IN THE MATTER OF AN INTEREST ARBITRATON

BETWEEN:

The Participating Hospitals

and

OCHU/CUPE

Before:	William Kaplan, Chair Brett Christen, OHA Nominee Tim Gleason, Union Nominee
Appearances	
For the OHA:	Craig Rix Hicks Morley Barristers & Solicitors
	Participating Hospitals Bargaining Committee Justine Boyd, Joseph Brant Hospital Paulette Clannon, St. Joseph's Healthcare, Hamilton Kevin Gibbons, Royal Victoria Hospital Allison Green, Renfrew Victoria Hospital Kelly Hanselman, North Bay Regional Health Centre Shirley Ward, Scarborough Health Network
	Ontario Hospital Association David Brook David McCoy Philip Cifarelli Joyce Chan Adrian Di Lullo Louci Apkarian
For CUPE/OCHU:	Steven Barrett Simran Prihar Goldblatt Partners

Barristers & Solicitors

Ryan Willis, CUPE Researcher
Doug Allan, CUPE Researcher
Declan Ingham, CUPE Researcher
Barbara Frey, CUPE A/Health Care Sector Coordinator
Jonah Gindin, CUPE National Representative
Michael Hurley, President, Ontario Council of Hospital Unions/CUPE
Sharon Richer, Secretary-Treasurer, Ontario Council of Hospital Unions/CUPE
Dave Verch, First-Vice-President, Ontario Council of Hospital Unions/CUPE
Treena Hollingworth, Area 1 Vice-President, Ontario Council of Hospital Unions/CUPE
Kevin Cook, Area 2 Vice-President, Ontario Council of Hospital Unions/CUPE
Calvin Campbell, Area 3 Vice-President, Ontario Council of Hospital Unions/CUPE
Susan Keeling, Area 4 Vice-President, Ontario Council of Hospital Unions/CUPE
John Jackson, Area 5 Vice-President, Ontario Council of Hospital Unions/CUPE
Dave Tremblay, Area 6 Vice-President, Ontario Council of Hospital Unions/CUPE
Judy Bain, Area 7 Vice-President, Ontario Council of Hospital Unions/CUPE

The matters in dispute proceeded to a hearing held on March 21, 2024. The Board met in Executive Session on April 10, 2024.

Introduction

This award resolves the outstanding issues in dispute between the Participating Hospitals (Participating Hospitals) and CUPE/OCHU (union) for a central collective agreement with a two-year term: September 29, 2023, to September 28, 2025. The union represents approximately 36,000 service and clerical employees in a wide variety of classifications in more than 100 bargaining units at 52 hospitals. These employees make an indispensable contribution to the well-being of the people in this province.

The parties have a mature bargaining relationship: this is their 21st consecutive central collective bargaining round.

Bargaining took place in November and December 2023. Mediation occurred in January and February 2024. Unfortunately, the parties were unable to resolve all issues in dispute, and a hearing, therefore, proceeded on March 21, 2024. The Board met in Executive Session on April 10, 2024. The collective agreement settled by this award will be comprised of the items agreed to in bargaining, the unamended provisions of the predecessor collective agreement and the terms of this award. Any union or Participating Hospitals proposal not directly dealt with is deemed dismissed.

It is fair to say that the parties were far apart when bargaining, and at mediation. In general, the union sought numerous improvements – in wages and benefits along with additional job security enhancements – and was adamantly opposed to all the Participating Hospitals' proposals as either sub-normative from a monetary perspective, or concessionary. The Participating Hospitals,

pointing to financial limitations, and the need for prudence given funding restraints and overall economic uncertainty, sought compensation increases that it characterized as fair and affordable. They also proposed changes to several central terms so that they could better manage staffing, avoid unnecessary expenditures, and achieve efficiencies in the delivery of patient care.

The Criteria

In determining the outstanding issues, we have carefully considered the governing criteria both normative and statutory. The normative criteria include the replication of free collective bargaining, but also demonstrated need, total compensation, and gradualism. The statutory criteria are set out in the *Hospitals Labour Disputes Arbitration Act*:

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.

