that the current inflation is inflicting particular hardship on them? None of the relevant questions are answered by a simple simplistic formula tied to the CPI. In my view the parties should retain

the flexibility to tailor their inflation adjustment to the complexities of their own concrete situation.

Of course, one price of the latter such mechanism is that it takes some time and effort. In the hospital sector, for example, as and when the provision was triggered at a certain level of unexpected inflation, negotiations would have to take place. If these were not completed according to a specified time table, arbitration would be required. I am satisfied that this could be accomplished relatively expeditiously, given the will on both sides to make it work. Ontario arbitrators should now give serious thought to this as a sensible alternative to the polar options now put to them: either a COLA clause or no inflation protection at all. But these simple logistical problems dictate that the device should only be used as the quid pro quo for a long-term contract for two years or more. In the situation facing this Board, while the agreement on its face is to last for two years, most of the first year has already gone by. The Union has already received from us an adjustment to the quickening pace of inflation since the September memorandum of settlement was signed. Our award has actually projected just another 17 months into the future, during which time we have guaranteed these hospital workers wage increases which are based on anticipated price inflation of 16-17% and average wage gains of 14-15% during this time frame. Should even these estimates be overtaken by economic events, this would not happen until near the end of the contract. Given that, the parties can readily make allowances (in whichever direction this is warranted) in negotiations for renewal of the collective agreement. Thus, while I have dealt with the issue in some detail in this award,

in deference to the arguments of the parties, our ultimate decision is to reject both a COLA clause and the wage reopener alternative.

26.

VIII.

Up to this point we have dealt with just the issue of the basic, across-the-board wage increase for this bargaining unit, together with the problem of how best to cushion these wage gains against future inflation. As in any set of negotiations, there remain on the table a variety of demands for changes in contract language and improvements of contract benefits--some twenty or so items from the Union alone. Since these so-called fringe benefits now amount to fully 30% of the total labour costs for the hospital service worker, it is important to carefully scrutinize these remaining issues.

I have always thought it essential not to look at any such item in isolation. With rare exceptions any such proposed improvement looks plausible on its face. The Union can point to some number of bargaining relationships where this point has already been conceded. It may even be true that, taken one by one, no single revision will actually cost that much. But, cumulatively, these changes can mount up substantially. Thus, sophisticated parties in free collective bargaining look upon their settlement as a total compensation package, in which all of the improvements that year are costed out and fitted within the global percentage increase which is deemed to be fair to the employees and sound for their employer that year. In fact, the general wage hike itself generates corresponding increases in the vast bulk of the compensation package represented by the wages, since it increases the regular hourly rate upon which holidays, vacations, overtime and other premiums depend. This means that in any one negotiating round only limited room is left available for improvements in the

scope and number of these contract revisions, and the Union must establish its own priorities among these various fringe items.

These facts of free collective bargaining must be kept in mind if arbitration is, indeed, to try to replicate the results which would be achieved in the former setting. The reason is that the arbitration model does not inherently require the parties to make these tough choices in their negotiating positions. Inside the bargaining unit, for example, one group of employees may want higher pensions, another segment seeks longer vacations, a third is interested in a new dental plan, while others simply want as much higher take-home pay as possible (depending on their respective positions, ages, family situations, and so on). In the arbitration context, the Union does not have to worry that if it asks for too many things at once, the result will be a painful work stoppage. Indeed, the Union may be tempted--as also the Employer which has its own diverse constituencies which it does not want to alienate--to carry all of these initial demands forward to the arbitration hearing, on the theory that it has nothing to lose by asking. And, indeed, a party may even hope that the more improvements it does ask for, the more will be given. Certainly it is essential to the integrity of arbitration that these latter assumptions not be reinforced.

Another important implication of the realities of collective bargaining is illustrated by the facts of this case: In particular, the fact of the memorandum of settlement. Bargaining between these parties was not chilled by the prospect of compulsory arbitration. The negotiators actually did address the entire array of demands made by the Union (and the Hospitals), granting some, modifying others, and forgetting about the rest. The Hospitals

agreed to improve the dental plan, to increase the employer's contribution to the health welfare insurance package, to hike shift premiums and standby pay, to lengthen vacations for certain categories of employees, to expand entitlement to certain types of leaves of absence, to grant modest skill trades adjustments, and so on.

However the memorandum of settlement was rejected by the Union members by a resounding vote. Apparently the key trouble spots were the wage increase and COLA demand (with which we have already dealt at length) and sickness pay (which we will address shortly). In these circumstances what would the parties likely have done in the setting of free collective bargaining, with a work stoppage hovering in the background, a painful prospect to both sides? Grudgingly perhaps, the employer would return to the bargaining table, find out precisely which items had proved to be the major stumbling blocks in the original package, and eventually make some accommodations to these employee concerns (maybe with reciprocal concessions from the trade union). The last thing the trade union would do would be to bring out its entire laundry list of initial bargaining demands. It would know that this would only alienate the employer negotiators who had, in good faith, made their earlier concessions only on the assumption that the remaining items had been dropped. For the Union to proceed now as if on the assumption that no package settlement had ever been reached would probably precipitate a quick strike.

In the arbitration setting, though, the Union negotiators need not worry about a strike. Thus, CUPE, accepting all of the earlier Hospital concessions as given, now seeks to erect on this plateau a number of further, costly contract changes. For example,

having won double time for overtime in the special limited context of overtime work on a paid holiday, the Union would now like this new double-time standard awarded by this Arbitration Board across the board. The same attitude is apparent regarding vacations, the health and welfare package, skill premiums, skill trades adjustments, and elsewhere.

As I observed earlier, the task of the interest arbitrator is to try to replicate the results of the process of free collective bargaining. Realistically this means that a memorandum of settlement must be accepted as definitive of just about the entire range of fringe benefits and contract language in this round of bargaining. There are two or three issues which we will scrutinize more closely because of how they figured in the employee rejection. One matter--payment in lieu of benefits to part-time employees--was actually left to be arbitrated by the parties in their original settlement and thus we will canvass this in some detail. For the rest, we confirm the terms of the memorandum and reject the Union's attempts to stack further gains on top of it in arbitration.

IX

The first such issue warranting some comments from this Board flows out of the still tenuous state of centralized bargaining in Ontario Hospitals. The terms of the collective agreement vary a great deal across individual Hospitals. It is a lengthy process to standardize the level of benefits and relevant contract language. This means that employees in one hospital are ahead (at least as to one contract provision) while their fellow union members in another hospital are behind (though perhaps the latter fare better in other respects). Nor is it always the case that

when the parties agree on a uniform standard in their centralized negotiations, this will inevitably match the highest plateau reached at any of the Hospitals. Thus the problem of "superior benefits". Should they be cut back to the common level at the same time that others are being raised up to the norm? Or should they be preserved--"red-circled" as it were--until the other hospital units catch up, presumably using the superior benefit as their target?

Understandably the Hospitals object to the latter being the automatic result. From their point of view, centralized bargaining should be seen as involving some give and take on the part of both sides. If everything moves in only one direction, if no hospital is able to improve its contract language to levels earlier obtained by its counterparts, what incentive would be left to the employers to join in centralized bargaining with the Union?

There is a good deal to that argument as a matter of logic, but less in terms of pragmatic industrial relations. Like it or not, once a group of workers achieve a plateau, they stick to it stubbornly, unwilling to retreat from it, and certainly not without themselves receiving some gain in return. And it is terribly difficult to persuade a group of service workers in an Ottawa hospital, for example, to dilute a benefit level which they have enjoyed for some time, simply because another hospital, in Thunder Bay, for example, is prepared to improve that benefit for its local Union. If the latter tack is insisted on simply because negotiations are centralized, the inevitable result will be to feed dissident opposition to ratification of the ultimate settlement.

While I do believe in a strong presumption in favour of preserving superior benefits, I do not favour writing this into the contract as an automatic unyielding rule, as the Union proposed

here. There is a practical difference between a tangible contract benefit, regularly enjoyed by a number of employees in a unit--where the better provisions should be red-circled--and the development of technical contract language which only remotely and indirectly effects the current employees--where standardization should be able to be pursued in a mature collective bargaining. A classic illustration of the latter is a provision which gives the Local Union the right to interview new hirees at the Hospital for fifteen minutes. Most of the Participating Hospitals previously had no such provision. Now all of them will have it. However, five of these Hospitals had previously permitted the Union a thirty minute interview. Surely the employees in those Hospitals would not claim that they are being unfairly deprived of a significant economic benefit or personal right, such that the concept of superior benefits must be rigidly adhered^{to} against this type of standardization.

In this situation the Union and the Hospital negotiators did turn their minds to this problem when they actually addressed individual benefits. The key employee benefits which were improved--e.g., vacations, the health and welfare package, and the like--did permit retention of superior local conditions. The only cases in which exceptions were made involved technical problems of contract language or its administration, only remotely affecting the employees (with the one possible exception of the standby clause). In our view, it would be wrong for this Board to second-guess this judgment made at the bargaining table. Thus, while accepting the basic principle defended by CUPE at the arbitration hearing, we confirm the exceptions which its representatives agreed to at the bargaining table.

X.

We turn next to the problem of part-time employees. As is customary in the acute care hospital sector, a substantial number of part-time service workers are employed in these Hospitals. Most of them are represented by the Union, some with their own separate collective agreements, others with addenda to the full-time agreements. Much of the contract structure designed for the full-time group is applicable to the part-timers, but other aspects of these arrangements present special problems for the latter. The parties have created a Technical Committee which has attempted to grapple with these issues but has not yet been able to sort them out to an agreed solution. They have put one issue to this Board: the form and amount of payment to the part-timers in lieu of fringe benefits. (At the hearing, the Union also asked this Board to address further issues--regarding the definition of a part-timer and their rate of progression along the salary grid. However, as we read the terms of reference to us, these latter issues were not submitted and we have no jurisdiction here to deal with them.)

The vast majority of fringe benefit schemes in the full-time agreements do not now apply to part-time employees: in particular, sick leave, the pension plan, and the health and welfare package. Some Hospitals provide no compensation at all. In most of the Hospitals where the part-time employees are represented, they are given a payment in lieu of such benefits, sometimes 15 or 20 cents an hour, alternatively a percentage, ranging up to 10%, of their hourly wage rate. This is done both to ensure that part-time employees actually receive fairly comparable total compensation for doing the same work which is performed by full-time employees,

and also to protect the compensation package which the Union has negotiated for the full-timers from erosion through excessive use of part-timers. While maintaining this basic principle, the Hospitals seek to change the form of payment by which it is achieved. They propose a new arrangement whereby the part-time employees will be given an opportunity to participate in the group plans, with the Hospitals paying a pro rata share of the premiums (proportionate to the number of hours worked by each part-timer relative to the full-time schedule).

There are admitted virtues to this concept. Those part-timers who would like to have the advantages of the benefits in a group plan, one which almost invariably is cheaper than coverage for a single person, would be given the opportunity to do so. On the other hand, those part-time employees who choose not to participate in the plans would not be paid at a rate that is higher (now 10%) than the wage rates paid to permanent employees for doing the same work; since some permanent employees may well have chosen to stay out of the plans (to save their share of the premium cost when their spouse has already obtained the family benefit elsewhere).

However, there is a major practical difficulty with this Hospital proposal, whatever its abstract virtues. Take the case of the dental plan, for example. The Hospital now pays 50% of the premiums. If a part-time employee regularly works only 1/3 of the full-time work week, the Hospital under its proposal would pay only 1/6 of the premium (1/3 of 1/2). To take advantage of this Hospital offer, the part-timer would have to pay the other 5/6 of the premium from a monthly salary which is just 1/3 of the norm.

The same would be true of OHIP, extended health care, life insurance, and the pension plan (as and when the latter is brought into the Hospital scheme). Inevitably the part-timer could and would take advantage of only one or two of these fringe benefits, if that. As to the others, the ones which were not opted for, the employee would lose the entire benefit of the Hospital contribution, thus defeating the basic purpose of Hospital payment for this part of the compensation package which is represented by fringe benefits.

Just as is true in other parts of this award, I believe this Board should be conservative in altering an established principle such as this one which now obtains in the part-time agreements. I want to make clear that I am not suggesting that the novel approach brought by the Hospitals is undesirable in principle. Indeed, the parties may well want to turn their minds to alleviating the basic difficulty which I have noted. If a "cafeteria" approach were adopted to fringe benefits for part-timers, the latter might well be allowed to select a single preferred benefit and have the entire cost of the employer's overall premium contributions for full-timers rolled into this one plan (one which might not be available at the spouse's place of work). But for this year, the current general practice of a payment in lieu of benefits should continue.

The Union sought a standardized and higher percentage rate of payment in lieu of benefits--20 percent. This figure is out of line with the evolution of this concept in the Ontario hospital sector. Recent service agreements with non-participating Hospitals and recent arbitration awards involved in the Ontario Nurses Association have hovered around the 12 percent point. The

Arbitration Board dealing with the SEIU contract this year is awarding 12 percent as well. In line with these precedents we award CUPE the standard figure of 12 percent in these participating Hospitals.

XI

It was agreed by the parties at the arbitration hearing that one of the most salient issues in the employees' rejection of the memorandum of settlement concerned HOODIP--the Hospitals of Ontario Disability Income Plan. Much of the controversy enveloped the replacement by HOODIP of the current scheme for accumulation of sick leave credits, a provision obviously considered by the CUPE members to be a superior benefit. Thus, this matter warrants some further comment from us.

Both of these systems are addressed to the same problem: what to do about providing income to the unfortunate employee who becomes sick or is hurt, but whose disability has nothing to do with his work, and thus is not compensable under workers' compensation. The traditional sick-pay approach is to permit the employee (usually after a brief probation period) to begin accumulating sick leave days (perhaps at 1 to 1 1/2 days a month) up to a maximum ceiling (ranging from 100 to 150 days). When the employee becomes sick the accumulated days are then available to be used. When the employee returns to work, the process of accumulation begins once more. A typical, feature, and an attractive one as far as many employees are concerned, is that upon termination of employment some or all of these sick days can be cashed out (in effect, a form of severance pay).

The basic flaw in this concept is also apparent. It provides full compensation for the short-term, less significant illness,

and cash bonuses for those employees lucky enough to stay relatively healthy. But, once an employee has used up his sick leave, he is left with absolutely no protection at all. HOODIP is designed to respond primarily to the latter situation. Each full-time employee is credited, after three months service, with an immediate 75 days sick leave. These provide replacement of income in varying amounts: from a minimum of two-thirds for employees of less than one year up to 100 percent of income for employees with four years or more of service. That protection will continue for up to a full fifteen weeks (and once the employee has returned to work for three weeks, the 75 day entitlement is reinstated in full). But if the employee is ill even after that date, he first of all goes on the Unemployment Insurance Commission Benefit Plan for a further fifteen weeks at 60 percent of salary (thus using up the statutory benefits to which these employees and the Hospitals have contributed). After that date, the HOODIP long-term disability feature is actuated. This protects employees of one year's service or more, as long as they are ill, until recovery, death, or the age of 65. The degree of income replacement ranges from 60 percent for employees with less than 10 years service to 75 percent for employees with more than 30 years service.

In concept, there can be absolutely no doubt that HOODIP is a much superior approach. Traditional sick leave schemes maximize the protection for minor illnesses and minimize the protection for major catastrophes. Worse, the cash-out provision in effect redistributes the pool of money available for this benefit from those who are sick to those who are lucky enough to have stayed well. Presumably in recognition of that fact, the parties in these negotiations followed the lead of Unions in other Hospitals

and decided to replace the sick leave plan with HOODIP. To my mind at least that seems to have been an enlightened judgment. But the CUPE members did not see it that way. Rather than being persuaded by the virtues of the new HOODIP protection, the employees focused on the fact that they were losing their right to accumulate and cash in sick leave credits in the future. (The memorandum did not eliminate the already accumulated sick leave days. These were to be "banked" for each employee, used to top off HOODIP benefits while still in employment, and then cashed out if and when employment was terminated.) And the fact is that a lot more employees are able to take advantage of this right (albeit in small amounts) than the few people who need long-term disability income (which can entail very substantial payments). As well, a variety of features were built into HOODIP which placed limits on the degree of income maintenance during short-term illness, limits which looked unfavourable by comparison with the standard sick leave notion. In any event, as we noted above, the HOODIP clause figured prominently in the drive to reject the entire memorandum of settlement.

However unfortunate I believe that verdict to have been, I also feel that arbitration boards must be sensitive to such employee sentiments. In the normal world of free collective bargaining, I feel it highly unlikely that an employer would have insisted to the point of a strike on getting its way on such an item (since apparently the overall costs of HOODIP are comparable to those of the sick leave system). Thus, contrary to the Hospital's position at the arbitration hearing, this is one part of the memorandum which we do not include in our award for a new central agreement (along with the change in the Medical Care Leave clause which

was tied in closely to this transfer to HOODIP).

However, CUPE wanted more from this Board. It wanted the current sick leave scheme maintained, a long-term disability program stacked on top of it, and the Cadillac version of an LTD plan at that. We are not prepared to accede to that request. For reasons elaborated on earlier, this is not the year in which a rich new fringe benefit can be fitted within the parameters of the compensation package (and the Union gave us no cost estimates for its plan). Eventually the CUPE members and the leaders are going to have to face the fact that there is a limited amount of money to expend on this area of their employment conditions, and decide that it should be expended where it would do the most good.

XII

A further issue raised by CUPE in this arbitration hearing concerned workloads. The Union argued that recent reductions by the Government of Ontario in hospital budgets had not just reduced the number of beds in Ontario hospitals but had reduced the number of full-time employees even further, thus increasing the workload of the service worker to excessive levels and creating a risk to patient care. In response to this concern, the Union proposed a new contract provision which would allow employees to lodge complaints about excessive workloads to a new Joint Hospital-Union Workloading Committee. In the event the Committee agreed on the disposition of such a complaint, its decision would govern. In the event there was no agreement, the matter could be pursued to grievance arbitration, which would have the authority to judge the workload to be excessive and to mandate corrective measures.

The Hospitals did not agree with the Union on the basic facts. They produced figures to show that in the last five years the nursing complement in Ontario hospitals (including RNA's and Orderlys) has increased by 5% while the total number of patient days in the hospitals has declined. True, the staff performing other service functions in hospitals has declined by some 12% in that same period. But the Hospitals say this is due to the introduction of new, labour-saving technology in the hospitals, while the loss of jobs has been primarily accomplished through attrition.

To one who views this debate from the perspective of the arbitration tribunal, this issue testifies to the deficiencies of interest arbitration. I have set out the essential assertions made by both sides in their briefs and their oral presentation. But this was just one of two dozen issues canvassed at the hearings, and left me with no confidence that I could make an informed judgment about which is the more accurate picture, especially since it is likely that the workload situation varies markedly from hospital to hospital.

In any event, the Hospitals went on to argue that this is a matter which is beyond the jurisdiction of collective bargaining, because discretion over staffing is exclusively delegated under the Public Hospitals Act to the Board and Officers of each hospital. This may very well be true, insofar as the focus of the problem or of any contract revision is on patient safety (and admittedly this was true of much of the argument made by the Union). But insofar as the thrust of the Union's concern is the impact of staffing levels on employee workload--on the pace, strain, and hazard

at work--surely this is precisely the kind of issue which is grist for the collective bargaining mill; and thence of interest arbitration which has replaced the strike as the means of resolving an impasse in hospital labour negotiations.

On the other hand, CUPE has asked us to impose across the entire Ontario hospital sector a new provision which would allocate to lay arbitration boards a judgment which would ^{be} inherently be difficult to make, and giving them little or nothing in the way of guidelines. We are not satisfied by the material before us that there should be introduced this radical innovation of a Work-loading Committee (or even the more moderate alternative, the Professional Responsibility Clause gleaned from the Ontario Nurses agreement). In the first place, this is another issue which was completely dropped at the negotiating table when the memorandum of settlement was signed (and was not even one of the initial priorities of the Union in bargaining in this round, as is evidenced by its own literature to its members). Second, there is inside the standard collective agreement a Joint Labour-Management Committee provision. It seems to the Board that this is the proper vehicle to which new, emerging employee concerns such as this one should first be taken. If there are tangible complaints in individual hospitals, these will be brought out into the open and perhaps they would be remedied without needing the ambitious new procedure such as is proposed here. That would be the ideal result. But even if they were not satisfactorily dealt with in this forum, the Union and its members would have made the claim to the management officials on the scene, both sides would have aired their conflicting views, and each would have had an opportunity to document its position about the complaint. If sufficient such complaints

of serious and persistently excessive workloads were validated but left unremedied in a variety of Ontario Hospitals, then the Union could return to the bargaining table (and perhaps the arbitration forum) in the next bargaining round, armed with a great deal more material with which to substantiate the bare assertions which it has made to us this year.

XIII

The final issue, with which we must deal returns us to the special feature of this case with which we began: the illegal strike. The Union and its striking members violated the Hospital Labour Disputes Arbitration Act, disobeyed an injunction obtained by the Attorney General of Ontario, contravened an order granted the Hospitals by the Ontario Labour Relations Board and filed in the Ontario Supreme Court, and ignored the obligation they owed to their immediate Hospital employer under their collective agreement. As a result, the Attorney General is now pursuing contempt of court charges against certain Union leaders, the Hospitals as a group are seeking extraordinary remedies from the Ontario Labour Relations Board, and individual hospitals have meted out discipline to their own employees who were involved in the strike: 36 discharges, 4,000 suspensions ranging from 1/2 to 25 days, and thousands more letters of reprimand put in personnel files.

As a result, the last request made by CUPE by this Arbitration Board was that we award a "no-reprisals" clause, one which would be inserted in the collective agreements of each of the Hospitals. This would ban, retroactively, all discipline of any kind for any employee involved in the illegal strike, and would also require withdrawal of all judicial, quasi-judicial,

and similar legal proceedings. Presumably the latter clause is intended to cover only those matters in which the Hospitals were involved, because it is clear that there could be no bar to legal action by the Attorney General flowing from an interest arbitration award.

Essentially, the theory of the Union is that a no-reprisal clause is standard fare at the end of any emotion-laden strike, that the only reason why none was agreed to here is that the weight of the law ended their strike, and thus this Board--whose mandate is to reproduce the results of free collective bargaining--should impose the provision on the Hospitals. This argument has something of a strange flavour to it: i.e., that legal pressure against the Union's strike unfairly prevented the latter securing immunity from discipline, when the discipline was meted out precisely because the strike was illegal from the outset. In any event, I am not persuaded by the Union's claim that its members are entitled to full immunity for their illegal course of conduct. Even besides the obvious concern to maintain the incentive to comply with the law generally, a hospital strike can be a dangerous experience for the patients whose health is risked as a result. As those who are familiar with my own published writings will know, I am not an avid fan of the policy which bans bargaining strikes and replaces them with compulsory arbitration. But even if interest arbitration were removed from the Hospital scene in Ontario (which would not be an unmixed blessing for the trade union in that sector, whatever they may now believe), surely the Legislature would not leave the exercise of the right to strike entirely uncontrolled. There would be an effective mechanism for designating and monitoring the performance of truly essential

services. In an illegal work stoppage, such as the one that occurred here, such a mechanism cannot realistically be available. Thus, whatever everyone's views about the relative merits of the policy embodied in the Hospital Labour Disputes Arbitration Act, it is terribly important that this system be respected while it still remains the law.

For this reason, total immunity from any form of discipline would be a mistake in a case such as this. That does not imply that there should be no limits to the scope of discipline; and, in particular, that the ultimate employment sanction of discharge is the appropriate measure. There is a natural tendency in such an emotional, highly-publicized conflict for the employer to over-react. Even worse, in a multi-employer context, some employers will be restrained but others will not be. This leaves the individual's fate up to the chance of who is in charge of the particular hospital in which he worked, and what that person's disciplinary philosophy happens to be. In this case, for example, of the seven members of the Union's Provincial Negotiating Committee, a body which clearly played a senior role in development of the strike action, every person received a different form of discipline from their respective hospital employer: ranging from a pure reprimand, to suspensions of two to seventeen days, up to a single discharge. No particular explanation has been offered for this widely varying treatment. Frankly, my initial inclination after hearing the case was to issue an award which placed an upper limit on the scope of discipline in this situation, a limit which would permit lengthy suspensions where these were appropriate, but would preclude discharge (for reasons which I have elaborated

on in detail as Chairman of the B.C. Labour Relations Board in the case of Alcan Aluminum (1977) 1 Can. LRBR 157. However, after carefully reviewing the legal arguments made by the Hospitals, I am not persuaded that this interest arbitration Board does have jurisdiction to deal with the reprisals issue in the first place. Thus, while I believe there is some force in the points made by CUPE, I believe these concerns are going to have to be addressed in the grievance arbitration system to which many of these discharges are not enroute.

XIV

In conclusion, our award confirms the matters agreed to by these parties in the memorandum of settlement of September 1980, except to the extent specified already in this decision. We reject all further demands made by the parties. The new collective agreement will run from September 29, 1980 through September 23, 1982. The new wage rates and the higher payments in lieu of benefits for part-time employees are to be retroactive to September 29, 1980, in the amounts specified. These retroactive increases are to be paid in respect of all work done within the unit since that date. As to employees who have terminated their employment since September 29, 1980, notice should be given by their respective hospital to the last known address, and the employee in question should have 30 days within which to claim the retroactivity payment. As is customarily the case under the Act, this Board remains seized of the case until a collective agreement has been drafted and put into effect, in order to deal with any disputes which may arise under this award.

June 1, 1981

Paul C. Weiler

Paul C. Weiler
Chairman

Mr. Dinsdale and Mr. Tirrell are in substantial agreement with this
ward, but each wishes to make certain observations and comments
which will follow at a later date.

S.E. Dinsdale
Hospital Nominee

A.S. Tirrell
Union Nominee

In The Matter of The
Hospital Labour Disputes Arbitration Act

Between: A group of
65 Participating Hospitals

(the Hospitals)

And: The
Canadian Union of Public Employees and Local Unions
(the Unions)

Board of Arbitration: Paul Weiler, Chairman
S. E. Dinsdale, Q.C., Hospital Nominee
A. S. Tirrell, Union Nominee

For the Hospitals: Yves Campeau
Robert Bass

For the Union: P. J. O'Keefe
W. F. Brown

Hearings: April 6 & 7, 1981 - Toronto

Award: June 1, 1981

ADDENDUM TO THE AWARD

BY S. E. DINSDALE, O.C., NOMINEE OF THE HOSPITALS TO THE BOARD

I am in substantial agreement with the Award as written by the Chairman and wish to make it clear at the outset that I have not been moved to make the few comments which follow by any real sense of dissatisfaction with the result the Chairman has reached. I concur in Professor Weiler's observation in the Award that "The ideal towards which interest arbitration aims is to replicate the results which would be reached in a freely-negotiated settlement" and I believe the Award reflects a genuine effort by the Chairman to do that. There are specific items in the Award with which one or other of the parties will not be entirely happy but as Mr. Tirrell, my colleague on the Board has commented, that is "perhaps an ultimate test of the propriety of the final result".

However, the Chairman in his endeavour to replicate the result which would result in a freely negotiated settlement has departed from a settlement reached in precisely that manner and it is regarding this departure that I direct my comments.

The Board had available to it a Memorandum of Agreement which was signed by the negotiators for the Union and the Hospitals on September 26th, 1980. As the Chairman states, this settlement was the result of a lengthy series of negotiations by skilled and experienced representatives of both parties and

embodied the compromises in position which those representatives saw fit to make. As such, it would appear that this settlement should be regarded as the most accurate indicator of the result that would have been reached had the negotiations taken place as part of a completely free collective bargaining process. For this reason alone I would have preferred to see the Award parallel the terms of the settlement, notwithstanding its rejection by a majority of the hospital employees affected.

There is a further reason for adopting this view. As the majority Award points out arbitral authority on this issue consistently supports the view that the terms of a memorandum of settlement should be adopted by a Board of Arbitration even in the face of a rejection by the employees or the Employer. In my opinion, one of the greatest obstacles to the acceptability of the process of interest arbitration by those who are required to participate in it, is its unpredictability and uncertainty, or at least the unpredictability and uncertainty that is perceived to exist by the participants. The parties regard themselves as having no real control over the result which will be imposed by an Arbitrator who is a stranger to their relationship and to the unique problems in that relationship. The arbitral authority which has been referred to fully by the Chairman has recognized this problem and has endorsed negotiated settlements that the parties themselves have reached in that part of the process over which they themselves have control.

There are compelling reasons for Boards of Arbitration to continue to follow the lead of this authority. The negotiators involved in the private stage of the process should be permitted the assurance and confidence that any memorandum of settlement they reach will be respected at the arbitration stage. Otherwise, there may be a reluctance to compromise on any given issue as fully as possible, for fear that an arbitration board may extend the parties beyond the limits they have set themselves. As a result, negotiated settlements that might otherwise have been attained through free negotiation may not be achieved. In other words both parties can end up "holding something back" for the arbitration stage. In addition to that, if an Arbitrator varies a negotiated settlement after rejection by the principals of either side, the negotiators lose face and the confidence of the principals for either accepting too little or giving away too much. It is self evident that such a result is not a good one for the health of the collective bargaining process. Most Employers and Unions (and there are exceptions to every rule) will do their utmost to make a negotiated settlement "stick" and it is usual that any variations subsequently negotiated in a free collective bargaining atmosphere relate to detail and not matters of principal or changes in overall cost of the settlement.

In the present case, it can be said that the Award closely parallels the terms of the memorandum of settlement which the

parties reached in September of 1980. I would like to comment on two of the deviations from those terms which the Chairman has made. The first observation relates to the quantum of wage increase awarded. I fully understand the Chairman's motivation in making the changes he did and the logic which he ascribes to it. The cost-of-living has perhaps increased more dramatically in recent months than could have been anticipated by the parties in September of last year. However, I would hasten to add that in any free collective bargaining process where prospective wage increases are negotiated, the parties involved are faced with attempting to predict or estimate the economic trends that will occur over the life of the agreement and in setting the rates to apply, a gamble is taken that the predictions made will prove to be accurate. Our responsibility as a Board of Arbitration is to make every effort to replicate the result that would be reached in a free collective bargaining context and we should not apply the hind-sight available to us which was not available to the principals at the time the agreement was made. The next round of negotiations is never far away and if errors have been made that is the time to seek to correct them.

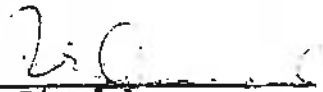
Secondly, I wish to briefly address the Chairman's disposition of the Hospitals of Ontario Disability Income Plan (HOODIP) issue. As I have indicated above, I recognize the Chairman's motivation in altering the quantum of wages which had been agreed to by the parties. However, I fail to see any

justification for the Chairman's rejection of the parties' agreement to replace the sick leave credit scheme with HOODIP. It is all the more puzzling in light of the Chairman's statement that there can be no doubt that HOODIP is a much superior approach. To my mind, this is clearly an issue where an attempt to replicate a free collective bargaining result demands adoption of the agreement made by the negotiators.

One final comment. As far as the question of disciplinary reprisals is concerned, I would agree with the Chairman's conclusion that this Board does not have jurisdiction to address this issue. Given such a conclusion, I find it unfortunate that the Chairman saw fit to make the comments he did on this subject. By joining in this Award, I do not wish to be taken as agreeing in any way with the Chairman's inference that discipline has been meted out in an arbitrary and discriminatory way. I would prefer to wait until the parties have had an opportunity to put forward the facts of particular cases and make full and complete argument on those facts before making any judgments as to the propriety of the penalties imposed. It may well be that the different disciplinary sanctions which were imposed are fully justified. In any event, in my respectful view, any discussion of this issue before hearing the evidence and argument is premature.

I wish to reiterate, notwithstanding the above comments, that I consider the Chairman's Award to be an excellent one given the very difficult circumstances under which the matter arose and came before the Board. The Award reflects the Chairman's well recognized clear and comprehensive understanding of the collective bargaining and interest arbitration process.

All of which is respectfully submitted.


S. E. Dinsdale

ADDENDUM TO THE AWARD

By the Appointee for the Union

As noted in the body of the Award I am in agreement with this Award. In the context of this dispute I consider this Award to be a good one and this Board has indeed attempted to replicate the kind of result which would issue out of a collective bargaining process not constrained by a requirement of ultimate submission to compulsory and binding arbitration. One is, of course, always able to nit pick about some specific items but that is generally a matter of opinion rather than substance.

Undoubtedly this Award will engender displeasure from either side with regard to the disposition of particular issues or items but that is usually inherent in any result produced through collective bargaining. It is perhaps an ultimate test of the propriety of the final result.

The Chairman has presented deliberative analyses of the main problems and issues confronting this Board and has thoroughly articulated this Board's reasons for deciding as it has. I hope these may prove to have utility in the future as well as now. There are some observations and comments I wish to make, however, which the Chairman has not considered essential to the

presentation of this Award. I am in the unusual position of having been appointed by the Minister of Labour to represent the Union on this Board. This has led me to give considerable thought to some questions which might, under other circumstances, not have been the case.

First, I would like to say that the Canadian Union of Public Employees is a good union; one which represents the interests of its members not only vigorously and well but with dedication to their causes. It would be unfortunate, indeed, if the unfolding of events surrounding this recent dispute and the media reporting of them caused the emergence of a different perception of this Union. A Union is an association of workers who are joined together of their own free will and consequently they are not, nor cannot be, regimented by their leaders. In a dispute such as that which produced the recent strike of the hospital workers emotions can become highly charged. It is also inevitable that various divergent views and interests vie for the allegiance of the members. It is an inevitable possibility, in such a context, that the members may be manipulated by the protagonists of the contending forces to a degree where confusion rather than a disciplined order results.

The Canadian Union of Public Employees (as do other Unions) tenaciously holds to the belief that hospital

workers are inhibited in the practice of collective bargaining because of the restrictions placed upon them by the Hospital Labour Disputes Arbitration Act which denies them the right to strike as a technique for final determination of an impasse in the collective bargaining process. That stance, in itself, can serve to generate much emotional heat during times when bargaining difficulties are encountered. It is worthy of some examination.

While it is true that in the private sector the right to strike is universal, and even in areas of the public sector, it is nevertheless true that hospital workers are not alone in confronting a denial of that right. Two realities confront the hospital Unions in this respect. The first is that hospitals, above all other enterprises, are perceived as institutions of great essentiality. It is doubtful whether any other establishment which provides a service to the general public is perceived to be quite as essential. The second is that because of that perception governments respond to it by providing either restrictions or a complete ban on the right to strike in such institutions. Even in jurisdictions where the right for hospital workers to strike exists it is not without specific restrictions. All of this is by way of leading me to say that it seems to

me the Union would be better advised, no matter how apparently frustrating, to pursue efforts to try to improve the criteria of the arbitration process rather than encourage its members to engage in the futile gestures of strikes which, in this jurisdiction, will produce only the kinds of distress which have resulted from the recent withdrawal of service. It is my view the hospital Unions in Ontario face inordinate obstacles to achievement of an unrestricted right to strike the hospitals and if they were to achieve such a right to strike but with specific restrictions they may well find that something less than an unalloyed blessing. I fully appreciate that large sections of this Union may consider this suggestion gratuitous but it is offered out of a full appreciation of the realities it confronts and, moreover, with the utmost sympathy.

Secondly, I want to address the question of disciplinary measures administered by the hospitals, an issue which engaged the attention of this Board. The Chairman, in the Award, has already commented on the uneven hand with which disciplinary penalties were meted.

While I agree that on the evidence before this Board it does not have jurisdiction to provide a resolution of this issue it nevertheless is an issue which, in my view, warrants additional comment. The Union is right in its

claim that in the private sector a strike, much more often than not even an illegal strike, is generally settled with an understanding between the parties that everything returns to normal, all employees return to work, and no penalties will be imposed as a result of the strike activity. This is because there is a general appreciation for the necessity to bind wounds and reconstitute good relations.

Such an appreciation does not seem to have permeated the situation in this case. While there have been some notable exceptions, in general the attitude of the hospitals has been one of rigorously punitive response. That does not bode well for future relationships and, I suggest, warrants a close reconsideration on the part of the Ontario Hospital Association. One unavoidably has the feeling that ingrained local animosities and frustrations have been allowed full sway rather than a judicious consideration of all the implications.

One can appreciate the feeling of the hospitals who felt betrayed by the employees' rejection of the bargain which had been laboriously worked out by their negotiators. The hospitals ought to recognize, however, that the Union's negotiators also arrived at the bargain in good faith and with the best of intentions and the rejection was no less traumatic for them. More importantly,

because of the nature of the Union's structure, they then immediately confronted certain crucial political risks not prevalent to anything like the same degree in the employer's ranks. Rejection by the Union membership is not too uncommon in recent times and although unquestionably unsettling to all those who hammered out the bargain it ought not to be a cause for a feeling that the Union has operated frivolously, without integrity, and with intent to embarrass the employer.

To the extent that this Board has been unable to act on this matter of disciplinary penalties it obviously fails to replicate the kind of result that generally would be produced out there in the rest of the collective bargaining world. This, too, is a matter for some consideration not only by the parties but for those who determine the scope of arbitrable matters.

Finally, I believe that the Government of Ontario is not entirely blameless in the events which transpired. It commissioned an examination of this industry (the Johnston Commission) which produced a number of recommendations which were generally well received by the constituents of this industry. The Government, however, has by and large not taken measures to implement those recommendations. It has, in my view, frittered away a useful opportunity to smooth relations in this industry.

It has not taken the necessary steps to insure the provision of the recommended facility for the parties to have common access to reliable, well researched, comparative pay data. The result is that the parties still approach arbitration using data which, as often as not, serves poorly to enlighten the arbitrators. More importantly, the arbitrators themselves are left without recourse to the data such a facility was intended to provide.

The Government has not proceeded with the necessary effort to bring about the establishment of a job evaluation procedure for the hospitals which would assist not only in determining the appropriateness of internal relativities but would facilitate external comparisons as well. Much needless pressure is generated in the collective bargaining process because of pervasive beliefs by the workers in this industry that they are not being equitably paid relative to others in the economy.

The Government has not proceeded energetically to encourage, recommend, and expedite co-ordinated bargaining in this industry which would tend to mitigate the occurrence of events such as the recent strike. It has done so for the construction industry, and, it seems to me, it is failing in this area where public concerns

are, surely, of greater anxiety.

Certainly the Government has a responsibility to administer legislation intended to foster and protect the general interests of the citizens. It is my view, however, that it has other responsibilities as well. It would be well advised to give thoughtful consideration to the creation and nurturing of an industrial relations climate in this industry where the sort of eruption that preceded the proceedings of this Board would be very much less likely to occur.

Stripping away any remaining mythology to the contrary it is the Government, as the Chairman has pointed out, that is the ultimate paymaster. It is also the authority that has legislated that hospital workers may not have recourse to the strike as a means to resolve any ultimate collective bargaining impasse. It has done so, presumably, because these workers are considered so essential that any withdrawal of their services would be a peril to the citizenry. It has, therefore, considerable responsibility to ensure that the hospital workers are equitably paid relative to others, not only within this industry, but to others in the economy as a whole.

It follows also, it seems to me, that it carries a greater onus than simply to bring the weight of the state to bear upon any one who transgresses legislative or regulatory measures pertaining to this industry.

A. S. Tirrell
A. S. Tirrell
Appointee for the Union

IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

The City of Ottawa

and

The Civic Institute of Professional Personnel

Before:

William Kaplan, Chair
Kathy Butler Malette, Employer Nominee
Michael Wright, Union Nominee

Appearances

For the Employer:

Sebastien Huard
Paula Campbell
Sabina Veltri
Emond Harnden
Barristers & Solicitors

For the Union:

Peter Engelmann
Colleen Bauman
Goldblatt Partners
Barristers & Solicitors

The matters in dispute proceeded to a hearing on January 17, 2022. The Board met in Executive Session on February 2, 2022.

Introduction

This interest arbitration was consensually convened to resolve the outstanding issues in dispute between The City of Ottawa (employer and City) and The Civic Institute of Professional Personnel (union) pursuant to Article 41 of the collective agreement. The union represents 3600 professional employees: full-time, part-time, temporary full-time, temporary part-time, and casual employees.

The previous collective agreement expired on December 31, 2019. The parties met in collective bargaining in March, June, August and September 2020, and in April and May 2021. A mediation was held on December 2, 2021. A number of issues were resolved in bargaining, and following the December 2, 2021 mediation. A hearing was held on January 17, 2022, and the Board met in Executive Session on February 2, 2022. The collective agreement settled by this award shall include the unamended provisions of the previous collective agreement, the agreed-upon items and the terms of this award. Any employer or union proposal not specifically addressed is deemed dismissed.

Union Submissions

In the union's view, to the (disputed) extent there was a previous pattern of replicating CUPE 503 settlements – the union representing inside and outside

workers at the City – it was not governing. In fact, other comparators had to be considered to come up with an appropriate wage outcome supplemented by an inflation adjustment to avoid a significant loss in real income. In the result, the award had to provide for increases well above those in the July 2022 arbitrated award settling the collective agreement between the City and CUPE. Even if there was an existing settlement pattern with an established comparator – again, a notion the union rejected – the jurisprudence clearly recognized that bargaining patterns had to be balanced by economic realities. That meant taking into account sustained and rampant inflation, a situation that showed no signs of abating. Indeed, all the evidence was that inflation would get worse over the remaining term of the collective agreement, hurting employees in the pocketbook as basic necessities were becoming more and more expensive. On the other hand, the City was in a good financial position with high levels of cash reserves and a healthy budget surplus. The employer had received, and would likely continue to receive, significant financial support from upper levels of government making the union's wage proposals affordable.

It was also the union's view that the economy was back to pre-pandemic levels and improving daily: the local, provincial and national economies were doing extremely well – new job numbers were up and growing – and, together with

various other positive indicators led to the conclusion that there were no barriers whatsoever to granting all the union's completely justified economic proposals – proposals that were normative and should be expected in this mature bargaining relationship.

For these and other reasons elaborated in its brief and at the hearing, the union argued that its wage request should be granted, as well as its other proposals for an increase in mental health benefits, provision of additional insured benefits for employees aged 65 and older, the employer assuming the cost of medical certificates in certain circumstances, improvements to WSIB coverage and enhancements to the bereavement leave provision. These were union bargaining priorities and were also necessary to give effect to replication as they would have been achieved in free collective bargaining and/or reflected well-established normative outcomes with relevant comparators. The union also asked that alternative work arrangements be made arbitrable, that new restrictions on contracting-out be introduced and that changes be made to the Vacancies provision.

Insofar as the employer's proposals were concerned, the union was completely opposed in particular to the employer demand for the modification of hours of

work for certain groups. In the union's view, this was a breakthrough proposal that would never be agreed upon in free collective bargaining. Making it even more untenable, in the union's submission, was that no demonstrated need had been established, especially since the union had a proven track record of making work hour adjustments on an agreed-upon basis.

Employer Submissions

For its part, the employer urged that careful attention be directed to the current climate of economic restraint, and referred to national, provincial and local economic indicators and the consequent need to appropriately and conservatively manage in the face of ongoing fiscal shortfalls.

It was true enough, the employer agreed, that it was not advancing any inability to pay in the classic sense. However, the overall economic situation was nevertheless relevant and, to give just one example, its cash reserves were necessary: that was the point of reserves, to be available to respond – if and likely when – to ongoing fiscal challenges presented by the sustained and continuing pandemic. The purpose of cash reserves was not to deplete them on unjustified and excessive wage increases demanded by one union. In another example, unemployment may have begun to decline, but earlier economic dislocations had a continuing impact,

reflected in numerous ways including reductions in City hiring and capital projects. Recovery may have begun, but the future remained, at best, extremely uncertain: to give just one example; there were substantial deficits in some areas, such as OC Transpo and no reason to believe that there would be an early turnaround in ridership and revenues. A breakthrough interest arbitration award was completely unwarranted when actual economic reality was considered. The full extent of the ongoing economic repercussions remained to be seen and this should lead, the employer urged, to an overall restrained outcome, not the profligate one sought by the union.

The employer sought a five-year term “to ensure labour relations peace...and provide...certainty...” and wage increases that reflected a long-established pattern (2004-2019) of replicating internal outcomes, in particular with its CUPE 503 inside and outside workers. There was no doubt, in the City’s view, that the appropriate comparator was CUPE 503; not those advanced by the union which had never been previously considered, at least one of which, the City noted – the federal government – had on an earlier occasion, when the parties proceeded to arbitration, been actually rejected by the union when advanced by the employer only to be resurrected here as it now suited the union’s interests (See: *City of Ottawa and CIPP*, unreported decision of Albertyn, July 3, 2005, para. 15.)

To better deliver services to vulnerable communities, the employer also sought some structural changes to the collective agreement: alterations to the hours of work provision. The employer indicated its willingness to agree to some improvements in some over-65 benefits, and to increases in psychological benefits, but only in return for substantial offsets. This point requires some additional attention.

Given the expense involved, there was, the employer submitted, no possibility of it ever agreeing in free collective bargaining to the union's post-65 benefit improvements, or even some of them, nor to the proposed mental health improvements, unless they were, effectively, cost neutral. The parties had, the employer noted, a consistent practice of only providing benefit improvements if the expenditure envelope stayed the same, and it would never agree to any deviation from this in free collective bargaining. Accordingly, absent offsets, none of these changes should be awarded.

Other union proposals, for example the introduction of a no contracting-out provision, would not, the employer insisted, have occurred in free collective bargaining, particularly if none of management's legitimate interests were taken

into account. It was a proposal, in any event, that was not justified on a replication, demonstrated need and gradualism basis.

Discussion

There is no question that many of the employees who are covered by this award – nurses employed in municipal long-term care and public health, paramedic superintendents and many other front-line workers – have worked tirelessly and gone well beyond the call of duty over the course of the COVID-19 pandemic. (Notably, approximately 1200 employees received temporary pandemic pay between April and August 2020.) In these circumstances, the union submits that “the economic increases proposed by CIPP are justified and necessary in light of the contributions CIPP members have made to the fight against the COVID-19 pandemic.” In addition, the union continues, if wages were not adjusted to account for inflation, the result would be a completely unwarranted wage reduction of employees.

The job of a Board of Interest Arbitration is to do the best it can to replicate free collective bargaining: to come up with a settlement that the parties would have reached had collective bargaining followed its natural course and come to a conclusion with a collective agreement. In doing so, Boards of Interest Arbitration

are guided by many criteria, most notably replication: the replication, whenever possible, of free collective bargaining outcomes. One of the preferred methods of deciding interest disputes is to look at what the parties themselves have done: their previous pattern of settlements. Arguably, this provides the very best evidence of what free collective bargaining would achieve. Here, a bargaining pattern exists: the evidence is incontrovertible that for sixteen years this union, and the one representing the employer's inside and outside workers, have moved lockstep in wage increases with only immaterial deviations. There is also evidence of a past practice of cost neutral health and welfare benefit improvements.

This is not to say, and we are not saying it, that replication of established bargaining patterns is immutable. Changing circumstances need to be taken into account. However, it would be completely inconsistent with the appropriate application of the replication principle to give long-standing bargaining patterns short shrift. There may be situations where current circumstances will trump established bargaining patterns, requiring arbitral intervention. The fundamental question to be asked is whether these parties, in free collective bargaining, would likely have departed from their long-established bargaining pattern mostly recently set just six months ago.

It bears repeating that for approximately sixteen years, in negotiations and interest awards, wage outcomes with this union have, with insignificant deviations of no consequence, mirrored the wage outcomes achieved between the City and the union representing its inside and outside workers, CUPE 503. The replication pattern is historical, demonstrable and amply evidenced in the submissions. (The most recent wages for the City and CUPE were set in July 2021 when inflationary pressures were emerging as the union acknowledges: “At that time, the reported year over year inflation was ... 3.4%”.)

Obviously, inflation, then and more so now, is a serious and growing concern. The temptation is great to provide an inflation adjustment, but there are currently no sectoral patterns of settlement, or awards, to replicate. Occasionally, and in exceptional circumstances when presented with compelling evidence of demonstrated need, a Board of Interest Arbitration will lead the way, but in this case, the parties will soon be in a position to take inflation into account in free collective bargaining – should it prove persistent – given that the union’s requested term has been awarded.

In the meantime, the wage settlement provided for in this award replicates what this union and this employer have done for many years. This wage outcome is also

fully in line with the other recent wage results with other City unions. As

Arbitrator Albertyn observed in an earlier interest arbitration between these parties:

I consider the amount paid to all other bargaining units of the City to be the key comparator for 2004. I have reviewed the information described above with respect to 2004, but consistency between the different bargaining units of the City is, in my view, the overriding consideration. There is no compelling reason why the members of the CCIP should have a better percentage increase than that which was paid to the other bargaining unit employees of the City. (*City of Ottawa and CIPP*, unreported decision of Albertyn, July 3, 2005, para. 33)

This conclusion about replication has also informed our decision with respect to the other union proposals in issue. And this conclusion has been reached notwithstanding the union's submissions that there are other comparators that should now be followed.

While the employer requested a longer term, we are, on balance, satisfied that given general economic uncertainty, including the long-term impact of inflation, a three-year term is most appropriate. In addition, the awarded term best replicates the shorter terms that these parties generally negotiate. And, as earlier noted, it will position the parties to take inflation and other economic circumstances into account, sooner rather than – as the employer proposed – later.

We have also accepted the union's proposal that the denial of alternative work arrangements should be arbitrable. The fact of the matter is that it is public policy

in Ontario – reflected in section 48(1) of the *Labour Relations Act* – that workplace disputes – *all differences* – be subject to final and binding settlement by arbitration. To be sure, arbitral carve-outs are not uncommon. But this is an example of a provision that requires updating to reflect workplace reality, which is what we have done.

Insofar as some of the other issues in dispute are concerned, it is apparent to us that the parties have been able to agree on changes where necessary to hours of work in certain programs to better deliver services to vulnerable communities; indeed, the jurisdiction specifically exists under the collective agreement to do so and has been utilized. Absent compelling evidence of demonstrated need that cannot be currently accommodated under the collective agreement, it is simply not appropriate for us, giving effect to the criteria of gradualism and avoidance of breakthroughs, at least at this time, to intervene. If, and when, the parties cannot agree, and service mandates require it, and are demonstrable, the employer can bring this matter back to bargaining and ultimately, to arbitration (as is provided for in the collective agreement as the agreed-upon mechanism for resolving collective bargaining impasses). Accordingly, these employer proposals have not been awarded.

On the other hand, the evidence, from both free collective bargaining and awarded outcomes, is clear, cogent and compelling: substantial increases to psychological benefits are now uniformly negotiated and awarded in all sectors for reasons so obvious as to require no further discussion other than to note that this has been granted in return for the union-offered offsets: "...CIPP is open to the City's proposal for enhanced (mandatory) generic drug substitution and an allocated maximum of diabetic test strips to help fund the additional mental health benefits, in order to offset a portion of its proposal for increased psychological care." We have accordingly awarded this improvement with the offered benefit rearrangement, consistent with the union's offer, the past practice of the parties, and while noting that it only offsets a portion of the increased cost. Finally, we have granted the union's request for an amendment to Article 38; a change that is fully justified on a replication basis, as is the modest change to the Bereavement Leave provisions.

Award**Term**

January 1, 2020 to December 31, 2022.

Wages

January 1, 2020: 1.8%

January 1, 2021: 1.5%

January 1, 2022: 1.75%

Retroactivity to all current and former employees within ninety days following issue of this award.

Bereavement Leave

Provision amended – Other Family Members – to include aunt, uncle, niece and nephew effective date of award.

Benefits (Professional Services: Psychologist)

Effective 60 days following issue of award, union proposal granted in return for enhanced mandatory generic drug substitution and annual maximum of diabetic test strips.

Medical Certificates

Union proposal awarded effective date of award with amendment to “... any reasonable and customary costs...”

Alternate Work Arrangements

Delete:

The approval, denial or termination of an alternate work arrangement by the Employer shall not be a grievable matter and thereby is not subject to Articles 19 & 20 of the Collective Agreement.

Add:

In approving or terminating alternative work arrangements, the City shall not act in a manner that is arbitrary, discriminatory or in bad faith.

Vacancies

Article 25.01 – as agreed.

Article 25.02 (a) – as agreed.

Article 25.02 (b) – as proposed by union.

Clarity Note – deleted.

Article 25.05 (a) – as proposed by employer.

Article 25.05 (c) – as agreed.

Article 25.05 (e) – twelve months as agreed. No inclusion of proposed union language.

Article 25.05 (f) – as proposed by the union.

Article 25.05 (g) – as proposed by employer.

Article 25.05 (h) – as proposed by employer.

LOU #9

Deleted.

Article 38 – Workplace Safety and Insurance

Union proposal awarded.

Conclusion

At the request of the parties, the Board remains seized with respect to the implementation of this award.

DATED at Toronto this 7th day of February 2022.

“William Kaplan”

William Kaplan, Chair

I dissent in part. Partial dissent Attached.

Kathy Butler Malette, Employer Nominee

I dissent in part. Partial Dissent Attached.

Michael Wright, Union Nominee

Partial Dissent of Employer Nominee

I respectfully must dissent in the interest arbitration award issued by this Board. I disagree with the changes awarded to Article 9 – Medical Certification and Article 10 - Bereavement Leave.

As a result of the amendment to Article 9 – Medical Certification, the Employer will now be required to pay the cost of medical certificates it requests from employees with no cap on the amount of payment.

Article 10 - Bereavement Leave was amended by adding additional relatives to be covered in a request for bereavement leave. This language does not exist in any other City of Ottawa collective agreements.

The current language in the two articles, Medical Certification and Bereavement Leave, is normative. The Medical Certification language which requires an employee to provide and pay for the cost of a medical certificate has been in place since the 2004-2006 collective agreement.

Neither amendment replicates what the parties would have agreed to in free collective bargaining nor did the union make a compelling argument that these changes were required based on a demonstrated need. There is only one union in the City of Ottawa (City of Ottawa and the Ottawa Professional Firefighters' Association) where the language in the collective agreement requires the City to pay a maximum payment of \$25 for medical certificates. No unions in the City provide paid bereavement leave for the death of an aunt, uncle, niece or nephew.

In its decision to award a change to the Medical Certification Article, this board should have applied the principle of gradualism and, at the very least, capped the payment by the Employer at \$25 for a medical certificate. This amendment will result in increased costs for the City as payment of medical certificates will be sought after by all other City bargaining units.

Regarding the changes awarded to the Bereavement Leave article, the Union did not provide any compelling evidence that bereavement leave should be provided for an employee's aunt, uncle, niece or nephew. There have been no grievances or issues with the application of the Bereavement Leave article from 2010 to now.

Further, the awarded amendments to the Bereavement Leave article do not exist in any of the collective agreements of the City. In fact, the comparator data exists only in collective agreements outside the City of Ottawa.

A Board of Arbitration must award language that the parties would likely have agreed to in free collective bargaining, based on the principle of replication. It must also consider evidence of demonstrated need for a change and previous patterns of settlements. In this instance, based on the absence of the above criteria, I would not have awarded changes to the Medical Certification or Bereavement Leave articles.

PARTIAL DISSENT OF INSTITUTE NOMINEE MICHAEL WRIGHT

I have reviewed the Chair's award in this matter and am in agreement with what has been awarded with the exception of wages, where I find I must dissent. My dissent is based on two points.

I. The Comparison with CUPE Local 503

The Chair is correct that the parties to this arbitration have historically treated whatever CUPE Local 503 has been awarded or negotiated for wages as the most applicable comparator. And while a comparator is a helpful reference point on which to base a decision, it is not the full and complete answer in all cases. Here, the Civic Institute of Professional Personnel ("the Institute") and the City of Ottawa ("the City") have agreed at Article 41 of the collective agreement to resolve any disputes with respect to the terms of a renewal collective agreement by arbitration. Both parties have chosen this method rather than resolving disputes through work stoppages. In this round of collective bargaining these parties were not able to resolve a number of items, with wages being one of them and likely the most important of all unresolved items. The only mechanism available to the Institute is to bring that dispute to arbitration, which it has done. To simply say in response to this inability to reach agreement that the parties have consistently tracked the wages agreed to by or awarded to CUPE Local 503 (which I accept has been the case) is an inadequate response to the current dispute.

If the Institute's position on wages and the arguments it has made in support of that position does not warrant a further increase beyond what the Chair has awarded then so be it, but that is not the basis for the Chair's conclusion. While the Chair says that patterns like the one with CUPE Local 503 are not immutable and that there may be circumstances that will trump these established

patterns, ultimately his decision simply adopts the wages awarded to CUPE Local 503 without engaging in a meaningful way with what are quite different circumstances. Where circumstances have changed and warrant it, a sophisticated party like the Institute (or the City for that matter) that wishes to depart from a pattern of wage settlements should be permitted to do so and will then have to accept the consequences of that decision, for better or worse.

II. The Evidence Before the Board About Inflation

This leads to the second basis for my dissent. In my view there are circumstances that were presented to this Board that not only justify but make it appropriate for the Board to deviate from the established pattern. At the time CUPE Local 503's wages were awarded inflation was, as the Chair notes, at 3.4 percent. As the evidence before this Board disclosed, at the time of that award the prevailing view was also that inflation was expected to be transitory. That is no longer the anticipated course of this inflationary cycle. But even if it is transitory, to not award the Institute a wage increase of anything more than 1.75 percent for 2022, the third year of this renewal collective agreement, puts the Institute well below the current expectations for increases to the Consumer Price Index ("CPI") for 2022. The evidence before the Board is that CPI was 4.7 percent in November 2021, which is 1.3 percent higher than the CPI increase at the time CUPE Local 503 was awarded a 1.75 percent wage increase for 2022 (subsequent to the hearing the CPI for December 2021 was announced at 4.8 percent—a 30-year high). The evidence at the hearing was that inflation in Canada was expected to average 3.4 percent for 2022. The evidence was that inflation in Ontario was 4.9 percent in November 2021 and 5.5 percent for Ottawa. Housing prices in Ottawa have increased 17 percent since 2017. I cannot support a decision that would award

employees represented by the Institute what is expected to be 1.65 percent less than the expected increase to CPI for 2022.

In 2021 inflation was 4.4 percent and despite now having the benefit of all of the relevant economic data for all of 2021, the Chair has accepted that the 1.5 percent increase awarded part way through last year to CUPE Local 503 for 2021 is also appropriate to award to employees represented by the Institute. I also cannot support a decision that would award employees represented by the Institute 2.9 percent less than the increase to CPI for 2021.

In its brief the City simply did not address the inflation factor. It says in its brief that there is no evidence of inflation as a consideration in the awards of the Institute's comparators, which is simply saying that inflation does not appear to have been a factor in the wages awarded to other employees. On one of the key factors for determining wages the City simply neglected to comment about the impact of inflation on the employees represented by the Institute.

For the Chair to say that the parties will soon be in a position to take inflation into account in free collective bargaining is no answer to the fact that 2021 and 2022 wages will have already been decided, so the Institute will have to bargain for catch up if it wishes to try to address the inflation that took place last year and is expected to take place this year, and will no doubt be met with an employer that will say that CUPE Local 503's wages for 2023 and 2024 have already been decided, and they are 1.8 percent for 2023 and 2.0 percent for 2024, and the Institute cannot get more. If that is the case then these parties will no doubt find themselves back at interest arbitration again, where it would be profoundly perverse if a subsequent interest arbitration board again deferred to

a pattern set by a different bargaining agent. If that takes place there is nothing in such a sequence that is consistent with the “free collective bargaining” the Chair views as readily available.

Concerning an arbitration
Pursuant to the *Hospital Labour Disputes Arbitration Act*

Between:

Dana Manor

and

Service Employees International Union, Local 210

to establish the terms of their collective agreement
for the period December 2, 1993 to December 1, 1995

Board of Arbitration

J. W. Samuels, Chairman
T. F. Storie, Employer Nominee
S. Lewis, Union Nominee

For the Parties

Union

M. Goldenberg, Director of Research
R. Renaud, Representative
J. Jackson, Chief Steward

Employer

R. Bass, Spokesman
L. Bondy, Administrator, Dana Manor
S. Hu, Comptroller, Diversicare
S. Bock, Director Human Resources, Diversicare
L. DeLaBarre, Vice-President, Peat Marwick Thorne Inc.

Hearing in Windsor, July 27, 1994; and later written submissions

Introduction

Dana Manor is a retirement home with a license to serve 195 residents. It has some residents who pay for space privately, but about 80% of its clients are covered by a service agreement with the City of Windsor and these residents are often ex-psychiatric patients ranging in age from 20 to 90. It is really a huge rooming house, providing some supervision. The majority of resident would be in a rooming house if they were not at Dana Manor.

The Manor has gone through several owners, and, in March 1993, after criminal charges had been laid against the owner's company (for misappropriation of residents' trust monies) and the company had gone bankrupt and the owner had left the country, the Manor was put into receivership. It then went into bankruptcy on the initiation of RoyNat, the mortgage-holder, and it was put under the supervision of Peat Marwick Thorne as Trustee.

Diversicare Management Services was retained to manage the facility and to attempt to revive it as a viable enterprise.

Diversicare has determined that, though the Manor is licensed to accommodate 195 residents, the practical capacity is 163 beds. When Diversicare took over in March 1993, there were 114 residents, but it was decided immediately that 14 of them ought to be in a nursing home, and space was found for them in other facilities.

Now there are 99 residents, and there are 17 full-time and 5 part-time employees in the service bargaining unit.

The parties were unable to reach agreement on the wage schedule for their collective agreement for the period December 2, 1993 to December 1, 1995. There were many agreed items to be inserted into the new collective agreement, and these are found in the Appendix to this award.

Fundamental Principle

Our task is to establish the terms which would have been agreed had the parties been able to resort to free collective bargaining. By legislation, the parties have been prohibited from striking or locking-out, and therefore, if the parties are unable to agree on the terms of their collective agreement, the disputed matters must be decided by arbitration. Virtually all arbitrators have agreed that, in these circumstances, our central focus is to produce the terms which would have resulted from an unfettered bargaining process. The purpose of the arbitration is to avoid a work stoppage in an essential industry, not to produce a collective agreement bereft of labor market realities.

Both parties, in their written submissions, argued that we ought to follow this fundamental principle.

So what would have been in the minds of the parties if they had to come up with their own agreement? What factors would govern the employees' resolve to strike, and how strong would these factors be? What factors would govern the actions and resolve of the Employer in its response to Union demands?

Application of the Fundamental Principle

The Union is requesting a \$2.00 across-the-board increase in wage rates, staged in 50¢ increments every six months. The strongest motivating factor for this request is the desire to move closer to parity with some other service units organized by this Union in nursing homes, retirement homes, and elsewhere in the health care field.

The Employer makes two central arguments.

Firstly, that the last collective agreement between the parties was for three years and was negotiated successfully by the parties. Therefore, the bargaining unit demonstrated by its agreement that it was satisfied with its position relative to whatever comparable groups it felt to be important.

Therefore, for 1994/95, it is only necessary to have the same movement as other groups in order to maintain the same relative position. And the settlements for 1994 are coming in as a general rule with no increase in wages whatsoever. In the first quarter of 1994, the average annual increase in the public sector had slowed to .1%, and in the private sector there has been a fallback of .3% (in other words, on average in the private sector, there have been wage concessions made by the bargaining units). Thus, there is good reason to keep the wages as they were in the expired collective agreement.

Secondly, the Employer argues that its financial position is so perilous that it simply cannot afford any increase in wages. Since Diversicare took over the management in March 1993, up to May 30, 1994, there has been an operating loss of \$155,000, before any provision for mortgage interest, receiver's fees, or management fees. Diversicare's management fees for this period came to \$88,200 plus GST, and this gave a net loss of \$249,200 for the fourteen months. And this loss does not even take into account interest owing to Roynat in respect of the advance made of \$4,600,000, which will amount to around \$951,000 by the end of 1994 (roughly \$437,000 for the last ten months of 1993 and \$514,000 for the twelve months of 1994). In short, Dana Manor is bleeding financially and it will be some time before the flow is stanchied.

The management fees have not increased in 1994 over 1993. The administration cost, apart from advertising and promotion, has decreased in 1994 over 1993. In an attempt to increase its occupancy, the Company has spent considerably more for advertising and promotion in 1994.