Union Submissions

In the union's view, and turning to the criteria, all its proposals were justified by their appropriate application. For example, its proposed general wage increases of 4% in the first year and 5% in the second were necessary to combat persistent inflation, and were affordable given overall economic conditions, including the robust state of provincial finances. Recovery, not recession, was clearly underway. Also affordable, and necessary from a comparator perspective, were improvements to other monetary provisions: premiums, insured benefits including dental, a

health care spending account, vacation, benefits beyond age 65, and bereavement leave. All the sought-after economic enhancements were absolutely justified by the continuing recruitment and retention crisis – one that had been repeatedly acknowledged by the Participating Hospitals – not to mention a morale crisis caused by unsatisfactory working conditions including impossible workloads made even more untenable by the massive understaffing. Vacancy and turnover rates were not substantially improving, and, in the result, union members were, in two words, burnt out. In addition, there was a strong case for catch-up as this was the first opportunity to bargain unhindered by unconstitutional wage restraint legislation, legislation that had artificially supressed wages. A significant wage adjustment was required to restore lost spending power.

Indeed, in the union's submission, when the most important of the normative criteria were considered – the replication of free collective bargaining – the evidence was irrefutable that its proposals were justified: settlements were tracking upwards in health care and more generally. Various examples – from the public sector and private sector – were provided and analyzed to substantiate this point. What was unsupportable was the wage offer of the Participating Hospitals: 3% in the first year, and 2.5% in the second. No one in health care – or more generally – was settling for these low numbers and the union asked that these proposals be categorically rejected. These sub-normative across-the-board adjustments would also significantly hamper progress towards equality given the gender composition of the different bargaining units. On the other hand, the union's proposals would have the exact opposite effect.

In the union's submission, the overall, application of the criteria, both normative and statutory, strongly supported long overdue wage and benefit improvements, together with the introduction

of a committee to study staffing ratios (with the possibility of pilot projects) and the establishment of a full-time job creation committee; both to address the continuing and unabated recruitment and retention challenges. There was also clear, cogent, and demonstrated need to amend the existing contracting-out language to ensure that any contracting out that did occur was not at the expense of employees who were currently doing the work. Given announced government intentions to increase the role of the private sector in delivering health care – for example, both surgical and diagnostic – the protection of the publicly funded system and the people who work in it was more important than ever. Instead of contracting out, the union proposed an amendment to the collective agreement to facilitate contracting in.

Other union proposals were directed at increasing the number of full-time staff and restricting the use of agency staff performing bargaining unit work (except in emergency situations). The union also sought amendments to the health and safety article to ensure appropriate consultation should another epidemic or pandemic be declared and pay and seniority protection when an employee was directed to self-isolate as a precautionary measure. All its proposals, the union submitted, would improve terms and conditions of employment. The benefit to employees was clear, but once implemented the union's proposals would also deliver immediate and tangible benefits to patients and the broader community.

The union insisted that the Participating Hospitals' concessionary proposals be dismissed out of hand. The union had spent decades – often at the expense of improvements to wages and benefits – negotiating provisions that protected job security. There was no labour relations reason, and

certainly no demonstrated need, to delete or even amend any of these important collective agreement protections.

Submissions of the Participating Hospitals

In the submission of the Participating Hospitals, this interest arbitration had to be placed in context. Part of that context were the tremendous staffing needs brought about by the COVID-19 pandemic. The Participating Hospitals rose to that challenge but moving forward, new problems now needed to be solved, such as the well-documented backlog in care along with a growing demand for services arising from an unprecedented growth in the provincial population. Labour costs had increased and would continue to do so. Inflation was affecting the price of goods. The Participating Hospitals needed to be innovative, creative, flexible and solution-oriented. That meant a central collective agreement that was modernized to reflect contemporary circumstances. That meant living within its financial means.

The funding model was complicated. The Ontario government was clearly increasing allocations – a year-over-year review of provincial funding illustrated this – but there was not enough money to meet current costs much less anticipated future spending. Government monies were finite and had to be distributed over numerous and competing priorities. Funding was directed at a wide variety of targets: fair wages to be sure, but other priorities too such as reducing wait times and expanding capacity, to give just a few examples from a very long list. The union's wage and other monetary demands had to be considered in this context.

Indeed, it was this very context, the Participating Hospitals pointed out, that informed its overall bargaining approach and the specific proposals it advanced. Those proposals were best considered in three silos. First, the Participating Hospitals sought to reduce collective agreement restrictions that prevented them from making changes to achieve efficiency such as properly deploying staff without attracting additional and unnecessary costs. The second group of proposals were aimed at introducing new initiatives, for example, a weekend worker, that would give employees flexibility to work weekends, and at the same time help relieve specific staffing challenges. In the third silo were the monetary proposals. The Participating Hospitals had to live within their restricted means; the monetary aspect of any award had to be fair to valued employees but, at the same time, reflect economic reality.