The central problem for the Employer is the low occupancy, and there is serious reason to be concerned that increasing occupancy will not be easy. The current government philosophy of care for the type of person who makes up a large part of the Manor's occupancy is to move the person into his or her own apartment in the community. There will be less

supported care. The Company has not been able to achieve the occupancy budgeted for 1994. For the first eight months of this year, there were 1774 fewer resident days than budgeted.

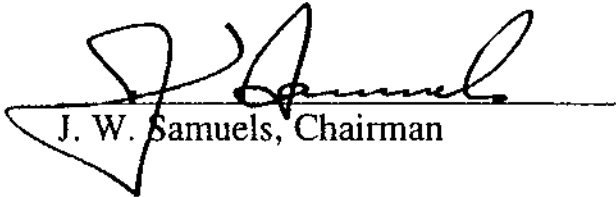
The Union argues that we ought not to take into account the Employer's argument of inability to pay. But this simply is not reasonable. The Employer is a private enterprise. The Employer will not continue operating the enterprise if it means a continuing and growing financial loss. If the parties were free to bargain their agreement, with the possibility of strike and lockout, there is simply no doubt that the Employer's position would be governed primarily by its own financial considerations. The ability of the Employer to pay any increase in wages would be the paramount consideration. And if our fundamental task is to replicate what would happen if the parties were free to bargain their own agreement, with the possibility of strike and lockout, then necessarily we must take into account the Employer's ability to pay.

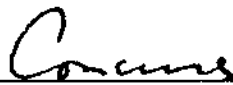
We have been shown the Employer's financial statements. We are satisfied that they reflect accurately what has happened since the Manor went into receivership in March 1993. The Union has had an opportunity to study these statements and to make submissions concerning them.

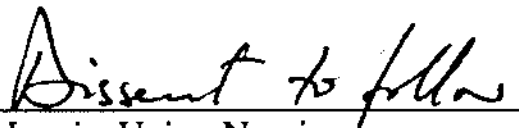
We are convinced that the Employer is not able to meet an increased wage bill. If we were to award an increase in wages, then in all likelihood the Manor would have to close. We think it makes no sense whatsoever for us to make an award which would have this consequence. For this reason, we deny the Union's request for an increase in wages.

The collective agreement for the period December 2, 1993 to December 1, 1995 will be in the same terms as the previous agreement, except insofar as the parties agreed on changes, found in the Appendix to this award.

Done at London, Ontario, this *2nd* day of *November*, 1994.


J. W. Samuels, Chairman


T. F. Storie, Employer Nominee


S. Lewis, Union Nominee

DANA MANOR & SERVICE EMPLOYEES' INTERNATIONAL UNION

ISSUES IN DISPUTE AND AGREED ISSUES AS AT JULY 25, 1994

1. All issues agreed prior to July 19, 1994.
2. Amend 23.01 to reflect that it applies only to employees working 30 or more hours per week.

Add a Letter of Understanding that states that employees working less than 30 hours per week as at the date of award who are covered by the existing Group Health Plans will continue to be covered by these plans and will be therefore deemed to be included in Article 23.01.

3. Effective November 30, 1994, delete existing 23.02 and replace with the following:

Effective December 1, 1994 pay for sick leave is for the sole and only purpose of protecting employees against loss of income when they are legitimately ill and will be granted to full-time employees working 30 or more hours per week and all other employees on staff as at July 19, 1994 on the following basis:

- a) Employees who have completed probation shall be credited with three (3) days of sick leave (Note: Employees on staff as at November 30th, 1994 who have completed probation will be credited with their existing bank, and will not be treated as employees who have just completed probation) and then shall accumulate sick leave credits at the rate of 1 day for each month worked to a maximum of 10 days.

To the extent an employee has not used up her sick leave bank, it may be carried over to the next calendar year. Sick banks can not exceed 10 days.

4. New 23.03:

Employees hired after the date of award working less than 30 hours per week will receive 20¢/hour paid in lieu of the benefits provided in articles 23.01 and 23.02.

Employees hired after the date of award working less than 30 hours per week will progress on the vacation schedule set out in article 16.03 on the basis that 1800 hours paid is equivalent to one year of service.

5. Add to Article 14.05:

The Employer will endeavour to schedule full-time employees such that they receive every other weekend off.

6. RPN Adjustment:

If the employer hires into the RPN classification, the Union may decide to pursue a special adjustment for this classification. If they do so, the parties will meet and review the proposal. Failing agreement, the Union may pursue the issue to interest arbitration. The matter will be heard by the Board established to determine the wage issue in this dispute.

The only issue remaining in dispute is the issue of the general wage increase, if any.

IN THE MATTER OF AN ARBITRATION

B E T W E E N :

THE PARTICIPATING NURSING HOMES

- and -

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1 CANADA

MARTIN TEPLITSKY, Q.C.
Arbitrator

APPEARANCES:

On behalf of the
Employer: Bob Bass
Ryan Wood

On behalf of the
Union: Ricardo McKenzie
Helen Nowak

Mediation held September 7, 2012

Arbitration held September 13, 2012
and September 14, 2012

I was appointed mediator/arbitrator of the renewal of the Collective Agreement in this province-wide negotiation between the SEIU and the Nursing Homes.

The statutory imposition of med/arb as the dispute resolution mechanism has led to the unfortunate practice of separating the mediation from the arbitration. Briefs are filed for the arbitration portion but no briefs are filed for the mediation segment.

Before this statutory change, I conducted med/arb in these cases with briefs filed in advance. Sometimes the “arb” or part of it proceeded the “med”. Although reasonable mediators may differ on this point, I remain persuaded that a base of ignorance is not an advantageous starting point for effective mediation. Briefs allow the mediator to become familiar with the issues in dispute and to plan an approach to resolution. Without briefs, little can be accomplished.

I appreciate that the parties followed the apparently common practice in these matters. This practice should change. The parties should provide briefs in advance of the med/arb. The process of med/arb should not be a rigid one of med first and arb second. Depending on the circumstances, it may be preferable to conduct a hearing first and a mediation second, possibly concluding with a further hearing if no settlement is reached. Even with briefs it is usually necessary to hear oral submissions to clarify the issues. Such submissions are best made in the

presence of the other party. The presence of both parties has a moderating impact on submissions resulting in more accuracy and fuller disclosure.

Prior to the commencement of the med-arb”, a number of issues were resolved.

During the med/arb, further issues were resolved. Importantly, the parties agreed to a 3-year term. I will only address those matters in this award which stand unresolved. I remain seized pending the execution of complete Collective Agreements.

This mediation/arbitration was conducted pursuant to the *Hospital Labour Disputes Act* (HLDA).

There are several criteria in the statute. For convenience I set these out:

“ 9.(1.1) In making a decision or award, the board of arbitration shall take into consideration all factors it considers relevant, including the following criteria:

1. The employer’s ability to pay in light of its fiscal situation.
2. The extent to which services may have to be reduced, in light of the decision or award, if current funding and taxation levels are not increased.
3. The economic situation in Ontario and in the municipality where the hospital is located.

4. A comparison, as between the employees and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.
 5. The employer's ability to attract and retain qualified employees.
- 1996, c. 1, Sched. Q, s. 2.”

ABILITY TO PAY

Re: 9.(1)(1.1) The employer is not submitting that it lacks ability to pay. The Union submits that the employer has the ability to pay. It led considerable evidence to show relative stability in the industry and its profitability. Because this is “private” sector employment (or perhaps hybrid private/public sector employment), ability to pay is relevant but only if the employer seeks to reduce an increase otherwise appropriate because of its financial circumstances. The fact that an employer may have the “ability to pay” is not a reason to award an increase. I have ignored this factor.

Re: 9.(1)(1.2) This provision has no application.

Re: 9.(1)(1.3) Judging by the size of the deficit in Ontario, and the results of collective bargaining generally, the economic situation is not robust.

Re: 9.(1)(1.4) I consider this factor subsequently in connection with the *Red Cross and SEIU* settlement for Home Care Workers.

Re: 9.(1)(1.5) This factor is not applicable.

The major monetary issue is the Union's demand for an across the board increase of 3% in each of the 3-year term of this agreement. The employer seeks a 0% increase in each year.

I approach interest arbitrations principally from the following perspectives: It is wrong in principle for the public sector to subsidize the private sector. It is equally wrong for the private sector to subsidize the public sector. The failure in Ontario to systematically collect and organize collective bargaining data and to cost collective agreements on a total compensation basis inhibits application of these self-evident principles. What interest arbitrators often receive in lieu of hard data is competing rhetoric on the alleged excesses of public sector compensation over private sector compensation and vice versa.

Second, the driving force of interest arbitration is replication. All parties accepted this approach. Interest arbitrators should "replicate" the results of free collective bargaining. In so doing, expression is given to the principles I have expressed. Interest arbitration is a derivative process which should to the extent possible, depend on the results of settlements achieved in a right to strike/lockout regime.

In this matter, there is a substantial private sector settlement involving the SEIU and some of the employers before me. It involved a large group of 3,500 employees having the same principal classification as exists in this case. The settlement was achieved in a right to strike

lockout regime. I refer to the *Red Cross and SEIU* (Home Care Sector). The results were a 0% increase for each of 2 years with a \$.15 cents per hour lump sum bonus in each year.

The Union submitted that I should not give much weight to this settlement. It asserted that the right to strike was not an effective tool in the home care environment. A strike would cause the loss of contracts because others would step in to provide the service. Reliance was placed on a statement of Arbitrator Weatherill in which he opined that: “ ... the real value of the right to strike is, at least in the present economic circumstances, somewhat illusory ...”. The Union pointed out that it had unsuccessfully sought HLDA status and that employees were reluctant to abandon their clients through strike action.

I do not accept that I should discount the *Red Cross and SEIU* settlement because of the view held by some that the right to strike/lockout is an inappropriate dispute resolution mechanism. Arbitrators are not well situated to judge these opinions. We must take collective bargaining facts as we find them. Whether the employees feel a “moral” or “professional” responsibility not to go on strike adds little to the issue of whether this private sector settlement is a compelling comparable. Although I respect Arbitrator Weatherill’s opinion, in my respectful view, it forms no basis to ignore or discount a close comparable. It would be an odd result if interest arbitration produced substantially different results from freely negotiated private sector settlements in a comparable business. Accordingly, I conclude that the *Red Cross and SEIU* settlement is a compelling comparable.

Since 2000, these employees have bargained or been awarded increases which follow public sector results. For the relevant period of this award, or at least two years thereof, "0" increases will be the norm. The results of recent settlements coupled with aggressive Government initiatives, makes this conclusion a certainty. The private sector has its own share of "0" increases. The recent settlements with Ford , GM and Chrysler and CAW illustrate this fact. In the result, I award a "0" increase in year one and year two; a wage reopener in year 3 and following the Red Cross settlement , *supra*, a lump sum of .15 cents per hour worked payable in the final week of each of the first 2 years of the agreement.

PENSION

I remain seized pending receipt of data on cost and implications.

LONG-TERM DISABILITY

At the present time, there is some coverage, in one form or another, for the first 35 weeks of absence from work. I was not provided with any data with respect to the cost of an LTD plan which would trigger in after 35 weeks. This issue may be raised in the reopener.

BENEFITS TRUST

There was no data available to me to consider this proposal. Considering the escalating costs of benefits, the wisdom of a Union managed programme is not readily apparent to me. In any event, the Union may make specific proposals for the reopener in the 3rd year.

NO CAP ON LIFETIME DRUG BENEFITS

I remain seized pending receipt of information as to whether a cap exists and the costs of removal.

SUPERIOR CONDITIONS

A clause is unnecessary. Unless expressly agreed to by the parties or in this award, all superior or inferior conditions continue.

RPN ADJUSTMENT

Such adjustments have been common in response to increases in the hospital sector. No increases have occurred in the hospital sector. Accordingly, no increase is appropriate for the first 2 years. This request may be renewed in the 3rd year wage reopener.

PART TIME AND OVERTIME ASSISTANTS

Assistants are in the Union.

LAY-OFF

The employer's proposed language does not adequately deal with the issue of what happens after the most junior employee in a classification is laid off. If the layoff results in a vacancy on the shift where the most junior employee was working, then the employer may assign on the basis of senior choice—junior force an employee in the classification from the opposite

shift. This issue may not arise if the most junior employee is working on the shift where the layoff occurs.

22.14 PAYMENT IN LIEU OF BENEFITS

The employer's language conforms to my directions at the hearing.

This applies to approximately 95 homes with the standard clause.

A few homes pay more than .50 cents in lieu. The standard language will also apply to these homes but the in lieu will be reduced by .25 cents. Two homes, Sheppard Village and Mariann Home have no provision. The provision as to sick leave only will apply to them.

I remain seized.

DATED the 27th day of September, 2012.



MARTIN TEPLITSKY, Q.C.
Arbitrator

175 ① T. E. M. Signed: E. H. Q.

IN THE MATTER OF THE SCHOOL BOARDS AND TEACHERS COLLECTIVE
NEGOTIATIONS ACT, 1975

AND IN THE MATTER OF A FINAL OFFER SELECTION BETWEEN THE
DUFFERIN COUNTY BOARD OF EDUCATION (the "Board") and DISTRICT 48
OF THE ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION (the
"Teachers")

SELECTOR

Ross L. Kennedy

APPEARANCES FOR THE BOARD

Fred Reeve	Spokesman
Arnold Townsend	Trustee
George Breckenbridge	Trustee
Peter Baxter	Trustee
Bruce Horsley	Trustee
W. S. Roliff	Director of Education
R. V. Hollier	Personnel Officer

APPEARANCES FOR THE TEACHERS

David Forsyth	O.S.S.T.F. Representative and Spokesman
Brian Reynolds	Chief Negotiator
Doug Thomson	Negotiator
Anne Yeager	Negotiator

A hearing was held in this matter at Orangeville on
the 12th day of March, 1979.

DECISION OF THE SELECTOR

Effective February 12th, 1979, the parties agreed to

negotiation of a Collective Agreement to me as Selector pursuant to the provisions of The School Boards and Teachers Collective Negotiations Act, 1975 (the "Act"). The parties have complied with the time limits and requirements of the Act in all respects, and submissions have been made to me in the briefs and replies of the parties and in oral submissions and in some additional materials filed at the hearing. The parties have resolved that the Collective Agreement under consideration will be for a period of two years from September 1st, 1978 to August 30th, 1980.

The matters which have been submitted to the final offer selection process relate to two specific areas, namely the salary levels to be in force for teachers, principals and vice-principals during each of the two years of the Collective Agreement, and to a Board request for a new provision in the Collective Agreement which would give to the Board the right to withhold the negotiated salary increase from a teacher at maximum years experience on the salary grid whose performance was found to be unsatisfactory.

With respect to salary levels, I have attached hereto as Schedule "A" the Board's final offer with respect to salaries and as Schedule "B", the Teachers' final offer. The Board proposal represents increases based on the 1977-78 salary levels with respect to the grid figures in the approximate range of 4.9% to 5.8%. The Board approach was essentially to determine appropriate increases at the minimum and maximum in each category, and to cover the intervening years in equal steps. The increase at each level on the grid at maximum comes to 5.7%. For

and at maximum, the increases are 5.0%. The Teachers' proposal provides for an across-the-board increase in all rates on the grid of 6.15% in the first year, and an additional 5.8% in the second year.

With respect to the costing to the Board of the respective levels of increase and the determination of the effective salary increase to the Teachers, the parties went through the customary disagreement between Boards and Teachers as to the status of the increment and its relevance in considering the rate of increase in the respective positions. The Teachers, of course, argue that increment is separate and distinct from any negotiated increase in the overall salary levels; whereas the Board stresses the fact that the cost of the increment represents a real item of disbursement on the part of the Board and, therefore, should not be ignored in evaluating the level of increase. Some argument was directed by the parties to this aspect of the matter, but in view of the fact that the offers are not significantly out of line, one with the other; and considering that the Board is not asserting, in this process, any particular financial hardship or inability to pay, the status of the increment would not constitute any major consideration on this selection. The projected cost of the respective offers based on the Board materials with respect to salary costs indicate that the Board offer represents an 8.0% increase over 1977-78 salary costs including increment, and a further increase of 7.0% for 1979-80. It is stressed that these

of the Teachers' proposal concluded that it represented an 8.48% increase for the first year and a 7.72% in the second year. It is noted, however, that those calculations as filed also included allowances and benefits in addition to the basic grid salaries; and the figures, therefore, while close, are not totally comparable. They do highlight that the respective proposals of the parties may be considered to be reasonably close, one to the other.

Each of the parties can provide adequate support for its position on the usual basis of comparisons with other Boards in the same geographic area or with comparable characteristics. On the question of comparability with respect to Boards in the same general area, there is some divergence with the Board rationale making reference to contracts in force in Brant, Oxford and Middlesex Counties, while the Teachers refer to Halton, Peel, Waterloo and Wentworth. A consideration of the comparables asserted by both parties does not lead to any definitive indicator that the one position is more reasonable than the other. A comparison to general trends in the consumer price index is again equally inconclusive in defining a rational basis for preferring one offer over the other.

In its costing approaches, the Board presents comparisons as to what the actual average teacher salary would be in Dufferin if the Dufferin teacher population were placed on the salary grid in force in 1978-79 in nine surrounding Boards of Education. That comparison shows that the average salary in

Dufferin based on the Board offer and the actual present teacher population would be exceeded if another County's grid were used in only one instance, namely Simcoe County. It is my view that that type of comparison can be useful in that it focuses on the portion of the grid that is most significant to the actual teachers employed under the contract. In making comparisons, it can remove anomalies that may result where another grid has been produced with excessively low minimums or excessively high maximums because there are, in fact, no teachers in those particular positions. This same consideration is relevant to some of the teacher information that was produced, which compared the relationship of the Dufferin grid to the minimums and maximums in force in other areas. Those comparisons generally tended to show that the Dufferin grid was less favourable to other grids at the minimums; whereas comparisons at the maximums were much more favourable to the Dufferin grid. Over half the teachers are already at maximum, and during the 1979-80 school year, there will be no teachers at either of the first two levels of any category. Accordingly, in assessing the Teachers' comparables, the comparisons at maximum appear to be more significant than the comparisons at minimum.

Some information was also provided by the parties relating to settlement trends outside of the teaching area, which again would indicate support for increases in the ranges suggested by both parties. I think in a consideration of those trends, however, it must be remembered that there are aspects of the teaching profession such as vacation periods, fringe and

pension benefits, and a degree of job security superior to conditions in other sectors, and that that ought to be borne in mind in making comparisons of relative rates of increase that are appropriate. In general, it would be my view that external comparisons would favour the selection of the Board position. It is further clear from numerous arbitral Awards in interest disputes and from various sources of public information, extracts from which were contained in the information provided by the parties that there is a general trend to economic restraint and a recognized need to keep the overall cost structures under control. General economic conditions and trends therefore would favour the Board position.

As stated previously, the offers are not that far apart. The term "range of reasonableness" has appeared in some arbitral Awards stressing the fact that the appropriate salary level is not something to be determined with mathematical accuracy. There is, rather, a range within which reasonable offers will fall, and both offers which are before me are clearly well within that range. The Ontario Educations Relations Commission publishes a provincial overview of Teacher/Board Collective Agreements as settled or determined by third party intervention, and in particular, has issued in January of 1979, statistics covering a very substantial number of completed Agreements. Those statistics contain a table setting out the distribution of secondary teacher grid salaries at category minima and maxima for 1978-79. A comparison of the Board and Teacher proposals with those distributions shows

roughly the median; whereas the Teacher proposal would come out in the general area of the third quartile. A similar type of comparison was contained in charts filed by the Teachers setting out the relationship of the Dufferin grid to surrounding Boards for 1977-78, and what the effect of the Teacher proposal would be in relation to those same Boards for 1978-79. Twelve surrounding Boards were included in that chart, and the average at minimum and maximum was calculated. The chart shows that with respect to maximum, in particular, the Dufferin grid was higher than the surrounding average, and that the Teacher proposal for 1978-79 maintained generally the differential. We were not provided any information that would establish any reason for that relationship; and it is further clear that on the Board offer, the differential would still, in general, be retained, but somewhat reduced.

In considering all of the foregoing matters, I would again stress that there is no preponderance of criteria that would favour the selection of the one offer over the other. In the event that salary levels were the only issue before me, I would be inclined to favour the Board proposal based specifically on the general trends of economic restraint and conditions and settlements elsewhere in the economy.

The second issue which is before me relates to the following clause requested by the Board to be inserted in the Collective Agreement:

- 4.05 (a) *Where, on the basis of written reports from the principal and/or Director of Education or his designee a teacher who is at the maximum step on the grid is deemed to have given service that is less than satisfactory, the teacher's salary under the collective agreement will be reduced by the average increment for that category. However, no teacher salary will be adjusted below his/her current salary level.*
- (b) *The teacher whose adjustment is being reduced must be notified no later than April 1st as to reason(s) and must be instructed on how to improve his/her performance.*
- (c) *In the subsequent year, should the teacher whose adjustment has been reduced and whose performance is now considered to be satisfactory, then that teacher's salary will be readjusted to that which is being paid for the maximum step.*
- (d) *Any teacher whose adjustment has been reduced for one year and whose performance is still deemed to be less than satisfactory, and who has been given adequate assistance in improving his/her performance, shall be notified by the Board of the teacher's termination of contract in accordance with the terms of the contract.*

In supporting the clause, the Board stresses that the purpose of the clause is not to deal with situations of incompetence, but rather situations where there is less than satisfactory performance. A similar clause exists in the elementary contract in Dufferin, and similar language has apparently been negotiated in three other secondary Teacher contracts. The Board argues that the remedy is totally analogous to the right to withhold an increment for a teacher not at a maximum and that the purpose of such a clause is to give tangible encouragement for improvement. The measure is designed to be corrective, rather than punitive, and is intended for situations calling for discipline that is

Act. It is the position of the Board that, as presently constituted, the available disciplinary steps are deficient in dealing with a situation of complacency and unsatisfactory performance as opposed to incompetence or wilful departure from proper procedures. It is the Teachers' position that the clause is unnecessary, and that while the withholding of increment may be appropriate to a developing teacher, the use of a financial penalty or fine is inappropriate in dealing with an experienced teacher. It is urged by the Teachers that the available procedures of discipline under the provisions of The Education Act and the established performance review procedures employed by the Board are fully adequate to deal with any problem teachers, and no additional remedies are required. In the Teachers' view, a contractual provision for a monetary penalty is not proper; and further, the Teachers argue that it is not appropriate in the context of a third party resolution of the dispute to introduce this type of change in the relationship of the parties, it being the view of the Teachers that third party resolution should not inject into the relationship between the parties some factor which causes or which might cause a change in a long-understood and agreeable operational method of evaluation developed over a period of years.

In evaluating the Board request in this area, it is first to be noted that in looking elsewhere to see what other Boards have done in an atmosphere of free collective bargaining, there is not to be found any significant trend to this type of clause elsewhere. I do not consider that this factor, of itself,

will categorize as inappropriate the type of clause which the Board seeks; but I think it indicates that an arbitrator or a final offer selector must set strict standards to be met before ruling that the clause be imposed upon the reluctant party. It may well be that a situation can develop wherein one side develops a very legitimate need for a contractual provision which, for policy or other reasons of the other party, it may steadfastly and as a basis of principle oppose. It is quite conceivable and proper that such a matter can properly be resolved by third party resolution, and particularly in the teaching area, there exist several potential areas of conflict between Boards and Teachers which could give rise to that type of fundamental disagreement. In resolving that type of issue, I feel it is incumbent upon an arbitrator or a selector to require that the party proposing the clause establish firstly that there is a demonstrated need for the provision desired and secondly that the proposed solution will, in fact, deal with the need which is stated. It is my view that the clause, as proposed by the Board, fails in respect to each of the foregoing standards.

With respect to demonstrated need, the Board relies on what it alleges to be an absence of disciplinary techniques for dealing with the unsatisfactory (as opposed to incompetent) teacher who is at the maximum level of the grid. By way of preliminary comment, it is to be noted that that teacher will, in the context of Dufferin County, have on eleven occasions, received an increment which, under the contract, the Board has the

in fact, been withheld or threatened to be withheld on previous occasions; and, therefore, it would seem reasonable to assume that for a teacher at maximum, the aspect of competence has already been reviewed. The issue for such a teacher, therefore, would appear to be a failure to perform or to keep up to date rather than a lacking in ability to perform the job in the first instance. Accordingly, the initial distinction made by the Board, of incompetence as opposed to unsatisfactory performance, would appear not to be, in fact, a valid distinction. It was established on the hearing that Dufferin does have an extensive performance review system which has been documented and the procedures themselves and various policy statements were filed on the hearing. The County would appear to be a leader in the establishment of a formalized system of procedures for performance review; and it was the opinion of both parties that the system worked well. It is further recognized that the ultimate penalty of dismissal pursuant to the provisions of The Education Act is not a remedy which is ever sought precipitously by a Board on the first indication of problem; but, in the normal context, it is preceded by a substantial period during which the teacher's performance and problems are documented and various efforts will be made to solve the problem. The teacher in question may be observed by principals, superintendents and directors; and attempts will be made to correct the problem. Only where efforts of this nature have been made and documented is it likely that in the process of a board of reference, the dismissal of a teacher will be upheld. The Board expressed its need for a clause of the nature proposed on the basis that the penalty of dismissal under The

Education Act was too severe for the type of situation envisaged for the withholding of the negotiated increase. That position overlooks the fact that, while the penalty of discharge is indeed severe, there are numerous steps, counsellings and warnings that normally precede that dismissal, and these, in substance do constitute disciplinary methods open to the Board. Arbitral jurisprudence generally indicates a recognition that the general principles of progressive discipline are applicable to the professional worker covered by a Collective Agreement. Generally, however, in the professional context, it is recognized that disciplinary responses such as suspension, which are common in the industrial setting, are inappropriate to a professional relationship; and that the more appropriate forms of discipline for professional employees are to be found in counselling and warnings as to the potential consequences of continued unsatisfactory performance. Examples of these principles are to be found in Ryerson Polytechnical Institute and Faculty Association, (1976) 12 L.A.C. (2d) 58 (Simmons), City of Toronto Planning Board and Canadian Union of Public Employees Local 79, Freesman Grievance (unreported December 15th, 1976, Burkett) and Re Owen Sound General and Marine Hospital and Ontario Nurses Association (1977) 16 L.A.C. (2d) 11 (Abbott). In its argument, the Board has essentially tried to categorize incompetence as a major problem to be dealt with by dismissal under the provisions of The Education Act, and unsatisfactory performance as a minor problem for which some minor form of discipline is desired. It would be my view that a teacher who is at the experience level of maximum and who is giving

ought not to be dealt with as such. It is a major problem which, if it continues, ought ultimately to result in a recourse by the Board to the provisions of The Education Act; and in the course of that process, there are numerous steps and opportunities for the Board to go through the procedures of progressive discipline appropriate to that problem teacher in a professional context.

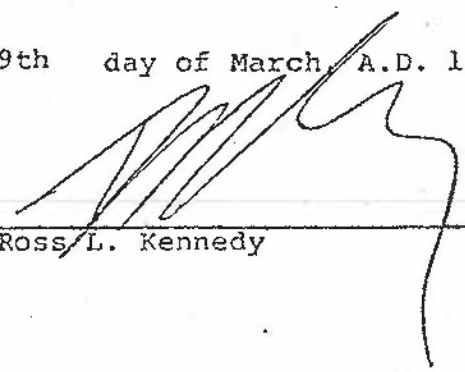
Even if it were established that more formal disciplinary methods or alternate disciplinary methods were required, the matter then falls to a determination of the appropriateness of a monetary penalty with respect to performance. In the general industrial context, the appropriate use of fines has been limited in the arbitral authorities to situations wherein the fine, in essence, reflects proper compensation for loss to the Company occasioned by the employee's wrongdoing. Monetary penalties to employees that are directly related to the Company's actual out-of-pocket loss have been upheld. However, the use of a fine as a strictly penal or corrective measure in circumstances of no actual cash loss to the Company as a result of the conduct is not a recognized form of industrial discipline. It is my view that the correct categorization of the procedure suggested by the Board is that it is a monetary fine and it is in no way related to any loss incurred by the Board if, indeed, it were possible to make any realistic calculation of that loss. I find it very hard to envisage that a monetary penalty could motivate a qualified and experienced professional person, in circumstances where counselling and the knowledge of the potential consequence of the loss of the job are insufficient motivation. I am, therefore,

unable to conclude that the disciplinary measure proposed by the Board can be considered an appropriate disciplinary response to performance problems with a senior teacher.

In light of the foregoing comments and finding, it is my decision to select the offer of the Teachers with respect to all matters which remain in dispute between the parties. In reaching this conclusion, it is obvious that I must give weight to the relative importance of the two fundamental issues which were before me. It was stated by the Teachers that the issue of Article 4 was, in fact, the reason why the matter had proceeded to final offer selection; whereas on that same issue it was the position of the Board that all matters outstanding were of equal significance. With respect to salary level, and as stated earlier, I would prefer the position of the Board; but it is clear that both position are completely reasonable on salary, and there is really no overwhelming preponderance of factors in support of one as opposed to the other. However, on the issue of Article 4, I do feel there is an overwhelming preponderance in favour of the Teachers' position, and that in the context of Dufferin County, with an established and working system of performance review, I think it would be inappropriate to include in the Collective Agreement the Article proposed. It was stated, on the hearing, by Board representatives, that the problem being considered by the Board would not affect more than 1.0% of the teachers, which means that it is a problem relating to one or two teachers. In my view, if such a problem exists, it has to be viewed as a

penalty. It can and should be looked at in the light of a performance review with counselling and warnings as to the consequences of a failure to correct the problem. I, therefore, conclude that the selection must be influenced by the significant difference on Article 4, and I have, therefore, selected the final offer of the Teachers.

DATED at Toronto this 19th day of March, A.D. 1979.



Ross L. Kennedy

The Board's Final Offer: Article VI 6.01 Salary Scale (teachers)
Effective September 1, 1978

SALARY SCALE

<u>Years Experience</u>	<u>Group 1 Category 4</u>	<u>Group 2 Category 5</u>	<u>Group 3 Category 6</u>	<u>Group 4 Category 7</u>
0	12,855	13,610	14,770	15,495
1	13,755	14,560	15,830	16,645
2	14,655	15,510	16,890	17,795
3	15,555	16,460	17,950	18,945
4	16,455	17,410	19,010	20,095
5	17,355	18,360	20,070	21,245
6	18,255	19,310	21,130	22,395
7	19,155	20,260	22,190	23,545
8	20,055	21,210	23,250	24,695
9	20,955	22,160	24,310	25,845
10	21,855	23,110	25,370	26,995
11	22,755	24,060	26,430	28,145

The Board's Final Offer: Article VI 6.01 Salary Scale (teachers)
Effective September 1, 1979

SALARY SCALE

<u>Experience</u>	<u>Group 1 Category 4</u>	<u>Group 2 Category 5</u>	<u>Group 3 Category 6</u>	<u>Group 4 Category 7</u>
0	13,550	14,265	15,540	16,355
1	14,490	15,265	16,650	17,555
2	15,430	16,265	17,760	18,755
3	16,370	17,265	18,870	19,955
4	17,310	18,265	19,980	21,155
5	18,250	19,265	21,090	22,355
6	19,190	20,265	22,200	23,555
7	20,130	21,265	23,310	24,755
8	21,070	22,265	24,420	25,955
9	22,010	23,265	25,530	27,155
10	22,950	24,265	26,640	28,355
11	23,890	25,265	27,750	29,555

The Board's Offer: Article VIII 8.03 Principals and Vice-Principals
(effective September 1, 1978)

(a) Principals	Year 0	36,790
	1	37,290
	2	37,790
	3	38,290
(b) Vice-Principals	Year 0	32,375
	1	32,875
	2	33,375
	3	33,875

The Board's Final Offer: Article VIII 8.03 (a) and (b)
Effective September 1, 1979

(a) Principals	Year 0	38,705
	1	39,205
	2	39,705
	3	40,205
(b) Vice-Principals	Year 0	34,265
	1	34,765
	2	35,265
	3	35,765

TEACHERS' PROPOSAL 1978-79 - (REVISED)

ARTICLE V - SALARY SCALE

<u>YEAR</u>	<u>CAT. I</u>	<u>CAT. II</u>	<u>CAT. III</u>	<u>CAT. IV</u>
0	12928	13655	14865	15675
1	13830	14610	15927	16818
2	14733	15566	16988	17962
3	15635	16521	18050	19105
4	16537	17477	19111	20248
5	17439	18432	20173	21391
6	18342	19387	21234	22535
7	19244	20343	22296	23678
8	20146	21298	23357	24821
9	21048	22253	24419	25964
10	21919	23209	25480	27108
11	22853	24164	26542	28251

TEACHERS' PROPOSAL 1979-80 - (REVISED)

ARTICLE V - SALARY SCALE

<u>YEAR</u>	<u>CAT. I</u>	<u>CAT. II</u>	<u>CAT. III</u>	<u>CAT. IV</u>
0	13678	14447	15727	16584
1	14632	15457	16851	17793
2	15588	16469	17973	19004
3	16542	17479	19097	20213
4	17496	18491	20219	21422
5	18450	19501	21343	22632
6	19406	20511	22467	23842
7	20360	21523	23589	25051
8	21314	22533	24712	26261
9	22268	23544	25835	27470
10	23190	24555	26958	28680
11	24178	25567	28081	29890

ARTICLE VII - MONETARY ALLOWANCES

7.03 Principals and Vice-Principals

(a) Principals

Years

0	37153
1	37683
2	38214
3	38745

(b) Vice-Principals

Years

0	32482
1	33013
2	33543
3	34074

ARTICLE VII - MONETARY ALLOWANCES

7.03 Principals and Vice-Principals

(a) Principals

Years

0	39308
1	39869
2	40430
3	40992

(b) Vice-Principals

Years

0	34366
1	34928
2	35488

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EXC

In the matter of a Reference
to Arbitration under the
Provisions of the Hospitals Industry
Labour Disputes Act R.S.O.

Between Ten London Area Nursing Homes

and

London and District Service
Workers' Union Local 220

Heard at London Ontario

November 26, 28

by

Mr. Douglas Stanley - Chairman
Mr. Tom Storie - Employer Nominee
Mr. Robert Stewart - Union Nominee

Appearances Robert Bass for Employer
Paul Middleton for Union

RECEIVED JUN 19 1987

INTRODUCTION

The parties to this arbitration are the London and District Service Workers Union Local 220, a union based in London that represents health care workers throughout South Western Ontario, and ten Nursing Homes. The homes are as follows:

Bethany Lodge, Lambeth
Chateau Gardens, London
Chelsey Park Oxford, London
Delhi Nursing Home, Delhi
Komoka Nursing Home, Komoka
Meadow Park Nursing Home, London
Middlesex Terrace, Delaware
Pinehaven Nursing Home, Waterloo
St. Raphaels Nursing Home, Kitchener
Trillium Villa Nursing Home, Sarnia

Each of these nursing homes has its own collective agreement arising out of separate certifications with the same union. This joint negotiation, arbitration process comes about through the parties agreeing to rationalize the process in a "Memorandum of Conditions for Bargaining". In that memorandum the parties have agreed to separate local and central issues. This award deals with central issues. The same Board has been constituted to deal with local issues in a separate process.

The employees are full and parttime, parttime employees being dealt with in addendum to the full time agreements or in separate agreements. These employees work in housekeeping, food preparation and delivery, laundry and nursing assistance. The largest group are Nurses Aides.

The present collective agreements were for a period from April 1, 1984 to March 31, 1986. These agreements arose out of an arbitration award that was not handed down until March 19, 1986, less than two weeks prior to the expiration of the contracts.

The union in accordance with the Labour Relations Act had served notice to bargain the renewal of these collective agreements prior to the date of this previous award implementing those Agreements.

In June 1986, the parties signed their Memorandum of Conditions for Joint Bargaining. They met twice, applied for conciliation. They met only once with the conciliation officer who reported on August 5th that he was unable to assist the parties. Upon receiving that report, the union moved to refer outstanding matters to a Board of Arbitration pursuant to the Hospital Industries Labour Disputes Act.

It is clear that there has been ^{no} real collective bargaining - no negotiations that would serve to narrow the issues. That is extremely unfortunate in this round of negotiations given the nature of the issues raised. The lack of any real negotiations puts an Arbitration Board in a difficult position with respect to some of these issues, as we will discuss later.

GENERAL PRINCIPLES GOVERNING AWARD

We have an obligation to address our minds to the issues raised and attempt to "settle the dispute". This does not mean that we must "do something" with each issue raised. As Professor Barton said in an Award January 18, 1982 involving Victoria Hospital Corporation and Local 220.

"It is quite clear that interest arbitration is something more than throwing a number of issues at a Board and hoping that the Board will accept at least some of them. We have not taken a position that because there are a lot of demands we must therefore necessarily grant a lot of them. One of the considerations that has influenced us is whether or not there has been a proven need for change."

In that case Barton was faced with 240 demands. Certainly that is not in the same league as the case before us. But, whether the list be long or short the fundamental question to be asked is still the same - has there been a proven need for change? We don't think Barton meant "proven" in the same sense as in an adjudicative process. In our mind, we have to be satisfied of the need for change in the particular Collective Agreement; in the particular employment relationship we are dealing with.

Arbitration is a conservative process in the sense that it has a tendency toward maintenance of the "Status Quo". There must be a demonstrated need for change before we can address ourselves to the question of what change is acceptable. The Arbitration process should not be viewed as an opportunity to make changes in a collective agreement based on philosophical preferences. In this way it should closely resemble the collective bargaining process which, in our experience, tends very quickly to focus on settling real practical problems and setting aside those proposals that stem from both parties simply seeking what would be, from their point of view, a better agreement.

We believe this to be particularly important in a system where you have ad-hoc arbitration boards rather than a permanent arbitral authority. Where you have ad-hoc Boards you run the risk of bouncing back and forth on an issue in successive rounds of arbitration based on the various Boards' particular views when the issue may not be more than of purely academic interest.

Having demonstrated a need for change, an Arbitration Board will address the solution. Where the parties have not been able to agree, the

Board seeks a just solution to impose on them. There are two accepted ways to develop that just solution which are not, in our view, mutually exclusive within an overall award.

There is the "Normative approach" where the Board considers the external norm and ignores what might otherwise result from the exercise of the parties relative strengths in a bargaining situation. Such an approach also ignores the acceptability of that norm by the parties. Thus on a particular issue the parties might get a clause neither wanted.

The other approach is the "Accommodative approach" which is an attempt to replicate what might be the parties "accommodation" on an issue were they to bargain a solution, given their relative bargaining strengths.

In settling the issues in dispute some of them may lend themselves to one approach or the other, we don't feel constrained to apply one throughout.

A cautionary note however about the normative approach; it is not an end in itself to be pursued. It is still only in those situations where the Board is satisfied that a change is desirable to address a problem that the Board applies the normative approach to find a just solution. Arbitration does not open the door to external norms being applied to every issue raised by one of the other party for the sake of establishing that norm.

The employer urged that in addressing monetary issues we accept the principle of considering "total compensation" and that for comparison purposes we use the end-rate method which compares the total compensation level at specific points in time.

We find that the concept of total compensation is generally accepted for very good reasons cited by several arbitrators of repute and we would adopt that approach in this award.

SICK LEAVE

The employer proposes that the present system of accumulating sick leave be replaced with a weekly indemnity plan. They support their proposal on two grounds: first, that it is a superior system for the employee, despite their protestation to the contrary; second, that it is the trend in the industry.

The union resists the proposal and argues it be rejected basically because it is "an inferior plan" and because it was only very recently turned down in the McKechnie award.

The present provisions give employees accumulated leave on a basis of 1 1/2 days per month to a maximum of 100 days (90 in one home and 120 in several others). These days are used for leave due to illness (in some cases there are limitations such as an employee not recovering pay for the first two days of the fourth short-term illness in a year). The unused sick leave bank is paid out to the employee when he leaves (there are different seniority qualifiers and in some cases the employee only receives a percentage of his bank depending on years' service). There is no long-term disability plan and a person who exhausts his sick leave bank recovers nothing if he is absent again due to illness.

The proposal from the employer is to replace this system with a weekly indemnity plan paid by the employer. Employee benefits under the plan are a combination of accumulating sick leave (1 day per month to a maximum 14 days) and indemnity payments. Indemnity payments of 66 2/3% of salary begin on the first day of hospitalization or the eighth day of illness. Recovery for short illnesses (up to 7 days) comes from the sick leave bank at 100% of salary to a maximum of 14 days.

Existing employees with a sick leave bank will enjoy transitional provisions allowing them to use that bank to top up weekly indemnity payments.

It is debatable whether this proposal is "a better plan".

For the new employee it has several advantages. They do not have to build up a sick leave bank for protection for absences in excess of a week or those requiring hospitalization. For all employees the fact that the weekly indemnity protection renews every time and is not exhaustable through successive periods of illness is a great advantage.

Measured against the existing plan there are some disadvantages. Existing employees lose the cash-out feature for their own accumulated sick leave. It takes 14 months to build up 100% protection for short-term illnesses to the maximum 14 days rather than the rate under the old contract where employees would bank 14 days in 9.3 months.

In terms of the maximum possible protection for an illness, employees go from 20-24 weeks at 100% salary to a maximum of 1 week at 100% and 17 weeks at 66 2/3 salary or 18 weeks maximum.

Arbitrators have dealt with this issue in the Health Care field in the past.

It was an issue that led to illegal CUPE hospital strikes in 1981. There had been a Memorandum of Agreement in that case which replaced the accumulating sick leave system with HOODIP. The Memorandum was rejected by the membership and the dispute went to Arbitration. In the award, dated June 1, 1981, Weiler speaks of the persuasive, but not compelling, influence of such a Memorandum of Agreement on an Arbitration Board that seeks to replicate a negotiated settlement. However, he acknowledges that it was this proposal that was "one of the most salient issues" in the rejection of

the Memorandum by the employees. It goes on to find that "in concept there can be no doubt that HOODIP is a much superior approach". The basis of that conclusion seems to be summarized as follows:

"Traditional sick leave schemes maximize the protection for minor illnesses and minimize the protection for major catastrophes. Worse, the cash-out provision in effect redistributes the pool of money available for this benefit from those who are sick to those who are lucky enough to have stayed well."

On the basis of the perceived employee resistance to the plan, although he recognizes it as being superior, Weiler rejected the proposal saying:

"In the normal world of free collective bargaining, I feel it highly unlikely that an employer would have insisted to the point of a strike on getting its way on such an item (since apparently the overall costs of HOODIP are comparable to those of the sick leave system)".

In an arbitration award affecting London District Service Workers, following closely on the heels of the Weiler award, Barton "takes the bull by the horns", to use his own words, and accepts the employer's proposal (with some modifications).

Other arbitrators have made critical comments on accumulating days sick leave plans. Although not going to the extent of replacing them, they have in some instances refused improvements to them and in one case, removed the cash-out provision.

George Adams introduced weekly indemnity by arbitral award in the nursing home sector in the Extendicare - SEIU award, dated June 25, 1982. That award covered 2300 employees in 33 homes. It is that collective agreement that has been referred to as the "master agreement" for the nursing home industry by several arbitrators. Adams does not offer much rationale for his award on this issue but at p. 48 says:

"The current provision (accumulating sick leave) encourages the kind of proposals made by the union leading to the view that sick leave is an earned benefit as opposed to an insurance scheme against illness".

Arbitrator McKechnie was invited to follow this lead in the last award affecting these parties (March 24, 1986). He declined saying, at p. 25 of his award:

"As in the case of pro-rata benefits, this Board is convinced that the principle involved is sound; however, prior to making an award, the Board would wish to have at its disposal information regarding the current levels of sick leave accumulation. Usage of sick leave credits for illness and for cash-out purposes, and the details of a comprehensive sick leave plan which would provide both short term and long term protection.

Since the necessary data was not present, the Board is not prepared to grant the employer's proposal"

Having been given such pointed direction, the employer, in their submission to us, attempted to address the deficiencies pointed out in the passage quoted above.

Their employer rejected the suggestion that their proposal should include an LTD component so as to become "truly comprehensive". They simply rely on the fact that LTD has not found its way into the nursing home industry. As to the data that McKechnie suggested was lacking, we were provided with information on sick leave accumulation and the level of use of sick leave. Employee sick leave banks go as high as 150 days. The total bank for the 275 employees is in excess of 12,700 days. The average annual use of sick leave is 10.2 days. The employer contends that the cost to them, of the proposal, is greater in the short term than the existing plan but that in the long run it is more economical and provides greater benefits to employees.

The failure of the parties to conduct any real negotiations on an issue like this puts an arbitration board in a difficult position. The union's position is to simply say no to giving up accumulating sick leave, hoping that an arbitration board will not effect such a fundamental change. The employer, not seeing any willingness to move on the union's part, does

not indicate the real price they might be willing to pay to secure their agreement. We are left with two unacceptable positions to choose from in a case where attempting to fashion a middle ground proposal might lead to a solution that is unacceptable to both parties. In our view, we are not bound to accept being put into such a position. On the other hand it is difficult to impose a plan on employees "for their benefit" and "because it is better for them" when their bargaining agent says that the employees don't want it. Therefore we reject the employers proposal.

PRO-RATA BENEFITS

Like the issue of sick leave, this is an area where the employer seeks fundamental change to the existing Agreement.

Presently parttime employees, defined in the Agreement as those not regularly working more than 24 hours per week, receive 10% of wages in lieu of benefits (Pinehaven 12% protected by a superior benefit clause). In Chateau Gardens and Chelsey Park Oxford, there is a provision for pro-rata benefits to employees working more than 24 hours but less than 37 1/2.

The union proposes to increase the in-lieu payment for parttime employees to 12%. The employer resists that improvement and proposes to introduce pro-rata payment of benefits for all employees scheduled less than seventy-five (75) hours bi-weekly. The pro-rata formula is based on 975 hours semi-annually (37 1/2 hour weeks). Employees who work between 66 and 75 hours bi-weekly would continue to receive 100% insured benefits but would have holiday and vacation pay reduced.

The employer's argument for pro-ration is that payment in-lieu systems work to the disproportionate advantage of parttime employees and results in them receiving a higher hourly rate relative to full-time employees. They also argue that there is a growing acceptance of the concept of pro-rata benefits in the nursing home sector, both in agreements settled through negotiations and those settled by arbitration.

The union argues that the purpose of these "in lieu payments" is to make up for "lost" benefit coverage and that 10% even 12% of wages does not fully compensate for the loss of these benefits. They also argue that percentage in lieu is the "accepted" norm in the industry in south-western Ontario.

Arbitrators of persuasive authority have dealt with this issue. Weiler in his 1981 award affecting 46 participating hospitals and SEIU said:

"There was a second very important issue raised regarding parttime hospital workers. The vast majority of fringe benefit schemes in the full-time agreements do not now apply to parttime employees; in particular, sick leave, the pension plan, and the health and welfare package. In just about all of the Hospitals where the parttime employees are represented, they are given a payment in lieu of such benefits, sometimes 20 or 30 cents an hour, but usually 10% of their hourly wage rate. This is done both to ensure that parttime employees actually receive fairly comparable total compensation for doing the same work which is performed by full-time employees, and also to protect the compensation package which the Union has negotiated for the full-timers from erosion through excessive use of parttimers. While maintaining this basic principle, the Hospitals seek to change the form of payment by which it is achieved. The Hospitals propose a new arrangement whereby the parttime employees will be given an opportunity to participate in the group plans, with the Hospitals paying a pro-rata share of the premiums (proportionate to the number of hours worked by each parttimer relative to the full-time schedule).

There are admitted virtues to this concept. Those part-timers who would like to have the advantages of the benefits in a group plan, one which almost invariably is cheaper than coverage for a single person, would be given the opportunity to do so. On the other hand, those part-time employees who choose not to participate in the plans would not be paid at a rate that is higher (now 10%) than the wage rates paid to permanent employees for doing the same work; since some permanent employees may well have chosen to stay out of the plans (to save their share of the premium cost when their spouse has already obtained the family benefit elsewhere).

However, there is a major practical difficulty with this Hospital proposal, whatever its abstract virtues. Take the case of the dental plan, for example. The Hospital now pay 50% of the premiums. If a part-time employee regularly works only 1/3 of the full-time work week, the Hospital under its proposal would pay only 1/6 of the premium (1/3 of 1/2). To take advantage of this Hospital offer, the part-timer would have to pay the other 5/6 of the premium from a monthly salary which is just 1/3 the norm. The same would be true of OHIP, extended health care, life insurance, and the pension plan (as and when the latter is brought into the Hospital scheme). Inevitably the part-timer could and would take advantage of only one or two of these fringe benefits, if that. As to the other, the ones which were not opted for, the employee would lose the entire benefit of the Hospital contribution, thus defeating the basic purpose of Hospital payment for this part of the compensation package which is represented by fringe benefits.

Just as is true in other parts of this award, we believe this Board should be conservative in altering an established principle such as this one which now obtains in the part-time agreements. I want to make clear that I am not suggesting that the novel approach brought by the Hospitals is undesirable in principle. Indeed, the parties may well want to turn their minds to alleviating the basic difficulty which I have noted. If a "cafeteria" approach were adopted to fringe benefits for part-timers, the latter might well be allowed to select a single preferred benefit and have the entire cost of the employer's overall premium contributions for full-timers rolled into this one plan (one which might not be available at the spouse's place of work). But for this year, the current practice of paying a percentage in lieu of benefits should continue. Given that the quality of these fringe benefits and the employer's share of the premiums has been enhanced somewhat for full-timers, the employer's payment in lieu of part-timers should be increased from 10% to 12%, and in corresponding amounts for those hospitals which now pay on a different basis."

etc.) and London District Service Workers' Union, Palmer said, at p.15:

"The issue is met; does one deal with parttimers in relation to fringe benefits by giving them a flat rate or by pro-rating the benefits.

... We have considered both aspects of this case carefully. In result, we side with the view that pro-ration of benefits is the course of wisdom and the one we accept."

Teplitsky specifically declined to follow Palmer's award on this issue in a 1986 award between Extendicare and ONA. In doing so he rejected the argument that in-lieu payments were unfair citing the fact that many benefits under collective agreements fall unequally on the employees in the unit. Furthermore, he notes that the bargaining unit, has indicated its preference for the status quo. Teplitsky also says at page 25 of his award:

"so long as the cost to the employer is the same, the method of distribution is basically irrelevant".

To some extent the last quoted remark ignores the true nature of the in-lieu payment. It is paid in lieu of benefits. In our view it is only fair that it take the form of a money payment until such time as a fair way of giving it in kind is put forward by the employer. However, having been settled by Palmer, it was not raised in the 1985-86 London District Service Workers negotiations nor dealt with by Teplitsky in the London District Service Workers - Extendicare award of March 1986.

This is another area where the parties not having had any negotiations on a complex matter, we have no signs to lead us through a mine field.

There is merit to the argument that parttime employees should be able to participate in the fringe benefit package. However, where the reality is that the employer's proposal does not guarantee that participation, we would not take away the benefit of in-lieu payments for the right to participate in a plan that might be beyond the employee's

means. Without the 'cafeteria' type approach spoken of by Weiler, it seems there can be no guarantee of an employee's right and ability to participate.

In our view, it would not be fair to introduce the concept of pro-rated benefits in a collective agreement that does not guarantee full-time employees full time hours. To do so is simply to open the door to the erosion of benefits for employees whose status is for all intents and purpose full-time however defined. Pro-ration, as a concept, ought to be confined to genuine parttime employees.

The employer makes an argument about the inequity created by the in-lieu payment to parttime employees. Although that argument may not be persuasive to abandon the in-lieu payment it is a good defence to the unions proposal to increase that payment to 12%. An argument can be made that the in-lieu payment should be a reflection of the cost to the employers of the full-time employees benefit package. However, that is really only an arbitrary yardstick that is resorted to because of not being able to measure the value of the benefit received by the full-time employee. The amount of the in-lieu payment also increases automatically with general wage increases. In the Weiler award, quoted from extensively above, the in-lieu payment was increased from 10 to 12% because of improvements in benefits and increases in the employer's contribution to the payment for those. In this case the benefit levels for full-time employees have not been improved and we see no reason to increase the in-lieu payment above what it will increase automatically.

SHIFT PREMIUM

The current provisions is a premium of \$.33 an hour to be paid to an employee who works a shift "other than his normal shift". The union proposes to increase this premium to \$.50 an hour.

We were not presented with persuasive evidence of a need for change in this area. The present provision compares favourably with that prevailing in the industry. For these reasons, we would not make the change urged on us by the bargaining agent.

VACATIONS

The union sought changes as follows: 3 weeks after 1 year instead of 2 after 1; 4 after 3 instead of 3 after 3; an additional day vacation for every year worked over 4 years to be given after ten years' service.

There was an improvement in the vacation schedule in the last round of negotiations, introduced through Mckechnie's arbitral award.

The vacation schedule is now identical to that in the SEIU - Extendicare Agreement and compares favourably with others in the industry. We would not grant improvements to the vacation schedule for the above reasons.

For parttime employees, vacation weeks are earned through years' service as for full-time employees, vacation pay is 2% of earnings per week.

HEALTH WELFARE

The union is seeking the following improvements:

Extended Health Care - move from 75 to 100% employer paid;

Vision Care - move to 100% employer-paid benefit of \$100/year from 75% of \$60/2 years;

Dental - move to 100% employer paid from 50% for #9 Current Fee Schedule;

Semi-Private Room - New, union proposal for employer to pay 100%;

Life Insurance - 100% paid by employer improvement in coverage sought from \$20,000 to 2 x salary;

Hearing Aids - to improve from 75%/\$300 to 100%/\$500.

In support of its sought-after improvements, the union points to other collective agreements on each of the above improvements. A health and welfare package, however, must be taken as a package. In each situation, the parties assign an overall cost to that package and within that, the parties decide what mix of benefits, at what level, best suits the objectives of the membership. The union here is seeking improvements over the whole range of benefits. However as a package, it compares favourably with the complete package under the Extendicare Agreement. It is ahead in life insurance and dental but behind in EHC, Vision, and Hearing Aids.

The employer costs the improvements sought by the union, excluding the pension proposal, at .56%. The improvement in the Dental Plan being the largest single component cost at .31%.

We would grant the sought-after improvements to the extent that EHC, Vision Care and Hearing Aides be improved to match the SEIU provisions. We would not award improvements in the dental plan or life insurance.

PENSION PLAN

This matter has been raised in successive rounds of negotiations and has been brought to arbitration by these parties in the last round. McKechnie did not award a pension plan. Employees in their industry are without pension coverage, thus this group is not unique. For an arbitration board to award a pension plan in such circumstances would be to make an unprecedented move. It is unfortunate that in the context of fundamental changes the employer seeks to this agreement that the parties could not have negotiated a solution to these perceived deficiencies.

We are aware of the reasons for denying such a request, expressed by Teplitsky in an award dated March 16, 1987 and would concur in his remarks, and accept his reasoning in not granting pensions in that award.

MATERNITY/ADOPTION LEAVE

The present collective agreement provides for unpaid maternity/adoption leave beyond the paid U.I. period of time.

The union seeks to have this as 'paid' time off.

The employer seeks to establish a ten month qualifying time for the existing leave of absence provision.

Because the present unpaid provision has only just come into effect, and because we have no evidence as to the 'real incidence' of such a benefit, and because we have improved benefits having general application to the unit; we would decline to award the improvements sought by the union.

Similarly the employer hasn't shown us that the present unpaid leave provision has been abused in the way they suggest it might (that an employee could use it to avoid serving a probationary period) or that the incidence of unpaid leave by new employees is such as to create a real, as opposed to possible problem. Therefore, we decline to include the provision sought by the employer.

RESPONSIBILITY ALLOWANCE

The union seeks an allowance of an additional 10% of pay where an employee is temporarily assigned responsibilities of a classification outside the unit, for a period of time in excess of 1/2 shift.

In one home, Pinehaven, there is such a provision more narrowly defined to those situations where an employee is required to relieve a Supervisor, but applying to all hours worked.

The SEIU agreement provides for a \$3.00 per shift premium in such circumstance.

In light of other improvements and because the union proposal is so vaguely worded and potentially could be interpreted to apply to situations beyond temporary replacement of supervisory staff, we would decline from awarding their proposal.

UNIFORM ALLOWANCE

Present uniform allowances range from \$5.50 - \$7.50; \$6.00 being the most common provision. Parttime employees receive \$3.00 most commonly. We would amend the collective agreements to the extent necessary to increase uniform allowance, for all employees receiving that allowance, to \$8.00 and \$4.00 for part time.

WAGES

The union's wage demand is \$2.00/hr. effective April 1/86; the employer is proposing 3% April 1/86; 3% April 1/87.

The argument in support of the union's claim is parity with South Western Ontario hospitals. The employer argues that hospital parity has not been universally accepted. The employer's argument on wages is based on the current levels of settlements and economic indicators.

Rates for Nurses Aides in the various homes vary from \$9.11 to \$9.27 as of the expiration of the Agreement March 31, 1986. The last increase was on October 1, 1985. The wage rate under the Extendicare agreement is considerably more than at these homes. The Teplitsky Board awarded increases of 4% effective December 15, 1985 and on a wage re-opener gave 5% effective January 1, 1987, bringing the Nurses Aide to \$10.21.

We would be sympathetic to a wage catch up with Extendicare in the context of a package including Pro Rata Benefits for parttime and weekly indemnity. These are two significant features of the Extendicare package the employer is seeking. Not being able to put together such a package, a fair wage settlement is one that matches the cents per hour increases at Extendicare. We would award as follows:

Effective April 1, 1986 - \$.38 per/hr.

Effective April 1, 1987 - \$.48 per/hr.

NON-ECONOMIC ISSUES

1. UNION REPRESENTATION

AWARD

All collective agreements shall be amended to the extent necessary to provide payment to members of the negotiating committee involved in any direct negotiations for a renewed agreement before and after, but not during the conciliation process.

2. GRIEVANCE PROCEDURE

AWARD

All collective agreements shall be amended to the extent necessary to provide a standard time limit of thirty (30) calendar days from the employer's reply at the last step of the grievance process to refer a matter to arbitration.

3. PROBATIONARY PERIOD

REMAINS SAME

We do not accept employer's proposal for change. The issue just settled by Mckechnie and there is no evidence of any real problems surfacing.

4. TRANSFER SENIORITY

For the purpose of seniority ranking only

A parttime employee who becomes a full-time employee without interruption of his continuous service, shall be ranked on the full-time seniority list with credit for his parttime service on the basis of a formula that 1800 hours equals one year service. This credit applies to seniority and not to service and applies only to employees transferring to full-time status after this award.

5. BEREAVEMENT LEAVE

The present collective agreement provides for two days as opposed to three days bereavement leave when an employee does not attend the funeral. The employer proposes to limit this provision by specifying that the two days' leave, where the funeral is not attended, should be "two days up to and including the day of the funeral".

The restriction proposed by the employer does not really address the real issue. The employee's legitimate interest is that bereavement leave be that; not simply time off on the occurrence of a death. There are situations where bereavement leave is legitimate apart from the days and up to including the day of a funeral. We would therefore propose that the collective agreement be amended to reflect the following qualification:

"If the funeral is not attended, the paid leave shall be limited to a maximum of two (2) scheduled days off for the purpose of making arrangements for the funeral or purposes otherwise directly related to the death of a person mentioned in 13:04."

6. PAID HOLIDAYS

We would direct that the collective agreement be amended to the extent necessary to provide that where a lieu day is to be given that the employee may request that the day be taken on a day acceptable to the employer based on operational requirements. Where no agreement within the schedule time limits set out in the agreement, the day is to be paid out.

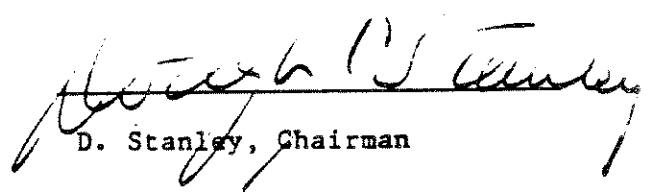
7. JOB POSTING

No to union's request. The union characterizes their proposal as a job posting provision. However, it addresses a much larger issue; the turning of full-time into parttime work.

8. WORK BARGAINING UNIT

No to employer's proposal - the matter just dealt with in Mckechnie award. Making management work in unit a prohibition only if it results in a lay off does not address the issue where the employer has significant discretion in the scheduling of parttime(ee's) and the number of hours worked by them. As well, union faces threat of crosion of unit through contracting out and use of volunteers.

DATED THIS 15th day of June


D. Stanley, Chairman

T. Storie, Member
See attached

R. Stewart, Member

IN THE MATTER OF A REFERENCE TO ARBITRATION
UNDER THE PROVISIONS OF THE HOSPITAL LABOUR
DISPUTES ARBITRATION ACT, R.S.O. 1980

BETWEEN:

TEN LONDON AREA NURSING HOMES

AND

LONDON AND DISTRICT SERVICE WORKERS' UNION,
LOCAL 220

PARTIAL DISSENT

It is easy to criticize the Chairman's award given the uncertainty of the arbitration process and the different approaches available to the board. I feel compelled, however, to make some general observations relating to this dispute and some specific comments relating to the disposition of certain issues. At the outset, I wish to express my concern as a Board Member in the delay in finalizing this matter. Submissions were made by the parties in November of last year and there is simply no excuse for such a delay. Not only is it frustrating to the parties, it becomes increasingly difficult and time consuming for Board Members to deal with the outstanding issues without continually reviewing the submissions made by both parties. It is of

particular concern in the instant case for reasons which I will deal with later in this submission.

I must take exception to some of the comments made by the Chairman with respect to general principles which should govern our award. In my view, two approaches were available to settle the outstanding issues in this dispute. One was to dispose of the issues by reference to the recent two year "Master" Nursing Home Arbitration. The other was to deal with each of the outstanding issues on the basis of Nursing Home industry norms. In my respectful view, the Chairman has followed neither approach.

My preference would have been to follow the "Master" group approach for a number of reasons. These ten Homes have voluntarily agreed to bargain jointly. The "Master" group have also followed the same approach and it is obvious that if our award followed the "Master" group on substantive issues it would encourage a broader basis for common bargaining and, if not, at least provide clear norms that would establish standards for the settlement of other disputes in the industry.

In the facts of this case, reference to the terms and conditions of employment prevailing in the "Master" group would have provided a basis of settling a majority of the substantive issues including sick leave, pro rata benefits, health and welfare, wages, work of the bargaining unit, probationary period and transfer of seniority. Instead, the Chairman has referred to the "Master" group as a basis for comparison by providing like wage increases, improvements in health and welfare and other issues but, at the same time, rejecting to follow those agreements on other critical issues such as sick leave, pro rata benefits, probationary period and work of the bargaining unit. The rationale does not, in my respectful submission, justify some of the conclusions.

While the approach to certain issues of "demonstrated need" is a sound one, in the particular facts of this case, it is prejudicial given the late publication of the arbitration award giving rise to negotiations and this arbitration. As pointed out by the Chairman, the collective agreements nominally terminated less than two weeks after the arbitration decision.

Hence, my concern with respect to the delay in finalizing the current dispute providing for agreements which will expire March 31, 1988.. At the same time, the Chairman seems to put significant weight on the lack of any real collective bargaining. Is the Union to be rewarded for moving the outstanding matters to arbitration after two direct meetings and a brief hearing with the Conciliation Officer?

In light of the foregoing comments, I would have awarded the Employer's proposal on sick leave and pro rata benefits as part of a package representing the quid pro quo for the wage increases matching the "Master" group. On the sick leave issue there can be no serious question that the Employer's proposal represents an improvement to the employees in question and protection against legitimate illness. The Chairman's comments confirm the arbitrable trend toward such a proposal and the Employer has answered the concerns raised by Arbitrator McKechnie in the prior dispute. The failure to provide an LTD program is hardly a reason for rejecting the introduction of a major improvement in short term protection. In my view, we are not

left with two unacceptable positions to choose from and the Chairman's reasoning does not support the rejection.

On the same basis, the rejection of pro rata benefits is not supported by the rationale of the majority. Pro rata benefits is hardly a novel approach given the comments of Arbitrators Weiler, McKechnie and Palmer's earlier decisions and other precedents set out in the Employer's submission. In this respect, the award is somewhat misleading. While Arbitrator Teplitsky declined to follow the Palmer award in a 1986 dispute, that involved an issue with ONA where in lieu payments are the norm. In doing so, however, he reduced the payment in lieu to 8% based on the actual cost of the benefits available to full time nurses. The pro rata issue was before him in the "Master" group arbitration and the re-opener and he chose not to disturb Palmer's award but rather modified it. It was this modified and well-reviewed position which the Homes in this matter put forward. In such a case, it is difficult to concur in the Chairman's award on these two critical issues in light of his comments dealing with the wage issue on page 19 of the award encouraging a

package approach comparable to the "Master" group on the issues of pro rata benefits, sick leave and wages.

Given this ad hoc approach taken by the majority, it would seem to me that the wage data would have dictated an increase in the first year in the amount of 3% which would provide end rates virtually identical to the average rates for unionized service workers in 33 Homes as of March 19, 1987 (including the Master Group). I cannot take serious objection to the amount of the second year increase awarded by the Chairman given recent settlements including Arbitrator Teplitsky's award of 5% in the second year for the "Master" group.

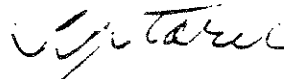
While I cannot seriously object to the award on Health and Welfare, the result is a welfare package that is modestly better than the "Master" group which confirms my concern in using the "Master" group as a basis of comparison on a selective basis.

As noted earlier, I would have applied the same approach to the Employer's proposals on work of the bargaining unit and probationary period. I,

therefore, reject the "demonstrated need" relied on by the majority and submit that Arbitrator McKechnie did not follow industry norms in dealing with these two issues in the prior dispute.

On a positive note, I can only assume that our award is a clear direction to the parties in the next round of bargaining to pursue a package approach on the issues of wages, pro rata benefits and sick leave with reference to the disposition of those issues in the collective agreements in the "Master" group.

All of which is respectfully submitted.



T. F. Storie
Employer Nominee.

May 19, 1987.

IN THE MATTER OF THE PARTICIPATING HOSPITALS
AND LONDON AND DISTRICT SERVICE WORKERS' UNION
LOCAL 220 (THE HOSPITAL LABOUR DISPUTES
ARBITRATION ACT)

BEFORE: P. G. Barton Chairman
 E. T. McDermott Hospital Nominee
 B. Switzman Union Nominee

APPEARANCES:

For the Hospital:

 R. B. Budd Counsel

For the Union:

 P. Middleton Spokesman

DATES OF HEARING:

Central Issues: June 23, 24, 1981

Local Issues: July 9, 10, 1981

TABLE OF CONTENTS

i

<u>I CENTRAL ISSUES</u>	Page
1. Wages	4
2. Health Care Package	9
3. Union Security	14
4. No Discrimination	14
5. Grievance Procedure	15
6. Arbitration	18
7. Seniority	19
8. Lay off and Recall	22
9. Leaves of Absence	24
10. Hours of Work and Overtime	29
11. Paid Holidays	30
12. Definition of Regular Straight Time Rate of Pay	33
13. New Classifications - Job Descriptions	33
14. Vacations	34
15. Shift Premium	37
16. C.O.L.A.	37
17. Charge Hands and Supervisory Premium	37
18. Standby Allowance	38
19. Call Back	38
20. Superior Conditions	39
21. Ambulance Issues	40
22. Work of the Bargaining Unit	42
23. Uniforms	43
24. Health and Safety	43
25. Bulletin Boards	44

	Page
26. Continuation and Maintenance of Benefits and Seniority ..	44
27. Duration	45
28. Contracting Out	45
29. Retroactivity	45
30. Agreed Items	47
 11 <u>LOCAL ISSUES</u>	
A. <u>Common Local Issues</u>	
1. Access to Personal File	50
2. Management Rights	51
3. Parking	52
4. Time Off for Union Business	52
5. Receipt of Benefits During Union Business	53
6. Credit for Previous Experience	53
7. Accumulation of Paid Holidays	54
8. Posting Seniority Lists	54
9. Promotion Clause	55
10. Shift Premium	55
11. Timekeeping Requirements	56
12. Overtime	56
13. Safety Shoes	57
 B. <u>Issues Particular to Individual Hospitals</u>	
1. Hanover District Hospital	58
2. Norfolk General Hospital	58
3. Woodstock General Hospital	60
4. Victorial Hospital (R.N.A.)	61

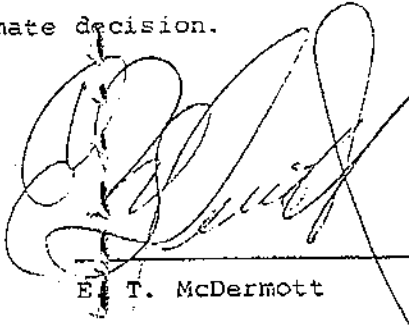
	Page
5. Victoria Hospital (Service)	63
6. Parkwood Hospital, McCormick Home, VCC and WCW (Service) UCC and WCW (RNA)	68
7. Tillsonburg District Memorial Hospital	70
8. Alexandra Hospital (Ingersoll)	72
9. Centre-Grey Hospital (Markdale)	73
10. Freeport Hospital (Kitchener)	74
11. Listowel Memorial Hospital	77
12. Meaford General Hospital	78
13. Sarnia General Hospital	79
14. St. Thomas-Elgin General Hospital	80
15. St. Joseph's Hospital (London)	82
16. St. Mary's Hospital (London)	85
17. St. Mary's Hospital (Kitchener)	87

APPENDIX I

LIST OF PARTICIPATING HOSPITALS

CONCURRING OPINION

While I have certain concerns and reservations about some of the determinations arrived at by this board, I am prepared to agree with the Award. The task presented to us was an enormous one and were it not for the diligence of the chairman of this board, we would have been much longer in arriving at our ultimate decision.



E. T. McDermott

I. CENTRAL ISSUES

Local 220 represents the Service Workers in seventeen hospitals in Southwestern Ontario. See Appendix I. This hearing concerns the contract for the workers in sixteen of these hospitals (University Hospital, London, did not take part in this round). Approximately 4,500 full time Service Workers are involved in this Award. In the province of Ontario there are approximately 37,000 Service Workers represented by at least ten different Unions or Locals. Approximately forty-nine of these separate units are represented by S.E.I.U. and approximately seventy-six are represented by C.U.P.E. Awards for both these groups were issued on June 1, 1981 (the Weiler Awards) and much of the discussion and argument at these hearings centred around the question of the influence if any these awards should have upon this Award.

Since 1976 there has been some central negotiation involving this Local 220. In 1979 a Board chaired by George Adams handed down an award which expired March 31, 1980. In the last round of negotiations the parties reached an agreement for a one year term which ended March 31, 1981. On February 28, 1980 the parties signed a Memorandum of Settlement on Central Issues and on March 12, 1980 they signed a Memorandum of Settlement on Local Issues. On January 9, 1981 a Memorandum of Conditions for Joint Bargaining for a new contract was signed. The parties were able to agree on very few matters, for reasons which will be stated in part; as a result this Board is faced with the problem of having to deal with approximately 240 separate issues.

The reason for this appalling lack of success in negotiation is not easy to find. Suffice to say that after three negotiation sessions in January of 1981, many hospitals in Ontario were faced with the prospect of an illegal strike. For a week or so it looked as if the hospitals represented by Local 220 would go out but because C.U.P.E. discontinued its strike they did not do so. Following this there were three further days of negotiations

an attempt at conciliation which failed, and the constitution of this Board. Effectively then to deal with the approximately 240 issues, six days were spent and only a handful were resolved. Because there are so many issues the parties may understand if we do not give the reasons for our decisions the full attention that they might deserve. We have in fact carefully considered each request on its merits bearing in mind the many principles which guide us in the area of interest disputes. In the body of the Award which follows I will refer to the decision on each issue as one made by the Board but the reasons as my own because the Nominees may or may not agree with some or all of the reasons.

It is quite clear that interest arbitration is something more than throwing a number of issues at a Board and hoping that the Board will accept some at least of them. We have not taken a position that because there are a lot of demands we must therefore necessarily grant a lot of them. One of the considerations that has influenced us is whether or not there has been a proven need for a change. The labour relations environment in the health care area is not a healthy one at the moment. Along with most other workers in the province and elsewhere, the expectations of the Service Workers were stifled by the activities of the Anti-inflation Board. Realistically, most unions have accepted the position that it is not possible for arbitration boards to bring back the pre Anti-inflation Board days, and that the most boards can do is to keep wages and benefits to a level which keeps pace or nearly so with the ravages of inflation. Thus one of the key ingredients in any award is the extent to which wages and benefits keep pace with changes in wages and benefits in other employee groups in society, particularly in Ontario.

In 1974 the Hospital Inquiry Commission reported. One of the considerations basic to that Commission's Report was that employees performing the same functions in various hospitals in Ontario should receive the same treatment in relation to compensation, fringe benefits and working conditions. To some extent a trend toward central bargaining was given some impetus by this Report although because of the large number of different unions involved in the health care industry, movement toward a provincial reality has been rather slow. It is basic to this Award however that unless there is a strong reason for striking off in a new direction in this Award, I have tried to find a provincial reality or common provision and adhere to it.

Because of the incredible complexity of this hearing it became apparent at the first executive session that it was going to take some months to resolve the matters. Accordingly, on October 6, 1981 the Board implemented an Interim Wage Award totaling .90¢ per hour with certain retroactive sums. The effect of this wage award was to take the wages of the Service Workers to the level of the wages in the Hospitals represented by C.U.P.E. and S.E.I.U. as awarded on June 1, 1981 by Weiler. The increase was in fact the increase agreed to or suggested by the Hospitals in this hearing.

In the entire Award I have tried to adopt a "total compensation" approach in the sense that I have tried to be aware of the total cost of the entire package. Although it may not be relevant to take into account "ability to pay", it is nonetheless clear that the taxpayers of Ontario, aided by grants from the central government, do pay the costs of these awards. It is they that must be convinced that the public sector is not being treated in too generous a way. It is particularly difficult to convince them where legitimate reasons exist for a catch-up in pay or benefits and where double-figure increases receive much publicity.

Although there are a plethora of issues and sub-issues, the two major issues of concern are the wage package and the health care package.

Accordingly we will deal with these first and then proceed to other issues.

1. Wages

As indicated the hospital offer involved a three step increase introduced as follows:

.25¢ per hour - April 1, 1981

.15¢ per hour - June 1, 1981

.50¢ per hour - October 1, 1981.

There are three bench mark categories in the wage area:

Porter/Cleaner

Aide/Maid

R.N.A./Orderly.

With respect to the third class in this group, a further .21¢ per hour was imposed as of April 1, 1981.

It was the position of the hospitals that it made a considerable amount of good sense to move the wage scale up to the Weiler scale and thus adopt the principle of the Hospital Commission referred to earlier. The position of the Union was somewhat different. In a submission dealing with what the hospitals called a different economic universe, the Union asked for an increase to bring the wages up to a level comparable to that existing in British Columbia. Although there was some dispute as to what the average wage paid within the hospitals was the Union stated it to be presently \$6.91, the hospital stated it to be \$7.04. The percentage increases sought by the Union as of the start date of this contract were approximately 40%. These increases would take the R.N.A./Orderly level to \$10.01 per hour from \$7.21, the Aide/Maid classification from \$6.42 to \$8.61, the Porter/Cleaner group from \$6.95 to \$9.23.

I am not convinced that the argument that parity with wages paid in other provinces is necessary, is a strong one. There are a number of reasons why it might be a good thing, but more compelling reasons why it does not exist at present. Without evidence that service workers have been leaving the province to take jobs with higher pay, this argument loses much of its force.

The most basic question to be addressed here is whether there is any justification whatsoever for not awarding the same increases as awarded in Weiler and as implemented in our Interim Award. In my view very strong reasons must be shown for not doing so. Two matters were advanced by the Union which it suggested would give us some basis for a higher increase. In the first place it was pointed out that in most cities in southwestern Ontario the hospital workers were making approximately \$2.00 an hour each less than the community average wage rates in those communities. Without some indication of the sorts of wages used to calculate those averages I am unable to attach any meaning to those figures. On the other hand however figures published by Statistics Canada and the Canadian Council on Social Development have established various "poverty" lines as they are called. The poverty line for a family of four in January of 1981 was estimated by the Canadian Council on Social Development at \$13,440.00. Using the Union's average wage for the Service Workers the average yearly wage works out to \$13,474.50, a figure which shows that in a family of four with one worker, the income would be barely above the poverty line. We do not have available any figures on the demographic characteristics of the work force in this Local and it is probably true that a substantial number of the employees are members of family units in which more than one person work. The figures is however a relevant one.

The second argument was one that was addressed to the Weiler Board and rejected by it. It involved a comparison of hospital rates to

average weekly earnings, the Ontario Industrial Composite. These figures shown that between 1975 and 1980 the Consumer Price Index increased approximately 52%, the average weekly earnings in the Ontario Industrial Composite increased approximately 52%, the average weekly earnings in the Cleaner, R.N.A. areas increased only 36 to 39%. Thus the argument was made that during that five year period the hospital employees fell behind compared to other employees. A somewhat similar comparison showed that between April of 1976 and April of 1981, the average weekly Service Worker wage as a percentage of the average weekly Ontario Industrial Composite wage decreased from 89% to 72%. These figures seem to me to show that compared to other employees in the province the Service Workers have been falling behind. The problem with figures is of course that they are only as good as the fundamental assumptions behind their calculation and a look at the assumptions in this case seems to show that the figures should be accepted with caution. One problem is that they utilize a monthly or weekly wage rate which does not take into account a reduction in the weekly hours from 40 to 37 1/2. This would of course tend to increase the hourly wage and make a comparison of hourly wages more realistic. The other problem with the data is the selection of dates. It is a bit unclear whether certain increases in 1975 in the wage rate were properly compared with the increases in the Consumer Price Index which those increases were designed to offset.

One argument raised by the Union relates to the principle that public sector employees should not have to subsidize private sector employees. It is often made with a reference to average wages paid in a particular municipality. I agree with the principle that public sector employees should be treated similarly. In the lower ranges of the classifications

of service workers there are people doing what could be called entry-level jobs for which they earn \$5-6.00 per hour. I have some considerable doubts whether the same persons in private industry earn more for these types of jobs. Thus, it is not completely accurate to say that public sector employees making an average of about \$7.00 per hour at the start of this contract are subsidizing private sector employees.

A further complicating factor is that in many of the hospitals in the group, the average wage paid compares favourably with the average wage for similar jobs in the town, which may be a small municipality with little industry.

Having looked closely at all the arguments I feel that some element of catch-up is justified. This was considered in the Weiler award and the amounts awarded there do contain this element. I have not been convinced that he underestimated the amount of the catch-up required and do not feel that more catch-up is required.

Another question with respect to wages is, assuming I desire parity with C.U.P.E., S.E.I.U., what of the period beyond May 31, 1982 (S.E.I.U.) and September 28, 1982 (C.U.P.E.), when this Award will continue and those will not. Is it possible to predict what will happen in the last quarter of 1982? I do not have a crystal ball, and the only reasonable assumption I can make is that inflation will continue at its present rate of between twelve and thirteen percent. This suggests to me that a quarterly increase of something under 3% might be justified as of October 1, 1982. It need not be the full 3% because the fact that it starts being paid in anticipation of the increase, at the start of the period helps considerably.

The final question is whether to add in an increase to take into account possible increased employee costs because of the changes made, infra in the health care package and the fact that certain health care benefits are now taxable. I do not feel that the employee costs in switching to a HOODIP-type plan are as high as suggested. It has been suggested that there is an employer saving in such a case of 4%. It is either assumed that this 4% represents an additional cost to the employee or that if it does not, that it should be passed on in any event by way of a 4% wage increase. Dealing first with the latter point, if a saving does occur to the employer it does not follow that it must be passed on. Hospitals are run for more than employees. Dealing with the first point the figures I have analyzed closely, as presented by the parties, suggest that there is in fact little if any increased cost to the employee from the switch and incidentally perhaps, little saving to the hospital. However, to compensate in part for the loss of a cashout option I award a one-time amount as of April 1, 1982 of .15¢ per hour.

To maintain parity with C.U.P.E. beyond May 31, 1982, an amount of .35¢ per hour is awarded as of June 1, 1982. The final increase as of October 1, 1982 will be .25¢ per hour. I debated the wisdom of any increase, given that only slightly more than six months was left to run from June 1, 1982 but decided to award it now rather than have a future Chairman or the parties themselves deal with a retroactive payment.

The increases can be seen as follows:

	<u>Oct. 1/81</u>	<u>Apr. 1/82</u>	<u>June 1/82</u>	<u>Oct. 1/82</u>	<u>END</u>
RNA/ORDERLY	\$ 8.32	\$.15¢	\$.35¢	\$.25¢	\$ 9.07
AIDE/MAID	7.32	.15¢	.35¢	.25¢	8.07
PORTER/CLEANER	7.64	.15¢	.35¢	.25¢	8.59

2. Health Care Package

With respect to most issues in this area the parties are at completely opposite ends of the spectrum. The Union wishes to improve the present sick leave credit system, to improve the system of banking sick leave and payout, add a long term disability plan as an addendum to HODIP, increase the percentage of Employer contribution to various other plans. Basically the Union is attempting to improve the sick leave banking system and add on a long term disability plan. The Hospital position on the other hand is that the sick leave system should be substantially changed to phase out existing accumulating sick leave plans and replace them with an integrated short and long term disability plan such as HODIP.

The necessity for a complete sick leave and long term disability system is undoubted. Employees should not feel in the hospital area that they must come to work even though they are not healthy. They must also have adequate protection in case their sicknesses extend beyond short periods of time. At present there are four hospitals with a HODIP-type plan in this area. Long term protection does not seem to be particularly good. Unions in this province have resisted attempts to move toward a HODIP-type plan for many years. Some of the reasons such as the presence of penalty provisions are good ones, some are less rational. Whatever the reasons however it is quite clear that the members of the Unions in this province feel very strongly about this issue. Indeed it seems to have been one of the major issues in the illegal strike this spring. In both the C.U.P.E. and S.E.I.U. Awards, Professor Weiler seems to have agreed that the HODIP plan is the better plan but declined to award it leaving it to local option. I am strongly of the view that a HODIP type plan is an absolute necessity and that it can be made more attractive by removal of some of the penalty features now found in HODIP.

The sick leave banking system is a system which has been in place for many years in Ontario. One of the features common to a sick leave accumulation system is that it takes some time to accumulate a reasonable amount of sick time. Thus new employees are not protected particularly well. Another feature allows accumulation of credits to a certain level and cash-out upon retirement. It is the proposal of the Union that the cap be taken off this accumulation and that full pay-out upon termination of employment be provided. I am strongly of the view that this sort of sick leave provision is completely anachronistic and that there is no valid argument for improving existing sick leave plans in this way. I am cognizant of the argument that cash-out is an earned benefit and that Employees feel very strongly that when they have earned a certain amount of accumulated sick leave it should not be taken away from them. Cash-out of any kind, however, rewards only the healthy which has always struck me as being completely foreign to the reason for having a sick leave plan in the first place. Accordingly under no circumstances would I order a change in the existing plan toward improving it.

It does not seem to make much sense to me to take an anachronistic plan and add on a long term disability provision such as an addendum to HODIP. The combined cost of maintaining a sick leave credit system and L.T.D. strikes me as prohibitive. The Union in its submission p.189 referred to the windfall that would accrue to the Hospitals if the sick leave system were cut back. The estimate is that the benefit to the Hospital would be approximately 4% of payroll per year and that "this saving to the employer does not appear to show up in the size of the wage offer or other monetary offers by these employers". I have addressed this factor already.

Considering all of the arguments I feel it is time to take the bull by the horns and accept the Hospital proposal. This proposal involves a freeze on present accumulation of sick leave from the date of the implementation of a comprehensive plan, a transfer of sick leave credit into a sick leave bank to top-up benefits and pay-out of any credits left upon retirement. The details of the Award can be found at p.346 and 347 of the Hospital brief and it is my Award that this be implemented. There are two changes which I would require the Hospitals to make however. I do not feel that there should be a penalty provision which provides that no payment would be made for the first two days of illness for the fourth and subsequent illness in a year. The presence of a provision such as this seems to me to encourage Employees who are not particularly healthy to come to work. Thus I would ask the employer to remove this penalty provision.

The HOODIP-type plan is one in which there is not short-term premium paid. The employee is given a bank of credits and the only premium paid is a long term disability premium. I feel that a Hospital contribution of 75% of this premium would be adequate.

The second feature which must be considered with respect to the implementation of a HOODIP plan or its equivalent is the question of the use of sick leave credits to top up Workmens' Compensation payments. Presently Workmens' Compensation Board payments are 75% of salary and tax-free. It is the obligation of the employer in some Hospitals to top up these benefits by the use of sick leave credits. Since sick leave credits from the bank are used to top up sick leave credits I feel that the Hospital proposal on p.365 of its brief should be accepted. To limit its impact it should not be applied to persons presently receiving WCB benefits. Any person who is not receiving such benefits as of the date of the Award, including those who have been injured but not yet paid, will be covered by the Award. In the case of those now being paid top-up,

it is ordered reduced so that net salary is made whole.

With respect to OHIP premium we award an Employer contribution of 100%. With respect to semi-private coverage this benefit should be provided with a 50% employer contribution. With respect to Extended Health Care we do not agree with the removal of the 10/20 deductible provision as that would substantially increase the premium cost. We do agree that a 75% employer contribution to this benefit which is awarded, is appropriate. We do not award the vision care or hearing package. With respect to group life, the present Hospital contribution is 90%. In the case of St. Joseph's and St. Mary's Hospitals the contribution is 100%. I do not award a change in contribution. Choice of carrier is to remain that of the Hospital.

With respect to the dental plan we feel that the Blue Cross Number 9 or equivalent is an appropriate plan and so award with the Employer contribution of 50%. The rates paid under the plan should be the CDA current scheduled rates and the plan should be implemented within one month of the date of this Award. I might add here that it is my view that in the area of insurance the payment of some part of the premium by the Employee is a necessity so that the Employee realizes that the benefits received have a cost.

There are two other issues remaining to be considered in the area of the Health Care Package. One of these is a question of Employer responsibility. The Union proposed a clause to read as follows:

"The Employer is responsible for the administration and application of any insurance policy established in order to provide the health and welfare plans as herein set forth and any difference arising with respect thereto will be disposed of in accordance with the grievance and arbitration procedures of this collective agreement."

It is unclear from this whether the Union is attempting to make the Employer responsible for the payment of benefits or merely for the administration and application of the policy. Certainly if the attempt is to make the Employer responsible for the payment of benefits that is contrary to the entire theory behind insurance and is probably illegal. It is true that in many cases where a claim is disallowed an Employee has a considerable amount of difficulty in dealing with the carrier to find out why it was disallowed. The clause is clearly an attempt to provide some avenue of recourse through the collective agreement and through the grievance procedure against such denials. The problem is of course that the denial is done by the carrier and not by the Employer and if the carrier is adamant there is usually very little that the Employer can do. We are aware that the recent collapse of Cooperative Health Services of Ontario directly affected a number of Employees in the health care industry. Given the vagaries of contract law however we do not feel that the proposed clause would improve the situation at all. Accordingly we deny this request.

The other proposal of the Union was that the change of carrier provision be amended so that the carrier of a particular plan be selected by mutual agreement between the Union and the Hospitals for all plans in this area. I do not feel that requiring mutual agreement for the change of carriers is a realistic requirement. I do feel however that since, for many of the plans the Employee is paying a proportion of the premium cost, the Employee should have some input into the decision concerning a change of carrier. This input should also be available where an initial plan is started such as the HODIP or equivalent plan awarded above. The present S.E.I.U. 220 clause awarded in 1979 provides that other carriers maybe substituted provided benefits conferred are not in total decreased and that the Union is notified concerning proposed changes. It is very difficult to envisage a clause which provides other than that the Employer should give

the Employee full information concerning the plans. I don't feel that a plan which gives the Employee a veto over a carrier is a workable system. Accordingly I feel that the present clause set out on p.343 of the Hospital brief under S.E.I.U. 220 - 1979 is adequate.

3. Union Security

The parties were able to agree on Articles .01(a)(b)(c), .02, .03, .04 and .05. The only Article upon which disagreement remained was Article .01-(d) and the area of disagreement concerned the amount of information which the Hospital was required to submit to the Union when forwarding Union dues. I agree with the Union proposal here with the exception that the last sentence should be deleted, which sentence requires the Hospital to list Employees who have terminated the Company and reasons.

4. No Discrimination

The Union proposes a comprehensive non-discrimination clause including ability to grieve alleged discrimination on a number of bases such as age, race, creed and colour, etc. The Hospital proposal is for a somewhat more limited clause which limits non-discrimination because of membership or nonmembership in a Union or because of Union activity or inactivity. The Hospital also proposes a clause specifying the extent to which Union activity will be allowed on the premises of the Employer.

Dealing with the second clause of the Hospital proposal I don't feel that such a clause would be workable.

The more difficult proposal is whether or not a more comprehensive nondiscrimination clause should be awarded. It is quite clear that many Union members are disgruntled with the activity of the Ontario Human Rights Commission. It is also clear that civil remedies for discrimination are not adequate. Basically the effect of implementing a comprehensive nondiscrimination clause is to give Employees a further avenue of redress where they allege

discrimination on various bases. Can it be said that there is a demonstrated need for a clause of this sort in the sense that presently Employers can discriminate against Employees for other than Union activity with impunity? Although such a clause would give Employees discriminated against some additional basis for recourse I do not feel that the time has come for arbitrators to be saddled with these impossible tasks. It seems to me that attention should be focused on the Human Rights Commission in an attempt to improve its resolution of such matters. The question facing me is whether to Award the Hospital request or to leave things as they are. There is no doubt that if the Hospital request is accepted, some restriction of activity might occur at some Hospitals. On balance I reject both proposals and the present clauses in contracts will continue.

5. Grievance Procedure

Basically the Hospital wants a complete revamping of these clauses while the Union only wishes four changes. These four changes are as follows:

1. The Union wants a Union representative present whenever an Employee is discussing his employment relationship with the Employer.
2. The Union wants to extend the substantive right to grieve to all Employees including probationary Employees.
3. The Union wishes to increase the number of working days within which a grievance must be submitted to twenty.
4. The Union wishes provision for policy and group grievances to be expressly written into the clauses.

The first question is whether a uniform grievance procedure should be imposed upon all the Hospitals within this group or whether the present clauses should be slightly changed or left as they are. In my view it makes a good deal of sense to have some uniformity across the board in this area given that the same local represents all the Employees within the many Hospitals. Accordingly I feel that the Hospital proposal

should be implemented across the Board with some changes. Proposed .01 is awarded. With respect to proposed .02 the Employees should have more than five calendar days to proceed to the grievance procedure from the complaint stage and that time should be ten working days. In addition the Employee should have the right to have a Union representative present at the complaint stage if he so requests. I do not feel that the Union proposal that all meetings between the Employer and Employee concerning employment relations should be conducted in the presence of a Union Steward/Committee person is a workable one. This because of the difficulty of defining what an employment relation is. Thus I award .02 of the Hospital submission, p.113, with the following changes:

1. Time to adjust complaint - 10 working days.
2. Time to proceed to grievance procedure - 10 working days.
3. Addition of clause at end of .02 which reads:
"Any employee is entitled, upon request, to have a Union Steward present with him when meeting with the
to attempt to adjust his complaint."

With respect to proposed .03 I agree with the three step grievance procedure and with the time limits set out therein.

With respect to proposed .04 policy grievance, I agree with the first part of proposed point .04 with the exception that the ten calendar days should be changed to ten working days. The Hospital proposal adds a proviso that policy grievances may not be used to institute complaints affecting Employees directly. This of course raises the thorny problem of the distinction between a policy grievance and an individual grievance, which distinction has caused considerable difficulty in "arbitral jurisprudence" I find some difficulty with the Hospital proposal in that it is very difficult to decide when a grievance will "directly affect an Employee" within the meaning of that clause. Without the proviso, however, employee grievances might be filed at this step. Accordingly I award all of .04.

.05: I agree with the provision for a discharge grievance originating at Step 2 but suggest that the time for filing be increased to 10 calendar days. The Hospital proposes that this clause exclude probationary Employees who, it suggests should be able to be discharged at the sole discretion and for any reason satisfactory to the Hospital. The Union on the other hand suggests that probationary Employees should have the right to grieve discharge. I am reasonably aware of the problems surrounding the rights of a probationary Employee to grieve discharge. Despite some ill-advised comments to the contrary I am reasonably aware of the concerns in the world of "industrial relations" surrounding this problem. Provided the probationary period is not excessively long, valid reasons exist for allowing the employer the freedom of unrestricted choice with respect to whether that Employee should continue in the Hospital. Accordingly the proposed "notwithstanding clause" in .05 is awarded.

I am aware that at some Hospitals in the group a rather ambiguous management rights clause exists. I deal with those in the part of the Award dealing with Local Issues.

With respect to .06 It is awarded.

With respect to .07 I do not feel that it is necessary, reflecting existing practice as it does, and decline to award it.

Proposed .08 is a useful clause to have if Employees are giving their Union representatives problems, and I award it. Numbering throughout the clause will have to be adjusted.

6. Arbitration

The parties agreed upon clauses .01, .02 and .05 and accordingly we include those within this Award.

With respect to proposed .03 the Hospital proposal is that no matter may go to arbitration which has not been carried through the grievance procedure. The Union .03 is a somewhat more comprehensive clause akin to Rule 185 of The Ontario Rules of Practice which provides that proceedings shall not be defeated by formal objections. It is thus more comprehensive than the Hospital's proposed .03. To some extent the Union proposed .03 is already reflected in the practice of arbitrators. Most of the formal objections that are taken to arbitrability concern time limit problems and to some extent those have been resolved by section 37(5a) of The Ontario Labour Relations Act. This of course provides that certain times can be extended where the opposite party is not substantially prejudiced. On balance I am not satisfied that an extension of present practice as reflected in part by section 37(5a) is justified. With respect to the Hospital's proposed .03 I award it subject to the removal of the word "properly" in the second line.

With respect to Hospital proposed .04 it seems to reflect existing procedure and consequently I am prepared to award it. With respect to the Hospital .07 because I have extended the time limits somewhat and because section 37(5a)(old) is incorporated, I award it.

The final proposal is .06 of the Union. The proposed clause provides that the parties may have the assistance of the Employee or Employees concerned as witnesses and that the parties and the arbitration board may go to any part of the Hospital to view working conditions. It is the case

now of course that the arbitration board has those powers and the effect of the proposed clause is to move them back into the grievance procedure. I do not think that we have the power to authorize the issuing of subpoenas to witnesses by Employees and do not see how any reasonable Employer who wished to make the grievance procedure work would fail to investigate the matter and talk to all of the witnesses as well as allow the Employee and the Union to do so. Accordingly since I see no demonstrated need for this provision I decline to award it.

With respect to the arbitration clause in general the numbering of the various clauses may have to be juggled to incorporate the above Award.

7. Seniority

There are a substantial number of issues covered under the area of seniority and they will be dealt with separately.

The first issue concerns the probationary period. Both sides seem to be in agreement that 45 days of work within 12 calendar months is an appropriate period. I agree with the Hospital proviso that this should be work in the full-time bargaining unit. The Union proposes that when an Employee transfers into this full-time unit from a unit in the Hospital represented by itself that time spent in such units should be credited toward the probationary period. The effect of this proposal would be to benefit Employees represented by this local. Leaving aside this question, the basic question is whether or not any move from part-time into full-time employment should be into a position as a probationer, i.e., whether or not part-time employment should be considered as probationary employment. It is true that a part-time Employee would be disinclined to move into the full-time unit if she or he were aware that the job would be at risk for the first nine weeks.

Unfortunately I do not have available to me information as to the extent to which movement occurs between part and full-time units. Thus I have no way of gauging whether or not this is a real problem. It seems to me to allow movement from any part of the part-time unit into any part of the full-time unit without some probationary period could lead to some difficulty. On balance I feel that the probationary period should be retained, even for transfers of this sort and reject the Union proposal. I award the Hospital proposal p.148.

Generally speaking loss of seniority provisions are useful to the Employer because they provide that if certain things occur loss of seniority is automatic. When coupled with a deemed termination clause as is proposed by the Hospital they provide a rather draconian remedy for situations in which the Employee fails to notify the Hospital in certain circumstances. I feel that to some extent at least some loss of seniority provisions are justified but not nearly to the extent proposed by the Hospital. In particular I do not feel that proposed (a) and (b) are necessary. If a person resigns or is discharged and not reinstated, clearly the employment relationship is terminated. It would be difficult for such a person who subsequently took up employment again with the Hospital to argue that seniority should be continued. Proposed clause (c) provides that if the Employee has been laid off for the lesser of his length of seniority or twelve calendar months, seniority will be lost. There is not a great deal of experience in these Hospitals with the question of lay offs and the question is, assuming lay offs occur, how long should the right to recall continue? This problem is tied in with the lay-off-recall problem to be addressed next and with respect to clause "c" I award it but change the cap from 12 months to 24 months.

Clause (d) provides that if a person is absent because of disability or illness for a period of one year or length of seniority whichever is the lesser, seniority will be lost. The question here is whether or not a position should be kept open in the sense of the Employee remaining as an Employee if that person has been off work because of illness or disablement for a period of one year or more. Under the above awarded HODIP or equivalent plan of course such Employees are receiving some payment from that plan. I agree that some cap is required here but feel that twelve months is somewhat short. The more appropriate provision should be 24 months.

Proposed (e) provides that an absence from scheduled work for three or more consecutive days without notification and a satisfactory reason shall lead to loss of seniority. I feel that some provision is necessary to cover the situation of Employees who simply disappear but suggest that the proposed clause should be changed by the addition of the following:

"and failure to notify was not due to circumstances within the Employees control."

Proposed clause (f) deals with failure to return from a leave or utilization of a leave for a different purpose. I would add the words "for reasons beyond the employee's control" after the phrase "leave of absence" in line two of the proposal and award the clause as so amended.

Proposed clause (h) deals with failure to return upon recall. The effect of the proposed Hospital clause is that if the Employee does not signify an intention to return after receiving notice of recall he or she loses his or her job. The responsibility of the Employee is to maintain an up-to-date address with the Hospital so that this notice can be received. There are alternatives to this clause. One is that if the person is recalled to his previous position and fails to come he or she loses the job but if the Employee is recalled to some other position and fails to take it the person maintains seniority but goes to the bottom of the list for recall.

Although there have not been many lay offs in this industry, it is possible that the health care system will ultimately be completely revised. Whether or not this will entail a reduction in staff is questionable: in the event that it does some provision for lay offs is essential as a protection to employees. Because person with low seniority are usually laid off first the problem is the extent to which these persons are to be protected. I feel that members of this group may well have a problem getting another job and are likely to be available for recall upon reasonably short notice. Thus a loss of seniority clause such as proposed (h) is not likely to work a substantial hardship and is awarded.

8. Lay Off and Recall

It should be noted here that the situation at Simcoe Norfolk is different from that in the other Hospitals and it is awarded that with respect to that Hospital lay offs and recalls for full time Employees shall be separate and apart from lay offs and recalls for part time Employees.

I agree with the submission that a mix of full and part timers is essential and do not feel that such a provision "erodes" the unit.

I will address the lay off-recall provisions in the context of addressing the Hospital proposal. It parallels the SEIU and Participating Hospitals language to some extent.

With respect to proposed .01 it is normal to reduce seniority because of certain absences. I would, however, change part of .01 to read as follows:

"...but exclusive of unpaid leaves of absence beyond 30 calendar days (except maternity leave) or illness in excess of 16 weeks and period or periods of lay off."

There are a number of problems raised with proposed .02. One is whether to allow a bumped Employee the right to bump another. I feel that if

lay offs occur in the higher classifications the effect of proposed .02(iii) might well be to work a hardship on the senior Employee in a lower classification. There is a lot to be said for that person being able to in turn bump someone else. It is true that considerable confusion may exist in the unit until all displacement rights have been exercised but I feel that seniority should be given full consideration. Thus I exclude proposed (iii) and add in its place:

(iii) Any persons displaced through this procedure shall themselves be entitled to utilize the procedure.

It is hoped that, if notice of lay offs is given as required, in most cases these displacements can be ascertained before the date of the lay off.

The question of length of notice of lay off is crucial. The times set out in proposed .03 seem a bit abrupt. I feel that if a lay off is to be for less than eight weeks, notice of one week is appropriate. This is dealt with in .04. Where the lay off is to be for more than eight weeks, as will usually be the case, a graded scale of notice should be provided. This will be as follows:

- "a) Up to two (2) year's service - two (2) weeks notice.
- b) Two (2) years or more but less than five (5) years service - three (3) week's notice.
- c) Five (5) years or more but less than ten (10) year's service - four (4) week's notice.
- d) Ten (10) years or more service - eight (8) week's notice.

Service shall be calculated as stated above as of the date of the proposed layoff".

With respect to .04 I agree with the provision and so award.

Clause .05 deals with recalls. I award .05 on p.175 of the Hospital brief with some changes. The first sentence will read, in part, as:

"Where a position or positions become available in a classification or classifications in which the lay off occurred, employees who retain seniority shall..."

I am concerned about the effect of this clause on persons who moved down one classification and displaced someone else. It makes some sense to allow these

people to move back into their previous jobs. Accordingly I award the following change: Following the words "laid off" in line four should be added the words "or displaced as a result of the exercise of the displacement procedure set out in .02, above, for a period of twenty four (24) calendar months or "less".

Clause .07 seems appropriate with the change that it will apply to employees who retain seniority (lines 3-5).

The problem of continuation of benefits on lay off is addressed by the Union proposal. A six month period is suggested, during which full premiums of Employee benefit plans would be paid. Present practice in the industry, is to pay until the end of the month in which lay offs occur. I feel that in the case of a lay off payment for thirty calendar days is appropriate. Thus the language presently in the agreements, set out at p.184 of the Hospital brief is continued except that it is amended to lengthen the time to thirty calendar days. The balance of the language will not be altered.

9. Leaves of Absence

There are approximately nine different types of leaves involved in this clause. The problem of continuation of benefits while on leave will be addressed as it arises.

(a) Personal Leave

A personal leave is a leave without pay and the issues between the parties are the length of the advanced notice required and whether or not benefits will continue. Given that it is within the power of the Employer to deny the leave and problems of scheduling would be an adequate reason for such denial, I feel that one week's notice in advance is adequate. A rider such as exists in the partitions agreement to the effect that the words "unless such notice in advance is impossible to give" is added. The Hospital proposal as amended is awarded.

(b) Compassionate Leave

There are three problems between the parties and they relate to the following issues:

- (i) what deaths should be covered;
- (ii) what happens if a death occurs while the Employee is on leave or vacation?
- (iii) must the Employee prove that he or she spent the leave by attending the funeral?

Dealing first with (iii) I see no basis whatsoever for requiring an Employee to prove that he or she spent the time at the funeral. Dealing with the topic (ii) three calendar days following the date of death but not including it is adequate. This is whether or not the Employee is scheduled to work on those days and whether or not the Employee is presently on a leave or holiday at time. It is true that a holiday may be completely spoiled by the death of a relative but no collective agreement can completely protect a person against the vagaries of life. With respect to (i) the definition of immediate family, I feel that the definition provided for in the Union proposal is far too wide and that for the moment at least, it should include parent, step-parent, spouse, child, step-child, brother, sister, mother-in-law, father-in-law, grandparent and grandchild. Thus .01 (Hospital) as amended is awarded.

(c) Maternity Leave

After carefully canvassing both the Union and the Hospital submissions I feel that the clause negotiated with C.U.P.E. set out on pp.216-218 of the Hospital brief is adequate with one change. It is that with respect to clause .05 the Hospital should maintain its premium payments for applicable insured benefits until the end of thirty calendar days.

(d) Union Leave of Absence

These leaves are without pay at the present. The issues between the parties are the length of advance notice required, the length of the leave, and whether a restriction as to the number of persons in any one department may be off on a Union leave is appropriate. With respect to the number of persons whomay be on leave at any one particular time I feel that the maximum should be worked out at each Hospital depending on the size of the bargaining unit. Having no information about this we made no Award concerning it. I do however Award the Hospital .01 clause with certain changes. With respect to .01(a) I do not feel that the limitation to two employees is adequate in the case of the larger Hospital nor do I feel that it is necessary to limit the availability to one Employee per department. This is also a matter which can be worked out at the local level and we make no Award concerning clause (a). With respect to clause (b) it seems to be a reasonable provision and is awarded. With respect to clause (c) we adopt it with the exception that we drop out the word "and approved" in the second line. Clause (d) will read as follows: "Such requests shall state the general nature of the function to be attended".

(e) Jury/Witness Duty

The major issues between the parties are whether or not the Employee must be through the probationary period to be entitled to this leave, and the scope of the clause. At the present the majority of the agreements provide that if an Employee is a juror he or she is covered by a clause, and substantially fewer agreements provide for leave with pay as witnesses. Speaking generally I feel that there is no justification for requiring that the Employee have completed the probationary period. Being called as a juror is something that is beyond the control of the Employee and serious penalties are attached for failure to attend as a juror when called and the clause should be available to all Employees. When a witness is subpoenaed

to attend at a trial that witness likewise has no choice to attend. Normally the length of time that a person spends as witness even though subpoenaed to a trial which may be expected to take some time is relatively short. Usually arrangements can be made for that witness to be called on the day the evidence is required and not have to spend several days waiting. I feel that clause such as the one negotiated between C.U.P.E. and 65 Participating Hospitals in September 1980 is an appropriate clause. It is set out on p.207 and p.208 of the Hospital brief and I Award it.

(f) Adoption Leave

The Hospital position here is that the personal leave provisions are adequate for the purposes of covering this area. The Union seeks a six month leave without pay for the purposes of adoption. It is perhaps a sad fact that because of the number of abortions performed in Ontario the number of younger children available for adoption has been substantially reduced in recent years. A good many more of the children being adopted other than through private adoptions are somewhat older. Normally bodies such as the Children's Aid Society require a six months adjustment period before a decision is made as to whether or not to allow the adoption. It is a six month period that the Union request seeks to cover. The Hospitals at the hearing did agree to the provision negotiated with C.U.P.E. recently and set out on p.221-2 of its brief. Accordingly it is awarded. Under clause (b) employer contribution to benefits will continue for 30 calendar days.

(g) Paternity Leave

The Union proposes a period of five working days without pay to prospective fathers. The Hospital feels that the personal leave provisions are adequate. I agree with the Hospitals in this respect and decline to award such a clause.

(h) Special Leave

The Union proposes a new provision in which Employees can earn a certain amount of credit and subsequently take time off with pay. This

is just another way of extending vacation time and I am disinclined to grant it, given its expense.

(i) Education Leave

It is becoming more common for certain qualifications to be required for the maintenance of jobs. Indeed in some cases qualifications are being imposed in a way that existing Employees must qualify or lose the job. It seems reasonable to me that if the Hospital requires a certain qualification or if government requires a certain qualification and an existing Employee does not have that qualification and requires it for the continuance of the job, a special provision should be in existence to allow that person to take a leave. I feel that the provision awarded by Professor Weiler in the recent S.E.I.U. Award, set out on p.228 of the Employer brief is proper and accordingly Award it.

It is true that the clause does not cover the situation in which the government may change the qualifications for a certificate but in which the Hospital does not require the new qualification. Despite one apparent occurrence of this I do not see it as a problem that can be addressed in this clause.

(j) Effect of Leave of Absence

I feel that it is necessary to deal with the effect of leaves of absence here.. In the case of a leave with pay benefit payment and seniority continues. In the case of a leave without pay, the Hospital proposes an omnibus clause making it clear that seniority stops accumulating. It is set out on p.234. I have dealt with this provision in part elsewhere and agree with the proposal except as modified elsewhere in this Award. Thus the clause is awarded on the assumption that the specific overrides the general. One example of a specific different provision is that dealt with under maternity leave.

10. Hours of Work and Overtime

There are two Union proposals here and no Hospital proposal. The Union is attempting to clarify the length of the meal period and to set up a system of overtime banking. Last year the parties agreed to a 37 1/2 hour work week. This was made up of five 7 1/2 hour daily shifts. It was suggested at the hearing that in a number of Hospitals many Employers were considering extending the lunch period to one hour to ensure that Hospital Employees were at the Hospital for the full eight hour shift in the sense that at the beginning and end of each shift there would be a direct carry-over of Employees. This is of particular importance dealing with such Employees as Stationary Engineers or Ambulance Attendants because the Hospital is required to keep someone in attendance at all times. The effect of granting the Union proposal would be, with respect to those Employees at least, to require the Hospital to pay them one half hour overtime per shift. We did not receive any evidence at the hearing concerning whether or not this proposed Employer practice had been adopted and feel that the draconian measure proposed by the Union is excessive. Should it become a problem we feel the parties can work it out to their own satisfaction and decline to make an Award on that issue.

The proposal for overtime banking is that an Employee could bank up to 40 hours. This could then be used as time off with pay at a time mutually agreed upon between the Employee and the Employer. In addition if the time were not taken off the Employee would be allowed to accumulate it with no cap until termination of employment. The issues are pretty clear here

1. whether to allow accumulation and if so to what extent.
2. the scheduling of lieu days.

The Hospitals resist the imposition of a clause such as this on the basis of the difficulties of scheduling that it would entail. At

present of course the provisions allow the Employees to take equivalent time off within 30 days following a call back. There are also provisions in most contracts allowing Employees who work on paid holidays to take a lieu day with pay sometime after that. For the moment at least I am disinclined to make an award under this item because the problem is to some extent dealt with by existing clauses.

II. Paid Holidays

There are a considerable number of issues involved in this clause; in general it can be said that the Hospitals are attempting to introduce a number of qualifiers to restrict abuse of the provisions and attempting to cut down on duplication of benefits where something unexpected happens to the Employee on the date of the holiday.

I propose to go through the various proposals by focusing on the Hospital proposal and comparing it, where relevant, to the Union proposal.

Proposed .01 requires that in order to qualify an Employee must have completed the probationary period. This was modified at the hearing to provide that "an Employee who has completed thirty days of employment and otherwise qualifies under Article thereunder shall receive the following paid holidays." I feel that this is an appropriate qualifier given that the Employment Standards Act requires three months of employment.

With respect to clause .02 there are two questions. In the first place the Union is requiring that a 12th holiday be provided. The Hospital on the other hand resists the addition of an additional day and wishes to qualify the clause in a way that if a further date is granted by legislation it will be included within that 11 days. Dealing with the

both of these I feel that 11 is a reasonable number of days and is probably the norm in the industry and decline to award a 12th day. I award .02 as proposed by the Hospitals.

With respect to .03 which defines holiday pay as regular straight time hourly pay exclusive shift premium, I agree with that clause and award it.

.04 of the Hospital's proposal introduces one qualifier with five exceptions. The basic question to be addressed is whether such a qualifier is necessary or desirable. The Union position is that paid holidays are earned benefits, a concept with which I agree but that qualifiers are inconsistent with this, a concept with which I do not totally agree. The purpose of such a clause is to prevent abuse. If the Employee does not work on the scheduled shift before and after the holiday there is often a suspicion that the Employee is abusing a sick leave provision. I feel it is open to the employer to control the sick leave provision in part by requiring the appropriate certification in a disputed case. Qualifiers are reasonably common, particularly in the health care industry and accordingly I award proposed .04.

.05 of the Hospital submission covers a situation in which an Employee is on sick leave during the holiday. The end result of .05 is to deny the sick leave pay. If a holiday is an earned benefit it seems to be somewhat unfair to deny the Employee the benefit of the holiday pay if he happens to be sick on that date and accordingly I decline to Award .05. Misuse of the provision can be limited by requiring proof of the illness.

.06 is designed to deal with a situation of an Employee who is required to work on a paid holiday. It is somewhat equivalent to .02 of the Union's proposal and they differ in only minor respects. In particular the Hospital proposal requires a lieu day be taken within thirty days before or after the holiday, and the Union proposal does not provide for what happens when the day off is not mutually agreed upon. I feel that the Hospital proposal would

contribute to a more efficient schedule, and because it deals with a problem of an impasse to the scheduling of a lieu day I feel it should be adopted. Thus .06(a) and (b) of the Hospital submission is awarded.

.07 of the Hospital proposal is a penalty provision in dealing with the situation of an Employee who fails to work when scheduled to do so on a paid holiday. I Award this with the change that the last line will be changed as follows: It now reads:

"The employee provides a reason for such absence which his immediate supervisor considers legitimate"

It should now read:

"The employee provides a reason for such absence which is reasonable".

.08 of the Hospital submission deals with a situation in which a paid holiday falls during an Employee's scheduled vacation. The Union's proposed .03 would deal with the situation by giving the Employee an additional day off with pay and gives the Employee the opportunity of taking it at some other time. I feel that .08 of the Hospital submission is more workable and accordingly so Award.

.09 of the Hospital submission deals with a paid holiday falling during an Employee's regular day off. The Union submission would deal with the situation the same way as in the previous situation. Both parties seem to agree with the provision of a lieu day and I agree with the suggestion that the day should be selected by the Employee and the Department Head by mutual agreement; failing such mutual agreement the lieu day will be scheduled by the Department Head.

With respect to both .08 and .09 the proviso "provided the Employee qualifies for the holiday pay" is necessary as there are qualifiers.

12. Definition of Regular Straight Time Rate of Pay

This proposal of the Hospitals which appears on p.246 of the Hospital brief. I agree with the necessity of defining it and with the definition set out therein and I accordingly award it.

13. New Classification - Job Descriptions

The Hospital proposal covers a situation in which a new classification is established by the Hospital. It does not deal with the phasing out of the old classification or changes made within classifications. The Union proposal on the other hand requires the Employer to draw up job descriptions for all the positions and classifications. It also provides that existing classifications shall not be eliminated without agreement. It also provides for a mechanism for grieving the changes in duties or volume of work within a classification.

There are a good many reasons why the Unions are attempting to introduce a clause of this sort at this time, given the legitimate concerns about the present job market. Although I feel that job descriptions are a very useful and necessary part of an employment relationship, I do not know whether the time has come to impose job descriptions upon Employers and make them part of the collective agreement. With the respect to the problem of new classifications and changes within existing classifications, I feel that the Employees do have a legitimate concern and interest in this area. In fact there are many clauses now dealing with new classifications. Accordingly the Hospital position is accepted with respect to new classifications. I do not feel that this proposal adequately protects the Employees in the case of changes within existing classifications or with respect to elimination of

certain classifications, and feel that the parties should work toward a clause in the next round of bargaining which provides for notice to the Union if any substantial changes within a classification are contemplated. Accordingly I make no Award on this issue.

14. Vacations

There are a considerable number of issues to be addressed under this head. I will address them in the context of dealing with the Hospital submission. .01 of the Hospital position deals first of all with the date for determining vacation entitlement. Date of entitlement is now dealt with differently in many of the Hospitals. To avoid considerable disruption, I make no change in the date and award the clause .01 suggested by the Hospitals at p.283.

With respect to the amount of the vacation dealt within .01(a)(b)(c)(d) and (e) I feel that the Hospital provision is adequate with certain exceptions. In particular I feel that the entitlement for four weeks of vacation should be reduced from twelve to ten years. In addition I feel that while the use of continuous service is a useful concept clause .04 should be altered somewhat as indicated infra.

With respect to the problem of scheduling the Union proposal requires that the schedule shall be mutually agreed upon and that disputes between Employees shall be determined by seniority. It also provides that a vacation can be taken in an unbroken period unless mutually agreed upon. With respect to the Hospital submission .02 I agree that for the purposes of scheduling a certain amount of advance notice is required, but since vacations are now being taken in the winter and in the summer, to establish an arbitrary date in the particular year when they are being taken does not seem to me to address the problem. I am disinclined to Award .02 and leave it to the parties

to decide what sort of advance notice is appropriate as reflected in present agreements. With respect to the scheduling, I agree that seniority should be the relevant factor, and that the date should be mutually agreed upon. However, in the event that the parties cannot agree upon a mutual date, the decision should be left with the Hospital. I do not agree that a split of the vacation time at the option of the employer is justified. Thus clause .03 should read as follows:

"The time of vacation for each Employee each year will be mutually arranged between the Employees and the Employer, provided however that if there is a dispute over a respective vacation date between Employees, seniority of an Employee shall be the governing factor. In addition should the parties be unable to mutually agree upon the time, the decision will be that of the Employer. A Employee shall be entitled to receive his/her vacation in an unbroken period, unless otherwise mutually agreed upon between the Employee and the Employer."

.04 of the Hospital proposal reduces vacation entitlement for unpaid absences exceeding a total of 30 days in the qualifying year. The Union strongly resists this clause, pointing out that it would be contrary to present practice. In many agreements in this area pay may be reduced but quantum is not. In a number of CUPE agreements such a provision does exist. I agree with the concept of reducing pay entitlement for absences without pay over 30 cumulative days but am reluctant to reduce quantum. I can see such a reduction having a severe repercussion where an Employee has taken a maternity leave. It is unlikely that any vacation entitlement would remain. Accordingly I award .04 but add the word "pay" between the words "vacation" and "entitlement" in the first line. I also award that pay entitlement is not to be reduced because of leaves for Union business.

.05 the equivalent of .03 of the Union's proposal suggests that if the Employee leaves for any reason he or she is entitled to vacation allowance. The Hospital proposal is that the vacation allowance would be forfeit unless the Employee gave two weeks notice and that the Employee would only receive the Employment Standards' Act percentage payments. I have canvassed the various ways in which a person could be discouraged from leaving without notice and have failed to find alternatives. Thus I feel that clause .05 is justified and so award.

.06 I agree with that clause and accordingly award it.

.07 of the Hospital proposal provides that if the Employee requests within 15 days prior to the commencement of the vacation that the vacation pay will be paid in advance, that it be done. The Union .04 is somewhat similar except that it merely provides that the Employees may elect to receive this vacation pay prior to the start of their vacation. To make such a clause workable it seems to me necessary that some advance notice of this requirement is required, and, particularly since the vacation will have been scheduled before this time I feel that the 15 days advance notice is reasonable. Accordingly .07 is awarded.

It is noted here that specific scheduling concerns are matters for local determination unless they are covered in the above awarded matters. It is also noted that the numbering may have to be changed.

The Union has requested a definition of total earnings for the purposes of vacation pay. If it is not clear from the above Award I feel that the vacation pay should be at the regular straight time hourly rate, because overtime pay, premium pay, shift pay, money paid for days not worked provide in themselves a bonus for the extra time or sick time or work on holidays. I feel that to use these sums as a basis for calculating holiday pay would be to doubly bonus the Employee. I note that both the St. Joseph's and St. Mary's Awards in London provide for pay at regular straight time hourly rate.

15. Shift Premium

The Union is proposing \$3.75 per shift, the Employer is offering \$2.10 per shift effective June 1, 1981. This would parallel the S.E.I.U. and C.U.P.E. amounts as awarded by Professor Weiler. I feel that the figure of \$2.10 is adequate and accordingly so award.

16. C.O.L.A.

For a number of reasons I decline to make an award under this heading.

17. Charge Hands and Supervisory Premium

To some extent these two requests are linked together and will be dealt with together. At the present there are five Hospitals that have a charge hand rate and the Union proposal is to set up a separate classification which would apply to all Hospitals. I do not think that the case has been made for doing that and accordingly make no Award with respect to charge hands. The amount of the charge hand pay that is presently paid at five Hospitals will be untouched by this Award.

With respect to the question of supervisory premium, it is now paid on a percentage basis in some Hospitals. For the purposes of standardization I feel that a dollar per shift amount would be appropriate and the remaining questions concern the amount of that premium and the extent to which an Employee must act in a supervisory capacity to qualify for it. The Union position is that all hours worked as a supervisor should be paid for in this way. The Hospital proposal is that if a person works as a supervisor for a period in excess of one shift when there would normally be a supervisor working, that the pay should be paid. I feel that a provision which provides that \$3.00 for each shift where the Employee is temporarily assigned in excess of one half of one shift is adequate I note the language negotiated with S.E.I.U., C.U.P.E. in Exhibit F and adopt it.

With respect to those Hospitals now paying on a percentage basis I Award that these percentages be converted to dollars per shift as of March 31, 1981 and be red circled.

18. Standby Allowance

With respect to Standby allowance the Hospital proposal was to increase the provision to \$1.25 per hour. The Union wishes to increase to \$2.00 per hour and to make it payable even if the person is called in. It is presently the case that when an Employee is called in the standby allowance continues to be paid. Because \$1.25 per hour is the amount paid under the C.U.P.E. and S.E.I.U. agreements I Award it.

19. Call Back

The Hospital proposal is that any calls that occur during the minimum guaranteed period are covered by the minimum guarantee. The Union proposal involves three hours pay at time and one half for each call back and a transportation allowance. It is presently the case that there is a minimum payment of three hours at time and one half in the existing contracts. I feel that if a second call back occurs within the minimum guarantee period the minimum guarantee should not be duplicated. To award a second amount if a call back occurs within the guarantee time is to ensure that employers will keep Employees on hand for three hours if called in at all.

With respect to the question of a transportation allowance because of the variations between the Hospitals and their locations as well as the size of the communities in which they are situate I am reluctant to make any award in this area without some idea of the financial implications of it.

20. Superior Conditions

The Union proposes a superior conditions clause which provides for an implementation committee and provides that with respect to all benefits superior conditions shall remain. The Hospital on the other hand proposes that superior conditions be limited to matters which are identified with direct financial implication to the Employees.

I do not feel that it is up to us to establish an implementation committee since that is probably normal practice in any event. In addition we retain jurisdiction over problems of implementation by law and will be available to explain any ambiguities in the Award. The question of superior conditions is one that has caused me considerable anguish. It is true that the clause negotiated between the parties last time awarded them across the board and that the Union in particular may well have entered central issue bargaining (to the limited extent that it occurred) with a desire not to lose but only to gain. The Hospital position, on the other hand, has been that without some uniformity of language, the purpose of central bargaining is thwarted. In non-monetary areas in particular, it suggests that some changes are justified across the board, even if these changes take some getting used to in local Hospitals.

I have adopted the approach throughout that if central bargaining is to have any meaning, some common language is useful. This must, as a very minimum, mean that such clauses as arbitration or grievance procedure clauses should be uniform. Such concurrence would also, incidentally, significantly ease the administration of the agreement by the Union.

It is true that it is my purpose in part to try to reach a contract that would have been reached in free bargaining. It, however, is clear that no bargain will ever be reached on some issues, despite the merits

of the situation, because of past or present misunderstandings, I feel that it is appropriate for me to impose my views upon the process by removing the impasse. Thus I have awarded a HOODIP type plan and am restricting superior conditions to a fixed list. That list is as follows:

1. Number of holidays.
2. Amount of money paid for work on a paid holiday.
3. Vacation quantum.
4. Shift premium.
5. Standby allowance.
6. Call back - minimum guarantee, and mileage allowance.
7. Percentage contribution to health care and insurance plans.
8. Uniform allowance.

Superior conditions will not apply to such matters as grievance procedure, arbitration procedure, management rights, work of the bargaining unit, vacation qualifiers, union security, lay off and recall, leaves, contracting out, maintenance of benefits, etc., or any other matter not specifically listed as appropriate for superior conditions, above.

21. Ambulance Issues

The treatment of this issue is complicated by a number of factors. In the first place there are a number of proposals set out on p.351 of the Union brief which suggests that insofar as ambulance officers are involved they should be set up as a separate classification and separate provisions with respect to court appearances, training seminars, wage structure, and uniforms should be provided. The Hospitals on the other hand treat the ambulance issues as part of the wage request and point out that in the last round of bargaining a number of increases were negotiated for people acting as ambulance attendants. At the hearing a further issue was raised by the

Union concerning ambulance attendants. The issue discussed earlier under the topic of hours of work and overtime in which the Unions requested a clarification of the length of the lunch hour, inter alia, also reflects on ambulance attendants and stationery engineers. The Hospital strongly objected to the Union raising this latter point with respect to ambulance attendants and supplementary materials were prepared by the parties and delivered to us on July 17 and August the 6th. From these materials it is apparent to us that the parties are not in agreement as to the number of Hospitals which would be affected by an Award on this issue. The Hospitals are concerned that as many as seven Hospitals might be involved with a cost per year of as much as \$85,000.00. The Union on the other hand suggests that only three Hospitals would be involved with a substantially lower cost. With respect to the clarification of the half hour lunch time, if it can be so described, I decline to make an Award on this issue. If there are in fact three Hospitals in which the ambulance people are being asked to work an extra half hour without overtime then we urge the parties to resolve the problem. Without concrete information however we are unable to deal with the matter properly.

I do not feel inclined to treat the ambulance attendants as a separate category unless they are presently so treated under the existing agreements. The provisions with respect to uniforms, court appearance, and education leave, are considered elsewhere in this Award and any Award with respect to those items would apply to these persons as well. We are not prepared to set up a separate classification for these persons and any increase that they received in the last round of negotiations would naturally carry through to form a base upon which this year's general increase could be added. Accordingly I make no Award with respect to these persons

particularly and continue existing clauses in agreements. The two areas where some change might be justified are in the area of uniforms and court attendance. I can see that if the employer requires a particular type of winter clothing, of a distinctive sort, that clothing should be provided, as is done in many police contracts. I also feel that case could be made for better provisions for court time, as is common in police contracts. I have difficulty awarding anything here because of a lack of basic information concerning cost, and suggest that the parties address the issues as soon as possible.

22. Work of the Bargaining Unit

At present approximately ten of the 17 Hospitals or 16 as the case may be, have some variation of "work of the bargaining unit" clause which is designed to prevent jobs from "leaking out" of the unit. The Union proposal with respect to this issue is that a clause protecting any work normally performed by Employees within the unit except in emergency situations or for the purpose of instructing Employees, should be awarded. The Hospital proposal is that present clauses be restricted to be applicable only to supervisors.

It is the fear of the Union, perhaps legitimate or otherwise, that without a clause of this sort, work being done by members within the unit could gradually be taken over by supervisors in some cases or volunteers or part-time workers in others. The position of the Hospital is that it would be "totally inappropriate" and that for a "lay arbitration board to award such a clause without first completely familiarizing itself with the functioning of the hospitals would be irresponsible". Although perhaps too strongly stated, the fear of the Hospitals is that a clause of this sort might be very difficult to administer in a small Hospital particular where there is a considerable amount of overlapping of function between R.N.A.s and R.N.s for example or indeed between supervisors and members of the unit. Although I have considerable sympathy with the position

of the Union I have not been presented with evidence which suggests that such a clause is necessary in the present practice of the existing Hospitals, and decline to make such an Award.

23. Uniforms

The Union proposed that a clause be added to the agreement such that where the Hospital required Employees to wear uniforms it would either supply, launder and maintain them or provide a \$6.00 bi-weekly amount for such maintenance. The Hospital points out that there is presently a clause providing for a \$40.00 per year uniform allowance and that no further increase is justified at this time. In view of the recent settlement between the parties with respect to this issue I decline to make an award on this issue.

24. Health and Safety

It is common knowledge that the Occupational Health and Safety Act made some major changes with respect to health and safety legislation in Ontario in 1978. Following the passage of that Act in a number of institutions existing safety committees were expanded and a number of issues arose concerning such matters as pay for attendance at meetings of these committees, which problems have been largely resolved by information circulars from the Ministry. The Union proposes a comprehensive clause which seems to me to basically parallel the provisions of the legislation itself. The effect of such a clause would be to allow redress through the grievance procedure in situations where the statute purported to set up its own system of redress. Health and safety issues are of prime concern, particularly in a Hospital, but until some evidence is presented to this Board that the present new legislative scheme is not working I do not feel that a clause such as the one proposed by the Union is necessary and decline to Award it. The parties in fact negotiated a clause with respect to this issue in the last negotiations and it has not been shown to me that this language has failed to be effective.

25. Bulletin Boards

Some sense of the success of the negotiations between the parties can be gathered from the fact that we are asked to make an Award on a topic such as this. Both parties agree that bulletin boards for notices of Union activity are necessary and the major question between the parties is whether or not proposed notices should be seen by the Employer before they are posted. In the Baum Award with respect to St. Joseph's Hospital in 1980 a general clause providing the posting of bulletin boards in mutually satisfactory non-public locations for the publication of notices "of reasonable" Union activity was awarded. As a matter of principle I feel that the Hospital should provide such bulletin board space and should not have the power of censorship as to what is posted on such boards. If information is posted on a board which induces the members to illegal activity, there are remedies for such illegal activity. The privilege of being misled is one that applies to Union members as well as all members of society including those who might see misleading or inaccurate material posted on general hospital bulletin boards. Accordingly I adopt the Union proposal and Award it.