What did not reflect economic reality were the union's proposals, both monetary and non-monetary. They were completely unaffordable and entirely unjustified. For example, the union was seeking various new job security provisions; but they were ill-advised and unworkable. Introducing new constraints would make it even more difficult for the Participating Hospitals to effectively manage their human resources. The union's proposed committee to study staffing ratios (and pilot projects) was a case in point. However well intended, ratios would prevent the Participating Hospitals from making best use of all available employees – full-time, part-time and casual – to meet evolving patient needs. The same could be, and was said, about the union's proposal to outright ban the use of agency staff to perform bargaining unit work (except in emergency situations). Occasions would unfortunately continue to arise when hospitals had no choice but to employ agency workers to deliver hospital health care. That was a fact of life.

In the view of the Participating Hospitals, the union seriously miscast the state of the economy and provincial finances. There was still a possibility of a recession; at best, the economic future was uncertain with government deficits, detrimentally affected by high interest rates, understandably and necessarily requiring a curtailing of public spending.

All the economic indicators, the Participating Hospitals argued, and this was elaborated at length in their brief, led to the conclusion that fiscal restraint was in order, not excessive and unaffordable spending. There was simply no money available to fund the union's economic demands. There was no basis to introduce new work rules into a collective agreement that already severely limited the ability of the Participating Hospitals to efficiently and affordably deliver patient care. The Participating Hospitals rejected all the union's non-monetary proposals for reasons detailed in its brief.

While recruitment and retention was an applicable criterion, job vacancies should not, the Participating Hospitals argued, automatically and reactively lead to compensation increases. Health care job vacancies were the result of the recent and dramatic growth in capacity. For example, there had been the large increase in the number of new beds. Along with multiple other initiatives, this had led to a significant rise in employee ranks. Yes, there were still job vacancies. But the number of FTEs was up and vacancies were down. The important point, however, was that more money would not attract new employees. What was required was time: time to train and recruit new staff. Supply had to be increased.

The union's solution to this problem – oversize wage and other economic adjustments – were unaffordable; more importantly, they would not result in new employees being hired. There were no new employees to hire, and previous interest arbitration awards, most notably the Bill 24 reopener, had already significantly increased compensation, described by the Participating Hospitals in their brief as "substantial." Notably, base funding levels have not been adjusted to account for the various Bill 124 awards, and there were serious sustainability issues that could not, and should not, be ignored. In this context, the Participating Hospitals asked that its proposed general wage increases, increases that it asserted balanced the competing interests, be awarded, together with increases to the night and weekend premiums of .15¢.

The Participating Hospitals also suggested that no changes should be made, or needed to be made, to benefits, vacation or bereavement leave and that no health care spending account be introduced. In summary, the Participating Hospitals were of the view that its economic offer was both fair and appropriate in the circumstances.

Also appropriate in the circumstances, and long overdue in the view of the Participating Hospitals, was that its non-monetary proposals be given the most careful consideration. Stated somewhat differently, the Participating Hospitals were bringing forward legitimate proposals to address staffing free from out-of-date, burdensome and unjustified collective agreement fetters that had no continuing relevance to contemporary circumstances where every dollar mattered and where there should be a shared intention to make the most of very scarce resources. For example, the Participating Hospitals proposed a change to the job staffing provision. Hospital jobs, it argued, should be awarded on skill and ability, not seniority. Another change that was sought

was the introduction of new language providing for transfer opportunities instead of costly and unnecessary layoffs (in circumstances where there was shared agreement between the parties that there were many jobs that needed to be filled). Staffing solutions had to be responsive to staffing realities. A must-have, from the perspective of the Participating Hospitals, were changes to retirement allowance provisions that required hospitals to pay employees early retirement allowances even if their departure would not reduce the number of layoffs. This provision, simply stated in the Participating Hospital's view, made no sense in any circumstances. Simply put, there was no rational reason to pay necessary employees to leave when there were jobs to be filled.

What did make sense, however, was the Participating Hospital's proposal for a weekend worker. It was in the interest of employees who would receive substantial additional compensation for the weekend work, and it was in the interest of the hospitals as it provided them with an additional tool in the chest to assist in staffing hard-to-fill weekend shifts. The proposal would also help expand the workforce by attracting employees to hospital work who might not be otherwise available.