26. Continuation and Maintenance of Benefits and Seniority

I have already dealt with this issue in the context of leaves, W.C.B. top-up, vacations and lay off. The Union requests a comprehensive clause covering absences for a number of reasons, including while on sick leave, W.C.B., etc. I find the proposal somewhat ambiguous but do feel that some continuation of benefits is justified. Under "Effect of Leave of Absence", supra it seems that an Employee on sick leave will accumulate seniority and be entitled to employer payment of premiums for up to 30 days. No provision is made for these where a person has qualified for W.C.B. or

is receiving it. I feel that a clause should be added to the clause awarded earlier at p.28 which provides that:

"Notwithstanding the above, where an employee is on sick leave or receiving WCB benefits or has qualified for WCB benefits and is awaiting payment, seniority for all purposes shall continue for a maximum of six months."

27. Duration

As I understand it this agreement will for one year from its date. There was some problem raised with respect to duration in the sense that if an agreement were automatically continued and an Award was not made until the final three months of the new contract, notice might not be given by the Union in time and the agreement might automatically continue. To deal with this the Union proposed a clause that agreements terminate on a specified date. I prefer the more normal provision suggested by the Hospital p.387. There is no period set out after which notice cannot be given and it seems that forgetting to give notice will be unlikely. Accordingly that provision is awarded.

28. Contracting Out

The Union proposed a restrictive contracting out provision. I have no doubt that the problem could become significant in future. If Hospitals see that work can be done more cheaply by outside agencies. They are presently protected by a clause negotiated in 1980 which is similar but not as all-embracing. I am reluctant to go beyond this at this time and decline to make an award on this issue.

29. Retroactivity

The interim award was retroactive to April 1, 1981 on hours worked. The Hospital asks that only wage increases be made retroactive. The Union counters with a proposal that all terms of settlement be retroactive. Such a clause is not useful for such matters as grievance procedure, holidays, etc., and

normally only monetary items are retroactive. Thus it is my award that as far as wage increases are concerned, retroactivity for then employed persons was dealt with. Any persons who have left the employment of the Hospitals since April 1, 1981, or who have joined later are entitled to a pro rata payment.

Other monetary items made retroactive to the April 1, 1981 date are shift premium, supervisors premium, standby allowance and call back minimum. A clause such as set out on p.387 of the Hospital brief regarding notice is awarded. It will have to be amended to include a reference to these other monetary items. Lest there be any doubt, the wage increase retroactivity continues to be for hours worked. Any other changes made by this award take effect as of the date of this Award unless otherwise indicated earlier in the Award.

With respect to the question of itemized cheques it is my understanding that retroactive payments are made separately and that the Hospitals would be able to provide information to specific Employees as to how the amounts in the cheques were calculated. Accordingly I do not feel that itemized cheques are necessary.

With respect to the question of interest there has not been any wrongful conduct on the part of the Employer which puts this case within the realm of the Hallowell decision of January 1980, and accordingly I do not feel that an Award of interest is justified. If a provision exists in a contract such as can now be included in a statement of claim in Ontario claiming interest the parties might then be aware of the possibility and might move matters along more quickly accordingly. Barring such a clause it does not seem fair to saddle the Hospital with interest costs where the delays are only in part caused by the Hospital.

30. Agreed Items

In the submissions of the parties it was indicated that there were a number of items that had been agreed. These are either contained in agreements or in letters of understanding. It is our intention to make those matters agreed to part of this Award even if we have not expressly so stated when dealing with a particular item. It should also be noted that it is our Award that provisions existing as of March 31, 1981 continue except as altered by this Award, which includes matters agreed upon. If there are any items with which we have failed to deal, or if there are problems interpreting the Award we will be available to deal with them. The part of this Award dealing with local issues is included in the scope of this statement.

II. PART AWARD - LOCAL ISSUES

APPEARANCES:

For the Hospitals:

R. B. Budd

For the Union:

Paul Middleton

C. Davidson

L. Whittaker

J. Askin

A. Common Local Issues

Pursuant to the Memorandum of Agreement signed on January 9, 1981 the parties did some bargaining on what were identified as Local Issues. An appalling lack of success resulted and in some Hospitals no issues were resolved. With respect to others very few were resolved. As with the Central Issues it is our intention that those matters which were agreed upon by the parties which are mentioned in their briefs or letters of understanding, or other documents are incorporated as part of this Award. Because many of our decisions on the Central Issues determine our decision on the Local Issues it should be clear that this Award concerning Local Issues is part of the Central Award and that the two form a package.

The submissions by the Union were made by four persons who identified two issues as common Local Issues. Approximately 13 issues were identified by the Hospital as common Local Issues in the sense that they were issues relevant to more than one Hospital. It was a condition of the Memorandum of Conditions for joint bargaining signed in January 1981 that local Issues were to be identified by February 2, 1981 and if not resolved by local negotiation would be referred to the central negotiation team by March 1, 1981. A considerable number of issues were advanced by the Union after this date and it is reasonably clear to us that very little effective negotiation occurred with respect to local issues. Accordingly just as with the central issues we have somewhere over 125 separate local issues to consider and the parties will understand if we don't amplify upon our reasons for accepting or rejecting some of them. In this part of the Award as in the part of the Award dealing with central issues the Award is drafted in the first person singular because my colleagues may not have agreed with some or all of the decisions or some or all of the

reasons given for them. I have chosen to consider 13 of the issues as common local issues as outlined in the Hospital brief and will deal with them first.

1. Access to Personal File

This issue is outstanding in approximately 14 of the Hospitals. As set out on page 10 of the Hospital brief and the proposal of the Union is that the Employee upon written request should be entitled to review his personal file including his application for employment, written warnings and evaluations and incident reports. It is presently the case that at some of these Hospitals, including Victoria Hospital, London, there is a policy that Employees who wish to review their personal file may do so upon request. They are entitled to review their application form, performance appraisals, formal disciplinary letters and notations, and pay documentation. The only outstanding factual issue between the parties seems to be whether or not there are such documents known as incident reports included in these files. The Union position is that if these documents are there they should be entitled to see them. It is my view that common fairness dictates that if anything is put into a personal file which is in any way derogatory to an Employee that Employee should have a chance to see it and comment upon its veracity. Accordingly I award that with respect to those Hospitals for which such a request was made a clause as follows be included in the contract:

"An Employee shall upon written request made a reasonable time before the time of viewing, have an opportunity to view his personal file in the presence of the Director of Personnel or his designate. The information the Employee may review will be:

- (i) application form;
- (ii) written evaluations;
- (iii) formal disciplinary notations;
- (iv) incident reports put into the file after
(the date of this Award.)

2. Management Rights

The Union proposes a rather brief management rights clause relevant to 9 Hospitals set out on page 7 of the Union brief. The Hospital proposal is considerably more comprehensive and applies to 8 Hospitals. (p.30-36, Hospital brief)

Although it is the suggestion of the Union that management rights clauses are something of an anachronism in view of the trend toward requiring a reasonable interpretation of a collective agreement, it is the case that such clauses are found without exception in all of the contracts covered by this Award. The thrust of the Hospital proposal is to clarify the question primarily of the rights of probationary Employees. With respect to two of the Hospitals, particularly Victoria Hospital (R.N.A.) and Victoria Hospital (Service) the Hospital proposal adds two words "direct and assign" to the clause as well. As stated in that part of this Award dealing with the central issues, the grievance procedure awarded does not provide for the right to grieve discharge of a probationary Employee. It is clear to me that with respect to some of the Hospitals at least there is some ambiguity in the management rights clause and that the Toronto Hydro case might well apply to these Hospitals. Although I am reluctant to take away a substantive right which the parties incidently might not have been aware that they had at the time the clause was negotiated, I feel that probationary Employees throughout all of the Hospitals should be in the same position. Accordingly

I accept the Hospital proposals set out on p.30,32-4 of the Hospital brief, including the addition of the two words mentioned to two of the contracts.

3. Parking

The Union proposal relates to continuation of the provision of parking facilities at Sarnia General Hospital and St. Thomas Elgin Hospital as well as at Hanover and District Hospital and Alexandra Hospital, Ingersoll and Simcoe Norfolk Hospital. The condition that the Union requests is that parking facilities be made available at no charge at 6 Hospitals including 3 of the Hospitals in London.

To some extent the question of provision of free parking at some of the Hospitals is beyond the control of those Hospitals. In a good many of these Hospitals some charge is already made for parking by all Employees and personnel at the Hospital. Without some indication of the costs of this provision which strikes me as considerable, I am reluctant to grant the Union request which ties the Hospital into an open-ended expense. Accordingly the Union submissions are rejected.

4. Time Off for Union Business

The Union request is to provide the Chairperson of the Union Committee with two hours off work with pay at Alexandra Hospital for the purpose of conducting Union business. With respect to 5 Hospitals, London St. Mary's, London St. Joseph's, Kitchener St. Mary's, Sarnia General and St. Thomas, Elgin the Union request is that the Chairperson be granted two hours off work with pay each day for this purpose. At present in the Woodstock General Hospital Article 8.10 of the agreement provides for two paid hours per week for this purpose. This clause was apparently introduced as a trial clause and it is the Hospital's submission that it has not had a "valuable impact on labour relations environment at the Hospital". It is the Union's submission that at Woodstock General

the contrary is the case and it wants to extent this benefit to other Hospitals. I have seen no evidence that it has not been a valuable clause at Woodstock General and see no reason to delete this clause from that contract. With the respect to add a similar clause to other agreements, I am not convinced that the case has been made out for such inclusion. Should the number of grievances escalate rapidly at these Hospitals it maybe necessary to change these agreements in the future but at present I deny the Union request.

5. Receipt of Benefits During Union Business

This request relates to the R.N.A. and service contracts, at Victoria Hospital. At present Article 7.05 of that contract provides that Union Committee members or Stewards will not lose pay from their regular shift for certain stated Union business. It is the position of the Hospital that such a clause is not needed in that agreement because it has no intention of prorating benefits or seniority during these absences. The Hospital offered a letter of understanding to this effect and taking the Hospital at its word I see no reason for extending the clause as requested by the Union.

6. Credit for Previous Experience

It is the Union request that at Hanover and District Hospital, Alexandra Hospital, Ingersoll, St. Mary's Hospital, Kitchener, Simcoe Norfolk Hospital, and Woodstock General, a clause be added which provides that an Employee commencing work who has verified experience shall receive a certain wage rate. Basically this request is that for each year of related experience the Employee be granted credit for one year of service. The Hospital submission refers on page 37 to a clause in the SEIU contract which essentially provides for consideration of related experience and credit of one year of service for every two years of related experience

in the classification. It can be seen that this proposal gives a somewhat limited recognition to previous experience which must be in the classification into which the Employee is moved following the probationary employment. I agree with the Hospital proposal except that I do not feel that experience must necessarily be in the same classification. It strikes me that the Hospital should take into consideration experience in any classification that is relevant. Accordingly with respect to the 5 Hospitals mentioned above, it is my Award that the SEIU clause set out on page 37 of the Hospital brief be awarded with the deletion of the words: "in the classification" contained in that clause.

7. Accumulation of Paid Holidays

The Union request relates to 5 Hospitals, Kitchener St. Mary's, London St. Joseph's, London St. Mary's, Meaford General and St. Thomas Elgin. The request is that Employees be allowed to accumulate five holidays in a calendar year. The effect of this of course is to allow the Employees to extend the vacation entitlement. It is the Hospital position that accumulation of paid holidays would make a master rotation of lieu days very difficult. The proposal is a rather novel one which strikes me as one which would cause considerable scheduling problems and might make the question of vacation qualifiers academic and since it does not presently exist anywhere in the province except in a few small institutions I feel that a case has been made out for rejecting the request.

8. Posting Seniority Lists

This request was made and withdrawn at Markdale Centre Grey and Meaford General. The request is made at St. Thomas Elgin and the Union request is to delete that part of Article 6 of the agreement which makes seniority as posted final after thirty days from the first date of posting. The Hospital has suggested that it is prepared to change

the word first to "current" in the St. Thomas Elgin contract and this concession seems to me to go a long way to address the problem raised by the Union. Accordingly with respect to St. Thomas Elgin I award the change as suggested by the Hospital.

9. Promotion Clause

The Union proposal relates to 3 hospitals, Markdale Centre Grey, Listowel Memorial Hospital and Meaford General. The Union proposal suggests that the competition type clauses at those 3 Hospitals be deleted, and a seniority based clause be added. With respect to layoffs and recalls, that part of the Award dealing with the central issues has dealt with the issue. I expressed the view there that a seniority based clause which perhaps gives senior Employees a slightly better chance of job security is appropriate provided the senior Employee has the necessary qualifications and ability to perform the work. Accordingly I accept the requests of the Union relating to the 3 Hospitals and direct that a clause which reads as follows be provided:

"In cases of promotion, demotion, transfer (other than appointments to positions outside the scope of the bargaining unit and other than movements caused by a lay off or recall), seniority shall prevail provided the senior employee possess the necessary qualifications and ability to perform the work available."

10. Shift Premium

The amount of the shift premium has been considered in the part of the Award dealing with the central issues. The request of the Union relates to London Victoria Hospital (Service) and London Parkwood Hospital. The issue relates solely to the question of the hours during which a shift premium will be paid. I agree that the Union proposal is somewhat wide and suggest that the proposal of the Hospital set out on page 58 of the

Hospital brief, that a shift premium be paid during each shift which commences or ends between 2200 hours and 0200 hours is more realistic. I award this both for Parkwood Hospital and Victoria Hospital (Service), despite the fact that in the latter Hospital a somewhat similar clause was negotiated last year. As requested by the Hospital this change should only be effective from the date of this Award.

11. Timekeeping Requirements

At Meaford General Hospital sections 8 and 9 of Schedule B provide that Employees shall conform to the timekeeping requirements of the Hospital and must obtain permission from Department Head before leaving work prior to normal quitting time. The last sentences in both sections 8 and 9 were deleted upon agreement at the hearing. During negotiations a similar request to delete both the provisions was made at the Centre Grey Hospital in Markdale and the matter was resolved by the deletion of the above mentioned sentences. It is my Award that to be consistent with the provisions at Centre Grey Hospital, a similar deletion of the last sentence of each of clause 8 and 9 should occur. I am unwilling at the moment to delete the entire provisions.

12. Overtime

At present at both Markdale Centre Grey and Meaford General Hospital a clause exists which requires an Employee to work overtime when requested by the Employer. With respect to Centre Grey General Hospital the Union is opposed to the directory tone of the paragraph. The same comment is made with respect to Meaford General Hospital. I agree that the tone of the clauses is directory but have not received any evidence that at these Hospitals the Employees are being required to work excessive amounts of overtime. Accordingly there being no demonstrated need for a change I deny the requests.

13. Safety Shoes

This issue relates to 3 Hospitals, Hanover and District Hospital, Kitchener Freeport and London Victoria Hospital (Service). There is no doubt that if safety shoes are required for the position it makes some sense for the Hospital either help the Employees to purchase these or to provide them. It strikes me that the issue as to who should be required to wear them should be resolved by the Occupational Health and Safety Committee at each Hospital. The Hospital position is that with respect to the Hanover and District Hospital and the Kitchener Freeport Hospital the matter should be resolved in that way. I agree that with respect to those Hospitals this seems an appropriate way to proceed.

At Victoria Hospital (Service) the Union request is that all Employees required to wear safety shoes in the interest of safety shall be provided with such shoes. In the alternative the Union suggests that the Employee shall be paid \$50.00 per year. I am reluctant to grant such an open-ended clause and suggest that the clause proposed by the Hospital as set out on page 69 and 70 of the Hospital brief is a good start. Accordingly for Victoria Hospital (Service) I award that clause which specifies particular functions appropriate for safety foot wear. I also suggest that with respect to that Hospital it makes sense to have the Occupational Health and Safety Committee involved in the question and suggest that it do so.

8. Issues Particular to Individual Hospitals

1. Hanover District Hospital

Article 19.02 - Sick Leave

The first request of the Union is that this provision be deleted from the contract. It is my view it is enough to delete all of the last part of the provision and it will thereafter read: "The employee may be required to produce proof of sickness for any absence in the form of a medical certificate."

Article 19.05

The Union is requesting deletion of the last sentence of this Article. Given my decision earlier with respect to the FRODIP penalty provision I award the deletion.

I feel that I have dealt with the provisions of Article 24.01 in the Common Local Issues part of this Award.

Article 28 - Job Assignment/Transfer/Allowance

I feel that I have already dealt with this provision by refusing to extend the application of call-back provisions to any second call-back within the guaranteed time of three hours.

Article 29 - Health and Safety Committee

This has been dealt with under Common Local Issues

Parking

This has been dealt with likewise.

2. Norfolk General Hospital

Article 7 - Personal File

This has been dealt with.

Article 16 - Wages

This has been dealt with under Common Local Issues.

Article 17 - Parking

Likewise.

Article 22 - Sick Leave Plan

Has been dealt with under the Central Issues.

Article 23.04 - Scheduling of Vacations

The request of the Union here is that health care aides be added to the RNA/Orderlies to receive a superior benefit with respect to quantum of vacation. This benefit was considered in the Central Issues Award. To award this is to benefit more than the health care aides and I decline to do so.

Schedule A - Classifications Adjustments

There are three changes sought in this area. The first of these to be dealt with concerns the Maintenance C classification. I reject this proposal of the Union.

The second issue concerns the Maintenance A classification. The Union proposes to delete the Maintenance A classification and list certified trades by jobs. The Hospital indicates that there are only three tradesmen in this department and that there is no need to do this. At the moment I agree with that submission and decline to award the Union request.

The third classification issue involves the CSS Attendant, Physio Aide and Physio Attendant. The suggestion is that at present Porters, Dietary Housekeeping and Laundry personnel start at \$6.61 per hour whereas CSS Attendants, Physio Aides and Physio Attendants start at \$6.22 or \$6.32 per hour. My view is that end rates paid in this classification are comparable and I reject the Union request.

3. Woodstock General Hospital

\ Article 7 - Management Rights

This has been dealt with earlier.

\ Article 8 - Committee Stewards

This has been dealt with earlier.

\ Article 15 - Method of Payment

This has been dealt with earlier.

Article 23 - Sick Leave

The Union wishes to delete a provision requiring call-in in advance of sickness in order to qualify. The Union suggests that this is an impossible requirement in many cases and that the clause should be deleted. The Hospital position is that it is essential to have this provision in order for efficient scheduling to occur. I am not prepared to delete the Article but will add a qualifier to it to the effect that "notwithstanding the above the employee will qualify for sick leave if his failure to notify was because of circumstances beyond his control."

Article 26 - Job Posting

The present Article 26.05 provides that employees who are transferred attain the six months job rate after completion of the probationary period which is, according to the Central Issues award, 45 days. The Union wishes to amend this to provide that "in case of lay off - transfer the employee so transferred shall move to the six month rate level in his/her new job position." I accept the Hospital arguments that are on p.233 of its brief and reject the request.

Article 30 - Parking

This has been dealt with earlier.

4. Victoria Hospital (RNA)

Article 1 - Scope of Agreement

The Hospital asks that a clause be added to this Article requiring each RNA to present a certificate of competence before January 1 of each year. Such a clause is presently required with respect to registered nurses and I feel that a clause is appropriate for RNAs. A rider should be added to this effect: "Where it is impossible for the registered nursing assistant to present the certificate in time because of circumstances beyond her control, she is required to present it as soon as it becomes available."

Article 6 - Management Rights

This has been dealt with earlier.

Article 7.05.- Union Representation

This issue was considered supra at p.53.

Article 12.02 - Transfer, etc.

The Hospital asks for deletion of this clause. I reject that request.

Article 14.04 - Hours of Work and Overtime

There are two scheduling problems involved here; one is the provision of a limit of five days between days off rather than the present seven, the other is a provision of at least one weekend off in every three weeks rather than the present guarantee of four weeks. Although I agree in principle with the proposed changes in Article 14.04 I accept the Hospital argument on

p.125 of its brief that this issue was dealt with in the last round of bargaining and it would be very difficult to comply with the proposed change with respect to weekends. Accordingly I reject the Union's request.

Article 14.05

Because I have rejected proposed Article 14.04(f) I reject a change in this provision.

Article 16.02 - Wages

Up until this year the employees had a choice of being paid by cheque or by direct payroll deposit. The Union requests a change to 16.02 to continue this practice at employee's option. This seems to be a reasonably lively issue although I rather doubt that a move to a direct deposit payroll system for all employees violates the Employment Standards Act. I am satisfied that the reasons for such change as has occurred this year, i.e., to direct payroll deposit are valid ones and reject the Union request.

Article 20.01 - Sick Leave

The proposed change to this Article is unnecessary given the decision in the Central Issues part of the Award.

Article 20.04 - Sick Leave

The proposed issues here deal with the notification to the employer of illness. With respect to the question of the provision of a physician's certificate and a completed sickness report as well as with respect to the option of a specialist which can be sought by the employer, I feel that there should be no change made in Article 20.04 and reject both the Union and the Hospital requests.

Article 20.06 - Sickness Report Form

I have not been convinced that it is necessary to delete this provision and reject the Union request.

Article 20.07 - Sick Leave

This Article is unnecessary given the changes made in the Central Issues part of the Award and is ordered to be deleted.

Article 21 - Paid Holidays

At present it is the practice of the Hospital to try to arrange work schedules to guarantee at least two consecutive days off at Christmas or New Years. The Union proposes to crystallize this practice in a new Article 21. I feel that if it is the present practice a new Article 21 is unnecessary and accept the Hospital position that on occasion it may be necessary for the purpose of scheduling to deviate from this practice. A compromise, dealt with Infra (Article 23.12 - Service Agreement) is awarded.

Article 26.02 - Filling of Vacancies

The parties are primarily concerned with the provision of a training or trial period and with whether or not the filling of the vacancy should be on the basis of seniority or on some other basis such as competition. I do not accept the Union proposal for a trial or training period nor do I accept the Hospital proposal for the qualifications-based provision. Accordingly no change will be made in either Article 26.02 or Article 26.04.

Article 27 - Parking

This has been dealt with already.

5. Victoria Hospital (Service)Article 6 - Management's Rights

Has been dealt with already.

Article 7.05 - Union Representation

This issue was considered as a Common Local Issue at p.53.

Article 12.02 - Seniority

The Hospital proposes to delete this provision. I feel that this has been dealt with. If not, I accept the Union proposal set out at p.137 of its brief with the exception that it will not apply to lay off and recall which was a Central Issue.

Article 14 - Hours of Work and Overtime

The Union proposes an addition to this Article which would guarantee a weekend off every three weeks. As with the RNA unit I feel that the request is a reasonable one but the requirements of scheduling are such that I am unable to crystallize it. Accordingly the Union proposal is rejected.

Article 16.03 - Wages

To be consistent with the RNA unit I reject the request to provide a cheque option of payment.

Article 20.01 - Shift Premium

I have already dealt with the amount of shift premium and the hours when it should be payable in various parts of this Award and except as already changed make no change in Article 20.01.

Article 22.06 - Sick Leave

To be consistent with the RNA agreement I make no change in this Article.

Article 23.12 - Paid Holidays

The Union has asked for a guarantee of at least two consecutive days off at Christmas or New Years. I feel that the provisions suggested by the employer at p.92 of its brief should be awarded. This provision reads as follows: "The employer will endeavor to grant all employees at least two consecutive days off including Christmas day or New Years Day having regard to efficient operation of the Hospital. The normal schedule will be waived for the period between December 15 to January 15 in order to facilitate the

above." I award this change in Article 23.12 of this agreement as well as with respect to the RNA agreement Article 21.

Article 28.01 - Posting Notices of Vacancy

Both parties made rather extensive proposals which include changes in the method of posting as well as changes from a seniority base to a competition system. Additionally there are proposed changes with respect to a trial period and limitations upon applying for subsequent jobs. I agree with the Hospital submission that there is an inconsistency or contradiction between Article 12.02 and Article 28.01 and accordingly award the proposed Hospital change to 28.01. I do not accept the provision of a trial or familiarization period nor do I accept the proposed addition by the Hospital of a limitation on applying for subsequent vacancies.

Article 28.02

I make no change in this provision.

Article 28.04

I reject the proposed addition of this clause by the Hospital.

Parking

This has been dealt with already.

Safety Shoes

This has been dealt with already.

Article 14.02(b) - Hours of Work and Over Time

The Union proposes to delete this clause. Given my decision earlier with respect to these employees I do not order the deletion of this clause.

Classification Adjustments

There are approximately seven classification changes requested by the Union. It is very difficult for a Board to make classification adjustments

and the general approach I have taken to these requests is that unless I am satisfied overwhelmingly that a change is justified I make no change.

Request Number One

Non-certified Nursing Assistants

This is a classification into which nobody has been hired for some time and it is the Hospital's position that these employees do not perform the same job as Orderlies or RNAs. Without evidence as what they do I am unable to grant this request.

Request Number Two

Second Class Engineer

At present these persons receive the same amount here as at St. Joseph's Hospital the Union is requesting that they move up .53¢ per hour. Because of the proviso mentioned above, i.e., the absence of evidence I am required to reject this request.

Request Number Three

Millwright

It is the Union's request that a new classification be established which would increase the basic wage of these employees by \$1.12 per hour. Six employees at the Hospital have in fact been granted a certificate of Millwright. The Hospital position is that the certificate is not required for the job and since the employees do not perform as Millwrights there is no reason to pay them the extra money. I agree with this and reject the request.

Request Number Four

Storesman

It is the Union request that these persons be reclassified as Supply Technicians. Having looked closely at the limited evidence provided by the parties I accept the Hospital submission on p.100-102 of its brief and reject the request.

Request Number FiveAdjustments for Certification

Basically the Union request is to compress a number of classifications to one rate of pay. The Hospital points out that qualifications of these persons differ and that some variation in pay is justified for this reason. I accept the Hospital argument here and reject the proposal.

Request Number SixPorters C5D

I am reluctant to reclassify these persons as Supply Technicians because of the fact that there is no such thing as a separate classification based upon a particular department in the Hospital. I have no evidence that these persons are doing jobs as Supply Technicians and indeed the appointment of two new Stores Supervisors would seem to argue against the request. Accordingly it is rejected.

Request Number SevenHead Storesman

The request is that the Head Storesman be reclassified as Charge Hand. The Hospital position is that there is no such classification as Charge Hand and it will be recalled that I refused to set up one when dealing with the Central Issues. Accordingly this request is refused.

6 - Parkwood Hospital, McCormick Home, VCC and WCW (Service) VCC and WCW (R.N.A.)

This part of the Award covers the one contract at the McCormick Home plus the agreements at the Veterans' Care Centre and Western Counties Wing.

Article 13 - Seniority

Present Article 13.11 provides that if an Employee is transferred from the part time classification to the full time classification the probationary period will apply but dismissal during that time can be the subject of a grievance. It is the Hospital proposal to delete this provision. To be consistent with matters dealt with earlier I feel that the Hospital proposal to delete the last 19 words of this Article should be accepted.

Article 13.12 - McCormick Home

The Union purposes a change in the wording of Article 13.12 to provide for a greater use of seniority when an Employee moves between the full and part time units. I do not think that the proposed changes are common and decline to make them.

Article 18

The Union proposes a clause which provides that any Employees working Monday to Friday be guaranteed a day off with pay for all statutory holidays or declared lieu days. The purpose of the clause is of course to guarantee time off on a particular statutory holiday. I accept the reasons set out in the Hospital brief p.154 as to why it would be very difficult to administer this clause and with respect to the ambiguity found in it. Accordingly I reject the proposal.

Article 19 - Sick Leave

This change is relevant to the McCormick Home. The Hospital asks for the removal of this clause. Given the changes made in the sick leave program in this part of the Award dealing with Central Issues I feel that such a clause is unnecessary and order it to be deleted.

Article 20 - Vacations

The first change here relates to Article 20.01. The Union proposes that this clause be deleted. The effect of such clause is that Employees who are continuously employed for less than six months as of April 1 do not receive vacation time but receive vacation pay. The Union proposes a clause which reads "first 12 months of employment an employee shall be eligible for vacation with pay on a pro rata basis". I accept the Union request and award the change in Article 20.01 as set out on p. 24 of the Union brief. It should be noted that this affects Article 20.02 as well which is deleted and replaced by the new 20.01.

The Union makes another proposal with respect to entitlement and asks for a clause that the vacation entitlement may be taken all at one time or in broken periods at the Employees option. I feel that I have already dealt with this issue under the Central Issues part of the Award.

The Union requests an addition to Article 20 to the effect that "all vacation entitlement shall be posted on or before May 1 in any year". Just as with the setting of a date for determining vacation entitlement I feel that a clause such as this would best be left out of an agreement. The information is available to Employees if they seek it.

Article 24.01 - Shift Premium

This has been dealt with already.

Article 26 - Medical Examinations

With respect to this Article the Union proposes that it be deleted. The Union is concerned about the problem of requiring an employee to submit to examination by a doctor who is on the staff of the Hospital as well as the fact that the report of the doctor might well lead to the termination of employment. Although this is a somewhat unusual clause there may be situations in which an employer would wish to have an employee examined by an independent physician. My primary concern is with respect to Article 26.04. Although a discharge based on a medical report might well be the subject of a grievance, I am concerned about the possibility that a person might be discharged for refusing or failing to report for an examination. Accordingly I feel that the last part of Article 26.04 should read as follows:

"Or in the event of the employee refusing or failing to report for and submit to such examination without reasonable excuse, the employee's employment may be terminated forthwith."

The balance of the Article will remain as it is.

Parking

This has been dealt with already.

Personal File

This has been dealt with already.

7 - Tillsonburg District Memorial HospitalArticle 7.03 - Union Representation

I accept the additional clause proposed by the Hospital at p.237 of its brief.

Article 15 - Reporting Allowance and Call In Pay

The Union requests that the present .12¢ per mile travelling allowance found in Article 15.05 be increased to .25¢ per mile. I feel that

this is a reasonable request and accordingly award it.

With respect to this Article the Union proposes an addition to read as follows:

"The employer agrees not to make excessive demands on employees when scheduling standby. Employees shall not be required to standby for less than one full shift."

The Union requests such a clause because it indicates that the Hospital is requiring ambulance Employees to be on standby for short periods of time such as one hour at very inconvenient times of the day. The present practice is apparently that each Employee stands by three shifts per week and the reason is so that ambulance people can take a unpaid one half hour meal break. I feel that the Union has presented a strong case for the addition of the required suggested clauses and I am not impressed by the Hospital argument that the ambulance people can either trade or give away their standby rights. Accordingly I award the Union proposal with the change that the first part should read: "The employer agrees not to make excessive demands on ambulance employees when scheduling standby. Ambulance employees will not be required to standby for less than one half of one shift."

Article 17 - Sick Leave

With respect to Article 17.01 the Hospital proposes to add a provision which would limit cash out of sick leave by any person who left without notice. Given the changes dealt with earlier under the Central Issues part of the Award I feel that such a clause would probably become unnecessary. Accordingly I decline to award it.

With respect to Article 17.02 the Union is requesting that the present practice of pay out of sick leave on a yearly basis be written into the collective agreement. Given the changes in the Central Issues part of the Award this clause is unnecessary.

Parking

This has been dealt with already.

Benefit Costs

The Hospital proposes that benefit costs for hours during which the members are at Union Management meetings be paid for by the Union. I have dealt with the question of Union representation in the Local Issues part of the Award and see no reason on the merits for the addition of such a clause and accordingly reject it.

Unlawful Activity

The Hospital proposes a clause providing that if Union personnel are involved in unlawful activity associated with employment they will be discharged immediately. The request for such a clause is rejected.

Article 12.05 - Seniority

The Union proposes a change in the job posting provision which would have the effect of making every promotion or transfer into a trial period. I am not prepared to accept this request.

Article 12.08 - Seniority

At present this clause provides that if a person is promoted out of the Union and then promoted back in that person comes back in with seniority credit for the time spent outside the unit. The Union proposes to delete this clause. It is a bit unusual for the Union to be asking for the deletion of a seniority guarantee of some sort and I do not feel that the Union has made a case for such a deletion.

8 - Alexandra Hospital, IngersollArticle 4.01 - Management Rights

This has been dealt with already.

Article 7 - Representation

I feel that the matter of time off has been dealt with at pp.52-3. With respect to pay, Article 7.03, I accept and award the Hospital proposal set out at p.219 of its brief.

Article 8 - Personal File

This has been dealt with already.

Article 15 - Hours of Work

The Hospital proposes a clause indicating that it does not guarantee any number of hours of work per day or days of work per week with respect to any Employee. I do not feel that such a clause is necessary and decline to award it.

Article 19 - Holidays

The Union proposes that a 12th paid holiday if awarded in the Central Issues become the third Monday in February. Given my decision earlier I feel that this clause is unnecessary.

Article 20 - Vacations

The Hospital proposes that if people want to take their vacations between June and September they must make their requests by certain dates. The Union accepts the proposal but suggests that the dates be April 1 and May 1 rather than March 15 and April 15 as suggested by the Hospital. This is agreed upon by the Hospital and accordingly is so awarded.

Article 25.02 - Health and Welfare

The Union proposes a change to 25.02 which change is unnecessary given my decision earlier.

Article 31 - Credit for Previous Experience

I feel this has been dealt with already.

Parking

This has been dealt with.

9 - Centre Grey General Hospital (Markdale)Article 6 - Management Rights

I have dealt with this already. Accordingly I make no additional changes to the management rights clause.

Article 10 - Personal File

This has been dealt with.

Article 13 - Seniority and Job Security

I feel that I have dealt with this already. If I have not I accept the Union proposal set out on p.137, with exception that it will not apply to lay off and recall which has been dealt with already under the Central Issues.

Article 17 - Sick Leave

At present cash out is on the basis of calendar days and the Union wishes to delete the third paragraph which so provides. I accept the Union's request here, since no reasons have been provided to support such a payment. I assume the situation here to be unique.

Article 18 - Statutory Holidays

I feel that this has been dealt with already under the Central Issues.

Article 26.03(c) - Reporting and Call Back Pay

I agree with the Union proposal set out on p.143 to delete clause (c) since there is a possibility that it would override what we have done under the Central Issues.

Article Schedule B

Presently section 4 of Schedule B provides that Employees shall work over time when requested by the employer. The Union requests the deletion of this part because of its directory tone. I have not been given any evidence that Employees are in fact required to work excessive over time at this Hospital and accordingly reject the request.

10 - Freeport Hospital (Kitchener)Article 5.05 - Representation

The Union proposes to delete Article 5.05 which provides that each

member of the Union committee and every shop steward must have completed the probationary period. I accept the Hospital suggestion here and decline to delete this clause.

The Union proposes an addition to Article 5.03 requiring the Hospital to keep the Union advised in writing of the names of all personnel in and above a supervisory capacity. At present Article 6.04 provides that the Hospital inform the Union of the names of department heads, administrator or designate and executive committee. I feel that this is adequate and do not see that it is possible to be more specific as to supervisors.

Article 8 - Seniority

The issue here involves transfer between the full and part time units and the part time and full time units. The Union requests that part of the preamble of Article 8.11 be deleted. The effect of the present Article is to limit the transferability of seniority by excluding its use for the purposes of service pay, vacation, benefits or pay except as set out in the agreement. I have already refused to tamper with such a clause in another Hospital and for the reasons set out therein decline to do so here. Accordingly the request is rejected.

Article 11 - Hours of Work and Over Time

The Union is requesting changes to Article 11.05 to guarantee one weekend off in three weeks, days off to be consecutive, no more than six days between days off, and posting of work schedules four weeks in advance. It has been my position throughout this entire Award that I am very reluctant to interfere with scheduling and that reluctance carries over to the approach to this request. Accordingly I reject the request and direct the parties to refer the matter to the Hospital-Union committee for further discussion.

Article 12 - Wages

The Union is proposing a new Article which provides that the present practice of payment of wages shall continue. Earlier in this Award I did not resist the change by the employer to a bank deposit system and decline to award this request as well.

Article 17:04 - Sick Leave

The Hospital proposes a change to a clause which denies a payment of sick leave for the first two days of the third absence in any calendar year. Given the changes in the Central Issues part of the Award this clause will probably disappear and accordingly I reject the request.

Article 24.01 - Retirement

The present clause provides for retirement at age 65 with a possible extension on a year to year basis by the employer to the 70th birthday. The Union is requesting that this clause be deleted. The question of mandatory retirement is one that is being debated widely at the moment. My own tentative view of the matter is that the argument in favour of mandatory retirement wins the day and I decline to make a change in this clause.

Parking

This has been dealt with.

Personnel File

This has been dealt with.

II - Listowel Memorial HospitalArticle 8.05 - Grievance Procedure

This present clause provides that no adjustments affected under the grievance procedure will be retroactive beyond a certain date, with certain exceptions. In the Central Issues part of this Award I refused to award a clause such as this on the basis that it was my view it was unnecessary. Accordingly because I feel it is unnecessary I accept the Union request to delete Article 8.06.

Article 11 - Seniority and Job Security

I dealt with Article 11.05 at p.55, supra.

The Union also requests that a letter of understanding of April 18, 1980 with respect to seniority and job security be deleted. The Union wishes to fall back to Article 11.07 which is a lay off-recall clause. I feel that this has

been dealt with under the Central Issues and decline to make an award with respect to it.

Article 15.04 - Scheduling

Part of the requests with respect to this clause were withdrawn although the Union seems to be requesting the deletion of a letter of understanding with respect to Article 15.04(e). If in fact this issue is not withdrawn, I feel that I should leave the parties as they are and incorporate the letter of understanding into Article 15.04(e) as well as increasing the number of consecutive days from four to five as suggested by the Hospital on p.290 of its brief.

12 - Meaford General Hospital

Article 6 - Management Rights

The Union proposes a new 6.01 and a deletion of 6.02. I have dealt with management rights under the Common Local Issues part of this Award and decline to make further changes.

Article 10 - Personal File

This has been dealt with already.

Article 13.02 - Seniority

seniority based clause. I have already dealt with this at p.55.

Article 18.07 - Hospital Holidays

Because this has been dealt with under the Central Issues part of the Award I decline to accept the Union proposal.

Article 18.08 - Holiday Accumulation

The Union proposes that an Employee be allowed to accumulate five holidays in a calendar year. I feel that I have dealt with this already but in any event if I have not specifically done so I reject this proposal.

Schedule B

Three changes are requested with respect to Schedule B. The first change is a removal of the directory over-time provision. I have not seen any evidence that employees are in fact required to work substantial times over-time and accordingly reject the request.

With respect to parts eight and nine of Schedule B the parties seem to have been agreed that the last sentence in each of these clauses be deleted and I accordingly so award.

13 - Sarnia General HospitalArticle 13 - Job Posting

The Union requests a number of changes to this Article to reflect some of the present procedure and as well an improved procedure. Basically the sorts of changes envisaged include additional posting of vacancies, removal of the present practice whereby an employee can leave a written application on file for up to two positions, and preference for Employees in part time bargaining units rather than outside personnel. The Hospital resists any change to Article 13, arguing that there has only been one grievance filed with respect to job posting. Some parts of the Union request seem to me to make a good deal of sense. I am a bit concerned about the proposed 13.02 requiring the posting of all subsequent vacancies and with the broad nature of the information required by the proposed Article 13.03. I accept the Union proposed Article 13.06 which will be renumbered 13.02. I accordingly award the following changes with respect to Article 13: no change with respect to Article 13.01. Delete 13.02, replace with Union proposed 13.06, renumbered.

With respect to 13.03 of the present agreement I order no change. With respect to Article 13.04 of the agreement I order no change. I make no further changes in Article 13. Less there be any doubt about the matter I feel that the letter of understanding of January 13, 1981 sets out a procedure which, if it has worked should be continued by the parties. I do not expressly incorporate into the agreement and leave it to the parties to continue it by further agreement.

Article 25 - Uniforms

I feel that this has been dealt with under the Central Issues part of the Award, and decline to make the extension suggested by the Union in its brief at p.5.

Parking

This has been dealt with.

Meal Allowance

The Union is requesting a meal allowance of \$2.00 or meal ticket if the Employee is required to work more than two hours of over-time. The Hospital suggests the parties have agreed to provide a meal allowance of \$4.00 to ambulance drivers or attendants who have to go outside Lambton county during meal time and a further extension of a meal allowance is unjustified. I do not accept the argument that because they are already getting a premium rate for overtime they should be allowed to use some of that money for meals. Accordingly I accept the Union proposal with respect to the meal allowance but add a rider that overtime must be contiguous to a regular shift.

Article 6 - Management Rights

This has been dealt with already.

14 - St. Thomas-Elgin General Hospital

Article 6 - Management Rights

This has been dealt with already.

Article 11 - Personal File

This has been dealt with already.

Article 14 - Seniority

Essentially the Union is requesting deletion of Article 14.04 and 14.05 which provides for Hospital wide seniority and covers persons transferring into the unit or persons who transfer out and are subsequently transferred back in. The Union is concerned that these persons bring with them the seniority accumulated outside the unit. The Hospital position as set out on p.209 to 211 of its brief is that with respect to Article 14.04 it is a reasonable one. I agree with that. With respect to Article 14.05 the Hospital refers to the unreported decision from Pembroke General Hospital (Abbott) and suggests in fact that it might agree with the deletion of the Article. As a basic matter I feel that seniority should be retained in the case of a transfer out and then back and feel that Article 14.05 which does this is a reasonable clause. Accordingly I decline to delete it.

Article 14.06 - Posting of Seniority

This has been dealt with already under Common Local Issues.

Article 14.07 - Loss of Seniority

I feel that this has been dealt with under the Central Issues and will not deal further with it.

Article 25 - Hospital Holidays Accumulation

For reasons given earlier I reject this request.

Parking

I have dealt with this already.

Management Rights

This has been dealt with already.

15 - St. Joseph's Hospital(London)

Article 5 - Management Rights

This has been dealt with already.

Article 6.04 - Union Representation

The proposes a change to Article 6.04 to provide that it may elect twenty stewards rather than the present sixteen from various departments. In view of the fact that the agreement is a relatively recent one and not having any information that the number of Employees has actually increased since it was negotiated. I do not accept the Union request with respect to this Article.

Article 6.07 - Union Representation

I decline to extend this clause beyond conciliation.

Article 8.05 - Personal File

This has been dealt with already.

Article 11 - Job Posting

The Union proposes to delete Articles 11.01 to 11.05 and replace them with a new provision. The Hospital proposes a small change which would restrict the movement of a person who has accepted a position in the previous six months. The present clause which seems to be somewhat similar to that in the University Hospital does provide for posting of secondary vacancies and I am unwilling at this time to extend it and accordingly reject the Union and Hospital requests.

Article 13 - Paid Holidays

The request to accumulate paid holidays is rejected.

Article 14 - Vacations

The Union request is that with respect to scheduling R.N.A.s be entitled to exercise vacation entitlement priorities as a classification.

The Union request with respect to treating the R.N.A. classification as a separate classification for the purposes of scheduling vacations is a reasonable one. It is true that it is necessary to have a mix of different classifications at the Hospital at any one time as suggested by the Hospital and the Union proposal would give preference to R.N.A.'s over all others. I accordingly reject the proposed clause set out on p.22 of the Union brief and award only the first two lines up to and including "classification".

Wages and Premiums

There are approximately 4 separate issues to be dealt with here.

Issue 1 - Attendants

What I have set out earlier with respect to classification changes in Victoria Hospital units applies to classifications within this unit. In particular I will only make changes where overwhelming evidence is presented in support of such a change. The request with respect to Attendants is made because in 1980 the orderly classification was eliminated and Orderlies became Attendants and dropped .20¢ per hour in pay. The Union is requesting that there be four special Attendants classifications and the .20¢ per hour be put back in. Since 1980 two special Attendant classifications have been created. I have carefully read the Exhibits filed with respect to this request and am not prepared to accept the proposed changes.

Issue 2 - CS Technician

The position of the Union is that this position receive an increase of .54¢ per hour effective April 1, 1981. The present maximum rate

is \$6.47 per hour as of the end of the last contract. This seems to be comparable to rates paid in other Hospitals within the city and other Hospitals covered by this Award. There is a brief prepared by Miss Jeznikar in the Union submission which brief indicates that the position is a highly technical one requiring a reasonable amount of training and experience. Unfortunately I do not have available to me information as to whether or not other jobs paid at a comparable level require comparable training and experience. Accordingly I am unable on the evidence to see the justification for the request to change and reject it.

Issue 3 - Physio Aide

There are two workers involved in this request for a wage level increase of .50¢ per hour effective at the start date of the contract. It is pointed out that the issue of their classification is presently before Professor R. J. Roberts and I feel it is appropriate to leave the matter in his capable hands and make no award with respect to the request.

Issue 4 - Schedule A

The Union wishes to compress the grid so that progressions are compressed to a start rate except for the Nursing classification which would have a two year progression. To some extent this request ties in with the wage request made under the Central Issues. If as suggested, the progression is, "outrageous" I would suggest that the parties themselves try to resolve the matter. I am very concerned that a change with respect to the progression in this Hospital could have a tremendous ripple effect and expense at other Hospitals in the future. Accordingly I reject the request.

Preamble

It is some indication of the negotiation success of the parties that a request is made with respect to this part of the agreement. I have not

been given any reason as to why a change should be made and decline to make one.

Article 5 - Management Rights

This has been dealt with already.

Article 10 - Seniority

The Hospital is proposing a change to the seniority clause. The Union requests that the present clause be continued. It is my award that the Union request be accepted and that the present clause be continued. It should be noted that with respect to lay off and recall this clause may be affected by what was done earlier under the Central Issues part of the Award.

Article 11.06 - Job Posting

This has been dealt with earlier in this part of the Local Issues Award.

Article 16 - Wages and Premiums

The Hospital has proposed a new 16.01(b) It seems to me that this has already been dealt with under the Central Issues part of the Award. If it has not it is my award that it be granted as requested.

16 - St. Mary's Hospital(London)

Article 4 - Management Rights

This has been dealt with already.

Article 6.04 - Union Representation

The Union wishes to change the present clause which provides for the selection of five Stewards from three departments to provide that it may select its Stewards from any departments whatsoever. It seems to me that if the Union wishes this request since it relates to a relatively small Hospital it should be granted and I accordingly grant the Union request set out on p.34 of its brief.

Article 6.07 - Union Representation

I decline to extend this clause as requested.

Article 10 - Personal File

This has been dealt with earlier.

Article 12.07 - Job Posting

The Union proposes to delete paragraphs (a)(b)(c)(d) and (e) and replace them with a new clause. The present clause seems to me to be adequate given that it does require the posting of secondary vacancies and I am reluctant to enlarge upon it at this time and therefore deny the Union request.

Article 17 - Paid Holidays

The Union wishes to accumulate five paid holidays in a given year. This has been dealt with already.

Hourly Wage Rates

There are basically three changes that the Union wishes to make with respect to the payment of wages.

The first relates to the progression and the Union wishes to compress the progression to start rate only except for the Nursing classification which would have a two year progression period. I have dealt with this issue already in the context of another Hospital and decline to make a change at this time.

The second request is that the R.N.A. classification receive a .25¢ per hour increase. The reason for this request is that in 1980 the Nursing Assistants were brought in with the R.N.A.s and Orderlies and it is the position of the Union that the R.N.A.s do a different job than that done by the Orderlies and Nursing Assistants. The Hospital position is that the issue was raised late and in addition since the R.N.A./Orderlies classification

is a benchmark classification the matter should have been raised in the Central Issues. I feel that there may be a case to be made for the R.N.A.s to be treated in a way different from Nursing Assistants and Orderlies and have already expressed the view that it does not make a good deal of sense to keep them in the same category as the other two groups. However, the Union has chosen to accept the R.N.A./Orderly as a benchmark classification and not to bargain centrally for changes in this classification and lacking evidence to support my hypothesis I reject the request. Additionally, the fact that some other group, i.e., the Nursing Assistants were moved in with the R.N.A.s and Orderlies does not necessarily mean that the R.N.A. or Orderly wages are too low.

The final classification request is that the rehabilitation classification receive a wage adjustment of .35¢ per hour. The argument is that basically this classification has always been ahead of the Nursing Assistant classification which was moved up in 1980. I accept the evidence on p.208 of the Hospital brief to the effect that this group is paid a comparable wage at the moment and make no order with respect to increasing that base.

17 - St. Mary's Hospital (Kitchener)

Article 5.01 - Management Rights

This has been dealt with already.

Article 10 - Personal File

This has been considered.

Article 12 - Seniority

The Union is seeking a list of preferred jobs, i.e., those which offer steady day shifts on a Monday to Friday basis. This matter was the subject of a policy grievance which was withdrawn in 1980. The Hospital was prepared to move somewhat toward the creation of preferred jobs and I award a clause which

is in effect the paragraph two of the letter of the Hospital of September 8, 1980 attached as an Exhibit and which reads as follows:

"Where a vacancy occurs within a classification and the position is preferable in nature by virtue of offering steady day shifts on a Monday to Friday basis, the Hospital, in its review of personnel to be assigned to the position, will give consideration to the seniority of those being considered and if all of the other factors are comparatively equal, the position will be assigned to the employee most senior. It should be noted however that such an assignment will not guarantee that the preferred nature of the position will continue indefinitely."

Article 15 - Occupational Classifications and Wage Rights

This is a credit for previous experience clause which has been considered earlier.

Classification Changes

The first request is for the creation of three new classifications being Orthopedic Technician, Dark Room Technician, Cook Assistant.

With respect to the first request I have no jurisdiction to decide whether or not the Orthopedic Technician is or is not within the bargaining unit. It may well be that having written an examination for Technician-Orthopedic this person is now in another unit. In any event I feel an increase of .50¢ per hour as of the date of this Award would recognize the more technical nature of this position. This increase is awarded on the assumption that this person is within the unit and I have no jurisdiction to make an award with respect to that question.

The second request is for a classification of Dark Room Technician - The Hospital position is again that this person has never paid Union dues and is not within the unit because the position is a technical position. I have received no evidence concerning this question and have no jurisdiction to deal with it in any event nor do I have any evidence as to what the nature

of the job is. Accordingly whether or not the position is within the bargaining unit I make no award with respect to it.

The third change proposed is with respect to the Second Cook/Assistant. At present there is a Cook/Baker classification and the Union requests that a Second Cook be removed from that classification to give more incentive to the Second Cook. Without any evidence as to what these persons do I have no possible basis for making such an award and reject the request.

Article 19 - Holidays

Basically the Union wishes to remove the Holiday qualifiers. Given my decision with respect to the Central Issues part of the Award I make no change with respect to the qualifiers. It is my assumption that the clause mentioned above will apply the only qualifiers to holidays in this Hospital and that the new clause will not include the requirements that the Employee be at work within four working days of the holiday. I do not agree with such a provision.

Article 19.06 - Accumulation of Holidays

This has already been dealt with.

Article 5.01 - Management Rights

This has been considered.

CONCLUSION

Less there be any doubt about the matter it is our award that the previous clauses in previous agreements which ended as of March 31, 1981 will form the new Collective Agreement except as changed by agreement between the parties and as changed by this Award. There were a considerable number of matters agreed to locally between the parties which are included in both the Hospital and the Union briefs. I have not referred to them specifically but they are a part of this Award. Unless otherwise stated any changes with respect to Local Issues become effective as of the date of this Award.

I would like to thank the parties for their comprehensive briefs which have been of considerable assistance to me in unravelling this tangled web. In addition I have found my colleagues Mr. Switzman and Mr. McDermott to be of exceptional help. Although their forceful arguments did not always carry the day there would have been a good deal more errors than do presently exist in the Award if they had not been available.

Should any problems arise with implementation we remain seized of the matter to deal with them. This includes any matters we have not dealt with through inadvertence.

DATED AT London, Ontario
this 18th day of January, 1982.



Peter G. Barton

(attached)

I, concur/~~dissent~~

E. T. McDermott
Hospital Nominee

(dissent to follow)

I, ~~concur~~/dissent

Brian Switzman
Union Nominee

APPENDIX I

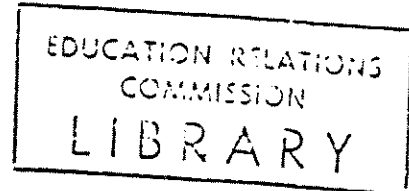
List of Participating Hospitals

Alexandra Hospital (Ingersoll) ✓
Centre Grey Hospital (Markdale) ✓
Freeport Hospital (Kitchener) ✓
Hanover and District Hospital ✓
Listowel District Memorial Hospital ✓
Meaford General Hospital ✓
Norfolk General Hospital (Simcoe) ✓
Parkwood Hospital, including McCormick Home (London) ✓
Veterans Care Centre (RNA, Service) (London)
St. Joseph's Hospital (London) ✓
St. Mary's General Hospital (Kitchener) ✓
St. Mary's Hospital (London) ✓
St. Thomas-Elgin General Hospital ✓
Sarnia General Hospital ✓
Tillsonburg District Memorial Hospital ✓
Victoria Hospital (RNA, Service) (London) ✓
Woodstock General Hospital ✓

IN THE MATTER OF The Metropolitan Toronto Boards of Education and Teachers Disputes Act, 1976;

AND IN THE MATTER OF an arbitration pursuant to said Act.

B E T W E E N:



- (i) The Board of Education for the Borough of East York,
- (ii) The Board of Education for the Borough of Etobicoke,
- (iii) The Board of Education for the Borough of North York,
- (iv) The Board of Education for the Borough of Scarborough,
- (v) The Board of Education for the City of Toronto,
- (vi) The Board of Education for the Borough of York, and
- (vii) The Metropolitan Toronto School Board.

- and -

- (i) The organization composed of all the teachers employed by The Board of Education for the Borough of East York who are members of The Ontario Secondary School Teachers' Federation,
- (ii) The organization composed of all the teachers employed by The Board of Education for the Borough of Etobicoke who are members of The Ontario Secondary School Teachers' Federation,
- (iii) The organization composed of all the teachers employed by The Board of Education for the Borough of North York who are members of L'Association des Enseignants Franco-Ontariens;

- (iv) The organization composed of all the teachers employed by The Board of Education for the Borough of North York who are members of The Ontario Secondary School Teachers' Federation,
- (v) The organization composed of all the teachers employed by The Board of Education for the Borough of Scarborough who are members of The Ontario Secondary School Teachers' Federation,
- (vi) The organization composed of all the teachers employed by The Board of Education for the City of Toronto who are members of The Ontario Secondary School Teachers' Federation, and
- (vii) The organization composed of all the teachers employed by the Board of Education for the Borough of York who are members of The Ontario Secondary School Teachers' Federation.

DECISION

INTRODUCTION:

On January 19, 1976, pursuant to the provisions of The Metropolitan Toronto Boards of Education and Teachers Disputes Act, 1976, (hereinafter referred to as Bill 1), I was appointed as the arbitrator to examine into and decide all matters in dispute between the parties and any other matters that appear to me to be necessary to be decided in order to make a decision. The Act also

provides that my decision shall be for the period commencing on the 1st day of September, 1975, and expiring on a date not later than the 31st day of August, 1977.

On January 19, I met with counsel who advised me that the first day upon which they could reasonably be expected to commence the hearing would be on January 28. After discussion with counsel, I decided that the hearing of the arbitration would be conducted in public.

On January 23, pursuant to s. 3(4) of Bill 1, the parties gave notice to me of the matters in dispute.

The hearing of the arbitration commenced on January 28, at which time both parties presented briefs and outlined the salient points contained within them. The reply briefs were filed with me on February 3. On February 5, the hearing was reconvened for the taking of further evidence, submissions and argument. Those hearings continued through February 6 and concluded in the late afternoon of February 7. I met in Executive Session with counsel and their expert witnesses on February 9, at which time some of the statistical information was further reviewed. On February 11, I received additional material. Since no issue was taken

as to the accuracy of the statistical information provided by both parties, it was agreed that during the preparation of my award, I could informally request of either party further statistical information without the necessity of reconvening, or having such further statistical information exchanged.

Since the matters in dispute were so numerous and so complex, and the hearings extended over such a lengthy period of time, I concluded that I could not do justice to the matter within the one week left to me if I endeavoured to deliver my decision within the thirty days of my appointment. I, therefore, pursuant to s.4(2) of Bill 1 sought and obtained from the Education Relations Commission an extension of time within which to report in writing my decision until March 5.

MATTERS IN DISPUTE:

In the fall of 1973, the parties negotiated an agreement for the school years 1973-74 and 1974-75. In June of 1974, amendments were made to the agreement, which had been previously arrived at, to increase the salary schedules for certain teachers and the salary scales for principals, vice-principals, co-ordinators and assistant co-ordinators to establish a parity with teachers of equal qualification and experience in the elementary school system who had in the interval negotiated slightly higher salaries in

those categories. I am advised that the amendment was, in effect, unilaterally made by the Boards of Education.

Negotiations for a new contract for the school year beginning September 1, 1975 were commenced in February, 1975. The chronology of events which transpired from that date are set forth in Appendix I.

It is to be observed that every device presently known to resolve a labour dispute has been invoked in this matter. Practically a year of negotiations, mediations, fact-finding, strike, further mediation and legislative action all proceeded this arbitration, and yet there are unresolved over twenty-six items to be determined by arbitration. The matters fall within the following general headings:

1. ANTI-INFLATION PROVISION
2. TERM OF AGREEMENT
3. SALARIES
4. COST-OF-LIVING ALLOWANCE
5. ALLOWANCES FOR RESPONSIBILITY
6. POST-GRADUATE DEGREE ALLOWANCE
7. SPECIAL EDUCATION ALLOWANCE
8. DISCONTINUANCE OF THE ETOBICOKE MASTER PLAN

9. LUMP SUM PAYMENTS
10. CHECK-OFF
11. DETERMINATION OF TOTAL NUMBER OF TEACHERS
12. APPOINTMENTS TO POSITIONS OF RESPONSIBILITY
13. SENIORITY
14. PROFESSIONAL DEVELOPMENT
15. EVALUATION
16. OCCASIONAL TEACHERS
17. UNASSIGNED AND PREPARATION PERIODS
18. PROBATIONARY TEACHER PREPARATION
19. LEAVE OF ABSENCE WITH PAY
20. SICK LEAVE
21. O.H.I.P.
22. EXTENDED HEALTH CARE
23. SEMI-PRIVATE ROOM
24. DENTAL PLAN
25. GROUP LIFE INSURANCE
26. LONG TERM DISABILITY INSURANCE
27. RETROACTIVE CLAUSE

Within the general headings, in some instances, there are many individual clauses in dispute.

One cannot help but feel that there was a failure to resolve most truly contentious items. There can be no doubt that the best contract of employment is

one which is agreed to by the parties themselves. Legislated arbitration is not uncommon in disputes such as this in the United States, and compulsory arbitration has frequently been invoked in industrial disputes in Canada as well. In both United States and Canada experience has shown that legislated arbitration is most effective when the matters to be resolved are limited, and when most of the contentious items have been agreed upon by the parties. One of the difficulties in the arbitration process in the past has been the tendency of an arbitrator to arrive at an award which is a compromise of the respective positions of the parties. The effect of that has been to encourage the parties to keep all the contentious items on the table and to discourage them from making a sincere effort to resolve items by themselves. As is pointed out in an article by Gene Swimmer in (1975), *Industrial Relations Industrielles*, Vol. 30, No. 3, at p. 533:

"When a contract dispute goes to compulsory arbitration, the temptation for the arbitrator to compromise is great. He appears fair by giving some concessions to both sides and does not alienate either of the parties, avoiding the possibility that he won't be called in as an arbitrator at some later date. Because both the union and management are aware of the tendency to compromise, neither side will likely make real concessions during the negotiations. In

other words, if arbitrators split the difference, the more outrageous your side's final position the more likely you will get a better settlement."

A similar point of view was expressed by Steven B. Rynecki in Journal of Law-Education, Vol. 4, No. 4, 645 at pp. 650-1, where he states as follows:

" Because the employee organization is primarily the demanding party in negotiations, management feels that with compulsory arbitration as an end result, true collective bargaining will not occur if the employee representative feels ultimate victory lies in the hands of the arbitrator rather than at the table. This perception is caused by the belief that arbitrators tend to 'split the difference' between the parties positions. Employee representatives can strive for "more, more, more" at the bargaining table and then go to an arbitrator for even more. This result, management feels, is contrary to the precept that bargaining must be done at the table, not by a third party neutral."

When an arbitrator "splits the difference" he assumes the role of a mediator rather than that of an arbitrator. At the commencement of these proceedings, I announced to the parties that I would make no effort to mediate the matters in dispute since I thought it was inappropriate to do so on an arbitration. There

may be cases in which the result arrived at by an arbitrator properly results in an award which falls between the respective positions of the parties. Such a result should only be arrived at when the evidence accepted by the arbitrator supports such a finding. If such a result is arrived at for any other reason, the arbitrator is not acting judicially.

ROLE OF AN ARBITRATOR:

It is to be observed that the function which I have been directed to perform is that of an arbitrator. Although an arbitrator need not be a judge, an arbitrator must act judicially, and it is his duty to come to a decision based upon the merits of the case as submitted. An arbitrator is not free to act independently of the positions and submissions of the parties. His role is quite different from that of a Royal Commissioner, or of a person who has been given a mandate to arrive at any result that he thinks appropriate as a result of his own independent investigation. In the context of the matters before me, the parties have narrowed the issue with respect to each matter in dispute and have withdrawn from my consideration a determination of the issues in a manner which would fall below or above what has been submitted, nor can I interfere with matters which the parties had expressly agreed upon.

TERM OF THE AWARD

As has already been observed, by reason of the provisions of s. 4(1) of Bill 1, my decision must commence on the 1st day of September, 1975, and be for a period expiring on a date not later than the 31st day of August, 1977.

Counsel for the teachers submitted that my award should be limited to a term of one school year expiring this August 31, only a few months hence. He submitted that to impose a longer term would encroach unnecessarily upon the teachers' right to negotiate a new contract for the ensuing year in the manner provided for in The School Boards and Teachers Collective Negotiations Act, 1975, (hereinafter referred to as Bill 100), and upon their right to strike if they thought it necessary to do so. Interference with the rights given to the teachers by Bill 100, he urged, ought not to extend beyond the exigencies of the moment. He pointed out that the majority of the contracts of recent date entered into by teachers have been for a period of one

year and stressed that through the mediation process during the strike, the Boards' negotiators had made a proposal based on a one year term.

On the other hand, counsel for the Boards urged, in the strongest terms, that my decision should be for a term of two school years, being the maximum provided by Bill 1. Any award short of that period, he submitted, would plunge the parties into immediate negotiations for a new contract. Indeed, Bill 100, which would then govern, would require the parties to commence negotiations immediately if the term of my decision expired this year. In support of his submission, counsel filed a report prepared by the Directors of Education of the School Systems of Metropolitan Toronto. The thrust of what is said by the directors is that an award which would require the parties to embark upon negotiations for a new contract even before the completion of the balance of this school year would jeopardize the efficient administration of the school system for the remaining months of this school year and would place the 1976-77 school year in further jeopardy which, in their opinion, would be to the detriment of the students. They point out that

the catch-up program now in effect for many of the students will have to be continued in the next school year.

I am sympathetic with the submission made by counsel for the teachers that the bargaining rights granted to teachers by Bill 100 should not be interfered with unnecessarily.

During the hearing I advised the parties that I would give consideration to an award for a period of sixteen months ending in December, 1976. However, an award for such a term would also put the parties into immediate negotiations and would terminate the contract in the middle of the school year, neither of which event would be satisfactory.

Mr. Hartt, who played such a prominent role in the negotiations, reported on October 1, 1975, approximately one and one-half months before the strike, as follows:

"If you assume as I do that it is only when the right to strike looms near that the hard decisions are taken by parties in any collective labour negotiations, the Act condemns the parties to eternal negotiations in the event that the parties opt for a one year agreement. Having spent two and one-half months intensively engaged in such a process this summer, I feel obliged to state that not even the wildest zealots in the respective

constituencies of the parties should expect the representatives of the parties to perform year after year the exercise in wearing each other down which went on this year."

In my opinion, an efficient school administration is dependent upon a mutual understanding and respect between teachers and students, teachers and parents, and teachers and Boards of Education, and it is also dependent on the support of the public at large. Without attaching blame to anyone, there is no doubt that the prolonged negotiations and strike have strained the relationships of all. The atmosphere has become emotionally charged.

I agree with what has been said by the Directors of Education that the public interest requires that the term of my award be for a period which fully encompasses two school years. I have decided that my decision should be for a period commencing on the 1st day of September, 1975 and expire on the 31st day of August, 1977. I am hopeful that within that period the mutual understanding and respect which heretofore had existed will be restored.

ANTI-INFLATION ACT
-and-
ANTI-INFLATION ACT REGULATIONS

Subject to an agreement being entered into between the government of a Province and the Government of Canada, the Anti-Inflation Act exempted from its application what might be described as the provincial public sector which would include Boards of Education and its teachers.

On January 13, 1976 the Government of Ontario entered into an agreement with Canada to make the Anti-Inflation Act and the Anti-Inflation Act Regulations applicable to the provincial public sector. The term of that agreement is provided for in its section 3, which reads as follows:

"3. (1) Canada and the Province hereby agree that this agreement shall apply from and after the 14th day of October, 1975 and shall remain in full force and effect, unless earlier terminated by the parties hereto pursuant to the provisions of subclause (3), until the date that is the earliest of

- (a) the 31st day of December 1978,
- (b) the date of the expiration of the federal act, or
- (c) the effective date of an agreement entered into between Canada and the Province respecting the provincial public sector pursuant to subsection 4(4) of the federal act which date shall not be earlier than the 15th day of April, 1977."

It is to be observed that the agreement applies from and after the 14th day of October, 1975, and, by its terms, the Province has a right to opt out of the agreement at a time which is not earlier than the 15th day of April, 1977.

On January 16, 1976, the Province of Ontario enacted a statute which sets forth my mandate. That Act provides that my award shall take effect as of the 1st day of September, 1975, and I have determined that it will expire on the 31st day of August, 1977.

The effect of Bill 1 is that the teachers are directed to return to work and are prevented from striking during the period that my decision is in effect, and the Boards are prohibited from locking out the teachers for the same period. The matters in dispute are to be determined by arbitration which is said by Bill 1 to be final and binding, and which is one imposed on all the parties.

Bill 1 makes no reference to the Anti-Inflation Act. No issue was taken before me as to the constitutional validity of the Anti-Inflation Act or of the Federal-Provincial Agreement, nor was I called upon to determine the application, if any, of the Anti-Inflation Act and/or the Anti-Inflation Act Regulations to my award. What I was asked to do by the Boards was to include a provision in my award, the

effect of which would be to stay the operation of my award for a period of time in order that it may be reviewed by the Anti-Inflation Board, and to provide that my award should be taken to have been amended to accord with any final decision made pursuant to the Anti-Inflation Act. I do not think that it would be right for me to do so. It is to be observed that the effective date of my award precedes the effective date of the agreement between the Province and Canada and could extend beyond the time when the agreement between the Province and Canada will be operative. The back to work order, the prohibition to strike and to lock out, the imposition of compulsory arbitration, and the term of my award, all provided for in Bill 1, in my opinion create a unique situation, and one which neither the Anti-Inflation Act nor the Federal-Provincial Agreement may have been specifically addressed to. Since no argument was submitted to me on this issue, I need not, of course, decide it, nor would it be appropriate for me to express an opinion on it. In any event, it would be inappropriate for me to endeavour to forecast how the Anti-Inflation Board would exercise its discretion in this case on the assumption that the Act were applicable.

I have concluded that the proper course for me is to limit myself to the mandate that I have been given and to decide the matter within the framework

of Bill 1 without any specific regard to the Anti-Inflation Act and its Regulations. As counsel for the teachers submitted, there is no need for me to include such a clause in my award.

Under such circumstances, I have decided not to include the provision in the decision relating to the Anti-Inflation Act, which I was requested to do by the Boards.

REMUNERATION

GENERAL OBSERVATIONS:

In my opinion, education deserves a very high priority in determining what share of the public revenue should be devoted to it. It is important to appreciate the very significant place that teachers hold in our society. They are highly qualified, and require several years of post-secondary education before they can embark upon their careers. A good proportion of them, by obtaining further certification and post-graduate degrees, are continuing to improve their qualifications. It is understandable that they place a high value on their services. One cannot assume that teachers will sacrifice their own

economic security out of a sense of dedication to the public. On the other hand, teachers should have a sense of satisfaction in the services they perform for the community and in the esteem with which they have traditionally been held, which cannot be compensated for in dollars.

At one time it was fair to say that teachers were grossly underpaid, but in the '60's, teachers' salaries increased in much the same way as workers' salaries in the community increased. The teachers submitted, however, that since the incorporation of Metropolitan Toronto and the introduction of ceilings in the '70's, they have failed to obtain salary increases comparable to increases granted to other workers in the community and to teachers in other municipalities. The Boards do not take issue with the proposition that the teachers are entitled to a substantial raise. The issue before me is what increase will do justice and equity to the teachers and to the public, over what period of time and on what basis.

One cannot ignore the timing of this arbitration. Every award of an arbitrator must have regard for the economic climate of the day. One need not be an economist

to appreciate that the economic climate of today, even apart from the Anti-Inflation Act, as a matter of prudence at least, commands a restraint on all of us. That applies equally to the public sector as well as the private sector. Everyone is concerned about the increase in the costs of providing the services rendered by those in the public sector. As I have already observed, in order to have an efficient education system, it is essential that all those affected have regard and respect for each other, and that the teachers have the support of the public. To insist on demands, no matter how meritorious they may seem to be to the persons who are making them, that are beyond what the public may reasonably be expected to pay, having regard to their present circumstances, is a course which, in my opinion, can only do a disservice to the teachers, could endanger the very future of education in this province and the job security of the teachers themselves. That is not to say, however, that the teachers should be expected to subsidize the cost of education. They are entitled to be treated fairly and to be remunerated in a way which recognizes their qualifications, skill, experience, importance and responsibility.

PRESENT REMUNERATION:

The basic salary for a teacher is determined

by the place that a teacher occupies on the salary scale provided in the contract, which salary scale has come to be known as the grid. The teachers are divided into four groups depending on their qualifications and experience, and within each group there are various steps. A teacher automatically moves down one step on the salary grid, at a higher salary each year, until he arrives at the maximum salary within his group. This is known as the increment. A teacher, by increasing his or her qualifications, may move from group to group and may be hired in a particular group and at a particular step commensurate with his qualifications and experience. In addition to the automatic increment, there are several allowances provided for in the contract which add to the teacher's total remuneration. The allowances fall within the following categories:

1. Post-graduate Degree
2. Special Education
3. Merit Plan
4. Responsibility
5. Cost-of-living Allowance

As of January 31, 1975 when the bargaining commenced for the new contract, there were 8213 teachers

employed by the respective Boards. Approximately one-half of those teachers were in Group 4, being the highest salaried group, and approximately one-half of them were at their maximum step. Approximately one-half of all the teachers, as of that date, were at their maximum step in one or other of the four groups. In addition to the cost-of-living allowance, which was paid to all of them, approximately 75 per cent were in receipt of one or more of the other above allowances. As of January 31, 1975, their average remuneration, including the allowances, was slightly over \$16,000.

As of January 31, 1975 there were 354 teachers employed with the respective Boards holding positions of responsibility, i.e., principals, vice-principals, principals for junior high schools, vice-principals for junior high schools, co-ordinators and assistant co-ordinators. They all received the cost-of-living allowance, and approximately one-half of them were receiving one or more other allowance in addition to the salary provided in the grid. The average remuneration for that group as of that date was \$25,522.

CRITERIA:

It is not a pleasant task nor an easy one to put a price on other people's services. Bill 1 does not provide for any criteria, nor does there appear to be a uniformity as to what criteria have been used in the past in arbitrations for employees in the public sector. Indeed, many awards have been delivered without reasons.

There are yardsticks which I think are relevant. In my opinion, the following factors, not set forth with any particular priority, must, at least, be taken into consideration:

1. The overall compensation presently received by the employees involved in the arbitration proceedings, including direct wage compensation, vacations, holidays and other excused time, insurance, pension, medical and hospitalization benefits, continuity and stability of employment, and all other benefits received;
2. A comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally,
 - (1) in public employment in the community,
 - and (2) in private employment in the community;

3. A comparison of the wages, hours and conditions of employment for the employees involved in the arbitration proceedings with the wages, hours and conditions of employment with other employees performing similar services within the same municipality and in comparable municipalities;
4. The average consumer price for goods and services commonly known as the cost of living;
5. Changes in any of the foregoing factors during the relevant period of time;
6. The economic climate of the day, including consideration of the gross national product and of the gross provincial product;
7. The interest and welfare of the public, and the financial ability of those who are called upon to pay the cost of the services being rendered.

In arriving at an award, all these factors must be taken into consideration and not merely one.

CONCLUSIONS:

I have concluded that, with a few exceptions, nothing has been put before me which would warrant any increases in the monetary items beyond those which were

proposed by the Boards. I have arrived at that conclusion only after carefully and anxiously considering the mass of material presented and the extensive arguments submitted by counsel, and after weighing all of them against the criteria which I have set forth above.

The Boards' proposal for the adjustment of the salary scale for the teachers as compared to what it was in 1974-75 is set forth hereunder:

<u>GROUP I</u>				
<u>Step</u>	<u>1974-75</u> <u>Year</u>	<u>Sept-Dec</u> <u>1975</u>	<u>Jan-Aug</u> <u>1976</u>	<u>Sept-Aug</u> <u>1976-77</u>
0	[7800]	10400	10920	11575
1	8800	→ [11025]	→ [11576]	12271
2	9600	12275	12889	→ [13662]
3	10200	12900	13545	14358
4	10700	13525	14201	15053
5	11500	14150	14858	15749
6	12000	15400	16170	17140
7	12500	16025	16826	17836
8	[13000]	16650	17483	18532
9	13600	→ [17275]	→ [18139]	19227
10	14200	17900	18795	→ [19923]
11	14400			

<u>GROUP II</u>				
<u>Step</u>	<u>1974-75</u> <u>Year</u>	<u>Sept-Dec</u> <u>1975</u>	<u>Jan-Aug</u> <u>1976</u>	<u>Sept-Aug</u> <u>1976-77</u>
0	[8100]	10900	11445	12132
1	9100	→ [11550]	→ [12128]	12856
2	9900	12850	13493	→ [14303]
3	10500	13500	14175	15026
4	11000	14150	14858	15749
5	12000	14600	15540	16472
6	12500	16100	16905	17919
7	13000	16750	17588	18643
8	[13500]	17400	18270	19366
9	14100	→ [18050]	→ [18953]	20090
10	14700	18700	19635	→ [20813]
11	15200			

GROUP III

<u>Step</u>	<u>1974-75</u> <u>Year</u>	<u>Sept-Dec</u> <u>1975</u>	<u>Jan-Aug</u> <u>1976</u>	<u>Sept-Aug</u> <u>1976-77</u>
0	[9000]	12000	12600	13356
1	10000	→ [12700]	→ [13355]	14200
2	10900	14100	14805	→ [15888]
3	11600	14800	15540	16732
4	12200	15500	16275	17576
5	13200	16200	17010	18420
6	13700	17600	18480	20108
7	14200	18300	19215	20952
8	[14700]	19000	19950	21796
9	15300	→ [19700]	→ [20685]	22640
10	15900	20400	21420	→ [23484]
11	16500	21100	22155	
12+	17200			

GROUP IV

<u>Step</u>	<u>1974-75</u> <u>Year</u>	<u>Sept-Dec</u> <u>1975</u>	<u>Jan-Aug</u> <u>1976</u>	<u>Sept-Dec</u> <u>1976</u>	<u>Jan-Aug</u> <u>1977</u>
0	[9500]	12500	13125	13913	13913
1	10500	→ [13200]	→ [13860]	14752	14822
2	11400	14600	15330	→ [16430]	→ [16640]
3	12100	15300	16065	17269	17549
4	12700	16000	16800	18108	18458
5	13700	16700	17535	18947	19366
6	14200	18100	19005	20625	21184
7	14700	18800	19740	21464	22093
8	[15200]	19500	20475	22303	23002
9	15800	→ [20200]	→ [21210]	23142	23911
10	16400	20900	21945	→ [23981]	→ [24820]
11	17000	21600	22680	24820	
12	17700	22300	23415		
13+	18400				

The arrows reflect the manner in which the increment is applied.

Appendix 2 is the salary scale proposed by the Boards of Education for those persons holding positions of responsibility.

In addition to the increases in the salary scale set forth above, the Boards of Education have proposed a cost-of-living allowance in the second year of the contract, plus an increase in other allowances, and a \$500 payment in the first year of the contract for certain teachers by reason of the abolition of the merit plan, all of which items will be discussed separately.

Applying the Boards' proposal to those persons in the bargaining unit as of January 31, 1975, and on the assumption that all those in the bargaining unit as of that time remained in the bargaining unit throughout the school years 1975-76 and 1976-77, the Boards' proposal would amount to an average increase for all persons in the bargaining unit of 24.6% in the first year and 39.2% over two years. On the same basis

it represents for the teachers an average increase in salaries of 40% over the two years, and for those holding positions of responsibility an average increase of 28% over the two years. This includes the allowances received by the teachers over and above their basic salary and a cost-of-living allowance on the basis of an estimate of only 6% from September, 1976, to September, 1977.

Appendix 3 is the calculation from which those figures are taken. This analysis does not show the actual increase in cost, by reason of a change in personnel since January 31, 1975, but any comparison needs a base, and I think this analysis does reflect the benefits which the teachers will have achieved through the bargaining process in the event that the Boards' proposal were to be adopted.

The teachers take issue with this method of calculation. Their contention is that they are negotiating for an increase in salary for each position. In determining the percentage increase negotiated, the teachers submit that the increment should be eliminated from any calculation. They also

take issue in annualizing any lump sum allowance and they would isolate the cost-of-living allowance from the negotiated increase on the grid and itemize it separately. As calculated by the teachers, the Boards' proposal would represent approximately a 21.5% increase in the first year and 32% over two years, plus the additional amount for the cost-of-living allowance. However, since the cost-of-living allowance is to be 'folded in', resulting in an adjustment in the actual salary scales, about which I will have more to say later, it does, in my opinion, become a salary item. There is, I think, merit in the submission of the teachers that the increment should not be included in ascertaining the amount of the negotiated increase for the new contract, but it must, in my opinion, be included in any comparison which is made with increases in average wages gained by others.

Although the last contract provided for an increment, those monies do represent for those who receive it a direct benefit in the years under consideration and represent a direct cost which is built in the salary scale permanently.

A few examples of the application of the new salary scale, as proposed by the Boards, including increment and a cost-of-living allowance, but excluding all other allowances, are set forth hereunder:

Example 1 (Group 1, Minimum)

A teacher who began teaching in Metropolitan Toronto in September, 1974, with a three year Bachelor of Arts degree and one year of teacher training —

1974-75	Step 0	\$7,800 + \$300 C.O.L.A.
1975-76	Step 1	\$11,356
1976-77	Step 2	\$13,662 + \$143 C.O.L.A.

Example 2 (Group IV, Maximum)

A teacher, at his maximum salary in September 1974 with a four year honours university degree, one year of teacher training, and a specialist certificate —

1974-75	Maximum	\$18,400 + \$400 C.O.L.A. + \$1200 Merit
1975-76	Maximum	\$22,969 + \$500 Lump Sum for Merit
1976-77	Maximum	\$24,820 + \$261 C.O.L.A.

Example 3

A principal of a secondary school at his maximum salary in September, 1974 —

1974-75	Maximum	\$27,400 + \$400 C.O.L.A.
1975-76	Maximum	\$32,497
1976-77	Maximum	\$35,116 + \$369 C.O.L.A.

(C.O.L.A. in 1976-77 on the premise of an increase of 6% for the year)

Example 4 (Group 1, Minimum)

A teacher who began teaching in Metropolitan Toronto in September, 1976, compared with a teacher who had commenced teaching in Metropolitan Toronto in September, 1974

1976-77	Step 0	\$11,575 + C.O.L.A.
1974-75	Step 0	\$7800 + C.O.L.A.

Pursuant to the Boards' proposal the average salary of teachers, who were employed by the Metropolitan Toronto School Boards as of September 1, 1974, and on the premise that they remained in the bargaining unit through 1976-77, will have increased from \$16,094 to \$22,472.

For those persons in the bargaining unit who held positions of responsibility as of September 1, 1974, and on the premise that they remained in the bargaining unit through 1976-77, their average salary will have increased from \$25,579 to \$32,660.

In my opinion the salary increases proposed by the Boards, however they may be calculated, are very substantial and fully meet all the valid arguments that the teachers have made out for a salary increase.

Much has been said on behalf of the teachers that over the last several years they have failed to receive salary increases commensurate with those received by others in this municipality. In support of that submission they relied on the Industrial Complex Average for Metropolitan Toronto (hereinafter referred to as the I.C.A.). The I.C.A. of Metropolitan Toronto reflects the gross pay, including salaries, straight time wages, piecework, overtime earnings, regular commission earnings, regularly paid incentive, cost of living and other bonuses and payments to persons absent with pay, of a complex of companies having twenty or more employees in Metropolitan Toronto.

The teachers relied on this compilation in support of their submission that they have fallen behind the average wage increase as reflected in that survey. They did so by analysing the percentage increase in the I.C.A. and comparing it to the increases on the minimum and maximum salary scales. However, since the I.C.A. reflects average salaries, the only valid comparison, if any, is to compare it with the average salaries of school teachers. The following is a result of such an analysis on the premise that the Boards' proposal is adopted, and, at the same time, includes a column reflecting the increased cost of living in Metropolitan Toronto from the years 1971 forward:

COMPARISON OF AVERAGE TEACHER SALARY WITH I.C.A. AND C.P.I.
DURING PERIOD 1971 TO 1975 (BASED UPON BOARD PROPOSAL FOR 1975)

	Average Teacher Salary	I.C.A.	C.P.I.	
1971	12,629	175.9	130.7	From September 1971
	<u>100</u>	<u>100</u>	<u>100</u>	to September 1975
				the average teacher
				salary is
1972	13,551	190.7	136.6	<u>13.3 percentage points</u>
	<u>107.3</u>	<u>108.4</u>	<u>104.5</u>	above the I.C.A.
				and
1973	14,755	204.7	146.1	<u>21.9 percentage points</u>
	<u>116.8</u>	<u>116.4</u>	<u>111.8</u>	above the C.P.I.
1974	16,094	227.3	162.8	
	<u>127.4</u>	<u>129.2</u>	<u>124.6</u>	September 1971 to
				September 1976 shows an
1975	20,089	256.5	179.3	average teacher salary
	<u>159.1</u>	<u>145.8</u>	<u>137.2</u>	which is
				<u>19.9 percentage points</u>
				above the I.C.A.
1976	22,472	278.0	193.6	and
	<u>177.9</u>	<u>158.0</u>	<u>148.1</u>	<u>29.8 percentage points</u>
				above the C.P.I.

NOTE: C.P.I. assumes an 8% increase September 1975 - September 1976.
I.C.A. assumes an 8.5% increase September 1975 - September 1976.

It is to be observed that in the years 1972 and 1974 the percentage increase granted to teachers fell slightly below the percentage increase as shown in the I.C.A. statistics. However, the above schedule demonstrates that if the Boards' proposal were adopted, the teachers will have increased their salaries by 13.3 percentage points above the I.C.A. from September, 1971 to September, 1975, and by 19.9 percentage points on projected figures for 1976. Both parties agreed that this projection was a reasonable one.

The above schedule also demonstrates that, in each of the years set forth in the schedule, the salary increases obtained by teachers were a higher percentage than the corresponding percentage increase in the cost of living. I recognize that there are frailties in such a comparison since it is hard to compare teachers with employees who are included in the I.C.A. It is useful only as a guide in that it does show the average increases received by a large group of employees in Metropolitan Toronto during the relevant period.

Furthermore, in such a comparison salaries cannot be looked at in isolation. Fringe

benefits and working conditions are a significant feature in anyone's employment. By the nature of their profession, the teacher's work is confined within a ten-month period. Within this ten-month period the teachers receive two one-week breaks plus six statutory holidays. They have a relatively shorter work day than most, although additional time is required by them for preparation and other ancillary work, and many of them do devote extra time to extra-curricular activities. Their fringe benefits include contributions to group life insurance, extended health benefits, O.H.I.P., Canada Pension Plan, and they receive such additional benefits as sick leave, accumulated sick leave and sick leave gratuities. They are also in receipt of a provincially guaranteed contributory pension plan. In short, it is fair to say that the total package of fringe benefits surpasses most, if not all, that those employees included in the I.C.A. compilation receive.

I have also considered salaries paid to those who teach in community colleges and in universities.

I have compared their salaries with the salaries paid to teachers in Group 4, which is the highest salaried group. A teacher at his maximum in Group 4 in 1974-75 was paid a basic salary of \$18,400. That teacher for the school year 1976-77, on the basis of the Boards' proposal, will be paid a basic salary of \$24,820. This does not include the cost-of-living allowance or any of the other allowances which almost all such teachers receive. Those salaries compare favourably with salaries paid to the teaching staffs in community colleges and in universities.

The elementary school teachers in Metropolitan Toronto accepted this very proposal.

I have also considered increases in salaries to policemen and firemen, both of which groups have received dramatic increases over the years. But again I am satisfied that the teachers, on the basis of the Boards' proposal, are relatively holding their own with those two groups. I do not think that a comparison with other professional groups is particularly helpful since the vast majority of those are in private practice and their working conditions are completely different.

It is when a comparison is made with the salaries paid to secondary school teachers in other municipalities in this province that the teachers make out their strongest case for a substantial increase in salary.

Appendix 4 sets forth a comparison of salaries paid to secondary school teachers in Metropolitan Toronto in the year 1973-74 with salaries paid to secondary school teachers in a group of municipalities selected by the teachers, which municipalities appear to pay the highest wages to secondary school teachers in the province.

Appendix 5 is a similar comparison for the year 1974-75.

It does appear from an examination of those Appendices that the relative position of the Metro secondary school teachers suffered in comparison with others in the schedule even when the amendment made to the salary scales in Metro in June, of 1974, which is not reflected in that schedule, is taken into consideration. Other Appendices filed by the teachers, however, disclose that even prior to the school year 1973-74, the salary scales in most of the municipalities referred to in the schedule were, on the whole, higher than in Metropolitan Toronto.

I set out hereunder a similar comparison for

September to December, 1975, being the first term of the two years under consideration, and, in that comparison, I have inserted the salary scales as proposed by the Boards for that period:

COMPARISON OF METRO SALARY SCALES AND REPRESENTATIVE AREAS

YEAR Sept - Dec 1975

Category		I	II	III	IV	V.P.	Principal	
YORK	Min.	10,500	10,900	12,000	12,500	24,500	28,500	
	Max.	18,000	19,200	21,100	22,400	27,350	32,250	
NIPISSING	Min.	11,280	11,720	12,830	13,540	28,332	33,134	
	Max.	18,020	19,910	22,550	24,010	30,432	35,234	
CARLETON	Min.	10,460	10,800	11,835	12,395	25,035	28,490	
	Max.	17,940	19,105	20,855	22,295	26,015	30,790	
OTTAWA	Min.	10,500	10,900	12,000	12,500	24,010	29,060	
	Max.	18,000	19,200	21,100	22,400	27,510	32,380	
WINDSOR	Min.	10,450	10,850	11,850	12,550	23,900	26,150	
	Max.	16,350	16,950	19,450	20,550	25,150	28,650	
WATERLOO	Min.							
	Max.							
METRO	Min.	10,400	10,900	12,000	12,500	24,750	29,150	
	Max.	17,900	18,700	21,100	22,300	27,150	31,550	

That comparison shows a substantial closing of the gap, and, once again, save for Nipissing which appears always to have been much higher than the others, the Metro secondary school teachers' salaries compare favourably with the highest paid in Ontario. What has transpired, however, is that certain municipalities, particularly Carleton and Ottawa, have agreed to pay, in the case of Ottawa for the period January 1 to August 31, 1976, and in the case of Carleton for the period January 1 to December 31, 1976, salaries at a higher scale than is proposed by the Boards for Metro for those periods.

Although the teachers in Toronto have been amongst the highest paid teachers in Ontario, it is not accurate to say that they have always been the highest. What is now being sought by the teachers is a salary scale which is said by them to be higher than all other teachers in Ontario, save for Nipissing, and in some categories higher than in Nipissing, and substantially higher than what is being paid by the other municipalities in the above schedule.

Appendix 6 is a calculation based on the same premises as Appendix 3 reflecting the impact on what is being asked for by the teachers. On that basis and on the same premises, the average increase in salaries for all those in the bargaining unit as of January 31, 1975 would have increased by 42.3% in the first year and 57.6% in the second year. In my respectful opinion, such an increase is completely unrealistic having regard to the present economic climate, and is so even when it is calculated in the manner submitted by the teachers.

To accede to this proposal would be to accept the principle of "leapfrogging" or "whipsawing" which has played such a prominent part in the bargaining process for a long time. It would in turn encourage others who had received higher salaries than the Metro teachers to urge that their salaries, having at one time been higher than Metro, should again be "leapfrogged" above the Metro salaries and on and on it would go. To give effect to such a submission could, in my opinion, put the cost of education beyond the financial ability of both the municipalities and the province and threaten the very future of education in this province. The fact that one municipality chooses to pay a much higher salary than others, which may be completely unjustified and beyond what is reasonable at this time, cannot be the sole foundation for an increase to school teachers employed in all other municipalities. The fact that other municipalities are paying higher is certainly a factor to be taken into consideration in giving effect to a substantial increase for the Metro school teachers, but it cannot be a justification for the granting of an award which is beyond what is fair and reasonable. Other criteria must be considered.

If one does not put an end to the "leapfrogging" and "whipsawing" arguments, which have apparently been

given effect to in the past, the last leap could bring about an economic crisis. It has happened elsewhere.

The teachers, quite understandably, relied on what is described by them as the fact-finder's report. Mr. Hartt, the author, quite frankly stated, "the term 'Fact-Finder' may be a misnomer, and I wish to point out at the outset that while much of this report will contain facts, some of it will be based on the opinions of the undersigned".

In that portion of his report where he made recommendations on many of the items with which I am dealing, I think it is fair to say that he was acting in the capacity of a mediator and was recommending what he thought could constitute a basis of settlement.

In discussing the Boards' proposal, which is now before me, he stated in part:

"...In any other circumstances,
in any other climate the
offer of the School Boards as
submitted during negotiations
would have to be regarded as
the extreme limit of generosity."
(Emphasis added.)

With respect to Mr. Hartt, I am satisfied that in the circumstances and in the climate which pertained in October of 1975, as well as the circumstances and the climate which pertain today, the Boards' offer should be regarded as the extreme limit of generosity, although for reasons which I will outline, it was, in my opinion, in the circumstances justified. It was in October of 1975, just shortly after Mr. Hartt's report was delivered, that the Government of Canada announced the necessity for restraints and announced its program to curb inflation. Mr. Hartt appears to be of the view that wage increases granted to those who are in the public sector cannot be regarded as inflationary. I am not an economist, but it appears axiomatic to me that wage increases unrelated to increases in productivity have a direct impact on inflation. This principle is applicable to the public sector, as well as to the private sector, and it is particularly significant when one has regard to the present state of the gross national product and the gross provincial product.

Mr. Dinsmore, in his evidence, frankly expressed the objectives which the Teachers' Federation were seeking to obtain. He gave as an example - a teacher who was at his maximum step in Group 4, with eleven years' experience, who was married, had a family and was between thirty-five and forty years of age. The Federation are seeking a basic salary of \$24,000 for such a teacher.

On the basis of the Boards' proposal for the school year September, 1975 to August, 1976, that teacher would have received a salary of \$22,969. Since that teacher would in all likelihood be receiving one or other of the additional allowances, he would receive in total remuneration close to \$24,000. Of more significance, however, is that as of September, 1976 his basic salary for the second year of the term would be \$24,820 with a cost-of-living allowance, and, in all probability, other allowances as well.

The implementation of the Boards' proposal would once again re-establish the salaries of the secondary school teachers in Metropolitan Toronto as amongst the highest in the province. It is further to be observed that in those comparable municipalities where the secondary school teachers are being paid more for a portion of the term, their contracts expire this year. There is no certainty that any salary increases in those municipalities will surpass what is being proposed by the Boards for the balance of the term.

As I have stated, I am satisfied that the Boards' proposal fully meets every legitimate argument advanced on behalf of the teachers for a salary increase and nothing more can be justified.

COST-OF-LIVING ALLOWANCE:

The Boards do not propose a cost-of-living allowance for the first year of the contract, and submitted that the anticipated increase in the cost of living in the first year is reflected in the new salary scales proposed by them. They do propose a cost-of-living allowance for the second year of the contract which is broken down in two distinct time periods as follows:

- (a) for the period July 1, 1976 - December 31, 1976, any increase in the Consumer Price Index (Toronto) above 6 per cent will be folded into the September 1976 salary scales retroactively;
- (b) for the period January 1, 1977 to June 30, 1977, the monthly salary of all teachers will be increased, proportionate to the corresponding monthly increase in the Consumer Price Index (Toronto); On August 31, 1977, the salary scales shall be adjusted by the percentage increase of the CPI between December 1976 and June 1977.

The teachers are seeking a fully compensating cost-of-living allowance for both years and submitted that that cost-of-living allowance be based on twelve months. It is a common feature of both proposals that whatever cost-of-living allowance is granted, the percentage increase in the cost of living is applied to the salary of the teachers. An example of a fully compensating COLA is set out hereunder:

EXAMPLE OF A FULLY COMPENSATING COLA

(Note: 1% C.P.I. Increase per month)

<u>Month</u>	<u>\$12,000 Salary</u>	
	<u>12-Month Cola</u>	<u>10-Month Cola</u>
1	10	12
2	20	24
3	30	36
4	40	48
5	50	60
6	60	72
7	70	84
8	80	96
9	90	108
10	100	120
11	110	
12	120	
	<u>\$780</u>	<u>\$660</u>
	6.5%	5.5%

By applying the percentage increase in the CPI against the salary, those in the higher salary brackets receive more than those in the lower salary brackets. In my opinion, it is an inaccurate reflection of the cost of living to apply it in this way. The impact of the increased cost of living is felt most by those who earn less. The principle that both parties have adopted is to give the greater amount to those who earn most.

The parties have specifically agreed that whatever cost-of-living allowance is granted, it is to be "folded in". Thus, assuming a teacher was being paid on the basis of a salary of \$20,000 a year and the CPI rose by 12% in that year, in addition to receiving the cost-of-living allowance during the year, that teacher would have his salary scale adjusted at the end of the year by increasing it by 12%, so that at the end of the year that teacher's salary scale would become \$22,400. It is then said that the salary of \$22,400 becomes the base for future negotiations.

It is understandable that a cost-of-living allowance may be negotiated in ensuing years, but, in my opinion, there is no logic in "folding in" the previous percentage rise in the cost of living to make it the new salary base against which future increases should be applied. The long

term application of such a principle can, in my view, pose serious economic threats to the total cost of education in this province. It would dramatically affect the future obligations for pensions, would increase the cost of such items as accumulated sick leave on retirement, and would distort the true percentage increases granted to teachers in the future. It spreads the differential between the lower salaried school teachers and the higher salaried school teachers which could only lead to disaffection on the part of those in the lower salary scales. It is further to be observed that there is no provision for a de-escalation clause. Rather than treating the salary scale as "folded in" as forming the base against which future percentage increases should be applied, the amount "folded in" should be regarded as an increase for the ensuing year, and I would hope that both parties would reconsider in future the advisability of continuing this practice of "folding in" since I am not satisfied that its full impact has been given sufficient consideration.

I have concluded that there is no justification for a cost-of-living allowance for the first year of the contract, having regard to the substantial increases which are being proposed, and since the teachers receive their total salary within a ten-month period, I think the cost-of-living allowance should be determined on that basis. But for the agreement of the parties that the cost-of-living allowance is to be applied on a percentage basis

against salary and is to be "folded in", I would not have awarded a cost-of-living allowance on either of such premises. But I have no jurisdiction to alter the principles upon which both parties have specifically agreed that the cost-of-living allowance is to be applied. Under those circumstances, I have decided that the cost-of-living allowance, as submitted by the Boards, should be given effect to.

DECISION:

Since I have concluded that, subject to a few exceptions, there would be no justification to award a monetary package greater than that which has been proposed by the Boards, it remains now to be decided whether I should adopt the Boards' proposal.

As I have outlined earlier, as an arbitrator I must decide the matters in dispute within the framework of what is submitted to me. In my view, anything below what has been submitted by the Boards is not in dispute. However, within the framework of Bill 1 and Bill 100 pursuant to which I am acting, even if I had jurisdiction to do so, I would not have awarded less than what the Boards have submitted.

The Boards' submission is one which would once again establish parity between the teachers in the elementary school system and in the secondary school system of comparable qualifications and experience. I was advised that this historical relationship has existed for some twenty years. The Boards, I think, properly recognized that they could not make a proposal which amounted to less than what the elementary school teachers of comparable qualification and experience, their own employees, are receiving in Metropolitan Toronto for comparable work. The Boards have stressed the desirability of continuing to expand the integration of the elementary and secondary school systems. To give less to secondary school teachers than the elementary school teachers receive could be destructive of that objective. In the earlier negotiations the Boards had made this very proposal. That could only lead to the reasonable expectation of the teachers that they would receive no less. To award something less, in my view, could well be destructive of the morale of the secondary school teachers even though at one time they had rejected this very proposal.

The purpose of Bill 100, within which framework I am acting, is the furthering of harmonious relationships between Boards and teachers. To award less, I think could create disharmony. Furthermore, it does appear that some secondary school teachers in comparable municipalities being paid at a higher salary scale than I have decided

is appropriate in this matter. Although I have rejected the argument that that fact alone would warrant an award larger than is being awarded here, it is, I think, relevant in determining whether the proposal of the Boards is justified. The Boards have stressed the importance to have teachers' salaries in Metropolitan Toronto competitive. The effect of implementing the Boards' proposal would, I think, make the teachers' salaries in Metropolitan Toronto competitive since they would be amongst the highest in Ontario.

Although, by this decision, the teachers will be receiving a higher percentage increase than most other employees are presently receiving, it must be recognized that they did fall behind in a relative way with what was paid other secondary school teachers in certain other municipalities in their last contract years. It does, therefore, take a relatively higher percentage increase to establish comparable rates for them and to effect a parity with the elementary school system. It is also not to be overlooked that the remuneration in this matter is one which is being imposed on both parties to the dispute. It is not being voluntarily entered into by either of them which I think is a factor which must also be taken into consideration.

I would, therefore, direct that the salary scales and cost-of-living allowance proposed by the Boards become

effective as of September 1, 1975 and remain in effect until August 31, 1977.

I am satisfied that this represents a very substantial gain for the secondary school teachers in Metropolitan Toronto, restores their relative position with most of the secondary school teachers in Ontario, that it does justice and equity to them and is in the public interest.

LUMP SUM PAYMENTS:

The teachers are seeking a lump sum payment in the sum of \$720 for all those teachers who were under contract with one of the Boards on January 1, 1975, and who were also under contract with one of the Boards on September 1, 1975, and who have been paid at least for one hundred days during the period between January 1, 1975 and September 1, 1975. This, it is said, is to compensate the teachers for the "poor settlement" that they had entered into in their last contract. In effect, it is a renegotiation now of their prior contract. It has already been observed that the contract last entered into was a voluntary one, and that the Boards unilaterally amended the contract to give additional sums to those who were at their maximum and those holding positions of responsibility, which amendment created parity with the teachers in the

elementary school system. Although the fact that the teachers fell behind in comparable rates during

their last contract justifies a larger increase in their future contract than would normally otherwise be justified, I cannot accept the principle that it is now appropriate to, in effect, renegotiate the former contract which has already expired.

The teachers have demonstrated great skill and determination in pursuit of their objectives. Collective Agreements are invariably viewed as a package, and it must be assumed that the package settlement arrived at in the earlier two years was the best that the teachers thought could be achieved at that time. I am further satisfied that the increase awarded here does give effect to the "catch-up" argument.

I think the Boards' analysis of the 24.6% increase, in the manner computed by them, does reflect the "catch-up" argument and can be apportioned in the manner analysed by them as follows:

"Catch-up"	- 5.0%	
Increment	- 2.4%	
Adjustment		
C.P.I.	- 12.0%)	
Other	- 5.2%)	
		<u>17.2%</u>
		24.6%

A lump sum of \$720, if applied to all those in the bargaining unit as of January 1, 1975 would amount to \$6,168,960. It would actually be somewhat less because many of the teachers would not qualify. However, in view of the very substantial increase granted to teachers by this decision, the very substantial additional cost for a lump sum payment cannot be justified at this time.

ALLOWANCES FOR RESPONSIBILITY:

The Boards' proposal includes an increase of approximately 10% for the first year of the contract and a further 5% in the second year of the contract. Having regard to the substantial increase granted in the basic salary of those who receive the allowance for responsibility, I do not think any further increase can now be justified, and I would direct that the allowance for responsibility, as proposed by the Boards, be awarded.

POST-GRADUATE DEGREE ALLOWANCE:

At present an allowance of \$500 is paid to a teacher who holds a recognized post-graduate degree and who has not used this degree for a change in group placement. This allowance is paid for one post-graduate degree only.

The Boards' proposal is that that allowance be increased to \$700, a 40% increase on this item over the old contract.

The teachers are seeking an increase of \$250. But, again having regard to the increase in the basic salary for the teacher who will be receiving a post-graduate degree allowance, the 40% increase in this item, I think, is all that should be granted at this time. This amount compares favourably with what is being paid in other municipalities.

The teachers are seeking an additional allowance of \$250 for each school year to a teacher who holds a second post-graduate degree which is not used for a change in group placement. The Boards resist payment for a second post-graduate degree on the premise that such a second post-graduate degree may not relate to the teacher's area of teaching specialization. They point out that "many second degree programs" add little to the overall qualification of a teacher in terms of a teacher's function in the classroom.

I think a second post-graduate degree which does relate to the teacher's specialization should be recognized, and I therefore decide that a teacher who holds a second post-graduate degree which is related to the

subjects which are taught should be paid an additional allowance of \$250 per school year. The determination of whether the second post-graduate degree does relate to the teacher's function in the classroom will be determined by the principal of the school.

SPECIAL EDUCATION ALLOWANCE:

Under the present contract, additional allowances are paid to a special education teacher. In my view, the present clause is wide enough to give effect to the purpose of this allowance, and I would not extend its definition.

DISCONTINUANCE OF THE ETOBICOKE MASTER PLAN AND
THE METRO INCENTIVE PLAN AND ITS ALTERNATIVE:

The Boards and the teachers agreed to the discontinuance of the various merit plans heretofore in existence in the boroughs of Metropolitan Toronto. Most teachers become eligible for merit in their sixth year of teaching. In giving effect to the abolition of the merit plan, the Boards' proposal provides for a larger increment in the salary grid between Step 5 and Step 6.

Since this would not in itself completely compensate those teachers who have received \$1,000 or more under the prior merit plan, they propose a lump sum payment of \$500 to such teachers. The teachers are proposing that the lump sum payment be paid to certain other teachers who have received less than \$1,000 under the Metro Incentive Plan. I think the adjustment to the grid does compensate those teachers and represents a valid payment to them in lieu of the prior existing merit plan.

By the abolition of the merit plan, particular difficulty has arisen for those teachers employed in Etobicoke, whose plan was quite different than the others. In Etobicoke many of the teachers were given a classification of Assistant Head, and Associate Head. It is not clear whether that classification was the equivalent of a merit pay or was being paid for responsibility. It would appear that the Etobicoke Associate Heads may be assuming duties assigned to Assistant Heads in other systems. For that reason, I direct that the discontinuance of the position of Associate Head in Etobicoke be delayed until August 31, 1976. With respect to Assistant Heads, I think it is fair to say that they may have been paid an allowance, partially for merit and partially for responsibility.

With respect to them, therefore, I direct that although the discontinuance of the Etobicoke Master Plan be made applicable to them, they receive a lump sum payment in the first year of the contract of one-half of the allowance that they had heretofore received for being an Assistant Head. In summary, therefore, subject to the change that I have made with respect to payment for a second post-graduate degree, and for the delay in discontinuing the Etobicoke Master Plan for Associate Heads, and for the payment of a lump sum for Assistant Heads, I have decided the proposal of the Metropolitan Toronto School Boards with respect to the various allowances and qualifications for the same be implemented.

PLACEMENT ON THE SALARY SCALES:

It appears that certain teachers are hired who have qualifications less than that which would qualify them for being included in the Group 1 Minimum Scale. The teachers are requesting that all such teachers who are members of the O.S.S.T.F. be paid the minimum of Group 1 of the salary scale. The Boards argued that teachers employed with less qualification than those in Group 1 Minimum ought not to be paid at that rate and

should be paid at a rate determined by the Board. Although I agree that the Group 1 Minimum Salary Scale may not be applicable, it strikes me that as long as they are employed in the secondary school system, their salary scale should be one negotiated between the parties. In negotiations, therefore, for the next contract, I think it is appropriate that the salary scale for those teachers be a subject of negotiations.

STAFFING:

For many years, studies have been implemented to determine the staffing levels for the Metropolitan Toronto school systems. The only issue between the parties is the divisor at the general level. The following divisors are included in the Boards' proposal:

	<u>1975-76</u> <u>School Year</u>	<u>1976-77</u> <u>School Year</u>
Advanced Level	20.9	20.9
General Level	20.6	20.0
Shop	15.0	15.0
Occupational	14.4	14.4
Special Vocational	13.6	13.6

The effect of any decrease in the divisor is to increase the number of teachers for the same student population. To give effect to the present proposal of the School Boards based on a comparison of the previous staff allocation formula applied to the 1975 student enrolment would require approximately eighty additional teachers in the year 1975-76 and would require further additional twenty-two for the year 1976-77. By costing the additional staff at 80% of the average salary and fringe benefits, based on hiring practices for the past year, the additional costs for 1975-76 to implement the Boards' proposal would be approximately \$1,348,508, and for 1976-77 would be approximately \$1,919,219. The teachers are seeking to reduce the divisor for the general level for 1976-77 from 20% to 19.5% which would require a further additional nineteen to twenty-one teachers. The argument made by the teachers is that further reduction of the divisor is necessary to improve the quality of the teaching function. In my opinion, any further additional cost is unwarranted at the present time. I think the Boards of Education have gone a long way in the adjustments proposed by them to the teacher-pupil ratio, and I would direct that their proposal in this respect be implemented. I also would make no change in the E.S.L. staffing.

FRINGE BENEFITS:

The teachers are seeking improvements in each of the items which are under the heading Fringe Benefits in the present contract, as well as the introduction of payments by the Boards for semi-private hospital care and a dental plan, neither of which items had previously been included in the former contract.

Appendix 7 is a schedule showing the respective positions by the parties for the year 1975-76. The calculations are those of the Boards based on the participation in the various programs under the old contract.

Appendix 8 reflects the calculations on the same basis for the year 1976-77.

Appendix 9 shows the impact of the Boards' proposal on all employee benefits.

The impact on cost, of the insured benefit plans only, is reflected in the following schedules submitted by the Boards on the basis of their proposal.

BOARD PROPOSAL FOR COST SHARING IN
TWO YEAR AGREEMENT

<u>BENEFIT PLAN</u>	<u>First Year 1975-76</u>		<u>Second Year 1976-77</u>	
	<u>Board Share</u>	<u>Teacher Share</u>	<u>Board Share</u>	<u>Teacher Share</u>
O.H.I.P.	75%	25%	75%	25%
Semi-Private	0%	100%	100%	0%
Extended Health	75%	25%	100%	0%
Group Life Insurance	60%	40%	100% for amount up to \$25,000; 0% over \$25,000.	0% up to \$25,000; 100% over \$25,000.

INSURED EMPLOYEE BENEFITS

<u>BENEFIT</u>	<u>1974-75 Board Share</u>		<u>1975-76 Board Share</u>		<u>1976-77 Board Share</u>	
	<u>%</u>	<u>Cost</u>	<u>%</u>	<u>Cost</u>	<u>%</u>	<u>Cost</u>
O.E.I.P. (1)	75	\$1,103,033	75	\$1,103,033	75	\$1,103,033
Semi-Private	0	--	0	--	100	\$ 164,505 (4)
Extended Health	75	62,629	75	(2) 99,900	100	217,095 (5)
Group Life Insurance	60	365,535	60	(3) 428,388	100	563,838 (6)
		<u>\$1,530,197</u>		<u>\$1,631,321</u>		<u>\$2,045,471</u>
				6.6% increase over 1974-75		33.9% increase over 1974-75

- (1) O.E.I.P. estimate assumes no increase in cost through to 1977.
- (2) Extended Health Benefits are improved by the addition of eye glasses and hearing aids benefits effective first of the month following signing of agreement.
- (3) Group Life Insurance maximum coverage available is increased from \$60,000. to \$80,000.
- (4) Board contribution increased from 0% to 100%
- (5) Board contribution increased from 75% to 100%
- (6) Group Life Insurance contributions will be shared as follows:

- up to \$25,000 - 100% Board
- over \$25,000 - 0% Board

It is to be observed that the proposal of the Boards represents a very substantial improvement in the cost-sharing program for these benefits when compared with what had existed in 1974-75. Once again, none of these items which have a direct impact on cost can be considered in isolation.

For the year 1974-75, the total cost of salaries, employee benefits and staffing for Metropolitan Toronto School Boards for those employees on staff as of January 1, 1975 when the bargaining commenced was \$145,660,958. Giving effect to what is proposed by the Boards on the premise that those persons were still in the bargaining unit in the year 1975-76, including requirement for additional staff on the basis of the new staff allocation proposed, the total cost would be \$181,886,301, and for the year 1976-77, \$203,444,263, representing a total increase of 39.7% over the two years.

Again this does not represent the actual difference in cost to the municipality for those years by reason of the change in personnel in the bargaining unit. However, it is a reflection of the increases which teachers, of similar qualifications and experience, will receive in

the present contract with what they would have received under the old contract. It does introduce for the first time a provision for semi-private room, improved extended health benefits and group life insurance benefits.

Having regard to the very substantial increases in the remuneration which I have already decided upon, I think the proposal of the Boards in the fringe benefit area is all the teachers should reasonably expect to receive throughout the term of my award. I am satisfied that it compares very favourably with fringe benefits which other teachers receive, and with fringe benefits that other employees receive. A dental plan and long term disability insurance must be left as a matter of negotiations for ensuing contracts.

WORKING RULES

SENIORITY:

The Boards' proposed clause would remove the right to grieve by surplus teachers who felt aggrieved on the question of their seniority. I would, therefore, adopt the Boards' proposal on seniority, but delete from clause 4.3.2.1.0. the words "in the reasonable opinion of the Board".

PROFESSIONAL DEVELOPMENT:

I reject the submission of the teachers that the meetings of the Joint Board Teachers Committee must be held during the day, and that a substitute must be provided by the Boards at the Boards' expense. Surely the time and place when the committee meets must be left to be determined by the parties.

I do not think it appropriate for me to make a direction as to what total number of days for professional activity should be allowed in 1976-77. Professional activity days are provided for by Regulation and the Regulation will govern.

SABBATICAL:

I think the Boards' proposal for sabbaticals is fair, and I would not make any change in it.

EVALUATION:

The Boards have agreed that the teacher will now be notified prior to the time of his evaluation. I think this fairly meets the request of the teachers for notice, and I am not prepared to designate the time when the notice must be given.

OCCASIONAL TEACHERS AND UNASSIGNED PERIODS:

The average school day is approximately six hours in length and is divided into nine, forty minute periods or the equivalent thereof. Generally speaking, of the nine periods the teachers have teaching assignments in six of them. They have one period for lunch, one period free from all teaching and non-teaching duties and one period free of scheduled teaching duties, but subject to assigned supervision or "on call" substitute teaching. The evidence before me discloses that as a general practice the teachers are not assigned supervision or "on call" duties in the ninth period, but occasionally they are. The teachers are seeking, except for emergencies, a guarantee of two periods per day free from all teaching and non-teaching duties, in addition to the period for lunch.

In current practice, each Board of Education endeavours to develop and maintain a pool of occasional teachers external to the school. Each principal, as the need arises, hires occasional teachers on a per diem basis, to substitute for absent regular staff if a suitable qualified occasional teacher is available from the pool. The budget for occasional teachers for the year 1975-76 was \$1,258,853 and for the year 1976-77, \$1,673,449. Where a substitute occasional teacher is not available from the pool, the

principal usually assigns a member of his regular teaching staff who is free from scheduled classes to provide substitute instruction. What is proposed by the teachers would require additional use of occasional teachers under such circumstances and would add substantially to the budget for occasional teachers.

I appreciate that the teachers feel that this extra period can best be used by them for preparation and other work, and that an occasional teacher may have greater expertise in the particular subject which must be taught by reason of the absence of the regular teacher. It is to be observed that the teacher who was absent is invariably absent with pay. I do not think that such added expense for occasional teachers is warranted for the years under consideration.

PROBATIONARY TEACHERS:

The teachers are seeking a clause that in the absence of an agreement with the principal and the branch affiliate, a probationary teacher should not be required to prepare for more than three different courses each day, and in semestèred schools in the absence of such an agreement,

probationary teachers should not be required to prepare for more than two different courses each day. The Boards' proposed clause provides that the probationary teacher, in the absence of an agreement between the principal and the probationary teacher, would not be required to prepare for more than four different courses each day, and in semestered schools in the absence of such an agreement, the probationary teacher would not be required to prepare for more than two different courses each day.

The probationary teachers vary in their qualifications, some are highly experienced, some are not. For those of limited experience it does appear that the requirement to prepare for four different courses each day may be unfair. I have concluded that a probationary teacher with less than two years' experience should not be required to prepare for more than three different courses each day. For those probationary teachers with more than two years' experience the Boards' proposal will govern. If the principal and the teacher otherwise agree, they should be free to do so without the concurrence of the branch affiliate.

RETROACTIVE CLAUSE:

Teachers are seeking certain provisions in the contract which relate to the period of time during which they were on strike. Section 69(5) of Bill 100 provides that the teachers shall not be paid a salary for the days that they were on strike, and counsel for the teachers does not take issue with that provision being applicable to the matter before me. However, there are other provisions in the contract which do not relate to salary. I have in mind those provisions in the contract which relate to seniority and experience.

To continue to deduct the number of days on strike in determining seniority and experience would not be helpful in healing the wounds which always arise as a result of a strike. I have concluded, therefore, that the days on strike will not be deducted in the determination of the teachers' seniority and experience.

A further issue has arisen with respect to some teachers who claim that they were not on strike, although they were absent during the period of the strike. There is some doubt whether they would have a right to

grieve , and I think that any ambiguity in this regard should be cleared up. I, therefore, have decided that Clause 6.1.0.0.0. in the teachers' proposal should be included as part of my decision.

As a result of the strike the teachers are seeking a "no recrimination" clause. I would have hoped that such a clause would not be necessary, but since it has been put in dispute, I must deal with it. The strike being a lawful strike, there should be no recrimination or disciplinary action taken by reason of the strike with respect to all those affected by it.

CHECK-OFF:

The branch affiliates have asked for a voluntary check-off with respect to monthly dues and/or other assessments.

By reason of Bill 100 the branch affiliates became the bargaining agents for all teachers who are members of the branch affiliates. Bill 100 further directs the parties to negotiate "in respect of any term or condition of employment".

Under The Teaching Profession Act, R.S.O. 1970, c. 456 there is already a mandatory check-off, which monies are forwarded to the Ontario Teachers' Federation which in turn remit part of those fees to its affiliated bodies.

There is no specific provision in Bill 100, as there is in the Labour Relations Act, respecting check-off. It is urged by the Boards that because there is a compulsory check-off pursuant to The Teaching Profession Act, they are not required to negotiate for a provision in the contract which relates to a voluntary check-off in favour of the branch affiliate.

I do not think that the absence of a specific provision in Bill 100 relating to check-off and the fact that there is a mandatory check-off pursuant to The Teaching Profession Act, relieves the Boards from negotiating for a check-off pursuant to Bill 100. In my opinion, a voluntary check-off is a term or condition of employment and certainly becomes one when the authorization is presented. A compulsory check-off has been held to be "a condition of employment", in Syndicat Catholique des Employes de Magasins de Quebec, Inc. v. Compagnie Paquet Ltee., 18 D.L.R. (2d) 346. A voluntary check-off for

preference of employment has been held to be a term or condition of employment in Hill v. Canadian Pacific Railway Co., et al. 30 D.L.R. (2d) 503.

Bill 100 is something quite different from The Teaching Profession Act, in that it constitutes branch affiliates as bargaining agents. In principle, I can see no objection to a voluntary check-off being awarded to a bargaining agent, which provision has become a common feature in collective agreements. In any event, I think it is a matter that is necessary for me to decide in order to make a decision.

The difficulty in this matter is that there is some uncertainty as to whether the constitution of the branch affiliates provides for the collection of dues by the branch affiliates and/or authorizes the branch affiliates to make any assessments.

Upon proof to the satisfaction of the respective Boards' solicitors that the branch affiliate is authorized by its constitution to collect dues and levy assessments, I direct that a voluntary check-off provision be included in any award. The voluntary check-off, once given, should be effective throughout the school year in which it is given and may be renewed by each teacher for the subsequent school year.

MISCELLANEOUS:

At my request the teachers submitted a proposal for two years. Included in the proposal were completely new items which had not previously been the subject of negotiations and were not included in the list of matters in dispute provided to me pursuant to s. 3(4) of Bill 1. That is understandable since the teachers had originally submitted their proposal on the basis of a one year term. However, since these were entirely new items and were not matters in dispute, and since I do not regard them as matters which are necessary for me to decide in order to arrive at a decision, I have not dealt with them, and they will have to be left for future negotiations.

I have endeavoured to deal with all the matters in dispute which were itemized in the notice provided to me. From an examination of the briefs a few of the items appeared to me to have been resolved, and I, therefore, did not deal with them. If I erred in that respect, or I have overlooked any of the matters in dispute, I invite the parties to draw them to my attention and I will then deal with them.

I draw the attention of both parties to

s. 37 of Bill 100 which now becomes applicable. If, in the preparation of the document therein referred to, there is any difficulty, I may be spoken to.

SUMMARY AND RECOMMENDATIONS:

I am indebted to counsel for their very able and thorough presentation and for their co-operation. I was also very impressed with those representatives of both parties who gave evidence and assisted in the submissions. I thought that they were intelligent and able, which makes the impasse between the parties harder to understand. A re-examination of Mr. Dinsmore's evidence, which I reviewed above, shows how close the parties actually were on the major issue of salaries.

The teachers have failed to attain their major objectives within a one year period, but they have gained more over a two year span than their original objectives for one year. It has been a well-established principle in arbitrations that where a group of employees fall behind others with whom a valid comparison can be made, it is not always possible to remedy that situation within one year. The impact is too great. Nor should one expect to receive substantial improvements in fringe benefits and in working

conditions while, at the same time, obtaining substantial increases in remuneration.

Although I have concluded that the grievances of the teachers have been overstated, one cannot overlook the strength of their convictions. I am satisfied that the substantial increases, which are provided for in this decision, give the teachers the most that they should reasonably expect to receive at the present time, and that the salaries provided give full recognition to their responsible position in the community. I understand the desire of the teachers in Metropolitan Toronto to be the very highest paid in Ontario. Although I have endeavoured to explain why in my opinion such an objective cannot be achieved during the term of my decision, as long as any other teachers receive more, even though they be few in number, I fear there will be cause, rightly or wrongly, for disaffection. I suspect that is so in other municipalities in this province as well. Under such circumstances, I think consideration must be given to a province-wide, or regional, basic salary for teachers, and uniform fringe benefits.

In delivering an award of a Board of Arbitration

between the Board of Trustees of the Wellington County Separate School and The Ontario English Catholic Teachers Association, Mr. Owen Shime observed in part as follows:

"...We also think that some consistency in the Province will prevent School Boards from being whipsawed in negotiations; see e.g. Report of the Ministerial Commission on the Organization and Financing of the Public and Secondary Schools System in Metropolitan Toronto at p. 144."

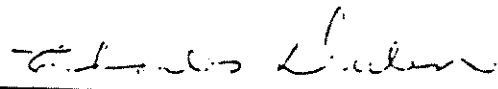
He went on to observe as follows:

"As a footnote we think some consideration should be given to establishing a Provincial grid system for fixing minimum salaries which would be arrived at in a process which would permit due consultation between Province, local School Boards and groups representing teachers. Once a minimum grid was established the School Boards and teachers should have a further opportunity of establishing why any particular situation warranted funds beyond the minimum grid."

I agree in principle with what Mr. Shime has stated. What is needed, in my respectful opinion, is a more direct provincial presence in the bargaining process. The Province could then immediately assess the impact of agreements being entered into between Boards of Education and their teachers on the total future cost of education in this Province. This would help to ensure that the high

standard of education in this Province can be continued in the future, and that the teachers will receive a remuneration for their important services commensurate with what the Province and the municipalities can afford.

DATED at Toronto this 3rd day of March, 1976.



ARBITRATOR

TO: Mr. Owen Shime, Q.C.
Chairman,
Education Relations Commission

AND TO: Mr. A.E. Golden,
Mr. M.L. Levinson
Mr. M.A. Green
Of Counsel for the Branch Affiliates

AND TO: Mr. R.E. Shibley, Q.C.
Of Counsel for the School Boards

APPENDIX 1

CHRONOLOGY OF NEGOTIATIONS BETWEEN THE BOARDS AND OSTY IN METROPOLITAN TORONTO FEBRUARY 11, 1975 - JANUARY 28, 1976

FEBRUARY 11 TO
JUNE 11, 1975

During this period, the negotiating teams for both sides met face to face on twelve occasions. Negotiation procedures and costing procedures were discussed.

April 29, 1975 - The teachers presented to the Boards their proposal for a one year agreement.

May 27, 1975 - The Boards made their first offer to the teachers for a one year agreement.

June 10, 1975 - As requested by the Boards and teachers, the Minister of Education appointed the mediator, Mr. S. H. Hartt.

JUNE 17 TO
SEPTEMBER 1, 1975

During this period, the Boards and teachers negotiated through the mediator.

August 11, 1975 - Through the mediator, the Boards presented an offer for a two year agreement to the teachers.

By the end of this period, considerable progress had been made in settling many of the non-monetary clauses in respect of definitions, grievance procedures, salary, staffing, working conditions and employee benefits.

SEPTEMBER 2 TO
OCTOBER 1, 1975

During this period, fact finding took place as required by statute.

September 2, 1975 - Mr. S. H. Hartt was appointed Fact Finder.

October 1, 1975 - The Fact Finder's Report was presented to the Education Relations Commission and the parties to the negotiations.

OCTOBER 3 TO 23, 1975

During this period, with the assistance of Mr. S. H. Hartt, the Boards and teachers attempted to reach an agreement.

October 16, 1975 - The Fact Finder's Report was made public.

OCTOBER 27 TO
NOVEMBER 6, 1975

The Boards presented their latest offer, dated October 27, 1975, to the teachers.

November 5, 1975 - The teachers voted to reject the Boards' latest offer and voted in support of strike action.

November 6, 1975 - Notices of intent to strike on November 12 were delivered to each Board.

Mr. William Dickie was requested by the Education Relations Commission to assist the parties in attempting to resolve the dispute before the commencement of the strike.

NOVEMBER 7 TO 12, 1975

For four days, Mr. Dickie attempted to promote efforts to reach a settlement.

November 10, 1975 - Mr. Dickie concluded that mediation had failed and withdrew his services.

November 11, 1975 - The Minister of Education met with the parties to determine if a settlement might be reached in order to avoid a strike. Impasse was acknowledged.

November 12, 1975 - The strike commenced against all Boards in Metropolitan Toronto.

NOVEMBER 12 TO
DECEMBER 4, 1975

During this period steps were taken by the Boards and teachers to clarify their position in regard to Anti-Inflation measures and to recommence mediation.

November 24, 1975 - Clarification was requested by representatives of the Boards from the Anti-Inflation Board in view of the impasse and strike.

November 28, 1975 - The Anti-Inflation Board reported on the submissions from the parties.

December 2, 1975 - Representatives of the Boards and teachers met at the offices of the Education Relations Commission and the concept of a team of mediators was agreed upon.

December 3, 1975 - The team of 3 mediators was appointed.

December 4, 1975 - Mediation recommenced.

DECEMBER 5 to 20, 1975 - During this period, a final attempt was made to reach a settlement under the auspices of the team of mediators.

December 19, 1975 - The terms of a revised proposal by the Boards covering a one-year agreement were presented to the teachers.

December 20, 1975 - The teachers agreed to submit the Boards' final proposal to a vote by their membership following the vacation period.

December 23, 1975 - The formal document incorporating the Boards' Final Proposal was delivered to the mediators for transmittal to the Secondary Negotiating Team.

JANUARY 5 to 28, 1976

January 5, 1976 - The Boards' revised proposal for a one-year agreement was distributed to teachers in Metropolitan Toronto.

January 7, 1976 - The teachers voted to reject the Boards' proposal.

January 8, 1976 - The Education Relations Commission set down ground rules for a hearing to receive submissions from the parties in exercise of its duties described by statute.

January 10, 1976 - Date of E.R.C. hearing to receive submissions from the parties.

- January 12, 1976 - The Committee of Board Chairmen withdrew its Proposal to the Secondary School teachers of December 20, 1975.
- January 15, 1976 - The Ontario Legislature was convened in Special Session to enact Bill 1, An Act Respecting the Metropolitan Toronto Boards of Education and Teachers Disputes.
- January 16, 1976 - Bill 1 received Royal Assent. The teachers were legislated back to work.

MATTERS IN DISPUTE - BOARD PROPOSAL

appendix 2

.2.0.0.

Salary Scales - Principals and Vice-Principals

Principals - Secondary

<u>Step</u>	<u>Sept.-Dec. 1975</u>	<u>Jan.-Aug. 1976</u>	<u>Sept.-Aug. ** 1976-77</u>
0	\$29150	\$30608	\$32444
1	29950	31448	33335
2	30750	32288	34225
3	31550	33128	35116

Vice-Principals - Secondary

<u>Step</u>	<u>Sept.-Dec. 1975</u>	<u>Jan.-Aug. 1976</u>	<u>Sept.-Aug. ** 1976-77</u>
0	\$24750	\$25988	\$27547
1	25550	26828	28438
2	26350	27668	29328
3	27150	28508	30218

Principals - Junior High School

<u>Step</u>	<u>Sept.-Dec. 1975</u>	<u>Jan.-Aug. 1976</u>	<u>Sept.-Aug. ** 1976-77</u>
0	\$27700	\$29085	\$30830
1	28500	29925	31721
2	29300	30765	32611
3	30100	31605	33501

Vice-Principals - Junior High School

<u>Step</u>	<u>Sept.-Dec. 1975</u>	<u>Jan.-Aug. 1976</u>	<u>Sept.-Aug. ** 1976-77</u>
0	\$23850	\$25043	\$26546
1	24650	25883	27436
2	25450	26723	28326
3	26250	27563	29217

Note: **Subject to adjustment by the application of the
Cost of Living Allowance provided in 2.3.0.0.0.

MATTERS IN DISPUTE - BOARD PROPOSAL

2.2.3.0.0.

Salary Scales - Co-ordinators and Assistant Co-ordinators

12 Month Co-ordinators

<u>Step</u>	<u>Sept.-Dec. 1975</u>	<u>Jan.-Aug. 1976</u>	<u>Sept.-Aug. ** 1976-77</u>
0	\$27950	\$29348	\$31109
1	28750	30188	31999
2	29550	31028	32890
3	30350	31868	33780

10 Month Co-ordinators

<u>Step</u>	<u>Sept.-Dec. 1975</u>	<u>Jan.-Aug. 1976</u>	<u>Sept.-Aug. ** 1976-77</u>
0	\$25350	\$26618	\$28215
1	26150	27458	29105
2	26950	28298	29996
3	27750	29138	30886

12 Month Assistant Co-ordinators

<u>Step</u>	<u>Sept.-Dec. 1975</u>	<u>Jan.-Aug. 1976</u>	<u>Sept.-Aug. ** 1976-77</u>
0	\$26150	\$27458	\$29105
1	26950	28298	29996
2	27750	29138	30886
3	28550	29978	31777

10 Month Assistant Co-ordinators

<u>Step</u>	<u>Sept.-Dec. 1975</u>	<u>Jan.-Aug. 1976</u>	<u>Sept.-Aug. ** 1976-77</u>
0	\$23850	\$25043	\$26546
1	24650	25883	27436
2	25450	26723	28326
3	26250	27563	29217

Note: **Subject to adjustment by the application of the Cost of Living Allowance provided for in 2.3.0.0.0.