What also made sense was awarding a letter of understanding for a Nursing Graduate Guarantee Program (NGG Program). An NGG Program would provide hospitals with access to supplemental funding. Participants were supernumerary – above funded complement – and the NGG Program would bring RPNs into the workplace (and hopefully retain them after they arrived, addressing a crucial staffing shortage). There was every reason to award this provision – found in the ONA central collective agreement – and no reason not to.

Discussion

In considering the outstanding proposals, we have paid very careful attention to the criteria, both normative and statutory. We have looked at and applied sector norms to the outstanding monetary issues including wages, premiums, benefits and bereavement leave. We have not, however, awarded any improvements to the vacation provision as total compensation must be considered. A Health Care Spending Account has been introduced. It is quite appropriate – and this is increasingly reflected in negotiated collective agreements – for employees to make their own crucial health care spending decisions. The introduction of this new benefit will assist them in doing so. The changes to the health and safety provision of the collective agreement to require consultation in the event an epidemic or pandemic is declared and to provide for pay and seniority protection when an employee is directed to self-isolate as a precautionary measure reflects hospital norms and is now widely acknowledged as a best practice.

There are continuing recruitment and retention challenges in hospital health care. To promote recruitment and retention, we have awarded the union's proposals for a new Letter of Understanding Re: Full-time Job Creation, while another new union-proposed LOU on Work of the Bargaining Unit will provide transparency in the use of agency staff. We have also made some changes to the contracting-in provision. These measures are all intended to address staffing. The same can be said about the new LOU awarding the NGG Program. Likewise, we are including a new staffing provision for a weekend worker. The NGG Program – and the union candidly acknowledged that there was "merit" to it – will attract more employees to hospital health care, and the weekend worker provision is in the interest of both employees and the Participating Hospitals. It incentivizes employees to fill hard-to-staff weekend shifts.

We are satisfied that the case has been made for some adjustment to Article 9.08. We do not think that scarce health care dollars should be spent on voluntary exits if approving those exits and spending this public money does not reduce the number of layoff notices that would otherwise need to be given. We do not characterize this change as concessionary; it is appropriate, prudent, and responsible.

Award

Wages

Across-the-board increases as follows:

Effective September 29, 2023 – 3.00%.

Effective September 29, 2024 – 3.00%.

Retroactivity to current and former employees within ninety (90) days following issue of award.

Premiums

Effective September 29, 2023:

Increase weekend premium by $0.37 ($2.77 to $3.14).

Effective thirty (30) days following the date of the award:

Amend shift premium to separate evening premium (1500 – 2300 hours) and night premium (2300 to 0700 hours).

Increase new night premium by $0.72 ($2.26 to $2.98).

Benefits

Effective sixty (60) days following the date of the award:

Increase Massage by $75 ($375 to $450).

Increase Physiotherapy by $75 ($375 to $450).

Increase Chiropractic by $75 ($375 to $450).

Include Implants into coverage for Crowns, Bridgework, and Repairs and increase from $1000 to $2000 maximum annually with 50/50 co-insurance.

Introduce Orthodontic coverage at $2000 maximum lifetime with 50/50 co-insurance.

Age limit for coverage under semi-private, extended health care, dental, and accidental death and dismemberment benefits for active employees increased from age 65 to 80.

Introduce Health Care Spending Account for active employees at $100 annually.

Bereavement Leave (Article 12.04)

Amend as follows:

Any employee who notifies the Hospital as soon as possible following bereavement will be granted bereavement leave for four (4) consecutive working days off without loss of regular pay from regularly scheduled hours in conjunction with the death of the spouse, child, or parent.
Any employee who notifies the Hospital as soon as possible following a bereavement will be granted bereavement leave for three (3) consecutive working days off without loss of regular pay from regularly scheduled hours in conjunction with the death of the sister, brother, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, grandchild, brother-in-law, sister-in-law or grandparent of spouse.

An employee shall be granted one (1) day bereavement leave without loss of regular pay from regularly scheduled hours to attend the funeral of**, or attend a memorial service (or equivalent in order to accommodate religious and cultural diversity) for** their aunt or uncle, niece or nephew.

The Hospital, in its discretion, may extend such leave with or without pay. Where an employee does not qualify under the above-noted conditions, the Hospital may, nonetheless, grant a paid bereavement leave. For the purpose of bereavement leave, the relationships specified in the preceding clause are deemed to include a common-law spouse, and a partner of the same sex.