SCHOOL PROPOSAL TO THE ADMINISTRATION

INCREASE TO THE BARGAINING UNIT
(BASED ON DATA EFFECTIVE JANUARY 1, 1975)

I. SALARY	1974-75	1975-76	1976-77
<u>Teachers (8,213.5)</u>			
a) Basic Salary Scales	\$120,179,189	\$120,179,189	\$158,597,404
Increment		3,400,050	3,048,850
Adjustment		35,018,165	15,869,690
b) Allowances			
MIP & Master Plan	4,049,365	0	0
Cost of Living	3,235,770	0	1,863,928
Other	4,412,200	5,015,800	5,192,000
Lump Sum for MIP & Master Plan		1,393,868*	0
Total for Teachers	\$131,876,524	\$165,009,072	\$184,571,872
<u>Principals, Vice-Principals, Co-Ordinators (354.8)</u>			
a) Basic Salary Scales	8,807,670	8,807,670	10,408,510
Increment		47,400	0
Adjustment		1,553,440	883,680
b) Allowances			
Cost of Living	141,920	0	118,620
Other	105,700	171,900	171,900
Total for Principals, Vice-Principals, Co-Ordinators	\$9,055,290	\$10,580,410	\$11,587,710
Overall Salary Totals (8,568.3)	\$140,931,814	\$175,589,482	\$196,159,582
% Increase over 1974-75		24.6%	39.2%

* Lump Sum on an Annual Basis

COMPARISON OF METRO SALARY SCALES AND REPRESENTATIVE AREAS - APPENDIX 4

Category	I	II	III	IV	V.P.	Principal		
YORK	Min.	7,500	8,800	9,300		23,200		
	Max.	13,650	16,250	17,500		25,550		
NIPISSING	Min.	7,600	8,800	9,300	20,685	24,191		
	Max.	13,750	16,480	17,530	22,785	26,291		
CARLETON	Min.	7,200	8,450	8,960	20,510	23,665		
	Max.	13,965	16,640	17,655	22,135	25,760		
OTTAWA	Min.	7,200	8,400	8,900	19,190	22,470		
	Max.	13,460	16,140	17,160	21,080	24,210		
WINDSOR	Min.	7,600	8,800	9,300	20,750	23,000		
	Max.	13,800	16,400	17,400	22,000	25,500		
WATERLOO	Min.	7,200	8,400	8,900	18,650	22,000		
	Max.	13,400	16,070	17,290	21,650	25,000		
METRO	Min.	7,400	8,600	9,100	20,750	24,000		
	Max.	13,500	16,100	17,200	22,250	25,500		

COMPARISON OF METRO SALES BY SCALES AND REPRESENTATIVE AREAS - APPENDIX 5

Category	I	II	III	IV	V.P.	Principal		
YORK	Min.	8,100	9,300	9,850	22,000	25,500		
	Max.	14,750	17,350	18,700	23,500	28,000		
NIPISSING	Min.	7,900	9,100	9,600	22,833	26,703		
	Max.	15,180	18,190	19,350	24,933	28,805		
CARLETON	Min.	7,930	9,305	9,865	22,400	25,935		
	Max.	15,375	18,320	19,440	24,260	28,235		
OTTAWA	Min. Sept.	7,200	8,400	8,900	20,535	24,045		
	Jan.	10,000	11,400	12,000	24,230	28,500		
	Max. Sept.	14,535	17,430	18,535	22,765	26,795		
	Jan.	17,210	20,585	21,900	26,860	31,620		
WINDSOR	Min.	10,200	11,600	12,300	23,650	25,900		
	Max.	16,100	19,135	20,300	24,900	28,400		
WATERLOO	Min.	7,920	9,240	9,790	21,175	24,860		
	Max.	14,740	17,680	19,020	23,815	27,500		
METRO	Min.	7,800	9,000	9,500	22,000	25,500		
	Max.	14,400	17,100	18,300	23,500	27,000		

O.S.S.T.F. PROPOSAL TO THE ARBITRATOR

APPENDIX 6

INCREASE TO THE BARGAINING UNIT
(Based on data effective January 1, 1975)

	1974-75	1975-76	1976-77
I. SALARY			
Teachers (8,213.5)			
(a) Basic Salary Scales	\$120,179,189	\$120,179,189	\$165,697,060
Increment		3,400,030	3,048,850
Adjustment		42,117,820	27,943,500
(b) Allowances			
MIP & Master Plan	4,049,365	2,337,746	0*
Cost of Living	3,235,770	6,315,379	6,392,406
Other	4,412,200	5,293,620	5,672,130
Lump Sum (Merit)		1,765,690 *	0
Lump Sum		7,327,062 *	0
Totals	\$131,876,524	\$188,736,556	\$208,753,946
Principals, Vice-Principals, Co-ordinators (354.8)			
(a) Basic Salary Scales	\$ 8,807,670	\$ 8,807,670	\$ 10,907,079
Increment		47,400	0
Adjustment		2,052,009	1,789,469
(b) Allowances			
Cost of Living	141,920	415,742	412,638
Other	105,700	171,900	179,500
Lump Sum		316,508	0
Total	\$ 9,055,290	\$11,811,229	\$13,288,703
TOTAL SALARY TOTALS	\$140,931,814	\$200,547,885	\$222,042,649
% Increase Over 1974-75		42.3%	57.6%

* Lump Sum on an Annual Basis

* COLA assumes 8% CPI increase in 1975-76
6% CPI increase in 1976-77

* It is unclear from the O.S.S.T.F. request how the Koblecke Master Plan will be discontinued.

APPENDIX 7

BENEFIT	TEACHER PROPOSAL 1975-76		BOARD PROPOSAL 1975-76	
	Board Share	Teacher Share	Board Share	Teacher Share
CHIP	$\frac{1}{2}$ 100% \$1,746,245	$\frac{1}{2}$ 0% -	$\frac{1}{2}$ 75% \$1,103,033	$\frac{1}{2}$ 25% \$ 367,667
WIFI-PRIVATE	100% \$ 166,303	100% -	0% -	100% \$ 166,303
EXTENDED HEALTH CARE	100% \$ 868,898	0% -	75% \$ 99,900	25% \$ 33,000
GROUP LIFE INSURANCE	* 100% 75% \$ 842,232	* 0% 25% \$ 92,248	60% \$ 428,368	40% \$ 285,600
DENTAL PLAN	100% \$1,198,012	0% -	- -	- -
	<u>\$4,819,892</u>	<u>\$ 92,248</u>	<u>\$1,631,321</u>	<u>\$ 851,072</u>

(Note: * Board pays:
100% of first \$25,000
75% of over \$25,000
to \$80,000)

BENEFIT	TEACHER PROPOSAL 1976-77		BOARD PROPOSAL 1976-77	
	Board Share	Teacher Share	Board Share	Teacher Share
OHIP	100% \$1,746,245	0%	75% \$1,103,033	25% \$367,667
SEMI-PRIVATE	100% \$164,505	0%	100% \$164,505	0%
EXTENDED HEALTH CARE	100% \$868,898	0%	75% \$217,095	25%
GROUP LIFE INSURANCE	* 100% \$842,232	* 0%	** 100% \$565,838	** 0%
DENTAL PLAN	100% \$1,317,800	0%	0%	100%
LONG TERM DISABILITY INSURANCE	50% \$850,000	50%	50%	50%
(Notes:				
* Board pays:				
100% of first \$25,000				
75% of over \$25,000 to \$80,000				
** Board pays 100% of first \$25,000				
Teacher pays 100% of amount over \$25,000				
			\$2,050,471	\$736,659

APPENDIX 9

1974-75

1975-76

1976-77

EMPLOYEE BENEFITS

Insured Employee Benefits

O.H.I.P.	\$ 1,101,033	\$ 1,101,033	\$ 1,101,033
Semi-Private	0	0	164,505
Extended Health	61,629	99,900	217,095
Group Life Insurance	365,535	428,388	563,835
U.I.C.	1,453,867	1,453,867	1,453,867

Other Employee Benefits

aid Leave for Branch Affiliate			
Presidents	0	101,182	101,182
T.S.A.C. consultant	0	16,864	16,864
Sabbatical & Special Leave	152,285	152,285	152,285
Sick Leave Credit Gratuity	407,635	407,635	407,635
Paid Teacher Absences	1,187,157	1,187,157	1,187,157

Employee Benefits	<u>\$ 4,729,141</u>	<u>\$ 4,948,311</u>	<u>\$ 5,365,461</u>

Case name:

**RE BOARD OF SCHOOL TRUSTEES, SCHOOL DISTRICT No. 1
(FERNIE) AND FERNIE DISTRICT TEACHERS' ASSOCIATION**

[1982] B.C.C.A.A.A. No. 528

8 L.A.C. (3d) 157

British Columbia
Collective Agreement Arbitration

J. E. Dorsey, J. Brewin, S. R. Pearce.

December 21, 1982.

(1 para.)

Labour Arbitration -- Process and procedure -- Arbitration -- Interest arbitration.

Labour Arbitration -- Employee rights and benefits -- Remuneration -- Wage rates.

The salary arbitration board was established to award salaries and bonuses to teachers. An issue arose as to the scope of the board's ability to make decisions. The teachers had legislated cutbacks in working days resulting in reductions in earnings of about 3 percent. They also confronted inflation and a spread in wages behind other groups faced unknown losses in jobs or wage reductions in 1983 depending on decisions by the government or choices by the employer school board. The school boards were cutting to the bone and had eliminated teacher aide and janitorial positions, 1983 summer student employment, transportation assistance and swim and ski programs and reduced finances in all areas of their budget.

HELD: Award granted. The board could not ignore the economic climate and government restraint but could not be paralyzed by concerns that salary increased for teachers would destroy public education in British Columbia. The board's final and binding award was really a recommendation of fair and reasonable salary increases. It was for the government to decide whether it would accept the recommendation and make funds available to the school boards, restrain the implementation of the award, take other action or leave the school boards, teachers and communities to deal with the effect of implementing the award.

Cited as:
**Pembroke (City) v. Pembroke Professional Firefighters' Assn.
(Vacation Grievance)**

**IN THE MATTER OF an interest arbitration
Between
The Corporation of the City of Pembroke (the "corporation"),
and
The Pembroke Professional Firefighters' Association (the
"association")**

[2000] O.L.A.A. No. 612

Ontario
Labour Arbitration

**P. Knopf, Chair, A. Reistetter, Corporation Nominee
and J. Sack, Association Nominee**

Heard: Toronto, Ontario, January 18, 2000

Award: June 16, 2000

(39 paras.)

Appearances:

Michael Kennedy, counsel and Ray Brazeau, Chief Administrative Officer, for the corporation.
Dave Stephenson, Advocate International Representative, Ted Farrell, Phil Corriveau, Dan Herback, Michael McFarlane and Fred LeBlanc, for the association.

The decision of the board was rendered by P. Knopf, Chair. Separate dissenting reasons were rendered by A. Reistetter, Corporation Nominee, and by J. Sack, Association Nominee.

AWARD

1 P. KNOPF, CHAIR:-- This is an interest arbitration that is convened to resolve the outstanding issues between the parties and to conclude a collective agreement for the years 1998 through to 2000 inclusive.

2 The parties engaged in productive collective bargaining and were able to resolve a number of issues on their own.

This Board of Arbitration was then asked to assist in a mediation/arbitration process on August 4, 1999. Despite the good faith bargaining on the part of both parties, they were unable to achieve a collective agreement through the mediation/arbitration process. Accordingly, this Board of Arbitration has been asked to resolve the matters which remain outstanding.

3 The City of Pembroke has a population of approximately 14,000 people. It is served by the Pembroke Fire Department which currently has a complement of 15 full-time Fire Fighters and a Chief. The Department also uses volunteers to supplement the services of the professional Fire Fighters. As well as fulfilling their statutory duties as Fire Fighters, the members of the Pembroke Professional Fire Fighters Association are heavily involved in the community in several charitable events.

4 Before addressing the outstanding items, it is important to set out the principles which will guide the determination of this dispute. First and foremost, as a Board of Arbitration resolving an interest dispute, the task is to try to replicate collective bargaining as closely as possible. Collective bargaining is a process whereby the parties are able to identify their own and each other's interests, explore those interests, and come to a contract which contains terms and conditions of employment that are viable for both sides. The process of collective bargaining is the best process available in our society for achieving an enduring and harmonious workplace environment. The task of an interest board of arbitration is not to impose terms and conditions of employment that seem attractive or even fair to the board of arbitration. Instead, the task of a board of arbitration is to design a collective agreement that comes as close as possible to what the parties could have expected to achieve if they had been forced to impasse. Under the legislation governing these parties, the right to strike does not exist. Interest arbitration is imposed upon the parties in order to protect the safety and security of the community. Accordingly, we embark on this analysis with a goal of trying to determine what the parties would have agreed to had they had the right to strike. In order to do this, we look at the factors mandated by the Fire Protection and Prevention Act s. 50.5 insofar as the evidence presented at the hearing covers those factors. In addition, we take into consideration all the evidence presented at the hearing and the rationale for each party's proposals. Finally, we also note the items the parties were able to settle prior to this arbitration. We look at these in order to help craft a collective agreement that creates a whole and coherent package and which reflects the give and take that one finds in collective bargaining.

5 Having stated the principles governing our analysis, we now turn to the specific items in dispute.

Vacations

6 The current collective agreement provides that Fire Fighters will get five weeks' holidays after 20 years of service and five weeks plus one day for each year over 25 years to a maximum of six weeks after 25 years. The Fire Fighters are asking for this provision to be amended so that Fire Fighters get five weeks' holidays after 16 years and six weeks' holidays after 24 years. The Association justifies this request by citing statistics that show that 65% of municipalities had "similar language" with five and six-week vacation allotments.

7 The Corporation opposes the Association's request citing other statistics that show only 17 municipalities out of 73 give Fire Fighters five weeks' vacation in less than 16 years and only 16 municipalities give six weeks' vacation after less than 25 years. Further, the Corporation points out that the Association is seeking a large "catch-up" award in terms of wages. Accordingly, it is argued that it would be inappropriate to award any significant increase in vacations as part of the kind of "rich" package that the Association is seeking.

8 Having reviewed the statistics and the submissions filed by both parties, we are not persuaded that there is any demonstrated reason to increase the vacation allotment for Fire Fighters before 25 years of service. However, we are persuaded that it would be appropriate to amend Article 4.01 to provide that there shall be six weeks of vacation for Fire Fighters with 25 years of service or more. Therefore, we order that Article 4.01 be amended accordingly.

Vacation Schedule

9 The current collective agreement provides that vacations are to be arranged in a system agreed upon by the Chief, the President of the Association and the Chairman of the Personnel Committee of Council. The Association is seeking an amendment that reflects an agreement that was reached in 1999 between the Chair of the Bargaining Committee for the Corporation and the Association. The Association argues that that agreement is currently being implemented, works well, and ought to be protected in the collective agreement.

10 The Corporation is seeking an amendment to the collective agreement that would allow the Chief to schedule vacations "on a system as directed" by him. The Corporation submits that this is necessary in order to maintain the control and direction which is critical for the protection of the community.

11 We refer this back to the parties for further discussion.

Retiree Benefits

12 Currently the collective agreement provides that benefits will continue for retired Fire Fighters from their 61st to 65th years. The Association is asking that benefit coverage continue from the date of retirement to age 65. The motivation behind the proposal is the recognition that Fire Fighters are retiring early and want to have the benefits continued. Further the Association points out that this is a common provision, to be found in over 2/3 of the collective agreements in the province.

13 The Corporation responded by pointing out that because OMERS allows people to retire early, the Association's proposal could amount to a large financial obligation for this Employer. While the Corporation acknowledges the merit in the Association's proposal, the Corporation stresses that any award in the Association's favour should be taken into consideration in the costing of the collective agreement as a whole.

14 Having regard to the mutually recognized merit in the Association's proposal and also taking into consideration concepts of implementation, the Board orders that Article 6.03 be amended to read as follows to take effect the date of this Award:

The Corporation agrees to continue coverage of benefits to retired Pembroke Fire Fighters' Association members from the date of retirement to age 65. "Benefits" shall mean the Medipac that shall include major medical benefits, including drugs, other health benefits including vision and dental benefits, as defined under the provision of the Retirees Benefit Plan.

The Association agrees that the cost of the Medipac shall be at the rate being paid by the Corporation for the current year in which the member retires. The Association agrees that the Corporation will pay fifty (50) percent of any future increases by the Carrier in the Retiree Benefit Plan with the remaining fifty (50) percent being borne by the Retiree.

To avoid duplicate family coverage, family coverage will be provided where no other coverage is available provided the coverage is not a reduction in benefits to the Retiree or Retiree's family, as outlined in the Retiree Benefit Plan. Each situation shall be judged on its own merit between the Corporation, the Association and the Retiree.

No Layoff Clause

15 The Association proposes that a new clause be inserted in the collective agreement that will ensure that there be no layoff or reduction of full-time Fire Fighters for the full term of the contract. Further, it would provide that the complement of Fire Fighters shall not fall below 16, excluding the Fire Chief and the Deputy Fire Chief. The Association acknowledges that the Corporation has been willing to sign letters of undertaking which have been attached

to the collective agreement and have ensured a complement for the term of the contract. However, the Association wants a no layoff clause enshrined in the collective agreement in order to prevent any further erosion of the bargaining unit that has occurred over the years and to ensure optimum protection to the community.

16 The Corporation responds to this request by stressing that it is prepared to renew the undertaking that is appended to the current collective agreement that promises to maintain a complement of at least 15 Fire Fighters. Counsel for the Corporation also argues that there are several provisions in the collective agreement already which give protection to the Association and its members. The Corporation vehemently resists any amendment to the collective agreement that would "lock in" or create a permanent obligation to a set number of Fire Fighters.

17 Given the Corporation's willingness to renew the undertaking to maintain the current complement, and given the existing protections to the Association in the collective agreement, we order that the letter that is attached to the current collective agreement promising that the complement shall not fall below 15 full-time Fire Fighters, be signed anew by the Corporation and appended to the new collective agreement.

Successor Rights

18 The Association is concerned about the pending amalgamation of the City of Pembroke with another or other municipalities. The Association proposed a new provision in the collective agreement that would ensure that it can play an integral role in the process of any form of merger. The Association is trying to ensure that it will be informed or consulted about a merger and that it would have the right to consent to any restructuring that could affect the collective agreement or the terms and conditions of employment.

19 The Corporation resists the Association's request pointing out that the affect of the proposed language would be to give the Association a "veto power" over elected officials on the issue of amalgamation. Further, while the Corporation acknowledges that the Association will have concerns over the potential effect of amalgamation on the bargaining unit, it was submitted that the appropriate way to address these concerns is not to be found in the collective agreement. Further, it was pointed out that nothing in the parties' collective agreement could prevent any amalgamation. It was suggested that the interests and concerns of the Association should be dealt with through collective bargaining and consultation with the Corporation, not by way of an interest arbitration award. Finally, the Corporation points out that protections given to the Association's members in the Public Sector Labour Relations Transition Act 1997 preserve the employment of members of the bargaining unit and the collective agreement.

20 The Board of Arbitration is sensitive to the concerns of the Association and its desire to protect its members. However, the Association's proposal goes far beyond what can be expected to be achieved in law. Even if the proposal were accepted, it would probably not have the force and effect of giving the Association the veto power it seeks over the Corporation insofar as amalgamation is concerned. The Board takes solace in the fact that some protections are to be found in the Public Sector Labour Relations Transition Act 1997. Those protections, coupled with the Association's ability to engage in collective bargaining with a new corporate entity in the event of amalgamation, are sufficient to persuade this Board that it would be inappropriate to accede to the Association's request.

Vacancy Clause

21 The Association is seeking to have a new clause put in the collective agreement that would ensure that no position in the department, excluding the Fire Chief or Deputy Fire Chief, shall be left vacant for a period in excess of three months. The rationale for the proposal is that it would ensure that the complement within the department would remain constant and stable. The Association has seen its ranks diminish over the last number of years and has serious concerns about safety.

22 The Corporation responds by submitting that the proposal is "a serious encroachment on the Corporation's ability to manage its work force." Further, the Corporation suggests that the proposal is "academic" given that the Corporation is prepared to renew the Letter of Agreement ensuring a complement of at least 15 full-time Fire Fighters.

23 Given the Corporation's willingness to ensure the current level of complement for the life of this collective agreement and given the other protections in the collective agreement with regard to the membership, we see no reason to accept the Association's request at this time.

No Contracting Out

24 The Association is proposing new wording in the collective agreement that would provide that no work customarily performed by an employee covered by the contract would be performed by another employee of the Corporation or anyone outside of the bargaining unit except to the extent agreed upon by the parties and except to the extent of the current practices as it relates to volunteer Fire Fighters. Essentially, this is a no contracting out clause. The principle behind the proposal is to protect present and future employees of the Corporation. The Association points to similar language in what are proposed as "comparable" municipalities.

25 The Corporation's response is to submit that there is "no demonstrated need" for the addition of a no contracting out clause given the existing collective agreement restrictions and the number of Fire Fighters. Reference is made to Articles 23 and 24 and the Letter with regard to complement.

26 On the other hand, the Corporation is suggesting that Article 23 of the current agreement should be deleted so that all emergency response vehicles would no longer be required to be driven by full-time Fire Fighters. The basis of the Corporation's request is that this would provide more flexibility to use volunteers.

27 There are serious implications in both parties' proposals. However the Board of Arbitration is convinced that this may require more attention in collective bargaining which the parties can address in the next round of negotiations. In the meantime, the status quo shall be maintained with regard to Article 23.

Wages

28 The Association is seeking parity with the Police in this community. The Association filed charts and statistics outlining the historical relationship between the Firefighters and the Police in the Pembroke area as well as comparable communities. Another chart showed the historical relationship of this Firefighters' bargaining unit to comparable bargaining units elsewhere. The effect of the Association's proposal would be a 12% wage increase over the three years of the contract.

29 The Corporation responded by recognizing that this Board of Arbitration should take some guidance from the historical relationship of approximate parity between police and fire generally. However, the Board of Arbitration was cautioned that "approximate parity is not a mechanical exercise to be engaged in a vacuum." The Board of Arbitration was also cautioned against adopting a concept that would allow either fire or police to "coat tail" on each other's bargaining successes. However, in any event, it was stressed that a board of arbitration should not try to make adjustments to a bargaining unit in a dramatic or abrupt manner. Instead, it was suggested that any adjustments must be made gradually over a period of time.

30 Further, while acknowledging that the Corporation was not mounting an "ability to pay argument", it was stressed that the community of Pembroke has an average population income of approximately \$25,000. The Association's request was put in this context in order to show that some restraint should be exercised in designing the wage award.

31 The Board of Arbitration has taken into consideration all the submissions and materials filed by the parties. The intent of this Board is not ignore the realities of the community. Instead, as stated above, the intent of the Board is to try to replicate what the parties could have been expected to achieve in free collective bargaining and make the kind of adjustments that the parties would themselves have accepted.

32 Accordingly, we award the following wage increases to be applied to the First Class Fire Fighter rate retroactively and that all other ranks shall be adjusted accordingly:

January 1, 1998	2 %
July 1, 1998	2 %
January 1, 1999	2 %
July 1, 1999	2 %
January 1, 2000	2.298 %
October 1, 2000	2 %

Further, a probationary rate of 60 per cent will be added to Schedule A of the collective agreement. The collective agreement will be amended where necessary to implement the introduction of the probationary status. This will be effective the date of this Award.

Conclusion

33 We urge the parties to incorporate the terms of this Award and their agreed upon items into a new collective agreement as soon as possible.

34 We remain seized with this matter should the parties require further assistance.

35 We thank the parties and their representatives for their professional and helpful submissions and briefs.

DISSENT

36 A. REISTETTER, CORPORATION NOMINEE:-- I have had an opportunity to review the award, and with respect I must dissent.

37 The wage and benefit increases awarded by the Board, without off setting trade-offs, I believe are too high.

DISSENT

38 J. SACK, ASSOCIATION NOMINEE:-- While not all matters have been dealt with that could have been addressed, I realize that the emphasis in this round has been on achieving restoration of parity with police.

39 The parties should address the other important issues in the next round of negotiations.

qp/d/qlsld/qlahp/qlmmn

IN THE MATTER OF AN ARBITRATION
B E T W E E N :

SERVICE EMPLOYEES INTERNATIONAL UNION,
A.F. of L., C.I.O., C.L.C., LOCALS 183,
204, 268, 478, 532 and 777

- and -

A GROUP OF 46 HOSPITALS

BOARD:

M. Teplitsky, Q.C., Chairman

Stephen Lewis

T. W. Sargeant

APPEARANCES:

On behalf of the Hospitals:

T. F. Storie, A. O. Shakes, J. Edwards, D. Macdougall,
R. G. Halstead, M. J. Bichan, C. Boettcher, J. Flesher,
P. Hawn, J. Vaillancourt, J. Edwards

On behalf of the Union:

S. E. (Ted) Rosecoe, Judi Rowland, Joyce Hansen, Larry
O'Brien, Elaine Harris, Don Burshaw, Livio Piersanti,
Isabel Gutoskie, Fitzroy Kelly, Mark Ortlieb, Tom Small,
Marcelle Goldenberg, Alan Edge, Charlie Ireton,
Barbara Spooner

Hearing held August 9, 1982.

This Board was constituted to determine a Collective Agreement for the period of June 1, 1982 to May 31, 1983. I note that this term was agreed upon between the parties.

Before I address the substantive issues which the parties have asked us to resolve, I propose to make some comments about the process which we followed in this arbitration in the context

of how compulsory binding arbitration currently functions in the hospital sector and how it is viewed by the parties.

The complaints about compulsory binding arbitration are numerous. The process is attacked both on the ground that the right to strike is a fundamental freedom (like freedom of speech) which employees in the hospital sector should not be deprived of and on the ground that the system in place in Ontario does not work well. I do not consider it appropriate for me to enter the debate on whether employees in the hospital sector should or should not be permitted the right to strike.

On the other hand, I do consider it appropriate to comment on some of the complaints which are made both about the process and about arbitrators and to suggest some changes which, in my opinion, would serve to improve compulsory binding arbitration by making the process more acceptable to the parties and one more likely to produce results with which the parties can live.

The two most recent complaints against the process generally and against arbitrators in particular which I noted, were reported in the Globe and Mail on August 25th and August 26th. On August 25th, the Mayor of Waterloo is reported to have described a prominent interest arbitrator as living in an "academic cocoon". I take it that the description was intended to indicate a lack on the part of that arbitrator of a sense of the real world. It is a commonplace criticism of arbitrators

who happen as well to be academics and one which in his case in particular is totally lacking in any merit. Her Worship's remarks are also very typical of the vituperative abuse which interest arbitrators in this Province are frequently subjected to.

I am concerned about these frequent attacks on arbitrators by both management and unions, not because the sensibilities of arbitrators may be offended, but because these attacks harm the process in several ways. First, the general shortage of interest arbitrators is caused in part because some arbitrators are unwilling to suffer the abuse and refuse these assignments. Rights arbitrations rarely result in personal attacks. Second, these attacks undermine the integrity of the process and the acceptability of awards in the eyes of both the public and the affected employees. Management and unions may understand that attacking arbitrators is part of the "game" and is not to be taken too seriously. The public and the employees are not as "sophisticated". Why should they be led to believe that the awards of arbitrators are intolerable when the criticisms are usually not even believed by those making them? Third, as a society we are diverted from finding appropriate solutions to our economic problems when we fail to accept responsibility for our own conduct and seek rather to blame interest arbitrators. Interest arbitrators make good scape-goats. They lack any effective means of reply.

In the August 26th edition of the Globe and Mail, Premier Davis is reported at the Premier's Conference to have called for a review of the role played by the arbitration system in "perpetuating the inflation cycle". I am delighted that the Premier raises this serious question. I hope that an independent review is undertaken. I suspect that it may disclose that the responsibility for inflation cannot be laid at the door of compulsory binding arbitration.

Interest arbitrators attempt to emulate the results of free collective bargaining. As I wrote in an award between the Ottawa Police and the Board of Commissioners of Police dated September 10, 1980 at page 4: "Interest arbitrators interpret the collective bargaining scene. They do not sit in judgment of its results". If our awards are inflationary, it is ordinarily because the freely negotiated settlements both in the private and public sector are inflationary. One should remember that the vast majority of settlements achieved in Canada are voluntary settlements between the parties without the intervention of an interest arbitrator. Indeed, even in those sectors which are controlled by compulsory binding arbitration, the freely negotiated settlements tend to lead the way. Employers, it seems, overlook their own freely negotiated and inflationary settlements when they criticize arbitators whose awards mirror these settlements. And these settlements must be followed because the goal of compulsory binding arbitration is to ensure that the parties affected by the loss of the right to

strike fare as well, although not better than, those parties whose settlements are negotiated within the context of the right to strike.

The parties also frequently complain about their inability to obtain the services of the most experienced and qualified arbitrators for the resolution of their interest disputes. The principal reason for their difficulty in the hospital sector stems from the fact that the current tariff for the payment of interest arbitrators is woefully inadequate. For those arbitrators who maintain offices and support staff at their own expense, payments under the tariff are barely sufficient to cover their overhead.

This difficulty does not exist in the area of rights arbitration because the fees are not set by any tariff and are only subject to the control which is implicit in the ability of the parties to refuse to use the services of an arbitrator whose fees are considered too high. It is ironical that interest arbitration which is recognized to be more difficult to perform than rights arbitration, which requires the arbitrator to undertake much greater responsibility, and which exposes the arbitrator to considerable abuse, should be paid at an average of approximately 1/3 the fees which a rights arbitrator will earn. Unfortunately, the proposed amendments to the tariff are too low to provide a remedy to the situation which the parties currently find intolerable. Accordingly, at the present time, the only arbitrators who eagerly

undertake these interest arbitrations are those who seek to accelerate their acceptability in the field of labour relations, in other words, the most junior arbitrators. It strikes me that interest arbitration is not the appropriate training ground for new arbitrators.

Another complaint which is frequently raised is that it is difficult for the parties to negotiate at the bargaining table because there is easy resort to compulsory binding arbitration as an ultimate dispute resolution mechanism. Accordingly, few matters are resolved between the parties, many are submitted to Boards of Arbitration, many involve drafting requirements at which Boards of Arbitration are woefully inadequate, with the ultimate result that the award may prove difficult to live with.

These are legitimate concerns. In an effort to meet these problems, in this particular case, our Board was requested by both parties to attempt to mediate a settlement in advance of the formal hearing; in other words to conduct a mediation/arbitration. Although resort to this form of third party intervention is common in other sectors, I am not aware of its having been chosen by the parties in the hospital sector on any prior occasion. Ordinarily, any mediation which takes place is on an ad hoc basis either during the formal hearings or between the members of the Board of Arbitration after all of the evidence has been adduced and the arguments have been

concluded. Although we were unsuccessful in our attempts at concluding a settlement of the entire dispute, we did succeed in stimulating additional fruitful face to face bargaining with the result that the number of issues was significantly reduced.

Mediation/arbitration offers many advantages both for the parties and for a Board of Arbitration. A dispute which has too many issues is extremely burdensome and unwieldy and makes the task of arriving at an acceptable result more difficult. Mediation facilitates the settlement of many of the less important items in dispute because within the mediation process, the parties find it easier to openly assign priorities to their interests. The dynamic of mediation serves to require the parties to take responsibility for decision making--a responsibility which they otherwise very readily abdicate in favour of submitting to arbitration. During mediation the items which can be settled and the cost of settlement are clearly identified. The more issues that the parties themselves settle, the more the ultimate result reflects a bargain made between them. It is universally recognized that such a bargain is preferable to one imposed by a Board of Arbitration. Another important benefit also results from a reduction in issues, namely, that the parties do not have to spend as much time or incur as great a cost in preparing extensive briefs. As well, the number of days spent in formal hearings is dramatically reduced, in this case to one day. Lastly, the opportunities for drafting viable

language are increased in the informal atmosphere of mediation where the results can be checked thoroughly by the parties and where it is possible to ensure that both parties understand what is intended by the language.

In a scheme of compulsory binding arbitration, simple mediation is not likely to prove successful. This comment is no criticism of Ministry of Labour mediation. Rather, it recognizes that when resort to arbitration is automatic and arguably, at little or not cost to the parties, a mediator, in an important central negotiation is at a great disadvantage. It is virtually impossible for him to muster sufficient leverage to provide real assistance to the parties in reaching an agreement.

On the other hand, a mediator who will ultimately, if necessary, become arbitrator can exercise much greater leverage. I am not suggesting that a mediation/arbitration is an exercise in power--agree to it or else I will impose it on you. A mediator/arbitrator must be mindful of the requirements of natural justice; in particular, he must have an open mind and appear to have an open mind until the proofs and argument are complete. Nevertheless, the suggestions of a mediator/arbitrator, however mild the form of their expression, and however couched in appropriate caveats, are given great weight by the parties. His suggestions operate both positively in the sense that these become the basis for resolution because the parties adopt them, or negatively, and to equally

good advantage, by alerting the parties to the mediator's train of thought, which they may both find quite unacceptable.

In my respectful opinion, it would both expedite the process and heighten the chances of settlement if Boards of Arbitration were empowered by the Statute, at the outset, before and in lieu of any other form of mediation, to assist the parties in reaching an agreement.

In addition to the matters already addressed, I would suggest that the following changes would also prove of assistance:

First, the absence of a central information collecting agency providing objective data to the parties and the third party neutrals, severely impedes the process. The necessity for such a service was recognized by the Johnson Commission. Moreover, such a service is made available by the Education Relations Commission pursuant to Bill 100 and is of great assistance to the parties and to third party neutrals. Without such data, it is difficult to assess competing claims in terms of industry norms.

Second, the data currently available is generated by Collective Agreements each of which can have and often does have different commencement and expiry dates. Whatever data is available, is difficult to apply. Consideration should be given to requiring the same commencement and expiry date for every

Collective Agreement under the Act although permitting the parties to bargain in multiples thereof. The data thus generated would be more helpful because it could be more readily and precisely applied. The benefits from this approach are apparent in the educational sector where every contract is required to have the same commencement and expiry dates.

Third, I encounter many cases (this is not one of these) where the employees have, in my judgment, waited far too long for a new Collective Agreement. Lengthy delay makes the achieving of a mutually acceptable result extraordinarily difficult because delay itself often creates a serious strain on the relationship. I suggest that consideration be given to empowering the Minister, if a Collective Agreement has not been renewed by its expiry date, to appoint forthwith a Board of Arbitration. Any conciliation or mediation can take place between the expiry date of the Collective Agreement and the convening of the Board of Arbitration. Lengthy delays are entirely unnecessary and in fact, diminish the acceptability of the process.

I turn now to a consideration of the issues which have been raised.

SUPERIOR CONDITIONS

In 1978 the Board of which I was Chairman, took the view that superior conditions should be dealt with on an

issue by issue basis and limited to central issues in dispute between the parties. The 3 specific areas which are raised are protective clothing and safety footwear, premium contribution to H.O.O.D.I.P. and work of the bargaining unit. With reference to protective clothing and safety footwear, there was no evidence that superior conditions exist. Accordingly, there is no purpose in any award and I decline to make one.

With respect to H.O.O.D.I.P., this is inappropriately characterized as raising an issue of superior conditions. Certain of the hospitals contribute in excess of 75% towards H.O.O.D.I.P. However, the Employer is offering a plan which is superior to that which exists in those hospitals. What the Union is seeking is to extract the best part of the current level of benefit and add to it the best part of the new proposed benefit and from the two of them make out what would indeed be a superior condition. Accordingly, it is my award that the Union may choose either to continue with its present level of benefit or to accept the proposal which is being offered. It may not combine the best of both.

The same comments apply with respect to the third item which is work of the bargaining unit. I see no reason in the circumstances why the Union may not elect either to maintain current language or to accept the current proposal.

I appreciate that offering options avoids the goal of

standardization of collective agreements. On the other hand, the absence of complete standardization is implicit in the notion which underlies the whole subject of superior conditions. Central bargaining is not viable where the parties are unable to maintain their "superior conditions". As I have already pointed out, this is quite different from attempts to combine from the status quo and the current proposal that which is superior in each.

SPECIAL ADJUSTMENTS OTHER THAN R.N.A.

The parties have agreed on a percentage increase across the Board as opposed to a flat increase on an hourly basis for each employee as had been the case in prior years. The effect of this is to generate a larger increase for those who earn the highest hourly rates. The persons for whom a special adjustment is sought fall within this category. Accordingly, this request is denied.

SPECIAL ADJUSTMENTS R.N.A.

The Employer is offering .15¢ an hour together with the grid. The Union is seeking .25¢ an hour and there does not seem to be any dispute with respect to the grid. In light of the balance of what I propose to award, I think that the Employer's offer is reasonable and accordingly, I would award the same by the Employer in this regard.

WAGE PARITY (5 HOSPITALS)

I indicated during the course of the hearing that Sensenbrenner seemed to be out on its own and that it should be improved on the basis which was also suggested at the hearing. We referred the matter back to the parties and will remain seized in the event that they are unable to reach agreement. The claim for wage parity in all other respects is denied. Although some of the rates are lower than others, in some cases they are also higher. In any event, overall disparities are quite minimal.

PAY FOR CENTRAL NEGOTIATING COMMITTEE

This matter was placed before Professor Weiler last year. He refused it. I am not bound by his refusal but as a matter of policy I take the position that where an arbitration Board has dealt with a matter in the prior year, a very strong reason should exist before a change should be made in the following year. Bargaining would be entirely chaotic if the parties had a realistic expectation that all matters could be changed annually. Wholesale changes do not occur where the right to strike exists. They should not occur here. If I found what Professor Weiler did clearly wrong, I would not hesitate to change it. On the other hand, if I merely disagree with him, I think that it is better in the first year after an arbitration award not to change those matters which are not clearly wrong and in respect of which there may be legitimate differences

of opinion. I do not think he was clearly wrong in refusing pay for the central negotiating committee and accordingly, this item is denied.

VACATIONS

Vacations have been improved each year since 1978. The current level of vacation benefits compares favourably with the vacation benefits which others have. Accordingly, I can find no basis for an improvement at the present time. This request is denied.

WELFARE

The Employer has offered some changes. The Union seeks others. Comparison of the health and welfare benefits for its employees, including the changes proposed by the Employer, indicate that they are comparable with other employees in the public and private sectors and no basis exists for a change at the present time. Accordingly, except as proposed by the Employer, this request is denied.

SHIFT PREMIUM

The Union seeks .35¢. The Employer is suggesting .31¢ per hour. The Nurses received .35¢ an hour and that was the comparison that was used by me in 1978. I can find no reason to depart from that view and accordingly, would award .35¢ per hour.

I would not otherwise deal with the subject of when the shift premium is payable. Conditions vary very much from hospital to hospital and accordingly, I decline to make an award in respect of that matter and would leave the current language as may exist in each Collective Agreement.

PAID HOLIDAYS

The employees currently enjoy 11 paid holidays. They seek an additional paid holiday. At this particular time and given the fact that 11 paid holidays is normative, I would not award any increase. This request is denied.

CONTRACTING OUT

In 1978 a request for contracting out was made before the Board which I chaired. That request was refused. Last year, Professor Weiler awarded a consultation committee.

Although an award of "no contracting out" will offend the ideology of some, "no contracting out" clauses are common both in the public and private sectors and cannot be inserted or rejected on the basis either that one believes in the concept or one does not believe in it. Rather, an arbitrator must weigh the competing interests: -- job security vs. freedom to manage and utilize sparse resources. In my opinion, economic conditions in this province have deteriorated to such an extent that the balance has now shifted in favour of recognizing at this particular time the job security which "no contracting out" is intended to

provide. A lay-off for these employees at this particular time means, for all practical purposes, that they will be without a job.

I appreciate, as Mr. Storie argued, that a provision, once inserted in a Collective Agreement, is almost impossible to dislodge in the future. Accordingly, rather than inserting a provision with respect to "no contracting out" into the Collective Agreement, I have decided to offer the Employer the opportunity to provide a Letter of Understanding to the Union on this issue, such letter to include the following: "For the period of September 1, 1982 to August 30, 1984, the Employer undertakes that it will not contract out any work usually performed by members of this bargaining unit if the results of such contracting out result in the layoff of any employees other than casual part-time employees. Contracting out to an employer who is organized and who will employ the employees of the bargaining unit who would otherwise be laid off is not a breach of the Letter of Understanding."

Letters of Understanding in the private sector are common. I can find no reason for refusing to utilize this useful collective bargaining tool in this sphere.

WAGES

The Union's proposal is for a 14% increase. The hospital's proposal is for a 10% increase split 7% at the commencement of the contract and a further 3% at a later date.

I have no hesitation in stating that had I been arbitrating this matter 3 or 4 months ago, an appropriate increase would have been approximately 12½%. There are any number of different settlements within the hospital sector and in the public sector generally which reflect wage increases at that level. Indeed, the settlements in the health sector in the first quarter of 1982 averaged 13.8% in Ontario.

On the other hand, the most recent statistical data released by Labour Canada with reference to wage settlements in the second quarter of 1982 show a continuing decline in the level of settlements from the first quarter of 1982 and the last quarter of 1981. At the present time, the average increase is 11.3%. Further, the most recent data in the Consumer Price Index indicates the rate of inflation has slowed to an annual rate of 10.8%.

If I were to award 12½% at the present time, it seems to me that I would be ignoring entirely the fact that economic conditions have worsened and that this worsening has been reflected in the level of settlements which are currently being negotiated both in the private and the public sector. Whether this trend will continue over the next 12 months is impossible to know with any degree of certainty although the likelihood is that it will. An increase of 11% will provide adequate protection against inflation over the term of the agreement and represents a significant recognition compared

with prior settlements in 1982 in the hospital sector, of restraint.

In arriving at an 11% increase, I also have recognized that Professor Weiler awarded .35 ¢ an hour to C.U.P.E. from June 1 to September 30, a 4-month period. This is approximately a 4½% increase for a 4-month period. On an annualized basis, it would represent 13½%. Anything less than an 11% increase would likely result in these employees falling once again behind C.U.P.E.

Lastly, notwithstanding that the parties seem to approach each interest arbitration as though it represented the beginning and the end of their relationship, in fact, it represents only one instance in the continuum of their collective bargaining. Because the parties have limited the length of the contract to a 12-month period, there is absolutely no reason why, if my award of 11% should prove either somewhat too high or somewhat too low, appropriate adjustments cannot be made in the next contract period. Any adjustments should not be significant because I have no doubt that an award of 11% is within the range of reasonable.

Accordingly, I award an 11% increase effective June 1, 1982.

PART-TIME ISSUES - Exclusion of Holiday Pay
from Payment in Lieu

In my opinion, Professor Weiler was not clearly wrong

in his decision last year, and accordingly, I would not interfere with it at this time. This request is denied.

- Progression and Vacation Pay
Progression

The issue is whether employees for whom there is not at the present time wage progression should start their accumulation as at the date of this Collective Agreement or as at the date of hire. In my opinion, the appropriate time is at the date of this Collective Agreement.

As to the other part-time issues, these need not be discussed and fall to be determined on the same basis as the full-time agreement including the provision for contracting out save and except to the extent that casual part-time employees are not protected.

EFFECTIVE ABSENCE

Professor Weiler introduced a provision last year which I find no reason to change at this time. Accordingly, this request is denied.

LYNDHURST HOSPITAL

This matter was addressed by Professor Weiler last year. He ruled on the matter and I can find no appropriate basis for differing with the conclusion which he reached. Accordingly, this request is denied.

RETROACTIVITY

On the issue of retroactivity, the Union seeks that it be for all hours paid. Apparently, Professor Weiler used the language "all hours worked". In my opinion, he did not mean anything different than "all hours paid" and accordingly, I would insert the following clause:

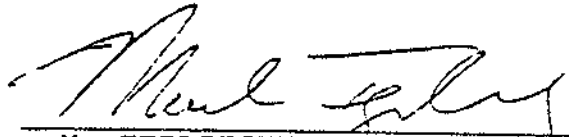
'Retroactivity will be paid for all hours paid by the employer to all employees on the payroll as of June 2, 1982 and to all new employees hired since that date on the basis of the awarded rates. Retroactivity will be paid within two pay periods following the release of the award. If an employee shall have terminated his/her employment since June 2, 1982, the employer shall advise the employee by notice in writing by registered mail to the last known address on the records of the employer and the employee shall have sixty (60) days from the posting within which to claim any payment due to him/her and failing claim for payment, the employer shall not be further obligated for payment to such employee.'

We will remain seized of any outstanding or unresolved matters pending execution of a Collective Agreement.

I wish to note with appreciation, the special co-operation and assistance that was extended to the Board by both parties both in the mediation and in the arbitration process. The conscientious effort made by both parties to reach a settlement was refreshing and when a settlement of all issues was not possible,

they resolutely pushed on to settle as much as possible. I
applaud their efforts.

DATED this 31st day of August, 1982.



M. TEPLITSKY, Q.C., Chairman

A partial dissent



STEPHEN LEWIS

Dissent to follow

T. W. SARGEANT

PARTIAL DISSENT FROM STEPHEN LEWIS

This award has two distinct parts: the Chairman's views of the arbitral process, and the actual determination of issues. I shall reverse his chronology by dealing with the issues first.

The truly innovative feature of this award - and one with which I readily concur - is the provision that there shall be no contracting out of bargaining unit work for a period of two full years. It is the first time in the hospital sector that so unequivocal a step has been taken, and it is long overdue. Hitherto, arbitrators have dealt with contracting out in a fashion so pallid as to amount to irrelevance. Now, finally, we have a letter of understanding which is an unambiguous and conclusive prohibition.

For the awarding of such a provision, the Chairman deserves to be saluted. I may disagree with him profoundly on other matters, but I cannot dispute this important initiative. Contracting out has been an accelerating threat to workers in the hospital sector. Whole sections of a bargaining unit can be (and have been) amputated in the name of contracting out. It is a deplorable practice to turf people out of their jobs solely for the reason of saving money by having the same work performed, on contract, by unorganized workers at lower rates of pay, outside of the bargaining unit.

It is therefore a pleasure to have the policy terminated, even if, in the first instance, for only two years. Happily, once such a provision is formally attached to the collective agreement, there is always a good possibility of its further extension.

The Chairman has one over-riding rationale: job security at a time of high unemployment. He is right of course; but it is, in my submission, only a partial rationale. Contracting out is, in principle, a pernicious practice, and should be expunged once and for all. What is more, the letter of understanding in this agreement should be seen as but a first step in the ongoing struggle to protect the integrity of the bargaining unit. More and more often these days, hospital workers find themselves out of a job for two additional reasons: full-timers replaced by part-timers, and lay-offs attributable to policies of alleged restraint. Somewhere along the way, preferably sooner than later, there must be contractual protection against the arbitrary behaviour of hospital employers ... the health care system is in sufficiently fragile shape as it is.

However, while I could not agree more with the Chairman in his award on contracting out, I could not agree less in his award on wages. And therein lies my prime reason for dissent.

But I don't want to be unreasonable about it. Mr. Teplitsky attempts to advance a plausible defense for his determination that the wage increase should be 11 per cent, and in the process makes a number of valid points.

Most important, I think, is the simple fact that all of the money is up-front and retroactive. This is a refreshing change from the recent practices of other hospital arbitrators who have developed a positive fetish for "phasing-in". Beyond that acknowledged advantage, the Chairman further enlists the economic climate of the day as his chief rationale, pointing out that wage settlements have been steadily declining, quarter over quarter, and that the latest rate of inflation for July of 1982 has slowed to 10.8 per cent per annum.

However, there is a key paragraph in the award which seems to me to be an explicit refutation of the Chairman's own ultimate finding. Let me quote it:

"I have no hesitation in stating that if I were arbitrating this matter 3 or 4 months ago that an appropriate increase would be approximately 12½%. There are any number of different settlements within the hospital sector and in the public sector generally which reflect wage increases at that level. Indeed, the settlements in the health sector in the first quarter of 1982 averaged 13.8% in Ontario."

Precisely. And that's exactly why I cannot concur in 11 per cent. As a matter of fact, if it were not for the damnable delays invited and encouraged by the Hospital Labour Disputes Arbitration Act (none of them attributable in any way to the Chairman), this award would have been made three months ago when the previous contract expired on June 1, 1982. There is something downright execrable about robbing workers of money they might otherwise have had if the process had worked as it should.

And yet that's not really the point since such matters are beyond the Chairman's control. What is the point, I think, is the Chairman's own recognition that analagous settlements and arbitrated increases have issued at levels higher than 12% for a major part or all of the time embraced by this award.

It seems to me that you just can't have it both ways. If it is argued that the short duration of the contract permits of a lesser benefit package overall, then at least let the wage increase bear appropriate relationship to other increases in the public sector over the same period of time. If the purpose of arbitration is to emulate, simulate,

25

replicate, or approximate (take your choice) "free" collective bargaining, then it cannot be a captive of some capricious moment in time when a given hearing actually takes place; it must, if it is to have integrity, mirror the data for settlements or awards which are directly coincident.

And the evidence is overwhelming. Let me list just a few examples:

1. Provincial government employees have received an average 12.5 per cent increase for the calendar year 1982. Their contracts overlap this contract by a full seven months. Moreover, their recently awarded benefit package which runs through to the end of 1983, and therefore overlaps this award completely, provides a range of improvements which vastly outstrip those in the hospital sector.

2. Medical Laboratory Technologists working in hospitals received a 45 per cent increase in a two-year agreement which terminates on December 31 next. Almost 23 per cent of that increase came in the calendar year 1982. Again there is a seven month overlap.

3. At 5 Metropolitan Toronto Hospitals which are also signatories to this award, some 900 office and clerical employees settled voluntarily for a two-year agreement running from October 1, 1981, to September 30, 1983. Obviously that freely-negotiated contract encompasses the entire time period of this award. The terms were for 13% in the first year and 12½% in the second, all of the money up-front and compounded. There is perhaps no stronger parallel than between these two situations: same hospitals, same union, similar groups of non-professional employees working side by side. By what logic should the service unit receive only 11 per cent?

4. The Chairman makes reference to Professor Weiler's award to CUPE hospital workers of an additional 35 cents to cover the period June 1, to September 30, 1982. Mr. Teplitsky correctly points out that on an annualized basis it would represent 13½%. Let me add Professor Barton's award to the SEIU Local 220 London area hospital workers of an additional 25 cents to cover the period October 1, 1982 to January 18, 1983. That provides a cumulative overlap of seven and one-half months with this award, and on an annualized basis represents 12%. Surely, in the name of equity, it makes more sense to give these employees an increase which might exceed the going rate by half a percentage point for 4½ months, rather than an increase which falls below the going rate by 1½% for at least 7½ months.

5. The Chairman speaks of wage settlements for all of Canada reflecting an average increase of 11.3 per cent in the second quarter of 1982. That is true as far as it goes, but it doesn't go very far. The average in the non-commercial sector (that is, the public sector, which is the relevant comparison for these employees) for agreements without Cola is 12.6%.

6. On May 7, 1982, a mere three weeks before the expiry of this contract, the doctors of Ontario received from the government the following scale of compounded wage increases:

April 1, 1982	-	11%
January 1, 1983	-	3%
April 1, 1983	-	8.75%

It is worth noting a) that prior to the increases, general practitioners were earning a net income of \$70,000. per annum, with specialists at \$101,000. per annum, b) that the percentages themselves apply to gross income, and fail to add in the rising utilization rate, so that for the one-year period reflected in this award, the average percentage increase for the doctors will run between 16 and 18 percent, and

c) that Professor Weiler himself asserted: "The precentage improvement ... will generate an absolute increase in the income of the average full-time practitioner which is greater than the total income of a good many Ontario workers." (emphasis his).

Now I know that many people resent the wage comparisons between doctors and other workers in the health-care system. They argue that such analogies are a red-herring, in no way indicative of useful wage relationships. I disagree. The class system in health-care in Ontario is both odious and inescapable. The privileges of the medical profession extend even to collective bargaining: they have an unfettered right to strike. Those who can rationalize a significant increase for the doctors, and much much less for hospital workers seem to me to be saying, quite eloquently, that there is indeed one law for the rich and another for the poor.

I could obviously go on to enumerate umpteen other public sector illustrations which make the same point - from nurses, to police forces, to teachers, to university faculty associations. But it's surely unnecessary to hammer the nail through the wall. Simply put, the Chairman and I have an abiding difference of opinion over which factors should predominate in the determination of wages. I don't dispute that the economic indices of the day are a useful guide; I only dispute their over-riding application when other factors are more persuasive.

For some, the argument may seem academic since the difference between the Chairman's view and my own is 1½%. But it's only academic to those who prosper financially. Apart from the matter of principle involved, 1½% on an average rate of \$7.94 per hour amounts to \$232. over the year. For people on low incomes, that's a mighty substantial chunk of money.

So ends my observations on wages. I have only one additional comment on the substantive issues of the award. The changes relating to working conditions and benefits are far too spartan - in fact, the improvements are negligible. Apart from the shift premium, and the limited special adjustment for RNA's, this award does very little to improve the lot of these hospital employees.

This is a Chairman who relies heavily on an assessment of what collective bargaining might have achieved. I cannot believe that the SEIU would have settled for so little beyond wages had it been able freely to negotiate an agreement.

So be it. I should now like to turn my attention - rather more briefly - to the Chairman's extensive commentary on the arbitral process. He pretty well divides the commentary into three areas: the critics, mediation-arbitration, and reform of the Hospital Labour Disputes Act. I shall deal with them seriatim.

Mr. Teplitsky's rejoinders to those who criticize the arbitral system are well taken. In fact, he needn't even have wasted words on the Mayor of Waterloo. A great many elected municipal politicians are notoriously neanderthal when it comes to labour relations, and to be attacked by them is a much-coveted achievement. Professor Kenneth Swan, the highly respected arbitrator was, in this instance, the target of municipal abuse, and one hopes he will carry it through life as a badge of honour.

Premier Davis, on the other hand, is a different kettle of spleen. But once again, the Chairman's response is telling. If a government can provide an inflationary settlement for the doctors - the highest paid occupational group in this province - then some arbitrators (albeit not Mr. Teplitsky)

will legitimately extend that precedent to others.

And of course it goes further than that. When some arbitrated awards in the public sector seem high - for example, the 15½ per cent for correctional workers, the 18 per cent for the U of T Faculty Association, or the improvements to benefits and working conditions for all government employees - there is invariably a reasonable explanation. Either the awards reflect public pronouncements from Mr. Davis' own cabinet Ministers, or they reflect an effort to reconstitute years of collective bargaining gone sour, or they reflect a component of catch-up for some group of workers illegitimately prejudiced by a combination of the former wage and price controls and the policies of government restraint.

In every instance there is a careful exposition providing reasons for what has been done. And in every instance, it seems to me, there is a more protective view of the public purse than that which is evidenced by the purchase of a government jet, or 25 per cent of an oil company.

The Chairman's next series of comments are enormously interesting, and speak to the value of mediation-arbitration as a tool in the resolution of interest disputes in the health-care sector. He has himself had great success as a mediator-arbitrator, most notably in the field of collective bargaining between teachers and Boards of Education.

Whether the approach can successfully be transferred to hospitals or nursing homes is a difficult question. Because the parties have no central bank of shared statistical data; because they have been subject for more than 15 years to compulsory arbitration; because there have been bitter illegal strikes, it may be virtually impossible for the employees to

trust a mediator who automatically becomes an arbitrator. The danger, of course, is that the mediator will be so fixed in his or her mind about what the parties might have or should have settled for at mediation that, if the mediation is unsuccessful, the subsequent arbitration becomes a ritual consummation of views already held.

All of which brings me, irresistably, to the question of reform of the Hospital Labour Disputes Arbitration Act. I shan't comment on Mr. Teplitsky's prescriptions because I've done so in other contexts on other occasions. But I do want to mention the one matter which seems to me absolutely crucial: the Act, if and when amended, must contain criteria which will provide an arbitral guide.

At present, there is absolutely nothing against which arbitration boards can measure their decisions - except previous decisions. As a result, arbitrators are literally all over the map, each and every one of them indulging personal eccentricity in the delivery of an award. Some such eccentricity is sound, rational, and lucid. Some is from another planet. More often than not, the parties have no way of knowing, in advance, which arguments, which sets of data, which comparisons, which criteria are important to a given arbitrator.

It's a jungle out there, where every time he turns around, Stanley meets a different Livingston.

Worse still, there is a profound difference of philosophy at work. For some arbitrators, the process is primarily adjudicative - each issue is decided on its merits. For most arbitrators however, the arbitration process is seen to approximate what would most likely have been achieved through normal collective bargaining, and every such Chairperson has a different way of assessing the bargain.

31

This is made doubly difficult because the approach of the parties tends to be adjudicative. They come before boards of arbitration with briefs which scrupulously analyze the issues according to their merits. Rarely, if ever, does union or management speculate on the deal that might have been made if there had been a negotiated settlement - nor, I suppose, should they.

So the system, as it presently operates, is a maelstrom of cross-purposes from which justice and fair-play rarely emerge. Privately, behind the scenes, the government has been meeting with the Ontario Hospital Association, and the various unions in the hospital sector, to achieve common ground in a series of changes to the Hospital Disputes Act. They've been meeting, off and on, for more than a year, and thus far nothing has emerged.

Yet the Act as it stands is a travesty, and everyone knows it. A responsible government wouldn't let it sit another day without amendment. Sometimes the Act works, and sometimes it doesn't - it's as quixotic and unpredictable a piece of legislation as ever there was and, as always, the workers suffer the consequences.

To be sure, there are occasional awards which are worth crowing about. But taken over the long-haul, compulsory arbitration in Ontario has done dreadful damage to the economic rights of working-people. This award, with its provision on contracting out, provides some slight redress. On the other hand, the wage increase is a decided financial set-back.

Overall, the hospital workers deserve better.

Alas, they never seem to get it.

THE MATTER OF AN ARBITRATION
B E T W E E N :

SERVICE EMPLOYEES INTERNATIONAL
UNION, A.F. of L., C.I.O., C.L.C.,
LOCALS 183, 204, 268, 478, 532

- and -

A GROUP OF 46 HOSPITALS

BOARD:

M. Teplitsky, Q.C., Chairman

Stephen Lewis

T. W. Sargeant

APPEARANCES:

On behalf of the Hospitals:

T. F. Storie, A. O. Shakes, J. Edwards, D. Macdonnell,
R. G. Halstead, M. J. Bichan, C. Boettcher, J. Flesher,
P. Hawn, J. Vaillancourt, J. Edwards

On behalf of the Union:

S. E. (Ted) Roscoe, Judi Rowland, Joyce Hansen, Larry
O'Brien, Elaine Harris, Don Burshaw, Livio Piersanti,
Isabel Gutoskie, Fitzroy Kelly, Mark Ortlieb, Tom Small,
Marcelle Goldenberg, Alan Edge, Charlie Ireton,
Barbara Spooner

SUPPLEMENTARY AWARD

Certain difficulties in implementing our Award have arisen and have been referred by the parties to the Board. Detailed written submissions were received. I did not think oral argument was necessary and after consulting with the parties, they both agreed that the Board should proceed to make its ruling on the basis of the submissions received to date.

As requested by both parties, we confirm that the matters agreed to by the parties, including those matters resolved through mediation/arbitration, form part of our award and shall be included in the renewal Collective Agreement.

CONTRACTING OUT

The most significant item now in dispute relates to the matter of contracting out. The Employer has offered a Letter of Understanding which will expire one day prior to the expiry of the Collective Agreement. Its position is that it will not, under any circumstances, offer a Letter of Understanding which will expire in 1984. The Employer also seeks withdrawal or deletion of the provision for consultation previously awarded by Professor Weiler.

Mr. Storie submitted that we lack jurisdiction to have the Letter of Understanding with respect to no contracting out extend beyond the life of the Collective Agreement. He also submitted that we are functus officio with respect to the issue of no contracting out.

I do not accept either submission. I agree that the Board may have no jurisdiction to insert as a term of the Collective Agreement a provision which would expire on a date different from the expiry date already agreed upon between the

parties. I did not purport to do so. I offered the Employer the opportunity to provide a Letter of Understanding on certain terms. I did not dismiss the Union's demand for a no contracting out provision in the Collective Agreement. Naturally, had the Employer provided the Letter, I would then have dismissed the Union's demand.

This Board is not functus officio. We expressly remained seized in our original award and our jurisdiction is also confirmed by our governing statute.

The Letter offered by the Employer is not in accordance with the "opportunity extended". Accordingly, for the reasons set forth in our Award, and after reconsidering the whole question, I have concluded that a no contracting out clause be inserted into the Collective Agreement in the terms previously set forth for the Letter of Understanding, save and except the expiry date will be removed. Professor Weiler's consultation clause is no longer necessary and shall be deleted.

SHIFT PREMIUM

It was not our intention that the shift premium be retroactive and we so award.

We will continue to remain seized pending execution

of a Collective Agreement.

DATED the 6th day of October, 1982.

I concur

Mark Teplitsky

M. TEPLITSKY, Q.C., Chairman

Stephen Lewis

STEPHEN LEWIS

Dissenting

T. W. SARGEANT

IN THE MATTER OF AN ARBITRATION

between

SERVICE EMPLOYEES INTERNATIONAL
UNION, A.F. of L., C.I.O., C.L.C.,
LOCALS 183, 204, 268, 478, 532

- and -

A GROUP OF 46 HOSPITALS

DISSENT TO SUPPLEMENTARY AWARD

I have had an opportunity to read the supplementary award of the Chairman in this matter and, with great respect, I am in disagreement with that part of this award concerning contracting out.

I have already expressed my views in my earlier dissent as to my opinion as to the merits of the issue. Obviously, from that dissent, I am in disagreement that such a clause should ever be awarded.

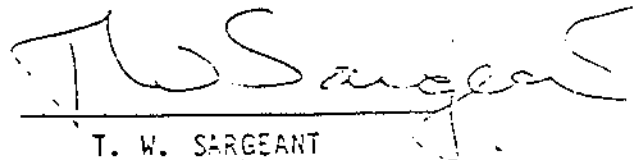
In the supplementary award, the Chairman has stated, "...I have concluded that a no contracting out clause be inserted into the Collective Agreement in the terms previously set forth for the Letter of Understanding, save and except the expiry date will be removed." I am of the opinion that this Board has no jurisdiction to make such an award and is functus officio on this aspect.

In the award dated August 31, 1982, the Chairman on this issue awarded in part as follows:

I appreciate, as Mr. Storie argued, that a provision, once inserted in a Collective Agreement, is almost impossible to dislodge in the future. Accordingly, rather than inserting a provision with respect to "no contracting out" into the Collective Agreement, I have decided to offer the Employer the opportunity to provide a Letter of Understanding to the Union on this issue, such letter to include the following: "For the period of September 1, 1982 to August 30, 1984, the Employer undertakes that it will not contract out any work usually performed by members of this bargaining unit if the results of such contracting out result in the layoff of any employees other than casual part-time employees. Contracting out to an employer who is organized and who will employ the employees of the bargaining unit who would otherwise be laid off is not a breach of the Letter of Understanding."

As can be seen from the terms of that award, the Letter of Understanding was to run for some considerable time after the collective agreement itself was to expire. Whether this part of the award is valid in law or not, is not a matter for this Board to attempt to rectify by a supplementary award. A supplementary award that purports to now award as a contractual term, a no contracting out clause, when the original award dated August 31, 1982 only awarded an "opportunity to provide a Letter of Understanding", is, in my opinion, substantively changing the terms of the original award. While admittedly this Board did retain jurisdiction, at best, in retaining such jurisdiction, a Board only has the right to clarify its award, not, as I understand the law, to substantively change the terms of that award.

I am therefore strongly in dissent on this part of the supplementary award dealing with contracting out.


T. W. SARGEANT

October 12, 1982.

IN THE MATTER OF ARBITRATIONS

B E T W E E N :

EXTENDICARE AND BESTVIEW HEALTH
CARE

- and -

ONTARIO NURSES' ASSOCIATION

AND B E T W E E N :

DIVERSICARE

- and -

ONTARIO NURSES' ASSOCIATION

BOARD:

M. Teplitsky, Q.C., Chairman

Elizabeth McIntyre

Bernie McGarva

APPEARANCES

(Extendicare)

On behalf of the Association: Marilyn Nairn, Mary Hodder

On behalf of the Employer: Bob Bass

(Diversicare)

On behalf of the Association: Felicity Briggs

On behalf of the Employer: Bob Bass

I was appointed Chairman of two distinct interest boards of arbitration, to determine the wages, benefits and working conditions of nurses working in Extendicare and Bestview Nursing Homes (these employers bargain together) and in Diversicare. However, the nominees are the same in both cases. Counsel for the employer was the same. Counsel for O.N.A. was Ms. Nairn in Extendicare and Bestview and Ms. Briggs in Diversicare.

Although separate awards will issue disposing of the specific issues between the parties (Schedules "A" and "B") several issues were raised which can conveniently be dealt with together, in particular, salaries, the percentage in lieu for part-timers, and pro-rating of part-time benefits. As well, the conduct of the arbitrations demonstrated to me once again, that serious problems face interest boards of arbitration in the health care field. I draw attention to these problems in the hope that the present government in Ontario will prove more responsive than have prior governments.

The rationale for the Union's proposal is centred on a claim to "parity in wages" with nurses working in the public hospitals. The evidence discloses that O.N.A. has succeeded in a number of nursing homes either in negotiating or more frequently, in obtaining through arbitration, rates which match the rates in the public hospitals. Indeed, prior to 1982 there was some trend toward "parity" in nursing homes. However, the mandatory restraint legislation in

place for the years 1982 and 1983 (Bill 1979) impacted upon nursing homes differently from public hospitals. In the result, the wages of nurses in public hospitals increased by approximately 4% more during this period than did the wages of nurses in nursing homes. In 1984, Bill 111 took effect. Although its guidelines were not compulsory, the Bill sought to influence results. As predicted by some, the influence was felt in exactly the opposite direction to that intended by the proponents of the legislation. In other words, the legislation caused public sector wages to be higher than they otherwise would have been. O.N.A. settled in 1984 with both Diversicare and Extendicare/Bestview for 5% increases. These voluntary settlements resulted in rates lower than those paid nurses in public hospitals. Suffice it to say that when the largest employers in the nursing home industry are paying salaries lower than those prevailing in the public hospitals as a result of freely negotiated settlements, the employer's argument against parity gathers momentum.

It appears to me that there are four bases which could serve to justify O.N.A.'S position. First, the work performed by nurses in nursing homes is substantially the same as the work performed by nurses in public hospitals. Second, if these jobs are in fact different, the value of the work performed by each group is substantially the same. Third, the bargaining between the parties shows an acceptance by both parties of parity. Fourth, nurses working in nursing homes generally receive the higher rate. In other words, the industry standard is parity with hospitals in wage rates.

Satisfying any one of these propositions may entitle these nurses to a declaration of "parity" in wage rates. I propose to consider each of these assertions in turn, because, in one form or another, each was canvassed during the course of the mediation/arbitration.

1. "THE WORK PERFORMED BY NURSES IN NURSING HOMES IS SUBSTANTIALLY THE SAME AS THE WORK PERFORMED BY NURSES WORKING IN PUBLIC HOSPITALS"

It is quite clear that the duties of nurses in nursing homes are different from the duties of nurses in public hospitals.

In the first Extendicare award in 1974, the Chairman, Mr. O'Connor said:

"We do not agree, as suggested in the minority award that a nurse is a nurse is a nurse. Jobs vary from hospital and in hospitals from job to job, but at no time did the Chairman agree with this silly jingle, that a nurse is a nurse is a nurse."

In a subsequent award of D. W. Rose, Q.C., between Extendicare Limited and O.N.A. (February 17, 1980), he held at page 13:

The Association requested that nurses of the Employer be paid at the same rate as nurses working in active-treatment hospitals (general hospitals) (item 23): In other words they are asking for parity with hospital nurses. It maintained parity had been established by prior arbitration boards' awards including one by

the Chairman hereof. However the Board in this arbitration received viva voce evidence under oath as opposed to the usual submission of briefs by both parties which did not permit the testing of the facts in those briefs by cross-examination as occurred in this arbitration. As a result in this hearing the Board had the opportunity to determine the extent and scope of the nursing duties in nursing homes or hospitals. The result was that the Board determined on the basis of the evidence that the scope of nursing duties in a nursing home are not the same as those duties in a hospital. For instance, the nurses in hospitals are regularly required to check on intravenous feedings and blood transfusions, whereas in nursing homes, the nurses rarely, if ever, have to supervise the intravenous feeding of patients and never have to supervise blood transfusions. In addition there are many other duties which hospital nurses perform for patients and which are not required to be performed by nurses in nursing homes. Accordingly on the basis of the evidence adduced the Board finds that the Association has not proved its claim for parity.

The Association's nominee did not criticize Arbitrator Rose's finding of fact that the jobs are different; indeed, Mr. Goudge agreed that the jobs are different. In fact, O.N.A. had agreed that the jobs were different. Its claim to parity was based on an assertion that the level of responsibility in a nursing home was greater and, therefore, at least equivalent wages were warranted.

In its brief in addressing this decision, O.N.A. submitted that:

- (1) The facts as stated by the Chairman are correct but his conclusion is erroneous. The Association has never based its parity argument on identity of job function but rather on comparability of job responsibilities and utilization of nursing skills. Duties performed by nurses are not identical, either as between units within one agency or as between various agencies. In the Hospital setting, nursing duties in the various areas (Intensive Care Unit, Maternity Ward, Operating Room, Psychiatric Unit) are widely divergent. Some areas require more intensive technical expertise (e.g. I.C.U. or O.R.), whereas others require greater communication skills (e.g. Psychiatry). The intensity of nursing care also fluctuates from area to area,

depending of the condition of the patients. However, it is the nurse/patient ratio which changes with this variable, not the responsibility on the individual nurses involved. It is for this reason that uniformity of rates paid to all Hospital nurses, no matter what their area, has never been seriously questioned.

- (2) Like most Hospital nurses, nurses working in Nursing Homes are applying their general nursing background to a particular area - geriatric nursing. In many ways, this job is even more demanding than many Hospital positions. The nurse/patient ratio is much higher than in any Hospital unit. Furthermore, these nurses must deal with the wide range of ailments (medical, social and psychological) from which elderly patients often suffer. This must be done without the assistance of specialized personnel and equipment which is more readily available to the Hospital nurse.
- (3) In rejecting the parity concept, the Extendicare Board ignored the reasoning of all other Arbitrators who have reviewed this question. They awarded rates which are not only out of line with Hospital rates but with other organized agencies of an identical nature. In so doing, they failed to consider comparable rates in similar job settings, the one criterion which has been universally accepted by Interest Arbitrators. In fact, the Board made no comments whatsoever on how they achieved the rates which were awarded. Having rejected comparability as a criterion in interest arbitration, the previous Extendicare Board replaced it with no criterion whatsoever.

Thus, it is O.N.A.'s position that although the jobs are different, they are worth the same rate of pay. In his award for the period of 1980-1981, Arbitrator Swan also criticized Arbitrator Rose's conclusion that because the jobs are different, the rates must be different. I agree with this criticism. There was no evidence before Mr. Rose to justify that conclusion.

Nevertheless, Arbitrator Swan's findings of fact were the same as Mr. Rose's. After hearing extensive oral evidence, he concluded at page 43 of his award: There is no doubt that these are very different jobs, differing in all sorts of ways". At page 50 to 51 of his award he

emphasized his conclusion as follows: "...the employers have convinced us that nursing home jobs differ from those in the hospitals...". My knowledge of the field satisfies me that these findings are correct.

Despite these facts, arbitrators have continually relied on Professor Gorsky's award in Komoka Nursing Home. In particular, Arbitrator Howard D. Brown has, in reliance on Komoka, found that there should be parity between nurses in nursing homes and in public hospitals. Counsel referred me to Arbitrator Brown's award in the Corporation of the County of Renfrew (Bonnchere Manor), January, 1977, where the arbitrator stated:

The Association proposes the same rates as applied to registered nurses in the Hospital field, as have been applied in a number of recent arbitration awards. The Employer distinguished the type of work performed in this Home from the Hospital field and compared its salary schedule to the other area salary schedules, and of course, the application of the Anti-Inflation controls. Firstly, with regard to the application of Hospital rates and Homes for the Aged, it is our opinion that this issue has been exhaustively dealt with by Professor Gorsky in re Komoka Nursing Home case which was reviewed and upheld by the Supreme Court of Ontario, in which award, the board applied the hospital rates. Since that time a number of arbitration boards have followed in that area, and have also applied Hospital rates for registered nurses in Homes for the Aged and Nursing Homes. In our view, the issue if any, is now determined, and the rates paid to registered nurses in the public general hospital care and have generally been applied throughout the health care industry. The Board has reference to the general Provincial nurses' settlement made in July, 1975, which determined a registered nurse's rate until September, 1976, in the Hospital field, and it is those rates which have been applied in circumstances similar to this home with an additional increase to cover the period concerned in 1977, as the rates for that year have not yet been determined in the Hospital field for nurses...

In my respectful opinion, Arbitrator Brown's analysis of the Komoka award is faulty and his reliance on that case unjustifiable. Professor Gorsky held that kitchen

help, laundry help, housekeeping maid and cook in nursing homes were comparable to the same occupations in public general hospitals and should receive the same rate of pay. He defined comparable as follows, "they have the same level of duties skill and responsibilities". However, in dealing with nurses' aides and RNA's, Professor Gorsky simply applied to their rates the same percentage increase as he had awarded the others. He specifically did not find that nurses' aides and RNA's were comparable with employees in public hospitals having the same classifications and bearing the same titles.

Professor Gorsky's reasons are instructive at page 24.

On the evidence before us we find that the following occupations in the Komoka Nursing Home and public general hospitals are comparable, i.e., they have the same level of duties, skill and responsibility:

- (1) Kitchen help, laundry help, housekeeping maid; and
- (2) Cook.

We believe that these occupations form adequate benchmarks against which to compare wages and benefits at Komoka and public general hospitals.

This conclusion is based upon four factors: First, the bulk of the submission of the employer re non-comparability was directed at the nurse aide and registered nursing assistant categories. There were no substantial differences cited to indicate any disparity in the levels of duties, skills, and responsibilities of employees in the above categories. Second, as a matter of logical inference such differences would not be expected -- type of patient and level of care required make little impression upon the work of kitchen help, laundry help, housekeeping maids and cooks. Third, with respect to cleaners, maids and cooks The Report of the Hospital Inquiry Commission found substantial comparability not only in the health care field but also throughout a host of other industries

These reasons do not support a similar result in the case of nurses. Indeed it is rather ironic that Professor Gorsky's award is used to establish comparability between nurses in nursing homes and nurses in public hospitals when: (a) Professor Gorsky was not concerned with nurses, (b) Professor Gorsky did not find that aides and RNA's were comparable, and (c) as a question of fact, the jobs are clearly different.

Several unfortunate consequences flow from this erroneous application of Komoka. First, the question of parity which was treated properly in Komoka as a factual matter and dependant on a finding of a comparable job, has been elevated to a question of "principle". Arbitrator Brown consistently speaks of the "parity principle". Thus, a failure to award parity is viewed as a departure from "principle" rather than the result of a failure to prove either that the jobs are comparable or of equal value.

Because parity has become an issue of "principle", it deflects parties from the goal of bargaining, namely, to achieve a mutually acceptable result. Settlements which might otherwise be accepted as reasonable, cannot be accepted for fear that in the future they will be viewed as either a departure from or an acknowledgement of a "principle". If the question of whether jobs are comparable or equal in value is treated as a question of fact (which it is) and only one of a number of relevant criteria in wage determination,

there would be less hesitation in making voluntary settlements. Such settlements would represent nothing more than bargains struck at a particular time based on particular facts. These would reflect neither an adherence to nor a departure from "principle".

When parties bargain, they seek to achieve certain goals. The arguments they make to support or oppose particular claims are, in reality, nothing more than arguments. "Parity" is such an argument. As I have said, the goal of bargaining is to make a mutually acceptable bargain. It is not to win an argument.

The elevation of fact to "principle" also suggests an "eternal truth". Yet as I wrote in Palmerston Town Manor and C.U.P.E. (June 24, 1980) at page 5:

"The resolution of interest disputes involves a balancing of the legitimate interests of the employees and the employer as part of a search for a "mutually acceptable result". This is Professor Gorsky's own definition of the goal of interest arbitration. Arbitrators cannot sensibly legislate a relationship between two groups of employees in different industries which will be appropriate for all times. We must recognize that change is a constant feature of collective bargaining. The parties are continually re-defining their own goals in line with their own self-interest as it appears to them from time to time. For example, there may come a day when comparability with the public general hospitals will not be a goal of these employees. They may seek wages and benefits which are superior to those in the public general hospitals. In other words, their collective bargaining cannot be channeled inexorably into a path formed by other unions or other bargaining units."

Finally, this single-minded preoccupation with the "principle of parity" has meant that arbitrators in this sector ignore the usual principles of wage determination. These have been elaborated by experienced arbitrators in many awards. For example, Mr. Justice Dubin, in his award after a long strike in The Metropolitan Toronto Boards of Education and O.S.S.T.F. set forth the following criteria as relevant:

- "1. The overall compensation presently received by the employees involved in the arbitration proceedings, including direct wage compensation, vacations, holidays and other excused time, insurance, pension, medical and hospitalization benefits, continuity and stability of employment, and all other benefits received;
2. A comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally,
 - (1) in public employment in the community, and
 - (2) in private employment in the community;
3. A comparison of the wages, hours and conditions of employment for the employees involved in the arbitration proceedings with the wages, hours and conditions of employment with other employees performing similar services within the same municipality and in comparable municipalities;
4. The average consumer price for goods and services commonly known as the cost of living;
5. Changes in any of the foregoing factors during the relevant period of time;
6. The economic climate of the day, including consideration of the gross national product and of the gross provincial product;
7. The interest and welfare of the public, and the financial ability of those who are called upon to pay the cost of the services being rendered."

He further comments that, "In arriving at an Award, all of these factors must be taken into consideration and not merely one".

To similar affect is the award of Harry Arthurs, Q.C. (now President of York University) in Re Building Service Employees and Welland County General Hospital, 16 L.A.C. page 1. At page 6, the learned arbitrator said:

While the list is not complete, and while no single item is conclusive, we would give the following comparative factors great weight:

1. Wages paid in "comparable hospitals", i.e., those of similar type in communities enjoying a similar cost-of-living and average wage level.
2. Trends in cost-of-living and average wages in the locality where the hospital is located.
3. Trends in comparable hospitals.

We would also consider the following factors to be relevant:

1. Difficulties encountered by the hospital in recruiting and holding staff (some evidence of the hospital's failure to pay a level of wages high enough to attract workers on local labour market).
2. Trends in non-comparable hospitals and in non-hospital occupations, where deserving of special consideration.
3. Trends in hospital wages generally.

We would accord little weight to the following factors:

1. Wage levels in non-comparable hospitals.
2. Wage levels in non-hospital occupations, where there is not substantial identity of working conditions (e.g., hospital tradesmen cannot be compared with construction workers.)
3. Abstract appeals to "justice".

By looking at various appropriate trends as well as existing wage levels, an element of flexibility and movement is preserved which should help to reflect shifts in general community prosperity and in the relative position of hospital workers within the community. It is by reference to these factors that the impact of any decision to make hospital work more attractive can be felt.

If the local considerations which are implicit in the criteria developed by Mr. Justice Dubin and Professor Arthurs and which have resulted in different rates throughout Ontario for police, firefighters, teachers and other public sector employees, are to have no weight in the nursing home sector, it behooves arbitrators first to recognize that their course of action in this sector is unusual and second, to justify their departure from accepted norms.

Although I do not approve the intemperate, even vituperative dissents by employer nominees in several recent awards in this sector, these dissents reflect a growing frustration with interest arbitration. In my opinion, that frustration is understandable. It arises from the fact, as I have noted, that arbitrators have departed without stated reasons from the usual criteria for wage determination. Instead they have adopted a "parity principle" in mistaken reliance on Komoka, without any evidence to permit a rational conclusion to be reached about the comparative value of nursing jobs in nursing homes and in public hospitals.

Lastly, parity in other sectors, for example as between firefighters and police, means reasonable or approximate parity. These words of qualification allow scope for bargaining and the application of "local factors". I do not criticize the decision of O.H.A. and O.N.A. to bargain a single rate in the hospital sector but, needless to say, that decision cannot bind employers in the nursing home sector who neither bargain nor arbitrate together. There is admittedly a "simplicity" in the approach of a single rate. Simplifying matters is worthwhile. But, the goal of wage determination is a "mutually acceptable" result. This goal can only be achieved by the exercise of discretion in the light of all the facts. Discretion can never be replaced by a mechanical approach relying on some absolute formula.

My review of the relevant prior awards would not be complete were I to omit Arbitrator O'Shea's recent award in Newmarket Extended Care and Convalescent Centre and CUPE (March 25, 1985). Mr. O'Shea refused to continue "parity" on the ground of different funding levels. In my respectful opinion, this factor by itself is irrelevant. What is relevant is whether an employer has or has not the ability to pay appropriate increases. Different funding levels may explain an "inability to pay" which the employer has proved through the production of its books and records and through the evidence of its auditors (See Palmerston Town Manor, supra). Absent such evidence, no weight can be given to differences in funding by the province to different health care establishments.

In the result, although I accept that wages paid nurses in public hospitals is a relevant comparable, I reject the claim for parity based on the proposition that the jobs are the same or substantially the same or based on Arbitrator Brown's interpretation of Komoka.

2. THE JOBS ARE DIFFERENT BUT THE VALUE OF THE WORK IS SUBSTANTIALLY THE SAME

There was not a scintilla of evidence adduced before me to establish the validity of this proposition. Its truth is not self-evident to me. One recognizes immediately in examining the work of other professionals that they

frequently receive different rates of pay for different jobs. On this matter Professor Swan commented at page 43 of his Award: "The suggestion of a carefully organized and executed job evaluation seemed to us to be a good idea in comparing allegedly unlike jobs; it was, therefore, exasperating not to be presented with any Ontario evidence of that sort..."

It is, after all, O.N.A.'s argument that the work, although different, has equal value. If this assertion is correct, one could invoke the "equal pay for work of equal value" principle.

In the Extendicare case, I advised the parties that I was prepared to entertain a request for an adjournment to permit the commissioning of a job evaluation. No request was made. In the Diversicare case, the Board heard the oral evidence and received a written report from Mr. Ramsay of Hay Consultants. This firm is experienced in performing job evaluations. Mr. Ramsay's instructions were limited to evaluating the jobs of nurses in Diversicare homes with staff nurses in public hospitals assigned to chronic care patients. He could express no opinion on how nursing home nurses compared with either other nurses in public general hospitals, or relative to a notional "average" public hospital nurse.

I recognize that a job evaluation between nursing

homes and public hospitals is complicated by the fact that nurses working in public hospitals perform an ever increasing variety of duties, some technically complex and some requiring additional training, for example, in the O.R. or in the I.C.U.

Nevertheless, Mr. Ramsay expressed confidence in his ability to provide a proper evaluation if so instructed.

In the result, I would not award parity either on the basis that the jobs are comparable (they are not) or on the basis that the jobs are of equal value (there was no evidence to support this conclusion).

In my opinion, this conclusion should not spawn a "travelling show" of long interest arbitrations requiring oral evidence in support of interminable job evaluations. One proper job evaluation should be enough. An award based on such a job evaluation would be a persuasive and compelling authority. Its findings would probably be accepted in other cases, unless a cause to deviate were shown. In other words, the evidentiary onus would shift.

Moreover, as I have already observed, a finding that the jobs are of equal value would not necessarily result in exactitude of earnings throughout the province. Arbitrators must consider all relevant criteria arising out of facts put in evidence before the Board.

In conclusion, it should not be assumed that the result of a job evaluation would be a finding that nursing home jobs are worth less. It is as probable, in my opinion, that the finding will be that such jobs are worth more.

3. THE COLLECTIVE BARGAINING HISTORY OF THE PARTIES

(a) Extendicare

In assessing this history, I include for consideration the results of arbitrations as well as the results of freely negotiated settlements between the parties. There was considerable disagreement over this matter. Ms. Nairn submitted that the history "proved" an adoption of the "parity" principle. Mr. Bass submitted that it proved the exact opposite. When two able collective bargaining practitioners can reach diametrically opposite conclusions based on exactly the same data, the chances are that the "history" speaks with a "forked" tongue.

The history begins with an arbitration award for the period of 1974-1975 for one nursing home in London. Although Mr. Bass disputed this conclusion, it is quite clear that Arbitrator O'Connor did award the nurses working in that one nursing home rates identical to those paid to nurses in public hospitals.

The first joint negotiations resulted in a voluntary settlement for the period ended December 31, 1976. Apparently, this settlement preceded O.N.A.'s settlement with the

hospitals. The nursing home rates ended up \$35.00 a month lower. Although this settlement cannot be viewed as an acceptance of a lower rate, it is nevertheless apparent that by agreeing to settle first, this group was prepared to run the risk of a different rate. ONA must have been aware that the relatively few nurses who were involved in the voluntary settlement would have no impact on the hospital settlement.

The settlement for the period ended December 31, 1977, was controlled by the A.I.B. The rates for these nurses increased by 6%. The differential with hospital nurses grew to \$60.00 a month probably because those nurses were on an 8% guideline.

The rates for the period of 1978 through 1979 were, as already mentioned, arbitrated by D. W. Rose, Q.C. The rates awarded were approximately \$50.00 a month less than in the hospitals.

As previously noted, the rates for 1980 and 1981 were established by a Board of Arbitration of which Professor Swan was the Chairman. The Board awarded the same total dollars as were earned by nurses in public hospitals. The rates awarded, however, were different from those in the hospitals. Professor Swan knew that the nurses in the hospitals had rates effective April 1 of \$1,650.00,

effective October 1 of \$1,820.00 and effective April 1, 1982 of \$1,900.00. The rate in the nursing homes effective until December 31, 1981, was \$1,678.00. If one treats the hospital rate of October 1, 1981 notionally as the rate from January 1, 1982, then the April 1 hospital rate of \$1,650.00 was the effective rate for the calendar year of 1981. On this basis, it could be argued that Professor Swan awarded parity "plus". On the other hand, if the \$1,820.00 is viewed as part of the 1981 rate for hospital nurses, Professor Swan's award is parity "minus". Professor Swan could, of course, have awarded a rate of \$1,820.00 effective October 1, 1981 and ended the controversy. He could also have ended the controversy by a clear statement in his award that parity in wage rates was appropriate. He did neither. I have read and reread his award. I am driven to the conclusion that his award cannot be read as supporting parity in rates.

The 1982 and 1983 rates were established under compulsory restraint legislation. The 1984 rates were established in a voluntary settlement under guidelines which were not compulsory. That settlement left a differential of \$158.00 a month at minimum--approximately 8%. Ms. Nairn submitted that this settlement was not voluntary because of

Bill 111. However, any reading of that Bill discloses that it does not compel any particular results. I do not attribute more to that settlement than this: As a question of fact, it does not support a submission of historical parity. On the other hand, it does not justify the inference that the issue of parity had been abandoned.

In the result, the only clear expression of parity in the bargaining between these parties occurred in Arbitrator O'Connor's award for one nursing home in 1975. Thereafter, neither through voluntary settlements nor arbitrated awards has parity been achieved. In the result, the collective bargaining history does not support a claim for parity. On the other hand, the collective bargaining history does not support a differential of almost 8% in rates with nurses working in the hospitals. In my opinion, the differential should be reduced.

(b) Diversicare

A careful review of the history of collective bargaining in Diversicare discloses a scenario entirely different from that found in Extendicare. Diversicare has either had arbitrated or has voluntarily entered into agreements which included rates equal to those paid in

public hospitals. Immediately prior to the enactment of Bill 179, the parties voluntarily made a "parity agreement". In my respectful opinion, but for Bill 179, "parity" would have been continued particularly in light of the fact that settlements at that time were not high. In other words, once having reached "parity", the cost of "parity" would not have been difficult to maintain. It is true that in 1984 under Bill 1979, O.N.A. settled for less than "parity". The acceptance by O.N.A. of the voluntary 5% guideline, although a factor to be taken into account, does not, in all the circumstances, override the "history" of parity.

A further factor is that in contrast to the Extendicare homes, the Diversicare homes are for the most part situated in Metro Toronto or its immediate environs. This fact may explain somewhat higher rates in Diversicare than in Extendicare. Thus, because the bargaining history is different, and because the Diversicare homes are located differently from Extendicare homes, and because I am reducing the % in lieu from 12% to 8%, I reject Mr. Bass' submission at this time of parity between "Diversicare" and "Extendicare" and award parity with the public hospital nurses. The rates will be as follows:

Effective January 1, 1985	- 3%
Effective July 1, 1985	- 3% (compounded)
Effective January 1, 1986	- 4.8% (compounded) to produce a start rate of \$2,329.00
Effective July 1, 1986	- 2% (compounded) to produce an end rate of \$2,375.00 in the start rate

4. THE NURSING HOME INDUSTRY STANDARD

After a careful review of the nursing home data, the most that I can say at this time is that some nurses are at parity in wages and some are not. The situation may be different in the homes for the aged. The Extendicare-Bestview group, which represents the single largest employer in the industry, is not and as a group has never been at parity. In my opinion, the evidence submitted does not demonstrate a nursing home industry standard of parity at this time, and parity cannot be awarded on this ground.

In conclusion, having rejected each of the four submissions in support of parity, I would award at Extendicare-Bestview an increase in all rates as follows:

January 1, 1985	- 3%
July 1, 1985	- 3% (compounded)
January 1, 1986	- 3% (compounded)
July 1, 1986	- 3% (compounded)

5. PART-TIME BENEFITS

(a) Extendicare

The Association seeks an increase from 8% to 12% in the percentage in lieu. Professor Swan rejected a similar request. In my opinion the percentage in lieu should represent the actual cost in dollars on an hourly basis to the employer of the benefits which the full-time bargaining unit receives. The evidence discloses that the employer's cost of benefits to full-time staff is slightly in excess of

7%. There is, of course, an additional cost for administration of these benefits. I agree with Ms. Nairn's submission that a percentage in lieu in the amount of 8% in the circumstances is not so high or unreasonable as to warrant a reduction. On the other hand, there is no basis for an increase. This request is denied.

On the other hand, the employer seeks pro-rating of benefits for part-time nurses to replace the percentage in lieu. Because pro-rating has been awarded in certain other cases, I propose to consider these awards briefly.

In Municipality of Metropolitan Toronto and C.U.P.E., Arbitrator Picher in an award dated February 15, 1985, awarded pro-rating of benefits for part-timers. It was a first contract. The parties had not previously bargained, as was the case here, a percentage in lieu. Moreover, it is my understanding that pro-rating had been a Union demand. In this case the Union opposes pro-rating.

In S.E.I.U. and 29 Nursing Homes, Arbitrator Palmer, in an award dated December 14, 1984, pro-rated benefits over the objection of the Union. This award occurred in the context of a mature relationship with a past bargaining history of a percentage in lieu. Therefore, it cannot be distinguished on that basis. However, the Board did not

provide any detailed reasons for its conclusion. The Chairman simply said at page 15: "We have considered both aspects of this case carefully. In the result we side with the view that pro-ration of benefits is the course of wisdom and the one we accept." The absence of reasons prevents my according any persuasive value to the decision, notwithstanding that the Union nominee, Mr. Lewis, concurred.

Mr. Bass also advanced a number of arguments in support of pro-rating. First, he submitted that "payment-in-lieu" is not fair to employees because some part-time employees would prefer the pro-rated benefits. In my opinion, this criticism is not sound. Most benefits do not impact the bargaining unit equally. In collective bargaining choices are made on the basis of what is best for the group and what the group will support. It is not tenable, for example, to attack maternity leave because male employees cannot take advantage of it. The bargaining unit decision must be respected. The assumption is that it is "fair" to the bargaining unit. That any individual employee may not benefit does not give rise to unfairness.

Second, he submitted that it was unfair that part-time employees get a percentage in lieu and full-time employees who do not utilize the benefits do not. This argument is also not tenable for the same reasons advanced with respect

to the first point. Moreover, this bargaining unit which is composed of both full and part-time employees has decided as a group that it prefers the status quo. In any event, full-time employees would not benefit if part-time employees were deprived of their percentage in lieu.

Mr. Bass also proffered two other criticisms. He argued (a) the payment in lieu increases with general hourly wage increases when in fact the cost of insured benefits may not change at all, and (b) part-time employees with differing hourly rates receive a different benefit whereas all full-time employees are eligible for the same level of benefits. So long as the cost to the employer is the same, the method of distribution is basically irrelevant. Nevertheless, if the parties prefer, the percentage in lieu could be translated into "cents per hour". And the amount payable could be based on the actual cost to the employer in the prior year. These approaches would entirely avoid the criticisms implicit in Mr. Bass' submissions. In my respectful judgment this exercise would not save the employer any money.

The reality is that the employer seeks pro-rating of benefits because it believes that the cost of pro-rating will be substantially less than the percentage in lieu.

I do not make this observation critically. It does, however, serve to set the arguments into focus. We are discussing money. We are not discussing what is best for particular bargaining units. The employer may legitimately try to reduce its costs but I can find no basis, indeed none was suggested in this case, to warrant a reduction in the cost of benefits to the employer in the face of a bargaining unit preference for the status quo.

There is no right or wrong to pro-rating as opposed to a percentage in lieu. Every bargaining unit is not the same. Some bargaining units may benefit very little from pro-rating, either because other family members provide the same coverage or because they cannot afford to pay their pro-rated share of the cost. Other groups may, because their demography is different, benefit from pro-rating. Only the Association is in a position to canvass the employees to determine their preferences and to establish with their members a collective bargaining strategy.

In summary then, it is my respectful opinion that in a mature relationship with a percentage in lieu as status quo, so long as there is no difference in cost to the employer, and so long as the employer is not experiencing

difficulty in securing or maintaining employees, there should not be a change to pro-rating without the Union's agreement, unless the employer can justify a reduction in the total compensation it has been paying its employees.

(b) Diversicare

The evidence discloses that the cost to Diversicare of benefits for full-timers is somewhat less than 7%. Attributing some cost to administering the plans, I am prepared to assume a cost of 8%. The percentage in lieu is 12%. In my opinion, there is simply no rational basis for paying the part-timers more than the full-timers earn. I have reviewed all the prior awards. The percentage in lieu started at 6%. No reasons were given. It went to 12%. No reasons were given. A.I.B. rolled it back. It was set at 10% and then 12%. No reasons are given.

In my opinion, it should be set at 8%. It is understandable that it is higher in the hospital sector because the full-timers in hospitals also receive a pension benefit of 6%.

I note Ms. Briggs' argument that the sick leave plan available to full-timers has not been costed fully. She submitted that its actual cost is the salary paid to the absent full-timer and the salary paid to her replacement. The employer only costed the salary paid to the absent full-timer.

This argument is attractive but on closer examination is clearly fallacious. If one assumes that there were no sick leave plan, the employer would still incur the replacement cost. The only additional cost when a full-timer is absent is her salary. When a part-timer is absent, the employer incurs a replacement cost. The employer does not pay the part-timer's salary. The benefit to full-timers is their salary. The cost of replacement has nothing to do with the benefit. It does not flow from the benefit. It is not triggered by the benefit.

Accordingly, I award a percentage in lieu of 8%.

It remains to consider the implementation of this benefit. For 1985 the part-timers have received 12%. I would ordinarily have reduced the percentage gradually over the two years of the Agreement. However, I do not propose to reduce it retroactively. The percentage as paid will also not be increased retroactively by the increase in salary for 1985.

In 1986, the percentage in lieu for the pay period next following the release of this award, will be reduced to 8%. Payments already made in 1986 at the rate of 12% will not be reduced retroactively or increased by the 1986 rate increases. The 8% will be payable on the 1986 salary then in force.

Although a reduction in the percentage in lieu of 4% is considerable, from a total compensation perspective, we should recognize that the wage increase has an off-setting 4% "catch-up" component.

Obviously, for the reasons already given, the employer's request for pro-rating at Diversicare is also denied.

THE ARBITRATION PROCESS

The following matters, in my opinion, require attention to improve interest arbitration in this sector:

First, an independent agency for the collection and dissemination of data must be established. The Education Relations Commission provides a useful model. Bargaining improves when the parties have all relevant data and when its source is unimpeachable. In the Diversicare arbitration we heard accusations by Ms. Briggs that Mr. Bass' data was incorrect and counter-accusations by Mr. Bass that Ms. Briggs' data was incorrect. Needless to say, if either of their data was incorrect, it was a result of inadvertence only. It is extremely difficult for the parties to obtain all relevant data, particularly that generated by other trade unions and/or employer groups. This recommendation was made as long ago as 1975 in the Report of The Hospital Inquiry Commission. When the previous government introduced

Bill 111, it promised to establish such a service. In my opinion, given the importance of interest arbitration in Ontario in the health care sector, it is irresponsible that interest arbitrators and the parties are not provided with the necessary tools.

Second, it is an unnecessary hinderance to analysis that collective agreements in the health care sector begin and end at different times. In my opinion, all collective agreements should commence the same day and end the same day. The parties can bargain in multiples thereof. The Boards of Arbitration can be required to award contracts which have at least 12 months to run after the date of the award. In education, firefighters and police, all contracts begin and end on the same day. The confusion caused in the health care field is monumental.

Third, the remuneration of Chairmen and nominees is scandalously low and prevents the parties from obtaining the services of the most experienced Chairmen.

Fourth, the establishment of an independent body, like the Education Relations Commission, (a) to monitor bargaining in the health care sector, (b) to train neutrals to mediate and arbitrate and (c) to offer a variety of third party resolution techniques as circumstances warrant, would in my opinion, stimulate bargaining between the

parties and generally improve the process.

DATED the 15th day of January, 1986.


MARTIN TEPLITSKY, D.C.
Chairman

DISSENT TO FOLLOW
ELIZABETH MCINTYRE

I concur


BERNIE MCGARVA

SCHEDULE "A"

EXTENDICARE-BESTVIEW

I turn then to the other issues between the parties. We will remain seized pending the execution of the Collective Agreement as provided within the Hospital Labour Disputes Act and in the event that we have neglected or failed to deal with any matter.

ARTICLE 2 - RECOGNITION

The Employer proposal was withdrawn.

ARTICLE 6 - MANAGEMENT RIGHTS

The Employer proposal was withdrawn.

ARTICLE 8.07 and 8.09

The Employer proposal was withdrawn. The Association proposal is denied.

ARTICLE 10 - SENIORITY

10.04 - The Employer proposal was withdrawn.

10.08 - The Employer sought the maintaining of Article 10.08 with the addition in the opening lines of the words "and shall be deemed terminated". I am prepared to accede to this request on the basis that Article 10.08 will include within it only paragraph (a), paragraph (b), paragraph (c), paragraph (e) and paragraph (h).

ARTICLE 15 - MATERNITY LEAVE

The cost of this benefit prevents our awarding it at this time. The Employer has proposed an adoption leave clause in Article 15.03 which would provide as follows and we so award:

- (a) An employee who has completed ten (10) months of continuous service shall, upon her written request, be granted adoption leave. Such leave shall be without pay, benefits and accrual of benefit credits. Such leave will not exceed (6) months following the date of adoption. The written request for such leave shall be submitted and indicate the intended date of return to the Employer when the employee receives approval of the adoption application. A copy of such approval is also required with the application for adoption leave.
- (b) For the purposes of Adoption Leave (15.03) the provisions under 15.01(f), 15.01(g), 15.01(h), 15.01(i), 15.01(j), 15.01(k), shall also apply.

ARTICLE 19 - INCOME PROTECTION

This was withdrawn by the Employer.

ARTICLE 20 - HOLIDAY PAY

The Employer proposal fails because the pro-rated provision fails.

ARTICLE 20 - PAID HOLIDAYS

We would award as follows in addition to Article

20.04:

"A nurse who qualifies for holiday pay will be eligible for one (1) days holiday pay during any one (1) period of illness. A nurse who qualifies for holiday pay and is absent due to illness or injury shall not also claim payment from income protection credits."

ARTICLE 21 - VACATIONS

The Union sought to change the method of calculation of vacation pay from a percentage of gross earnings to at current rates. In my view the change would only compound problems and accordingly, it is denied.

ARTICLE 22 - EMPLOYEE BENEFITS

The parties agreed to an increase in the life insurance and we so award.

ARTICLE 22.03

The Association sought an improvement by the inclusion of semi-private coverage. The Employer on the other hand offered to pay 100% of the premium but would not agree to include semi-private coverage.

The Employer's proposal must be accepted. The

cost of other benefits already agreed upon and the wage package which includes a catch-up component prevents the awarding of this benefit which is relatively expensive.

ARTICLE 22.0 - DENTAL PLAN

The parties agreed on a provision and we so award.

ARTICLE 22.05 -

This was a new Employer proposal which was withdrawn.

ARTICLE 22.04

The various proposals were withdrawn.

ARTICLE 22.0 - PENSION PLAN

This request must be denied simply on the basis that its cost is prohibitive at the present time.

ARTICLE 22.07 -

The Association proposes payment of employee benefits while on paid leave of absence or workmen's compensation. In my opinion this proposal should be awarded with a qualifier that the obligation to pay while on Workmen's Compensation continues only so long as the employment relationship continues.

ARTICLE 22.08

The Association seeks that the Employer provide

each nurse with information booklets outlining all of the current provisions in the benefit plans confined in this Article. The Association shall also be provided with a current copy of the master policy. I see no reason to deny this request so long as it is clearly understood that the Employer's obligation pursuant to this Collective Agreement is to provide the insurance coverage bargained for. Any problems with respect to the insurer acknowledging or honouring any claims is a matter as between the employee and the insurer.

ARTICLE 25.06

This matter was agreed to. The parties will enter into a Letter of Understanding in which it will be acknowledged that registered nurses will not be required to use the mechanical clock system. However, upon introduction of an automated, computerized time record system, the Employer may require nurses to use time cards in accordance with the requirements of the system and to pay them in accordance with the Collective Agreement.

ARTICLE 26.01 - OVERTIME

The following shall be added to Article 26.01:

"Authorization shall not be unreasonably withheld. In the event of an emergency authorization is not required."

ARTICLE 26.04

In my opinion, Article 26.04 to make it consistent with 26.01 should read:

"Time less than fifteen (15) minutes per day shall not be counted as overtime. Where, however, overtime is payable, payment shall include the first fifteen (15) minutes."

ARTICLE 26.05

The Employer proposal on this Article was withdrawn.

ARTICLE 29.03 - WORK SCHEDULE

The Employer proposal on this Article was withdrawn.

ARTICLE 29.11

This Article shall be amended to provide as follows:

"Nurses as of November 28th, 1985, on permanent shifts, will not be rotated without their consent except for the purposes of instructions, emergencies or when regular employees on other shifts are not available."

ARTICLE 31.04 - JOB CLASSIFICATION AND WAGE RATES

The Employer's proposal was withdrawn.

ARTICLE 31.05

This Article was withdrawn.

ARTICLE 33.01

The parties agreed on a payment of Seventy (70) Cents per hour.

ARTICLE 33.02

The parties agreed to extend this premium to weekends and accordingly, I would not increase it as there is already a significant cost in the agreed to extension.

ARTICLE 33.03 - SHIFT DIFFERENTIAL AND RESPONSIBILITY ALLOWANCES

Considering the cost of the other matters awarded, I would not increase the shift differential.

ARTICLE 35 - PROFESSIONAL RESPONSIBILITY

The proposal was withdrawn.

RETROACTIVITY

The retroactive payment shall be made to all nurses on staff as at January 1, 1985 or thereafter. Any nurse who has left her employ shall be notified by prepaid registered post, addressed to her at her last known address, of her entitlement hereunder and such entitlement shall

cease if not requested within thirty (30) days from the date of mailing.

We also include all items previously agreed to between the parties.

We will remain seized pending execution of a Collective Agreement.

SCHEDULE "B"

DIVERSICARE

ISSUE NO. 1 - PAID MATERNITY AND ADOPTION LEAVE

The cost of this benefit and its uncertainty prevents our awarding it at this time.

I do not accept Arbitrator Joyce's view expressed in a recent award dated November 20, 1985 between S.E.I.U. - Clerical and Toronto Hospitals, as a reason for refusing maternity leave that "we believe this subject is a matter for consideration by elected representatives". In my opinion it is irrelevant what an arbitrator believes is the most appropriate forum within which to treat an issue. Absent legitimate employer concerns, if a trade union wants to utilize part of its total compensation increase for maternity or adoption leave that is its business and not the arbitrator's. It is, essentially, an issue of priorities. Coming out of a period of restraint there is ordinarily not enough money for maternity or adoption leave because the Union has other areas more important to it where the money is to be utilized. This request is denied.

ISSUE NO. 2 - OVERTIME

O.N.A. seeks double-time for overtime on regular shifts where the nurse is receiving premium pay, usually on statutory holidays.

In my opinion, if overtime is no more than 1½ times on a day the nurse is already receiving 1½ times, then there is no premium for overtime. In my opinion, this request should be allowed and I so award.

ISSUE NO. 3 - SHIFT PREMIUM

The premium has stood at 1.85 a shift (24.6 cents) per hour since 1981. Its real value has diminished since 1981 by at least 25%. I would increase it to .30 cents an hour effective the second pay period after issuance of this award.

ISSUE NO. 4 - SICK LEAVE

This issue was withdrawn.

ISSUE NO. 5 - LONG TERM DISABILITY

This issue was withdrawn.

ISSUE NO. 6 - DENTAL PLAN

The current plan is No. 7 with a 1982 O.D.A. fee schedule, 50% employee contribution. I would award Blue Cross No. 9, 1985 O.D.A. fee schedule, 50% employee contribution, to be implemented as soon as practicable.

ISSUE NO. 7 - PENSION PLAN

The cost prevents our awarding this benefit at this time. This request is denied.

RETROACTIVITY

The retroactive payment shall be made to all nurses on staff as at January 1, 1985 or thereafter. Any nurse who has left her employ shall be notified by prepaid registered post, addressed to her at her last known address, of her entitlement hereunder and such entitlement shall cease if not requested within thirty (30) days from the date of mailing.

We also include in our award all items agreed to between the parties in their recent negotiations.

We remain seized until a Collective Agreement is executed for all purposes.

IN THE MATTER OF AN INTEREST ARBITRATION

Between:

The Participating Hospitals

(Represented by the Ontario Hospital Association)

and

ONA

Before:

William Kaplan, Chair
Brett Christen, OHA Nominee
Phil Abbink, ONA Nominee

Appearances

For the OHA:

Craig Rix, Counsel, Hicks Morley, Barristers & Solicitors

David Brook (Spokesperson) – V.P., Labour Relations & Chief Negotiations Officer, OHA

Carol Hatcher (Chair) - Chief Nursing Executive, Humber River Hospital

Rebecca Officer - V.P. Human Resources and Organizational Culture & Development, Bruyere

Myfanwy Marshall – V.P. People & Experience, Centre for Addiction and Mental Health

Bryan McNevin - Manager People Services, Collingwood General and Marine Hospital

Julia Marchesan - HR & Workforce Wellness Executive, London Health Sciences Centre

Phillip Kotanidis - Chief Human Resources Officer, Michael Garron Hospital

Sarah Jane-Irvine - Chief Human Resources Officer, Norfolk General Hospital & West
Haldimand General Hospital

Clarence Willms - Chief Human Resources Officer, Providence Care

Sue Rogers - VP Clinical Operations and Chief Nursing Executive, Sault Area Hospital

Dean Osmond - Chief Executive Officer, Sioux Lookout Meno-Ya-Win Health Centre

Suzanne Madore - Chief Operating Officer and Chief Nursing Executive, The Ottawa Hospital

Robin Ross - Director Labour Relations, Unity Health

Mandy Madill - Director Labour Relations, University Health Network

David McCoy - Director Labour Relations, OHA

Phil Cifarelli - Consultant Labour Relations, OHA

Joyce Chan - Consultant, Labour Relations, OHA

Adrian Di Lullo - Consultant, Labour Relations, OHA

Louci Apkarian - Consultant, Labour Relations, OHA

For ONA:

Wassim Garzouzi, Counsel, Raven Law, Barristers & Solicitors

Julia Williams, Counsel, Raven Law, Barristers & Solicitors

Steve Lobsinger RN - Chief Negotiator

Marilynn Dee RN - Manager II – Negotiations Hospitals

Rachel Muir RN - Region 2 Full-Time Representative Chair

Erin Ariss RN - President

Bernie Robinson RN - Interim President, Region 2 Vice President

Angela Preocanin RN - First Vice-President

Andrea Kay RN - Chief Executive Officer

Monique Storozuk RN - Region 1 Full-Time Representative

Jason Dupras RN - Region 1 Part-Time Representative

Kate Magladry RN - Region 2 Part-Time Representative

Serge Ganzburg RN - Region 3 Full-Time Representative

Jane Penciner RN - Region 3 Part-Time Representative

Laurie Rogers RN - Region 4 Full-Time Representative

Elizabeth (Betty) Audibert RN - Region 4 Part-Time Representative

John Lowe RN - Region 5 Full-Time Representative

Jo-Dee Brown RN - Region 5 Part-Time Representative

Patricia Carr RN - Manager II – Negotiations LTC/Community

Ronda Sawyer RN - Region 1 Labour Relations Officer

Adriana Breen RN - Region 2 Labour Relations Officer

Michael Levey RN - Region 3 Labour Relations Officer

Adele Churchill - Region 4 Labour Relations Officer

Marie Haase RN – Region 5 Labour Relations Officer

David Cheslock RPN - Region 3 Manager, Labour Relations

Kayla Sanger - Legal Counsel, HLDAA / Interest Arbitration Specialist

Dave Campanella - Economist, Labour Market Research, Collective Agreement Analysis

Ryan FitzGerald - Member Benefits Specialist

Victoria Romaniuk - Manager Administration, Office of the CEO

Dawn Armstrong RN - Region 1 Vice President – Observer

Karen McKay-Eden RN - Region 3 Vice President – Observer

Alan Warrington RN - Region 5 Vice President – Observer

Todd Davis - Region 4 Manager, Labour Relations

Robert McGregor RN - Region 5 Manager, Labour Relations

The matters in dispute proceeded to a hearing in Toronto on May 2 & 3, 2023. The Board met in Executive Session on June 15, 2023.

Introduction

This interest arbitration was consensually convened to settle the terms and conditions of the central collective agreement between the Participating Hospitals – represented by the Ontario Hospital Association (OHA) – and the Ontario Nurses’ Association (ONA). Notice to bargain was given on January 5, 2023. Bargaining took place in January and February, with mediation following in March. The matters in dispute proceeded to a hearing held in Toronto on May 2 & 3, 2023. The Board met in Executive Session on June 15, 2023. ONA represents approximately 65,000 Registered Nurses (RNs) and Nurse Practitioners (NPs) – both full- and part-time (49,580 FTE) – and other health professionals providing frontline health care at 127 Participating Hospitals located across Ontario, rural and urban, teaching and specialist, and they range in size from small – less than 10 nurses – to very large – more than 3000 nurses. This award will set the terms and conditions of the twentieth central collective agreement between these parties.

Statutory Criteria

The Hospitals Labour Dispute Arbitration Act (HLDAA) governs these proceedings and sets out the specific criteria to be considered:

9 (1.1) In making a decision or award, the board of arbitration shall take into consideration all factors it considers relevant, including the following criteria:

1. The employer’s ability to pay in light of its fiscal situation.
2. The extent to which services may have to be reduced, in light of the decision or award, if current funding and taxation levels are not increased.
3. The economic situation in Ontario and in the municipality where the hospital is located.
4. A comparison, as between the employees and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.
5. The employer’s ability to attract and retain qualified employees.

The parties have agreed that a *HLDAA* term applies: April 1, 2023 to March 31, 2025.

ONA Submissions

Summary

In ONA's view, two issues were front and centre in this interest arbitration, and they were inter-related: the need to address a severe RN shortage and to catch up on overall compensation that has fallen behind over the past decade, a situation made even more untenable by continuing high inflation and its corrosive impact on spending power. The solution to these problems included long overdue and meaningful pay increases, grid adjustments, introduction of long-service recognition pay, and enhanced premiums. In addition, penalty provisions were necessary to discourage the ongoing and excessive use of agency nurses; an unbelievably expensive stopgap measure to staff hospitals but one that, perversely, made recruitment and retention of RNs even more challenging. A Nurse Practitioner (NP) grid was also a bargaining priority.

ONA reviewed various interest arbitration criteria – both statutory and normative – in support of its submissions including recruitment and retention, appropriate comparators, the economic situation in Ontario, the extent to which services may have to be reduced, ability to pay along with gradualism and demonstrated need. Application of each of these criteria led to the immediate, indeed inevitable, conclusion that all ONA's compensation proposals were fully justified and should be awarded.

Recruitment and Retention

It was almost beyond debate, in ONA's submission, that the Participating Hospitals were unable to attract and retain sufficient numbers of RNs. The evidence in support of this proposition was everywhere. Indeed, it was described in detail in the OHA's own publication, *Practical Solutions to Maximize Health Human Resources (Practical Solutions)*, in growing numbers of hospital

emergency room closures never previously seen in Ontario and skyrocketing waiting lists for urgent surgical procedures, in payment of incentives such as increased overtime – outside the provisions of the collective agreement – to attract and retain nurses, and in the huge expansion in use of agency nurses, paid a multiple of the collective agreement grid rates. Other individual hospital efforts to attract and retain nurses included raffles, swag, visits by therapy dogs, BBQs, recognition of long-service employees, manicures, massages and free snacks. All these steps established, with clear, cogent and compelling evidence, a staffing crisis in need of immediate and meaningful attention.

The assertion of a serious recruitment and retention problem was not, ONA observed, based on anecdotal evidence. It was fully outlined in *Practical Solutions*. Moreover, the OHA's Fall 2022 *Health Human Resources Workforce Survey* showed a tripling of the RN vacancy rate since March 2018: the all-hospital vacancy rate (both full- and part-time) was 10.27% on October 1, 2022; the RN and RN Speciality Rate was 14.78%, up from 4.9% on March 31, 2018. To be sure, some new positions had been created, but that was not, in ONA's view, the principal cause of the nurse shortage. Resignations and a huge increase in turnover were the most important contributors. A March 31, 2018 hospital resignation rate of 4.98% had more than doubled to 10.93% as of September 30, 2022. *Practical Solutions* reported that exhaustion and impossible workloads led to the burnout of experienced late career nurses who were voting with their feet leaving frontline clinical practice or, far too often, the profession altogether (although sometimes returning to the workplace they just left as much more highly paid agency nurses). Of course, ONA pointed out, these departures – whatever their proximate cause – adversely affected the nurses who remained by increasing their workloads creating a vicious circle of even more nurses who then decide to leave.

The miscellaneous measures that had been put in place ranging from doubling overtime to swag and BBQs, ONA observed, were not working. The same could be said about government initiatives including *The Temporary Reimbursement of Fees for Internationally Educated and Inactive Nurses*, the *Community Commitment Program for Nurses* (offering a \$25,000 incentive for nurses who have not practised in Ontario for the last six months but who make a two-year commitment to do so), and a \$5000 retention bonus to existing nurses in return for them agreeing to remain working in Ontario. Even with all of these and other initiatives, nurses – the unequivocal data demonstrated – continued to leave hospital health care, with significant numbers returning to work as agency nurses at a multiple of their previous pay.

Indeed, the use of agency nurses by the Participating Hospitals was particularly telling. In 2003 (*Sunnybrook & Women's College & ONA* (133 LAC (4th) 91), ONA grieved a large increase in agency nurse employment largely brought about by recruitment and retention challenges. The award concluded that while agency nurses could be used, a parallel contingent workplace was prohibited by the collective agreement. Nevertheless, many of the Participating Hospitals were regularly employing agency nurses – in fact, were putting them on schedules – because the staffing crisis left them with no other choice. The immediate result was completely predictable: agencies could, with their higher pay and benefits, attract nurses from the Participating Hospitals, and then return them to the hospitals to work side-by-side with their former colleagues but with superior terms and conditions of employment (including more attractive shifts). Unless agency nurse usage was forestalled and left for true emergencies, the recruitment and retention crisis would inevitably deteriorate even further. A number of examples describing this insidious circle were provided including a frank October 6, 2022 press release – a typical example in ONA's view of a pervasive system-wide situation – issued by the South Bruce Grey Health Centre

Chesley hospital site (SBGHC) announcing an eight-week emergency room closure due to a critical shortage of nurses:

... there have been multiple times over the last 3 weeks where the ED had to close for several full days on short notice due to the overall shortage of nurses.

...

In order to keep services operational, SBGHC has relied on the use of agency nurses to fill vacant shifts. This approach is not an ideal or preferred solution, as agency nurses are costly and not committed to our hospital sites. In addition, our nurses do not feel valued when the agency nurses are making more money for doing the same work. SBGHC would much rather be putting the extra cost spent on agency nurses into the pockets of our own staff, who have worked tirelessly to support our organization and our communities. The unfortunate reality is that without using agency nurses at this time, the organization would be looking at additional closures and reductions.

Active recruitment continues for nurses to come and work at SBGHC, however, the pool of available nurses is very limited in the current environment across the province.

Other examples were also provided.

The money that was being spent on agency nurses, ONA argued, was disturbing for many reasons. At the very least, public funds were being diverted from addressing the staffing crisis and were barely successful in even providing a short-term fix. In the 2020-2021 fiscal year, the Participating Hospitals reported spending \$38,350,956 on agency nurses, in 2021-2022, \$70,978,158 and in 2022-2023, \$173,669,808 (with the numbers for 2022-2023 probably an undercount for reasons explained in the ONA brief, reply brief and at the hearing). Agency hours grew from 449,608 in 2020-2021, to 1,183,358 in 2022-2023 (or, according to the OHA, 1,259,183). Moreover, at one time agency nurse use was a Greater Toronto Area phenomenon; now it was ubiquitous across the province, urban and rural, as was fully detailed in the ONA submissions and illustrated by another statistic: In 2020-2021, 31 Participating Hospitals reported using agency nurses; two years later, 77 (and that was with some Participating Hospitals not reporting).

The fact was, ONA submitted, all the Participating Hospitals were struggling with RN shortages. Quite clearly, the various *ad hoc* measures to incentivize RNs to work even harder established this, as was further illustrated when skyrocketing overtime was examined. The Participating Hospitals paid overtime – some hospitals well in excess of the negotiated collective agreement multiplier – because they had to; it was the only way to meet staffing needs. In 2016-2017, the Participating Hospitals reported 1.75 million hours of overtime, in 2018-2019, 2.19 million, and in 2021-2022, 3.42 million (at a cost of \$277,656.162).

Recruitment and retention is a *HLDA* criteria. The Participating Hospitals could not recruit or retain, and compensation was the main reason why. The conclusion was inescapable, ONA argued, that there were nurses available – agency nurse usage established that – just not ones willing to work at the current rates. Instead of the various *ad hoc* measures to incentivize RNs to work more, the money would be better directed to improving the terms and conditions of employment by addressing staffing, and also workload, and that would, in turn, encourage RNs to stay at their jobs and, for those who had left, to return to work. Spending large amounts of money – hundreds and hundreds of millions of dollars – on agency nurses and overtime – to give just two examples that partially and at best inadequately met short-term staffing needs at great cost to morale and with no hope of retaining or recruiting – was not a strategy with any real likelihood of actually addressing the problem. All ONA's compensation requests were, accordingly, fully justified by this criterion alone.

Relevant Comparators

In ONA's view, the proper application of *HLDA* and other interest arbitration criteria required examination of relevant comparators which included nurses in other Canadian provinces, Ontario

agency nurses and nurses employed in private hospitals, nurses in the United States and the United Kingdom, and other frontline professionals. Turning first to other Canadian nurses, ONA noted that the Financial Accountability Office (FAO), an Ontario government-appointed body that provides independent analysis of the province's finances, trends in the provincial economy, and related matters, concluded that Ontario currently has the lowest nurse wage rates in all of Canada. Ontario had dropped from fifth place in 2012 to last place in 2022. Not surprisingly, another cause of the RN shortage was nurse migration to other places in Canada and abroad that offered better pay and working conditions; a situation that was not abating notwithstanding various government initiatives (earlier described). Likewise, and as above, agency nurses were better compensated, often substantially so. This private sector comparator was especially apposite with the private sector nurses doing the exact same job in the exact same workplace side-by-side with Participating Hospital RNs but receiving substantially more money.

Other frontline service workers, for example, police and fire, received substantially more compensation, a situation which ONA argued was inappropriate as Participating Hospital RNs were very similarly situated: professionals providing life-saving uninterrupted essential services to the community. Accordingly, police and fire were relevant comparators, and their terms and conditions of employment were appropriately considered in determining the outcomes for RNs. This led to the conclusion that the requested salary and other compensation increases were justified not to mention long overdue. The same could be said about nurse settlements in the United States and the United Kingdom, and information about that was set out in the ONA brief (notably the number of Ontario nurses seeking licensure in the United States has doubled in the last five years). Appropriate comparators did not, in ONA's submission, include service and clerical workers employed by the Participating Hospitals. Comparable classifications had to be

considered; or stated a little differently, similar employees doing similar work. That could not be said about the service and clerical employees who were different employees – albeit of the same employer – doing very different work.

The Economic Situation in Ontario and the Municipality where the Hospital is located

The impact of inflation, ONA argued, was profound, and it established demonstrated need for a substantial across-the-board increase, together with many other improvements. Before 2010, annual wage increases for RNs exceeded the rate of inflation, but since 2011, inflation has outpaced increases to Participating Hospital salaries in every single year leading to an overall decline in real wages. In 2022, the situation deteriorated further. Inflation for 2023 has been estimated at 3.6%; Scotiabank came in higher with a 4.2% projected increase, BMO Capital Markets at 4.1%. Any award, ONA urged, had to take inflation into account, and also needed to consider Ontario's burgeoning revenues and surpluses, making general wage and other compensation increases completely affordable. In ONA's estimation, the province was "flush with cash, including an additional \$4.4 billion in federal health funding...How the province chooses to spend that money, is simply a question of priorities."

Extent to which Services May Have to be Reduced

Services, ONA observed, have been reduced, and it referred to its submissions set out above: emergency room closures, surgical waitlists, etc., all because of a lack of RNs to do the work. Services have been reduced because the Participating Hospitals cannot attract full- and part-time staff and instead misspent many hundreds of millions of dollars on overtime and agency nurses. In ONA's view, a careful and sustainable allocation of resources – money spent on attracting and retaining Participating Hospital RNs – would result in an expansion of services, not a reduction.

Ability to Pay

The Participating Hospitals did not assert inability to pay. And ONA did not dispute that the Participating Hospitals faced budgetary constraints, but pointed out it has been long established that public sector employees do not bear the responsibility of subsidizing essential services by accepting, or having awarded, substandard wages. It was also a well-accepted principle that government funders cannot determine interest arbitration outcomes by limiting funding, for to do so would undermine the overall independence of the interest arbitration process. More importantly, the objective data about agency nurse and overtime spending established that there was money available. The issue was not lack of funds, but their allocation.

Gradualism and Demonstrated Need

ONA did not necessarily disagree with received wisdom to the effect that there should be no major breakthroughs or gains through interest arbitration without demonstrated need. But ONA's proposals were not breakthroughs – they were the minimum that was required after a decade of wage decline, to catch up to other Canadian nurses and private sector colleagues including agency nurses and nurses at non-Participating Hospitals, such as Shouldice, for example. Moreover, there was demonstrated need. There was a recruitment and retention crisis – the data about that was categorical – and there was an economic crisis with inflation that left nurses with less and less spending power even though there was a pre-existing pattern of their wages, at the very least, keeping up with inflation. The *ad hoc* adjustments and government programs were ineffective, to put it bluntly. The time was, therefore, long past for substantial general wage increases and other adjustments to tackle the nursing crisis head-on and, in that way, ensure future sustainability.

The ONA Proposals

ONA proposed the following:

1. Revised Wage Grid, eliminating the Start and First Year rates, and 12% general wage increase on April 1, 2023 and 6% on April 1, 2024. Add Long-Term Service Entitlements: 14 years – 2%, 21 years – 4% and 28 years – 6%.
2. Overtime at two times regular rate and two-and-one-half times on a paid holiday.
3. Substantial increases in shift premiums and restructuring of weekend premiums from \$3.04 per hour to one-and-one-half times the straight hourly rate.
4. Increase percentage in lieu for part-time nurses.
5. Create a six-step grid for Nurse Practitioners.
6. Introduce salary continuation for nurses unable to work due to exposure to a communicable disease and/or required to quarantine and/or as required by law.
7. Introduce an 8-week vacation entitlement at thirty years of service.
8. Introduce a Health Spending Account at \$1000.00.
9. Extend LTD coverage to age 80.

ONA also proposed a number of non-monetary changes including additional penalty payments for use of agency nurses and increased notice for shift change.

Submissions of the Participating Hospitals

Summary

There was no doubt, the Participating Hospitals observed, that the last several years have been extremely challenging for Ontario's hospitals and the nurses who worked in them. Prior to the COVID-19 pandemic, a history of restrained provincial funding required hospitals to implement

efficient staffing models and deliver quality care while collective agreement rules and restrictions severely limited the hospitals' ability to quickly respond to changing needs. Faced with the pandemic and its unprecedented demands in terms of volume and complexity, Ontario's hospitals were pushed beyond capacity, and this, of course, led to an extraordinary toll on individual workers. While capacity has increased – new beds were added when the pandemic began and more than 3000 additional beds were announced in 2022 with 1700 of those already up and running – the Participating Hospitals were confronted with RN shortages reflected in emergency room closures and a backlog of surgical and other procedures. Growth in capacity and demand has far outstripped available human resources in the short and medium term.

While staffing shortages could be easily described – there were not enough health care workers to meet demands – the solution to this situation was much more complicated, as was generally the case with intractable problems. Money was not a panacea; changing some of the unduly restrictive collective agreement work rules that left the Participating Hospitals unable to properly deploy human resources could, however, immediately begin to address staffing shortages and provide essential services to the people of the province. Now was therefore the time to address antiquated collective agreement requirements that frustrated the efficient delivery of services and the sensible deployment of nurses to meet urgent needs; collective agreement provisions that increased and exacerbated turnover, cost and instability.

To be sure, compensation was a component of a larger health human resources strategy and with that in mind – and paying attention to economic reality, available and anticipated funding and financial sustainability – the Participating Hospitals proposed wage increases of 3% in each year of the term, and improvements to the shift premiums. Increases of this kind were fully in line

with prevailing healthcare settlements and otherwise. The various compensation increases requested by ONA were unaffordable and unfunded.

ONA's Proposals

ONA's proposals did not reflect funding realities. As important, they would not work in addressing recruitment and retention. There were vast human resource challenges in Ontario's hospitals. Spending unprecedented and excessive amounts of money on nurse compensation would not solve staffing shortages because of one central fact: there were not enough nurses in the province to fill the growing demand, in hospitals and elsewhere. A pay raise would not solve that, as was illustrated by the introduction of the 25-year rate and, more recently, the government-funded COVID-19 \$5000 bonus: after the 25-year rate was put into place, retirements went up, while the one-time bonus did not impact retention. Compensation was important, but the fact was that terms and conditions of employment were only one part of the equation: addressing recruitment and retention required a multi-pronged approach – set out by the Participating Hospitals in their brief and reviewed at the hearing – with the active participation of numerous stakeholders beyond ONA and the Participating Hospitals.

The Criteria

Hospital Funding

Also germane, the Participating Hospitals argued, were interest arbitration criteria, both statutory under *HLDAA*, and normative, most importantly replication: replication of free collective bargaining. Neither unions nor employers should be advantaged by the substitution of adjudication for strike/lockout. It was important to be realistic about possible outcomes – and pursuing – as ONA was doing here – a long list of completely unobtainable and unaffordable

fiscal objectives in the hope that some would be awarded was not an approach to be encouraged, particularly in the context of a short collective agreement term in uncertain economic times and, as was well known, insufficient funding. Hospitals must operate within the confines of the funding provided to them: that was one of the applicable labour market realities. Economic increases cannot be passed on to the consumer. Available funding was not sufficient to cover existing obligations; there was no ability to pay for increases beyond what the Participating Hospitals had on offer. As well, ONA's proposals were not established by the normative application of the governing principle that required establishing demonstrated need.

Economic Conditions

The rate of inflation, while relevant, did not assist in replicating free collective bargaining given these parties and their long-established bargaining patterns. Simply put, there was no history of matching wage increases to inflation – and that history was applicable here – and where high inflation is not persistent, its role in replication was diminished. Moreover, hospital funding was not indexed to inflation and so inflationary increases were, by definition, unfunded. In addition, arbitrators were on record – and had been for some time – that interest arbitration outcomes could not fully ameliorate against inflation. The Participating Hospitals cited with approval the observations of Arbitrator Hayes in *Homewood Health Centre & UFCW* (unreported award dated June 1, 2022) that “the harsh reality is that no-one can expect to be fully immunized from the negative impacts of extraordinary inflation. This award does not come close,” (at para. 31, a finding that was adopted, also with approval, in other cases cited by the Participating Hospitals).

The overall economy was relevant, and the evidence established that the outlook was uncertain. In fact, the normal economic indicators suggest that there would, at best, be slow economic

growth with the real possibility of a recession during the collective agreement term (possibly because Bank of Canada interest rate hikes to control inflation might over-correct). On the other hand, inflation had begun to fall, making it less of an applicable factor in these proceedings especially if the trend continued and projections of dropping down to the 2% benchmark were achieved next year. In further support of this submission, reference was made to various factors suggesting troubling economic times ahead including the projected slowing of real GDP growth, statistics indicating declining employment growth and rising unemployment, the inversion bond yield curves and, more broadly, other disturbing economic developments such as recent and well-known large bank collapses.

While the overall economic situation provided important context, so too did the economic health of the province. Government deficits were the order of the day, and while the plan was to bring the budget in balance, that relied on increased revenue spurred by economic growth. In the meantime, there was a significant debt burden – and the high interest rates that came with it increasing the cost of borrowing – which directly impacted the government’s ability to boost program spending. Ontario’s debt level has gone from \$281.1 billion in 2013, to a projected \$435.5 billion in 2023. There was no way around it: public funds were under pressure, would remain so for the foreseeable future (and throughout the entire term of this collective agreement), and that impacted funding to Ontario’s hospitals. In the current economic environment additional increases to government deficit spending – and therefore monetary allocations to fund the ONA demands to the Participating Hospitals – were not possible (made even more difficult as both health care costs and patient acuity resulting from an aging populace continued to rise). Even so, the Participating Hospitals had been and would continue to advocate for increased funding.

To the extent that additional funds were and are available, they have been targeted for various measures such as increasing capacity (pre-pandemic, Ontario, for example, had fewer acute hospital beds than any other Canadian province and all but one of the OECD member countries), reducing surgical backlogs and enhancing emergency services. While the government announced an increase to hospital base funding on March 23, 2023, it has not yet been divvied into priorities and there was no reason to believe that paying for ONA increase would necessarily be among them. Announced additional federal investments in Ontario health care of \$4.4 billion – to be allocated over the next three years – while welcome, have likewise yet to be allocated. In the meantime, the Participating Hospitals had to operate in an economic environment where their costs continued to increase, and where none of its funding was indexed to inflation. The Participating Hospitals had to live within their means, and those means made the ONA asks completely unaffordable such that they should not be awarded.

Recruitment and Retention

The Participating Hospitals agreed: “there is currently a nursing shortage in the Ontario hospital sector.” Where the Participating Hospitals and ONA parted company, however, is whether massive collective agreement increases to compensation had the potential to fix it. To answer that question, one had to understand the causes of the problem; a necessary first step prior to proposing any solutions. And the cause of the problem, in the view of the Participating Hospitals, was the increase in capacity illustrated through the growth in the number of hospital beds. There were 1749 new beds added between 2020 and 2021, the largest one-time increase since 2005. The Participating Hospitals have responded to this by hiring an additional 7.3% of nurses between 2016 and 2023 (46,466 to 49,580 full-, part-time and casual), and further capacity initiatives were underway.

In normal circumstances, the Participating Hospitals pointed out, capacity increases would be accompanied by broader pre-planned health human resource recruitment and realignment to ensure adequate staffing. The exigencies of the pandemic prevented this. More time was needed to train and certify new nurses to catch up. Moreover, context mattered. There were currently 9,310 RN hospital vacancies or 15.46% (out of a total headcount of approximately 60,000), but this had to be understood as resulting from capacity growth as well as from individuals moving intra-hospital. Indeed, while overall turnover rates were higher than pre-pandemic, numbers had begun, in 2023, to decrease; retirements rates had only slightly increased compared to pre-pandemic, and while resignations had gone up compared to pre-pandemic, they had recently begun to dip. Significantly, the overall hospital nursing workforce was larger. It was also important to bear in mind that labour market shortages were commonplace across most Canadian workplaces. An important contrast in comparing RN vacancies with the general Canadian rate of 4.8% was that private sector employers can raise wages to attract staff, an option that is unavailable to the Participating Hospitals because of funding constraints imposed by the provincial government (and government funding was actually insufficient to even meet even ongoing operational needs).

In the meantime, the Participating Hospitals remained the employer of choice, and since 2017, as already noted, RN employment had grown (in large part because of the more than 8000 nursing preceptored placements). The most recent Ontario budget had allocated funding to hire an additional 200 preceptors, and the Participating Hospitals had made specific proposals to create preceptored placements that would, in turn, alleviate the staffing crunch. (Along with other initiatives such as Enhanced Extern Program, and the Learn and Stay Grant, both as detailed in the Participating Hospital brief and at the hearing.) The Participating Hospitals asked that these

proposals be kept carefully in mind. It was obvious that more RNs would do a lot to improve the staffing situation – that was where resources should be directed – not to unaffordable and unfunded compensation increases. Given that there were only 1,879 RNs not currently employed – according to College of Nurses data – it was unlikely that compensation increases would be sufficient to incentivize them to return to the workplace, and the numbers involved would not significantly address the overall current vacancy deficit. Other data established that there has not been an exodus of nurses from Ontario’s health care system: losses from RNs leaving the province ranged from .11% to .35% of total headcount between 2018 and 2022 (with more younger nurses choosing to leave compared to other age groups with mid-career departures relatively stable). Newer vintage nurses could be incentivized to stay in a variety of ways, including by the Board awarding another one of the Participating Hospitals proposals for a New Grad Guarantee Letter of Understanding that would provide more placement opportunities for new graduates in hospitals to build skills and competencies.

It was true enough that some of the Participating Hospitals had introduced various temporary incentives to encourage current employees to work additional shifts, or to economically incentivize new applicants through referral and signing bonuses. This was done to address a present-day supply problem, one that would, slowly but surely, begin to be addressed as the other broader based strategies to train and recruit more RNs came into place. Notably, most of these incentives were offered to address specific short-term staffing challenges such as summer vacations and the Christmas holidays. It was not even clear that referral and signing bonuses were successful (establishing that money alone, if at all, would not solve recruitment and retention). Insofar as agency nurses were concerned, they were only hired as a last resort; intended to address urgent staffing situations, not out of any desire to rely “on exorbitantly priced

agency nurses instead of hiring bargaining unit staff.” The volume of work performed by agency nurses was a tiny percentage of RN work performed in the Participating Hospitals and, notably, less than a third of the Participating Hospitals made any use of them at all.

The bottom line, according to the Participating Hospitals, was that a multi-stakeholder process involving multi-faceted province-wide initiatives was where attention should be placed to address staffing, not granting requests for unaffordable, unfunded compensation. One thing was for certain: increasing compensation as proposed by ONA was not an effective vehicle to increase nursing supply and would not achieve the stated objective.

Participating Hospitals Proposals

Proposals of both ONA and the Participating Hospitals had to be considered through the lens of total compensation and that included the impact of inflation and associated roll-up payroll costs. Bearing all of this in mind, the Participating Hospitals proposed wage increases of 3% in each year of the two-year term, some modest improvements to the evening, night and weekend premiums, the mentorship premium, the student supervision premium and introduction, in year two, of a \$100 health spending account. The Participating Hospitals costed their increases in each year at 2.997% and 3.006% in contrast to 25.536% and 5.65% calculated for the ONA proposals.

Discussion

This Board of Interest Arbitration is subject to *HLDA*, which sets out the criteria we are to consider in determining outcome. Specific criteria are listed and have been carefully considered. In addition, the Board must review “all factors it considers relevant,” not just the enumerated

ones. Accordingly, overall context matters and, in general, that is one in which compulsory interest arbitration is imposed because a legislative decision has been made to substitute adjudication rather than strikes and lockouts as the means to reach a collective agreement. Hospital nurses may not strike; and the Participating Hospitals may not lock them out for public policy reasons that are self-evident. In this compulsory interest arbitration regime, our overriding objective is to replicate what the parties would have agreed to in free collective bargaining where there is the right to strike or lockout. Neither party is to be advantaged or disadvantaged by the substitution of an interest arbitration regime.

Application of the Criteria

Recruitment and Retention

Under *HLDA*, a Board of Interest Arbitration is to consider the employer's ability to attract and retain employees. The evidence presented establishes that there is truly a nursing recruitment and retention crisis in Ontario's hospitals: *Practical Solutions* – an OHA report – is unequivocal about this. That is why it recommended “robust retention strategies,” and “immediate funding to bolster staffing models.” *Practical Solutions* corroborates ONA's submissions: ONA members are leaving their jobs because vacancies were not being filled, creating unmanageable workloads leading to burnout and exhaustion driving employees from the workplace. The evidence referred to in this award unambiguously establishes that there are historic numbers of vacancies, which generally take a very long time to fill, and the suggestion that this can mostly be explained by employees moving intra-hospitals is not generally supported in the evidence. Increased capacity with staffing not yet catching up is only a small part of the explanation.

Hospitals are using agency nurses because they are compelled to do so. Hospitals are offering inducements, outside the collective agreement, because that is the only way in which they can meet their staffing needs: that is also the only explanation for the incredible expansion in overtime, and for hiring agency nurses at double or triple the collective agreement rates; because compensation is a, if not the, key driver in attracting employees. The Participating Hospitals repeatedly acknowledged in their brief that “there is currently a significant gap between hospital capacity and nursing supply.”

Practical Solutions says it best:

In our discussions with members and system stakeholders, it has become clear that workforce issues are at a tipping point – solutions are needed immediately.

...

HHR Issues at a Critical Point

Our members have suggested that exhaustion and ongoing workloads have led to burnout of experienced, late career nurses who have decided to leave frontline clinical practice or the profession entirely. There is anecdotal evidence to suggest that some nurses are leaving hospitals to work for agencies and/or other health care facilities (e.g., public health, surgical centres, independent health facilities) or leaving the industry entirely for a more balanced lifestyle. Members felt that these issues affecting nursing care are a risk to the delivery of the most critical services in EDs, operating rooms, and intensive care units. Some hospitals and other health providers have no alternative but to fill vacancies by relying more on agency staff than in the past, often spending significant dollars doing so.

In northern hospitals, utilization of agency nurses combined with a heavy reliance on locum physicians is significantly impacting patient care – concerns were raised that some of these professionals do not have the necessary cultural and/or Indigenous training needed to work within these regions. With limited HHR supply in these environments, aggressive recruitment efforts by staffing agencies and increasing top-ups are driving up hospital costs. Many hospitals report that they are spending inordinate amounts of time, energy and dollars trying to recruit permanent or semi-permanent staff.

HHR Issues Are Impacting the Delivery of Care

Many hospitals are dealing with an abundance of one-two sick day calls and an increased number of staff, including physicians, taking extended sick leaves. Members reported that the increased amount of sick time leave is impacting the ability of hospitals to deliver care in specific programs. For example, we have heard about shuttering of neonatal intensive care units, birthing units and surgical wards.

There are also growing concerns that HHR issues are impacting the operations of EDs. Most recently, several hospitals within rural and northern communities have considered potential closures to their EDs because of a lack of nurses in the region. Others have had to scale down or close other programs to staff their EDs or other critical areas of care.

A review of the ED metrics (November 2021) shows increases in ambulance offload times, time to physician assessment of patients and wait times for patients being admitted to an inpatient bed. These increases are being observed all while ED volumes remain relatively low, when compared to previous years. Hospitals and ED physicians have indicated that these increases are due, in part, to HHR challenges, as well as the increasing complexity of care which is in turn straining hospital resources.

Profound Challenges to Operating Essential Services in Rural and Northern Communities

For hospitals in small, rural, and remote communities, the challenges to safely operate and provide essential programs and services are now insurmountable given their long-standing HHR concerns. Currently there are more than 300 physician vacancies within rural and northern communities. Hospitals are doing their best to maintain services and keep hospitals open, however significant gaps in nurse and physician coverage are putting hospitals at risk for poor outcomes and creating disincentives to recruitment efforts. *To avert a crisis, there is an immediate need for practical solutions to maximize capacity in the short, medium and long-term* (emphasis ours).

As stated in *Practical Solutions*: “To avert a crisis, there is an immediate need for practical solutions to maximize capacity in the short, medium and long-term.” Another OHA publication, *Challenges and Concerns about Future Health Care Workforce Supply* recommends: “Providing immediate funding to bolster staffing models to enable the hiring of at least 10,000 registered nurses...Providing immediate funding to bolster staffing models would create more manageable workloads for staff, help increase retention rates, and allow hospitals to better respond to patient needs.” The vast expansion of overtime and agency nurse usage – demonstrated by a truly astonishing growth in both – establishes a true recruitment and retention problem, and it is one that is normatively addressed by compensation increases.

Among the best means to recruit and retain, and to incentivize individuals to enter a profession, is compensation. We simply cannot conclude that the other incentives to retain and presumably motivate staff – described above – will be successful in retaining (and motivating) nurses given the demonstrated shortages, as documented in the OHA’s *Practical Solutions* and elsewhere.

Understandably, the province is offering a variety of policies and programs to address this issue.

In the meantime, the Participating Hospitals suggest that compensation increases will not solve

these problems, but this submission is not persuasive in a context when many of their members are doing the opposite: using financial incentives to attract and retain staff, and the government is adopting and backstopping this same approach. Wage increases can reasonably be expected to keep people in the workforce, incentivize people who have left to return (including RNs who have let their registration lapse together with the almost two thousand RNs the College of Nurses records as not currently employed), and attract future employees. We have borne in mind that the Participating Hospitals, as they acknowledge in their brief, are competing for nurses “within a competitive labour market.”

Having said all of that, we also agree that a multi-faceted approach involving all relevant stakeholders is necessary in the short, medium, and long-term. However, our task is to determine the appropriate outcome in settling this collective agreement and we conclude that the Participating Hospitals’ proposals of a general wage increase of 3% in each year together with extremely minor premium adjustments and the introduction of small healthcare spending account, will not be effective in addressing recruitment and retention. (Mentorship and student supervision premiums are discussed further below.)

The Economic Situation in Ontario and the Employer’s Ability to Pay

The Participating Hospitals argued that there is no guarantee that any awarded increases will be funded and urged us to keep that in mind. However, after carefully reviewing these submissions, we have concluded that this is not a factor to be considered in determining outcome. The Province cannot determine the results of independent interest arbitration through its funding allocations; that would fetter the independence of this process, which is to replicate free

collective bargaining and arrive at an independent award after having applied the statutory and normative interest arbitration criteria.

The economic situation is relevant, however. The FAO in its May 31, 2023 *Ontario Health Sector: 2023 Budget Planning Review* estimates that the province has allocated a total of \$4.4 billion more than what is necessary to fund existing programs and announced commitments from 2022-23 to 2025-28. There is, however, a sobering flip side: the FAO also projected that if all hospital employees were awarded retroactive compensation (under Bill 124 reopeners), hospital spending could increase by an additional \$2.7 billion over this period. At the same time, recent Federal Government GDP updates establish reasons for optimism about the overall economic situation, and high employment augers well for recovery, not recession.

Considering the economic context includes reviewing the impact of inflation on wages. It is indisputable that nurses have seen their spending power eroded by inflation, with increases in the cost of living now baked into consumer prices. Some economists predict recession, other economic indicators indicate otherwise, suggesting positive signs of recovery. In considering what to award we have, of course, reviewed the two previous reopener awards decided weeks before submissions were made in this case.

The Earlier Reopener Awards

There are two ONA Bill 124 reopener awards: (*ONA & Participating Hospitals*, unreported award of Stout dated April 1, 2023 and *ONA & Participating Hospitals*, unreported award of Gedalof dated April 25, 2023). In our view, the first of the two earlier ONA reopener awards did not, in awarding an additional 1%, consider the impact of inflation, and to the extent that it did it

is fair to say that this was not reflected in the result. The second ONA award is a different matter: it unequivocally indicated that “soaring inflation” had been considered and in addition to a requested wage increase, a change was made to the grid worth approximately 1.75%, positively impacting approximately half the bargaining unit (and, by and large, the most senior nurses). Nevertheless, neither of these awards addressed inflation in any meaningful manner (and the data is categorical: nurse wage rates have fallen substantially behind). Free collective bargaining, on the other hand, has begun to reflect persistent high inflation in outcomes.

Replicating Free Collective Bargaining

Settlements outside of healthcare have not generally been considered or applied in determining central hospital awards. On the one hand, the unions assert that the dramatically changed economic landscape means that they must be reviewed, while on the other, they are rejected as comparators by the Participating Hospitals as either relevant or useful. Most recently, in *CUPE/OCHU & SEIU & The Participating Hospitals* (an unreported Bill 124 reopener award dated June 13, 2023), attention was turned to this issue and it was determined that in the current context – with high and persistent inflation – it was both appropriate and necessary to broadly consider collective bargaining settlements from groups not traditionally referred to.

That conclusion followed an earlier decision reached in like circumstances: In *Participating Hospitals & OPSEU*, unreported award of Gray dated November 4, 2009 (the Gray Award), an arbitrator was asked by the Participating Hospitals in a central OPSEU case to consider settlements from outside health care – economic settlements from the Ontario and federal governments, teachers, municipal police, the OPP, firefighters, LCBO, municipalities, and energy – in support of its submission that a central pattern settlement not be followed, but

reduced, because of a severe economic downturn. The Gray Award did just that: it considered settlements from across the economic landscape and declined to follow the central ONA award which would have otherwise set (a higher) general wage increase. This approach has even earlier antecedents: the last time inflation was high and persistent.

In *Participating Hospitals & CUPE* (unreported award of Weiler dated June 1, 1981), the arbitrator reached a number of conclusions that we follow (because the Board in that case, like the Gray Award and the Board in this one, had to address extraordinary economic circumstances). The Weiler Board held that the appropriate standard for decisions in this sphere should be drawn from external collective bargaining between sophisticated union and management negotiators whose bargains are shaped by real economic forces: “The parameters of change in the Hospital system as a whole must be drawn from and be compatible with the external world of collective bargaining in the Province” (at 6). Summarily stated, in extraordinary circumstances it is entirely appropriate to look at settlements from sectors not normally considered. Having done so, we find that the best evidence of free collective bargaining is the recent OPG and PWU settlement – authorized by Ontario’s Treasury Board – and the also recent settlements between the Government of Canada and PSAC covering 155,000 core public servants and employees of the Canada Revenue Agency (ratified by both parties in June 2023). For whatever reason, including possibly happenstance, in terms of the numbers, these settlements – again freely negotiated in strike/lockout regimes – are identical.

In OPG and PWU, wage increases of 4.75% and 3.5% were agreed upon for 2022 and 2023, along with signing bonuses of \$2,500 in each year, not to mention other significant compensation improvements. In the federal government PSAC settlement, the parties agreed on the exact same

percentage general wage increases for 2022 and 2023, along with a \$2,500 signing bonus, and some other (more modest) compensation improvements. These two settlements are extremely instructive and have informed our view of how to best replicate free collective bargaining in this round. These settlements are among the best evidence available of free collective bargaining in a high and sustained inflation environment. They fall far short of what ONA has requested – and they do not fully immunize against inflation – but our job is to replicate what the parties would have done in free collective bargaining because we follow free collective bargaining. The last time significant inflation so dramatically affected spending power, arbitrators, like Professor Weiler in the case earlier cited, awarded double-digit increases. But in doing so the Weiler Board was following free collective bargaining outcomes, not leading them.

It is our view that freely bargained outcomes are the touchstone, and in the federal sphere they were achieved after relatively lengthy strikes. We conclude that these voluntarily negotiated outcomes covering so many employees in the quasi-public and public sector are the best guide for setting compensation in current circumstances. Our job, to repeat, is to replicate free collective bargaining, and to ensure that the parties end up no better and no worse than if their right to strike and lockout had not been curtailed. Obviously, these settlements are most important for determination of the general wage increase in 2023. Notably, in neither of these settlements was recruitment and retention a factor, which it most definitely is in this proceeding. Replication of free collective bargaining and determination of wage increases is more challenging for 2024.

Overall Approach

As is well known, the Participating Hospitals were unable to pursue any of their non-monetary collective bargaining objectives in the two ONA reopeners because jurisdiction in those proceedings – the situation in all reopener awards – was and is limited to compensation. This is not those cases. And, free from Bill 124 reopener jurisdictional constraints, the Participating Hospitals have advanced some non-monetary proposals to target staffing – to provide for limited redeployment of nurses without it being characterized as a layoff – which, in our view, are quite properly awarded, albeit with modifications (as set out below). This award must do what it can to address recruitment and retention in both its monetary and non-monetary results.

Accordingly, this award has been crafted to respond to the three most important issues/interest arbitration criteria requiring attention: replication of free collective bargaining, recruitment and retention and the economy, in particular the impact of inflation on real wages. The purpose of the award is to make targeted adjustments, both monetary and non-monetary, within the context of a two-year term that is already underway to address urgent and compelling staffing needs and to provide fair compensation adjustments reflecting free collective bargaining. The award also addresses lacunae arising out of the grid adjustments in the second ONA reopener.

We have, therefore, replicated free collective bargaining by awarding general wage increases of 3.5% in 2023 and 3% in 2024 and have also made adjustments – given recruitment and retention – to the grid building upon the second ONA reopener. The award takes inflation into account and is an acknowledgement of the incontrovertible evidence that for more than a decade inflation has greatly outpaced RN rates (and that current inflation was inadequately considered in the two recent ONA reopeners and needed, in any event, to be reflected in this award as it continues to

significantly erode spending power). We have also increased premiums for Mentorship, Student Supervision and Team Leader as each of these functions is critical to the professional development of new nurses. We have, however, made no adjustments to any of the shift premiums as they are already best in class.

Notably, there are over 9000 RN vacancies across the Participating Hospitals. In our view, it makes no sense to require a hospital to hire an agency nurse rather than redeploy a member of staff for a short-term reassignment. Likewise, it is completely counter-productive to pay nurses to leave employment when both parties are agreed that there is an RN shortage. Stated somewhat differently, we have attempted to provide the Participating Hospitals with some relief so that they can make short-term staffing reassignments without risking an adverse legal outcome: an arbitral award determining that something more than a partial or single shift reassignment is a layoff and that the layoff provisions in Article 10.14(b) then come into effect. Steps need to be taken to enable the Participating Hospitals to avoid overtime and hiring agency nurses, and this is in the mutual interest of both parties. We are firmly of the view that in the midst of a nursing shortage – and ONA correctly described this as a crisis – collective agreement provisions that deem a reassignment of more than one day a layoff, and then financially incentivize nurses to leave employment as the layoff provisions come into effect, are counter-productive to shared goals and the public interest.

However, the fact is that under Article 10.08, anything more than a partial or single shift reassignment of nurses from their area of assignment has – as a result of the case law – been construed as a layoff. In case after case, arbitrators have concluded that even where, for example, a unit was briefly closed for renovations and the nurses were temporarily reassigned, that that

was a layoff or, in another example, where a unit was closed and the nurses provided with similar work with similar shifts at the same hospital, that that too was a layoff. Article 10.14 requires hospitals to make offers of early retirement to incentivize departures during the layoff process – including layoffs resulting from a process that began following reassignment of a nurse for more than one shift in circumstances where the hospital has neither the intention nor the desire to reduce workforce, but merely to realign it. The data establishes that the Participating Hospitals are trying to grow the ONA bargaining unit, not reduce it: there are four thousand more RNs working in the Participating Hospitals in 2023 than were present in 2020, and those numbers will only continue to expand (barring truly unforeseen developments and contrary to every single projection).

Hospitals need the ability to temporarily reassign for more than a single or partial shift without doing so being construed as a layoff. On the other hand, highly valued job security language – admittedly introduced when layoffs were a fact of life – can only be impaired to the minimum extent possible. Our award has attempted to balance these interests in addressing the recruitment and retention crisis in a context where job security interests remain front and centre and where overall compensation has been meaningfully addressed.

The award provides hospitals with additional flexibility to deal with short-term reassignments without triggering a layoff and everything that would flow from it. The award gives the Participating Hospitals the ability to redeploy nurses while maintaining valued seniority protections. Surely the parties would agree that it is nonsensical to offer early retirement packages and severance pay to nurses who are actually needed in the workplace. The provisions awarded are not a concession (an unlikely outcome in replicating free collective bargaining in the

current context) and they must be viewed in the context of an award that has fully recognized compensation as highly motivating when it comes to recruitment and retention.

We have declined ONA's invitation to introduce penalty provisions for agency nurse use.

In our view, penalty provisions are an issue that the parties should agree about – as was previously the case – or the Legislature should act. We agree with the Participating Hospitals and ONA that the best practice is to hire RNs and, in the words of the Participating Hospitals not to rely: “on exorbitantly priced agency nurses” Notably, *Practical Solutions* called on the government to establish governing rules including price controls. This was repeated in the OHA's *Short-Term Actions to Address Health Human Resource Challenges*. ONA's proposal for further transparency on use of agency staff, however, has evident merit and has been awarded with revisions.

There are approximately 500 NPs in 70 of the Participating Hospitals and we acknowledge that a common grid has been an ONA priority in earlier bargaining rounds. We are declining to award an NP grid, or any of the other NP proposals (noting that a minimum start rate is already in place). Obviously, the general wage increase applies to all NP rates.

The pandemic established demonstrated need for isolation pay, and we have awarded a new collective agreement provision that will provide nurses who have been exposed to a communicable disease with salary continuation when they are required to quarantine because of their hospital's policies, or as required by law, or by direction of Public Health.

Award

Grid

Effective April 1, 2023 and prior to the general wage increase, amend grid as follows:

Start:	\$36.65
1 Year	\$37.57
2 Years	\$38.51
3 Years	\$40.24
4 Years	\$42.05
5 Years	\$44.15
6 Years	\$46.36
7 Years	\$48.68
8 Years	\$52.53

Wages (after new grid)

April 1, 2023:	3.5%
April 1, 2024:	3.00%

Percentage in Lieu

Effective April 1, 2024 add 1%: Move to 14-10.

Mentorship and Student Supervision Premiums

Effective date of award increase to \$2.

Team Leader Premium

Effective date of award increase to \$4.

Isolation Pay

Effective date of award:

Employees who are absent from work due to a communicable disease and required to quarantine or isolate due to (i) the employer's policy, and/or (ii) operation of law and/or (iii) direction of public health officials, shall be entitled to salary continuation for the duration of the quarantine.

Layoff

Effective 30 days following issue of award:

10.08 Layoff – Definition and Notice

- (a) A "Layoff" shall include a reduction in a nurse's hours of work and cancellation of all or part of a nurse's scheduled shift.

Cancellation of single or partial shifts will be on the basis of seniority of the nurses on the unit on that shift unless agreed otherwise by the Hospital and the Union in local negotiations.
A ~~partial or single shift~~ reassignment of **4 consecutive shifts or less** of a nurse from her or his area of assignment will not be considered a layoff.

The parties agree that the manner in which such reassignments are made will be determined by local negotiations.
- (b) A "short-term layoff" shall mean:
 - i) A layoff resulting from a planned temporary closure of any part of the Hospital's facilities during all or part of the months of July and August (a "summer shutdown") or during the period between December 15th and January 15th inclusive (a "Christmas shutdown"); or
 - ii) A layoff resulting from a planned temporary closure, not anticipated to exceed six months in length, of any part of the Hospital's facilities for the purpose of construction or renovation; or
 - iii) Any other temporary layoff which is not anticipated to exceed three months in length.
- (c) A "long-term layoff" shall mean any layoff which is not a short-term layoff.
- (d) The Hospital shall provide the local Union with no less than 30 calendar days' notice of a short-term layoff. Notice shall not be required in the case of a cancellation of all or part of a single scheduled shift, provided that Article 14.12 has been complied with. In giving such notice, the Hospital will indicate to the local Union the reasons causing the layoff and the anticipated duration of the layoff and will identify the nurses likely to be affected. If requested, the Hospital will meet with the local Union to review the effect on nurses in the bargaining unit.

(e) Process to Avoid Permanent or Long-Term Layoffs

- i) Where in the Hospital's determination there will be one or more layoffs of a permanent or long-term nature, the Hospital shall provide the Union and all nurses on the affected unit(s) with no less than thirty (30) calendar days written advance notice. The advance notice will describe the unit(s), reasons causing the layoffs, number of nurses that would be laid off and a list of vacant positions and any positions not yet posted to be used as transfer opportunities that may be filled in order to avoid the layoffs.**
- ii) In accordance with seniority, the Hospital will offer those nurses on the unit(s) and within the classification(s) where the proposed layoff(s) would otherwise occur the opportunity to elect to be transferred to a transfer opportunity provided that the nurse is qualified to perform the available work. A nurse's election must be provided to the Hospital in writing within the advance notice period in Article 10.08(e)(i). The number of nurses so transferred shall not exceed the number of nurses who would otherwise be subject to layoff.**
- iii) If the number of nurses who voluntarily elect to transfer to a transfer opportunity within the advance notice period in Article 10.08(e)(i) is less than the number of nurses who would otherwise be subject to layoff, transfers will occur in reverse order of seniority provided that the nurse is qualified to perform the available work and the transfer does not result in a reduction of the nurse's wage rate or hours of work, is located at the nurse's original work site or at a nearby site in terms of relative accessibility for the nurse and is on the same or substantially similar shift or shift rotation.**

Where more than one nurse is to be transferred in order to avoid a layoff, nurses shall be entitled to select from available transfer opportunities in order of seniority. The number of nurses so transferred shall not exceed the number of nurses who would otherwise be subject to layoff.
- iv) The Hospital bears the onus of demonstrating that the forgoing conditions have been met in the event of a dispute. The Hospital shall also reasonably accommodate any reassigned employee who may experience personal hardship arising from being reassigned in accordance with this provision.**
- v) A transfer of a nurse to a transfer opportunity under this article is not a layoff and also need not be posted.**

(f) Notice

Following the completion of the process under Article 10.08(e), in the event of a proposed layoff at the Hospital of a permanent or long-term nature within the bargaining unit, the Hospital shall:

- i) Provide the Union with no less than five (5) months written notice of the proposed layoff.**
- ii) Provide to the affected employee(s), no less than four (4) months written notice of layoff or pay in lieu thereof.**

NOTE: Where a proposed layoff results in the subsequent displacement of any member(s) of the bargaining unit, the original notice to the Union provided in (i) above shall be considered notice to the Union of any subsequent layoff.

In the event of the elimination of a vacant position or in circumstances where the Hospital decides not to fill a vacated position, the Union will be provided with notice at the time the decision is made.

The Hospital shall meet with the local Union to review the following:

- iii) The reasons causing the layoff/elimination.
- iv) The service which the Hospital will undertake after the layoff/ elimination.
- v) The method of implementation including the areas of cut-back and the nurses to be laid off.
- vi) Any limits which the parties may agree on the number of nurses who may be newly assigned to a unit or area.

10.09

Layoff – Process and Options

- (a) In the event of a layoff, nurses shall be laid off in the reverse order of seniority provided that the nurses who are entitled to remain on the basis of seniority are qualified to perform the available work. Subject to the foregoing, probationary nurses shall be first laid off.
- (b) Nurses shall have the following entitlements in the event of a layoff.

Prior to implementing a short-term layoff on a unit, nurses will first be offered, in order of seniority, the opportunity to take vacation day(s), utilize any compensating/lieu time credits or to take unpaid leaves in order to minimize the impact of a short-term layoff.

- i) A nurse who has been notified of a short-term layoff may:
 - (A) Accept the layoff; or
 - (B) Opt to retire if eligible under the terms of the Hospital's pension plan as outlined in Article 17.04; or
 - (C) Elect to transfer to a vacant position, provided they are qualified to perform the available work; or
 - (D) Displace the least senior nurse in the bargaining unit whose work they are qualified to perform.
- ii) A nurse who has been notified of a long-term layoff may:
 - (A) Accept the layoff; or
 - (B) Opt to retire if eligible under the terms of the Hospital's pension plan as outlined in Article 17.04; or
 - (C) Elect to transfer to a vacant position provided that they are qualified to perform the available work; or

- (D) Displace another nurse in any classification who has lesser bargaining unit seniority and who is the least senior nurse on a unit or area whose work the nurse subject to layoff is qualified to perform.
- iii) In all cases of layoff:
- (A) Any agreement between the Hospital and the Union concerning the method of implementation of a layoff shall take precedence over the terms of this article. While an individual nurse is entitled to Union representation, the unavailability of a representative of the Union shall not delay any meeting regarding layoffs or staff reductions.
 - (B) Where a vacancy occurs in a position following a layoff hereunder as a result of which a nurse has been transferred to another position, the affected nurse will be offered the opportunity to return to their former position providing such vacancy occurs within six (6) months of the date of layoff. Where the nurse returns to their former position there shall be no obligation to consider the vacancy under Article 10.07. Where the nurse refuses the opportunity to return to their former position the nurse shall advise the Hospital in writing.
 - (C) No reduction in the hours of work shall take place to prevent or reduce the impact of a layoff without the consent of the Union.
 - (D) All regular part-time and full-time nurses represented by the Union who are on layoff will be given a job opportunity in the full-time and regular part-time categories before any new nurse is hired into either category.
 - (E) Full-time and part-time layoff and recall rights shall be separate.
 - (F) Casual part-time nurses shall not be utilized while full-time or regular part-time nurses remain on layoff, unless the provisions of Article 10.10 have been complied with or unless the matter is covered by local scheduling.
 - (G) No new nurses shall be hired until all those nurses who retain the right to be recalled have been given an opportunity to return to work.
 - (H) In this Article (10.09), a "vacant position" shall mean a position for which the posting process has been completed and no successful applicant has been appointed.
 - (I) The option to "accept a layoff" as provided in this Article includes the right of an employee to absent themselves from the workplace.
- (c) i) Where there are vacant positions available under Article 10, but the nurse is not qualified to perform the available work, and if such nurse is not able to displace another nurse under Article 10, the nurse will be provided with the necessary training up to sixteen (16) weeks' training to enable the nurse to become qualified for one of the vacant positions. In determining the position for which training will be provided the Hospital shall take account of the nurse's stated preference.
- ii) When nurses would otherwise be recalled pursuant to Article 10 but none of the nurses on the recall list are qualified to perform the available work the Hospital will provide necessary training up to sixteen (16) weeks to nurses, in order of seniority, to enable them to become qualified to perform the available work.

- iii) Where a nurse receives training under this provision, they need not be considered for any further vacancies for a period of six (6) months from the date they are placed in the position.

...

- 10.14 (b) **Where a nurse would otherwise be laid off as a result of a permanent reduction in her or his hours of work following the process in Article 10.08(e), B**before issuing notice of long-term layoff pursuant to Article 10.08(f)(ii), and following notice pursuant to Article 10.08(f)(i), the Hospital will make offers of retirement allowance in accordance with the following conditions:
- i) The Hospital will first make offers in order of seniority on the unit(s) and within the classification where layoffs would otherwise occur.
 - ii) The Hospital will make offers to nurses eligible for retirement under the Hospital pension plan (including regular part-time, if applicable, whether or not they participate in the hospital pension plan).
 - iii) The number of retirements the Hospital approves will not exceed the number of nurses who would otherwise be laid off.
A nurse who elects a retirement option shall receive, following completion of the last day of work, a retirement allowance of one (1) week's salary for each year of service, to a maximum ceiling of thirty-five (35) weeks' salary.
 - iv) If a nurse(s) on the unit referred to in paragraph (i) does not accept the offer, the Hospital will then extend the offer, in order of seniority, to eligible nurses in the same classification in the unit where a nurse who has been notified of a long-term lay-off elects to displace in accordance with Article 10.09 (b) ii) (D) and one subsequent displacement. The Hospital is not required to offer retirement allowances in accordance with this provision on any subsequent displacements i.e., the offer shall follow the displaced nurse, to a maximum of two displacements.

NOTE: For the purposes of this provision, Charge Nurse and Team Lead shall be considered as within the same classification as a "General Duty RN", or any other classification agreed by the parties.

Agency Nurses

Effective date of award:

(e) The Hospital will provide the Union, on a quarterly basis, with satisfactory reporting respecting the use of agency nurses as follows: and the percentage that use represent of total bargaining unit hours worked (RN).

- i) Agency nurse hours worked per unit.
- ii) Total bargaining unit hours worked per unit.
- iii) Percentage of agency nurse hours worked per unit.
- iv) Total agency nurse hours worked hospital-wide.
- v) Total bargaining unit hours worked hospital-wide.
- vi) Percentage of total agency nurse hours worked hospital-wide.

The Union may, at its expense arrange for an audit of the information provided and the employer will cooperate in that audit process.

LOU: Supernumerary Positions (Nursing Graduate Guarantee) and Internationally Educated Nurses

Effective date of award:

Delete Paragraph 3.

Amend Paragraph 9:

Such nurses can apply for posted positions during the supernumerary appointment but may not transfer to a permanent position before the end of the supernumerary appointment.

LOU: Supernumerary Positions-Nursing Career Orientation (NCO), Initiative for Internationally Educated Nurses (IENS).

Effective date of award:

Delete Paragraph 2.

Amend Paragraph 8 (formerly 9):

Such nurses can apply for posted positions during the supernumerary appointment but may not transfer to a permanent position before the end of the supernumerary appointment.

Conclusion

At the request of the parties, we remain seized with respect to the implementation of our award.

DATED at Toronto this 20th day of July 2023.

“William Kaplan”

William Kaplan

I dissent. Dissent Attached.

Brett Christen, OHA Nominee

I dissent. Dissent Attached.

Phil Abbnik, ONA Nominee

DISSENT

I respectfully dissent from the Award of the Chair dated July 18, 2023 (the “Award”) and the monetary items awarded therein.

The Award covers a two-year period from April 1, 2023 to March 31, 2025 and follows two re-opener awards (the “Re-opener Awards”) chaired by Arbitrator Stout and Arbitrator Gedalof, respectively, which together cover a three year period (the “Stout Re-Opener” and the “Gedalof Re-Opener”). The Re-opener Awards addressed compensation issues not addressed in awards issued when the Protecting Sustainable Public Sector for Future Generations Act, 2019 (“Bill 124”) was in effect (the Ontario Superior Court declared Bill 124 to be unconstitutional and of no force or effect in November 2022). Under the Re-Opener process, there was no opportunity for the hospitals to negotiate any trade offs against the monetary gains sought (and obtained) by the Union.

As noted by the Chair, the Union’s arguments for greater compensation and benefits relied very heavily on the on-going shortage of nurses to fill available vacancies or, in terms of HLDAA criteria, recruitment and retention. The Award details some of the measures adopted or recommended by the Government of Ontario, some Participating Hospitals and the OHA to deal with the identified recruitment and retention issues. The Chair correctly notes that the solution to the issue is a multi-faceted one and one which cannot be achieved solely through increases to compensation and benefits. To state the obvious, increases in compensation cannot attract nurses to vacancies where there are insufficient nurses in Ontario to fill those vacancies nor do such increases in any way assist hospitals in matching available staff to hospital units which are experiencing short or long-term staff shortages.

In the present proceeding, as part of the multi-faceted approach to improving recruitment and retention, the Participating Hospitals made considered, reasonable and targeted proposals, which together, were designed to respond reasonably to the economic and funding environment facing hospitals and to assist hospitals in addressing staffing shortages by enabling the efficient short-term movement of available staff to enhance patient care in other areas of the hospital, by reducing expenditures on expensive severance packages in circumstances where the hospital is not reducing bargaining unit staff, and by assisting hospitals in restructuring staffing on units to provide enhanced patient care. The Participating Hospitals also proposed modest amendments to existing Letters of Understanding Re: “Supernumerary Positions (Nursing Graduate Guarantee) and Internationally Educated Nurses” and “Supernumerary Positions – Nursing Career Orientation (NCO), Initiative for Internationally Educated Nurses (IENS)” to enhance the utility of these programs, which facilitate the recruitment of new and internationally trained nurses into hospital vacancies.

The Award grants these Participating Hospital proposals, albeit with some modification, in furtherance of the stated goal of the Award to ameliorate staffing issues in the hospitals. There can be no reasonable objection to the award of these items in the present circumstances facing hospitals, where similar language exists in another central agreement, and in a proceeding in which the Union’s request for non-normative monetary enhancements rested almost exclusively upon the recruitment and retention criteria. The amendments to the collective agreement language granted in the Award are exactly the type of trade off which would occur in free collective bargaining in exchange for monetary enhancements and are fully justified on the basis of replication. In mature bargaining relationships, the rule in free collective bargaining is “give to get”; unions achieve monetary gains in exchange for addressing legitimate employer needs for flexibility or other

similar goals. The plethora of interest arbitration awards in the hospital sector which ignore this reality while paying lip-service to the principle of replication do not represent an approach to be endorsed.

Even setting aside a replication analysis, the Participating Hospitals' proposals were fully and amply supported by demonstrated need. The proposals, in one form or another, have been advanced on many occasions in past negotiations and should have been granted long before the present Award.

My issue with the Award, then, is not with the general approach undertaken. It is clear that the Chair undertook a careful and thorough review of a massive amount of data and other information which was submitted to the Board by both parties. Rather, my objection is that the Chair erred in balancing the trade-offs appropriately; the monetary items awarded to the Union are simply too great for the modest hospital proposals awarded in exchange. In particular, the grid adjustments and ATB increases awarded exceed, in my view, what would have been achieved by the Union in free collective bargaining, particularly given the tremendous fiscal pressures hospitals operate under.

I understand that the on-going recruitment and retention issues relating to nurses are unique in the hospital sector and, as noted repeatedly by the Chair, the Award is a product of that fact. However, in my view, more modest compensation increases were warranted particularly having regard to the appropriate and traditional hospital sector comparators and the principle of total compensation.

I also strongly disagree with the Award's increase to the percentage in lieu of benefits for part-time employees by 1% effective April 1, 2024. The payment in lieu of benefits has been expressed by the parties as a percentage of wages rather than as a set amount so that the payment to part-time

employees would grow as the base of the calculation (wages) increased. By choosing the percentage formula, the parties have determined, in my view, that there is no need to increase the percentage itself. In any event, as a result of the ATB increases and increases to the grid awarded, the in lieu amount received by part-time employees will significantly increase over the two year period covered by the Award. Given this fact, I don't feel that this change is supported by replication and also that it should not have been awarded having regard to the principle of total compensation.

Dated July 20, 2023

Brett Christen
Nominee of the Participating Hospitals

Dissent of Union Nominee

For the first time, an interest arbitration board has recognized the severe recruitment and retention crisis facing Ontario hospital nurses together with the devastating impact of persistent multi-year inflation on wages in a meaningful way. Significantly, the award moves Ontario's nurses from second to last place in Canada to first place. More needs to be done, but this was an important first step.

Also significant is the award of isolation pay for infectious diseases. Path-breaking and unprecedented, though clearly much needed, this will improve the resiliency of the healthcare system in the event of future pandemics, and quite fairly provides compensation to nurses who are not permitted to work to protect their colleagues and patients.

I do, however, have concerns about the Chair's decision to award significant changes and wholesale additions to the reassignment and layoff language. In my view, there was no demonstrated need for these changes, and to the extent they would have occurred in the context of free collective bargaining, one would expect that even more significant increases in compensation would have been negotiated for ONA to have agreed to any alteration of this valued and longstanding language. I also note that there is the risk of a perverse impact resulting from these amendments. The Chair's explanation for these changes is to allow the Hospitals flexibility to staff their operations as needed. That said, Nurses who apply for and accept a position on a specific unit do so because they want to work on that unit. Having done so, and in many cases having developed considerable expertise in their chosen area of specialization, there is the real risk that transferring them to a different area of practice without their consent will undermine the steps the Chair has taken to address retention and recruitment. Obviously, the impact of these changes needs to be carefully monitored and, if need be, appropriately addressed in future rounds.

I am disappointed that the Chair has not awarded a centralized NP grid, which was a priority for ONA. Every other grid in the ONA central agreement is centralized, and the local grids for special classifications are pegged to the grid. Based only on the principle of comparison, NPs doing the same work for the same kind of employer should be paid the same. I anticipate that this will remain a priority for ONA and expect that this proposal will be awarded in the near future.

IN THE MATTER OF AN ARBITRATION BETWEEN
SERVICE EMPLOYEES INTERNATIONAL UNION
LOCALS 183, 204, 268, 472, 532, 777 AND
A GROUP OF 43 HOSPITALS

The Board: Martin Teplitsky, Chairman
R. Fillion and M. Geiger

Appearances

For the Union: Albert G. Hearn and
Stanley E. Roscoe

For the Hospitals: T. F. Storie, Counsel
R. W. Brown, J. E. Stewartson,
R. A. Morton, R. Woodcock,
T. R. Yukich, R. J. Bass

Fifteen issues were submitted to this Board for resolution and I will proceed to deal with each issue in the order listed in Exhibit 4 in the Union's brief.

I note at the outset that the parties have agreed that the agreement being considered by us will terminate on March 31, 1979 and our Award, therefor, so provides.

Superior Conditions:

The Union request is that if in any existing contract a superior condition exists to that which is provided for in this award, such superior condition will continue. The Union's thesis is that it was not the intention of central bargaining to deprive employees of these advantages. The Employer's position is that at most such

a clause can only apply to the issues before this Board and should be approached on an issue by issue basis rather than by an all encompassing provision.

I have attempted to give effect to the legitimate concerns of both parties by examining the issues in respect of which there is a possibility of a superior condition. Accordingly, wherever there is a condition in respect of benefits (monetary or non-monetary), or working conditions, in any existing collective agreement in respect of hours of work, protective clothing, vacations with pay, E.M.C.A., sick leave, or converting to long term disability which is superior to the condition awarded by this Board, the superior condition will prevail. This principle then shall be given effect to in drafting the individual collective agreements.

Hours of Work:

The respective proposals on this issue were reasonably similar. The difference revolves about the Union's request that a failure to grant a fourth weekend off, attract automatically a penalty of pay at time and one half. In my view such a request is difficult to accede to in its present ^{form} given the wide variety of local conditions. On the other hand to provide no relief from an unwarranted failure to schedule weekends in a reasonable way would be unresponsive to a valid concern. Accordingly, the one paragraph still in dispute which begins at the bottom of page 9 of the Union's

brief and continues on to page 10 will read:

"In scheduling shifts, the employer will endeavour to arrange schedules, so as to provide for a minimum of 8 weekends off in every 24 week period, and, in any event, at least 1 weekend off in each 4 week period. Where the weekend is not granted on the 4th weekend, time worked shall be paid at the rate of time and one half for any time work done the Saturday or Sunday unless the employer, notwithstanding its best efforts, was unable to meet this standard. This shall not be construed as requiring the employer to hire additional staff."

Protective Clothing:

That an employee should be provided with appropriate protective clothing and equipment is a principle to which one can readily give full support. However, its implementation in appropriate contractual language sufficient to avoid countless grievances is impossible to achieve by an arbitrator. In addition, the problem, it seems to me, can more effectively be addressed by government. I am also influenced by the fact that it seems reasonable to anticipate such governmental action in the near future. Accordingly, with some changes in language I have adopted the employer proposal found at Exhibit 19 of its brief and the following provision shall be inserted in the collective agreement:

"The Hospital agrees to continue its present practices with respect to the provision of protective clothing and safety devices to employees. The Hospital further agrees to meet directly with the representative of the Union or through the Accident Prevention Committee to discuss the need for any protective clothing or safety equipment in addition to that which the Hospital is presently providing."

Health and Welfare:

The parties agree that this award should include a direction that the employer's contribution should be based on "billed rates". The employer's agreement was conditional on the Board's recognizing any increase in cost as part of total compensation. Such recognition is given in the discussion of the general wage increase.

Blue Cross Dental Plan:

In a period of economic restraint where wage settlements are less than the increase in the cost of living, it seems reasonable to me to seek out what may be called "inflation fighters". A dental plan provides some relief from the ravages of inflation for those who can benefit therefrom, particularly employees with young children. Accordingly, I would award a dental plan No. 7 (Blue Cross) or its equivalent with the employer paying 50% of the billed premium cost, such plan to be implemented as soon as practicable. The cost to the employer will also be recognized in my discussion of a general wage increase. Acceptance of the plan by any individual is, of course, voluntary. If the enrolment requirements of the insurer cannot be met, the Board will remain seized.

Vacations With Pay:

Vacations were improved in the last collective agreement and the statistics provided show that these employees have vacations which compare favourably with others. Accordingly, I conclude that no basis exists for improving this benefit at this time.

Shift Premiums:

Both parties agreed that an increase was appropriate but differed in the quantum thereof.

In our view the differential which applies to nurses should also apply to these employees. Accordingly, the following language should be inserted in the collective agreement:

"Effective April 1, 1978, any employee who works a complete evening or night shift shall be paid a differential of \$1.65 per shift.

Employees who regularly work a shift greater than the daily shift hours established under this agreement shall be paid a shift differential based on 21¢ per hour for work performed during a complete evening or night shift."

Pension Plan Representation:

I have no doubt that basic fairness requires that these employees have a meaningful voice in the management of their pension plan. However, I have no power to award such representation as control of the plan lies with a party who is not before us. The employer, however, gave an undertaking which is found at Exhibit 17 of its Exhibit Book and I make that undertaking part of this award.

Addresses for Present and New Employees:

I consider that the Union's request found at page 44 of its brief is reasonable and accordingly include in the award a direction

that the employer supply the Union with the addresses of new employees when they are placed upon the check-off list for the first time.

General Wage Adjustment for Tradesmen:

In setting an appropriate increase, I am mindful of the general increase to be discussed subsequently and the desirability of maintaining the differentials which have existed in the past. Accordingly, I would award an adjustment of \$9.00 per month.

E.M.C.A. Classification and Wage Rate:

In my view recognition should be given to the increase in qualifications represented by those who have successfully passed the E.M.C.A. course. However, in the absence of specific evidence, and given the limited experience with employees who have this course requirement, I hesitate to create too marked a differential between these persons and persons presently employed without the qualification. Accordingly, I would award .15¢ an hour as a premium for those who have this qualification. I am not satisfied on the evidence that it is necessary to create at this time a separate classification.

A General Wage Increase:

Quantifying the total compensation to be awarded is obviously both the key and most difficult issue. In arriving at my decision, I have considered the following factors in addition to those set forth at page 53 of Mr. Storie's brief:

- (a) It is not appropriate to consider the AIB guidelines in constructing the award. There is a consistent stream of

arbitral awards to this end and I refer to Mr. Burkett's award in the Ontario Nurses Association v. The Wellesley Hospital.

(b) The ability of the employer to pay in a public sector dispute is irrelevant. It is not that I fail to recognize the difficulties facing the employer, when inflation is running at 8½ per annum and provincial grants are only 4½, continuing the high level of service which our society has become accustomed to. However, these employees cannot be expected to subsidize a higher level of care than we as a society can afford or are prepared to pay for by receiving less than appropriate wages.

(c) Employees whose incomes are relatively modest are most affected by the impact of increases in the cost of living. Mr. Justice Dubin accepted the validity of this observation in The Metropolitan Toronto Secondary School Teachers dispute, Award dated March 3, 1976 at page 45 where he stated:

"By applying the percentage increase in the CPI against the salary, those in the higher salary brackets receive more than those in the lower salary brackets. In my opinion, it is an inaccurate reflection of the cost of living to apply it in this way. The impact of the increased cost of living is felt most by those who earn less.

(emphasis mine)

In a period when compensation increases lag behind cost of living increases, one should avoid becoming mesmerized by percentage increases. These percentage increases should

be translated into the actual dollars generated. Accordingl settlements even in the same industry are less weighty as comparables if the employees affected by those settlements earn substantially higher than the employees covered by this collective agreement."

With all of these considerations in mind, I approach this problem by first determining what would be an appropriate award of total compensation assuming no special factors warranting either a negative or positive adjustment. Thereafter I will consider whether any adjustment should be made to my preliminary determination.

In my view the range of total compensation settlements at this period both in the private and public sectors is between 4% and 7% with the highest concentration of settlements in the 5.5% to 6.5% range. Therefore, what appears normative at this time is for an employee to receive as total compensation, absent special factors, between 2% to 3% less than the increase in the cost of living, which at the present time is approximately between 8½% to 9% per annum. This view is confirmed by a study published by the collective bargaining division of Labour Canada in May of 1978 entitled "Base Rate Increases, First Quarter 1978". I refer in particular to Table 2. I have selected 6.5% which is at the high end of the range I have identified, based on the fact that these employees, given the relatively modest level of their earnings, suffer the impact of inflation more severely than those whose earnings are greater. An award which is at least 2% less than the rise in the cost of living is a sufficient recog-

I turn then to consider whether any adjustment should be made to this preliminary determination of 6.5%.

The employer's proposal of a total compensation award of 4% is supported by reference to statistics which indicate that these employees have fared extremely well over the past 10 years when their increases in earnings are compared with the rise in the cost of living. This contention in my view principally bears on the issue of whether any catch-up is necessary.

It was also submitted that these employees' earnings have also improved more than the earnings of service employees generally. The data supplied appears to support this argument to some extent. However, without further details with respect to the hours of work, employee benefits, conditions of work and job description, of service employees generally, it is difficult to draw meaningful comparisons particularly when one approaches the subject from the perspective of total compensation. Moreover, I cannot accept the contention that at the present time the level of earnings of these employees is so high as to justify a negative adjustment factor when the last settlement which was freely negotiated between the parties includes a wage rate which is 4% higher than these employees in fact presently earn. The 4% differential is accounted for by a rollback in the last agreement by the AIB.

I also note that this differential has existed since 1974. Prior to that date the hospital service employees' earnings were less than those of the average service worker. I am not prepared on the

evidence presented to me to conclude that there was an over-adjustment at that time which requires remediation. In any event, in a period where wage increases are substantially less than the increase in the cost of living any adjustment would be relatively nominal. In The Lambton Secondary School Teachers dispute I had occasion to make the following observation which I think applies in this connection as well. "...Gains or losses which have resulted from collective bargaining over a number of years should only gradually be adjusted by a Board of Arbitration because gradual adjustments better reflect what the collective bargaining process would itself have achieved. Such an approach is reinforced by the current climate of economic restraint".

Reference was also made to 3 prior settlements in the hospital industry which included general wage increases of between 4% to 5½%. The total compensation may be somewhat higher because of improved benefits. For reasons previously discussed, I do not consider these settlements as comparable because the wage rates of the employees affected therein is substantially higher than those of the employees affected by my award.

Nor do I consider that these settlements have established a pattern within the hospital industry that should be more persuasive than the results of a general overview of the private and public sectors. The 3 settlements affect, relatively speaking, only a small number of the total employees in the hospital industry. I must be aware of the tail wagging the dog.

I turn then to consider whether there is any sufficient reason to make a positive adjustment. The Union proposal was for an award of 9½% based on an 8½% increase in the cost of living and 1% for catch-up. In this latter connection, the Union relied on the rollback previously adverted to. To award 8½% for the rise in the cost of living is to ignore economic restraint, which as I have mentioned, is being reflected in both the private and public sector settlements. There is no reason for these employees to be treated differently from all others in this respect.

As far as catch-up is concerned, I take the view that at this time no adjustment should be made beyond that implicit in the award of a dental plan which I have only costed against total compensation on an actual cash flow basis for the period of this agreement, notwithstanding that I appreciate that the award of the dental plan has overall greater impact.

Accordingly, I confirm my determination of 6.5% as total compensation.

In arriving at the appropriate general wage increase I have made the following deductions:

O.E.I.P.	.29
R.N.A. and Orderly	.07
Increased Shift Premium	.02
Special \$7.00 Adjustment to Maintenance	.06
Long Term Disability 6 Hospitals	.06
Dental Plan	.16

The general wage increase of 5.85% multiplied by the average hourly rate of \$5.29 produces an hourly increase of .31¢ per hour and a monthly increase based on a 40 hour week of \$54.00 rounded off to the nearest dollar. This amount then is my award on this issue.

Orderly and Registered Nursing Assistant Parity:

The Union seeks parity at once whereas the employer seeks a gradual parity. Parity already exists in 30 of the 43 hospitals. In the other 13 parity exists at maximum but not at start, first year and sometimes second year. The cost of the Union demand is .07%. The cost of the employer proposal is .04%. In my view it would be appropriate to achieve parity in this contract. By parity I mean as I understand the Union demand, within each hospital using the orderly as the bench-mark. I may add that by this relatively minor adjustment I am not intending and trust that in fact I am not affecting the "tie-point" referred to in Mr. Burkett's award dated April 4, 1977 in the dispute between the ONA and The Wellesley Hospital.

Job Security:

I cannot accede to this request. The employer is faced with a difficult problem of managing its resources in this period of economic restraint and limited financial grants and high inflation. It would be wrong in principle to tie its hands and limit its discretion.

Sick Leave Converting to Long Term Disability:

The Union requested that we refer this issue back to local bargaining after having sanctioned a conversion for those who want it. This request would involve an abdication of our function and it must

This issue is also difficult of resolution. Giving the matter the best consideration I can, I have concluded that the employer's proposal is fair and results in a significant increase in benefits for all employees and therefore, is what should be awarded.

Retroactivity:

The only issue on the question of retroactivity related to whether or not retroactivity should apply to employees who have left their employment. In my respectful view, our award should be applied as of April 1, 1978 to all employees on payroll as at that date, including those who may have left subsequent thereto. The parties shall agree on an appropriate method of notifying such employees who will have 30 days after notification within which to claim retroactive wages. Any new employees should be treated on a pro rata basis. Obviously, the retroactivity only applies to wages and premiums and does not apply to hours of work or the dental plan.

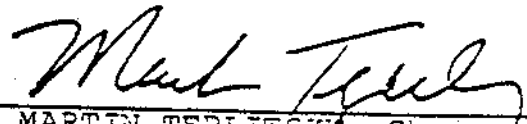
Both parties agreed that if after the contract is submitted to AIB, a rollback occurs, such rollback should be in the area of the general wage increase and not in the area of benefits.

The Board will remain seized should there be any difficulties with the award, and without limiting the generality of the foregoing, in implementation, drafting of appropriate contractual terms, agreeing on entitlement to premiums.

Both parties stressed the importance of this arbitration and their assessment was that the award was a fair and equitable one.

and spirited oral presentations. Interest arbitrations are always difficult. Fortunately, the help I received from both parties made the task of adjudication much easier.

DATED this 19th day of June, 1978.


MARTIN TEPLITSKY, Chairman

R. C. FILION (dissenting in part)


MARK GEIGER

IN THE MATTER OF AN ARBITRATION

BETWEEN:

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCALS 183, 20- 158.
478, 532, 777

- and -

A GROUP OF 43 HOSPITALS

DISSENT

I have had an opportunity to consider the Chairman's award in this matter and, with respect, I must dissent in part. Although I find myself in agreement with the Chairman concerning many of the issues in dispute, I must disassociate myself from both the reasoning and conclusion reached by the Chairman as to the following issues.

General Wage Increase

In my view, the evidence before the Board clearly indicates that the appropriate total compensation should not, on the merits, and cannot, under the Anti-Inflation legislation, exceed 4%. To the extent that the award exceeds this figure, it is a futile exercise of jurisdiction. At the same time, it has the effect of raising, then dashing the expectations of the employees affected by the dispute.

In arriving at a figure of 6-1/2%, the Chairman has failed to give sufficient effect to the fact that the employees in question have fared extremely well over the past ten years compared with the rise in the cost of living. They have also fared extremely well by comparison with the increase in the average weekly earnings of other employees in the service sector over the same ten year period. Indeed, notwithstanding the large increase received by these employees in 1974 and the subsequent period of restraint, the statistics indicate that the differential between these employees and other employees in the service sector has continued to increase since 1974. The Employer's position would maintain the approximate differential existing in the years since 1974.

Nor do I feel that sufficient weight has been given to comparable hospital settlements providing for increases approximating 4% in total compensation. Apart from the fact that these were freely negotiated settlements, the agreement between O.P.S.E.U. and thirty-eight hospitals in particular is comparable, representative and significant.

Moreover, I cannot agree that any weight should be given to the rollback which arose from the previous settlement. Not only does recognition of this earlier rollback ignore the current merits relevant to this dispute, but it invites diffi-

culties in future negotiations between the parties due to what I consider to be the inevitability of a rollback to this award.

The Employer did not place any emphasis on ability to pay as a factor in arriving at the appropriate total compensation. The existence of economic constraints and the difficulty faced by employers in managing resources in a period of restraint, high inflation and limited financial grants, must, however, be recognized, where the employer's position is justified on the merits. In these circumstances, a Board of Arbitration should make every effort to structure its award in such a way as to avoid creating difficulties in maintaining current staffing levels.

The adjudication of interest disputes is a difficult judicial process and there is no precise formula which is applicable in determining the various matters involved in any award. In this particular dispute, the application of what I consider to be an absolute ceiling of 4% is not inequitable based on the merits. The impact of this award is not limited to the employees in the 43 hospitals involved in this dispute but must also be considered in light of current negotiations affecting

thousands of other hospital employees.

Dental Plan

I cannot challenge the trend in recent years toward the implementation of dental plans. If the total compensation had been limited to 4%, it would be difficult to oppose the introduction of a dental plan on a shared cost basis. Inasmuch as the award exceeds 4%, a dental plan at this time would appear premature.

General Wage Adjustment for Tradesmen

In my view, although an adjustment for tradesmen is warranted in conjunction with a general wage increase, any adjustment should not exceed \$6.00 per month in order to adequately maintain the approximate differential between tradesmen and other employees, particularly in view of the fact that there were adjustments in each year of the expired agreement.

E.M.C.A. Classification and Wage Rate

I cannot agree that any recognition should be given to those employees who have successfully completed the E.M.C.A. course. At the present time, any premium for this course is premature since the value of the course credits cannot be assessed against existing qualified attendants. At the hearing, the Union was invited to adduce evidence relating to any alleged increased duties and responsibilities

performed by those who had completed the course. The Union declined this invitation. Nor was there any evidence that the qualifications acquired from the course are in any way utilized in the attendant's day-to-day activities.

R.N.A. - Orderly Parity

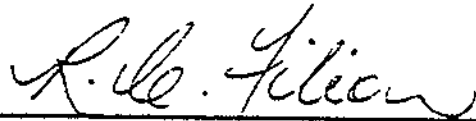
The issue is not whether there should be parity between the R.N.A. - Orderly classifications on an intra hospital basis but rather the manner in which such parity should be achieved. As the Chairman noted in relation to the general wage increase, gains or losses which have resulted from collective bargaining over a number of years should only gradually be adjusted by a Board of Arbitration because gradual adjustments better reflect what the collective bargaining process would itself have achieved.

I am not as concerned with the cost factor involved in the Chairman's award as much as with the fact that the resultant Orderly start rates of the affected hospitals will exceed the average start rates for Orderlies affected by these proceedings. In my view, Alternative #2 suggested by the hospitals would accommodate these concerns and achieve parity in a more equitable manner.

I wish to note my agreement with the Chairman's

comment that any method used to achieve parity in this dispute is not intended to affect the "tie-point" argument referred to in Mr. Burkett's award and thereby influence negotiations between O.N.A. and any affected hospitals.

DATED at Toronto this 22nd day of June, 1978



 ROY C. FILION