Full Time Job Creation Committee

Introduce new Letter of Understanding as follows:

Letter of Understanding re: Optimal Staffing Composition

The parties agree that periodic review of the composition of full-time, regular part-time, and casual staff ensures the optimization of the hospital workforce and may support quality work environments, support continuity of patient care, ensure adequate staffing resources, and support cost-efficiency. Such reviews should reflect the recruitment and retention considerations of the internal and external workforce, including the desire for stability and flexibility while ensuring service stability for patients in a 24/7 environment. It is also understood that such reviews occur at a point in time, and the optimal composition of full-time, regular part-time, and casual staff for a unit/department may change over time.

To this end, the parties agree to meet annually to discuss departments/units that would benefit from a review of the optimal composition of full-time, regular part-time, and casual staff. In order to conduct the review, the parties may review the following information for these departments/units:

- Overtime hours,
- Hours worked by casual staff,
- Hours worked by regular part-time staff above their commitment as per the local appendix of the collective agreement.
- Recruitment and retention data,
- Job postings,
- Hours worked by agency staff.
- Work Schedules

Where appropriate, if there are hours identified above that are consistent and recurring, they may be used to add or create full-time or regular part-time positions.

Work of the Bargaining Unit (New Article 11.03)

Introduce New Letter of Understanding as follows:

Letter of Understanding re: Agency Staff Reporting

The Hospital will provide the Union, on a quarterly basis, with satisfactory reporting respecting the use of agency staff as follows:

i) Agency RPN and PSW hours worked per unit.
ii) Total bargaining unit hours worked per unit.
iii) Percentage of agency RPN and PSW hours worked per unit.
iv) Total agency RPN and PSW hours worked hospital-wide.
v) Total bargaining unit hours worked hospital-wide.
vi) Percentage of total agency RPN and PSW 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.

Contracting In (Article 10.03)

Amend as follows:

(a) Further to Article 9.08(A)(d)(i)(1) the parties agree that the Redeployment Committee will immediately undertake a review of any existing sub-contract work which would otherwise be bargaining unit work and which may be subject to expiry and open for renegotiation within six (6) months with a view to assessing the practicality and cost-effectiveness of having such work performed within the Hospital by members of the bargaining unit.

(b) **On request by the Union, and no more than annually, the local parties will review contracted services which fall within the work of the bargaining unit. The purpose of the review will be to determine the practicality of increasing the degree to which bargaining unit employees may be utilized to deliver such services in the future.**

Infectious Diseases (Article 19.02)

Amend as follows:

(g) Within a reasonable time frame following the declaration of an epidemic or a pandemic by public health officials, the employer will meet with the joint health and safety committee to consult on how to implement protections for health care workers

(h) Employees who are absent from work due to illness shall receive sick pay in accordance with Article 13 (or in the case of part-time employees, percentage in lieu). Employees who are absent from work due to a communicable disease and who are 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 and seniority accumulation for the duration of the quarantine.

For clarity, a part-time employee required to quarantine would receive salary continuation, including percentage in lieu, for all regularly scheduled shifts that they are absent for due to the quarantine requirement.

New Letter of Understanding – NGG

Introduce new Letter of Understanding re: Nursing Graduate Guarantee Program as follows:

LETTER OF UNDERSTANDING
RE: Nursing Graduate Guarantee Program

1. The Hospital may introduce supernumerary positions to newly graduated or internationally educated nurses in compliance with the government's 2023-24 Guidelines for Participation in the Nursing Graduate Guarantee Program. If these guidelines are amended in a way that directly impacts the terms and conditions of this LOU, the parties will meet centrally to renegotiate this letter of understanding.
2. Only so many positions will be created as are covered by government funding for supernumerary positions.
3. Newly graduated nurses are defined as those nurses who have graduated from a nursing program or refresher program within the last year.
   Internationally educated nurses are defined as those nurses who received their basic nursing education in a country other than Canada.
4. The Hospital will consult with the Union with regards to supernumerary positions in accordance with the 2023-2024 Nursing Graduate Guarantee Program Guidelines.
5. The applicable mentorship premium in the local appendix will apply.
6. Such supernumerary positions will not be subject to internal postings as per Article 9.05.
7. Such nurses will be full-time and covered by the full-time Collective Agreement.
8. The duration of such supernumerary appointments will be for the period of funding or such other period as the local parties may agree, provided such period is not less than twelve (12) weeks.
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.
10. For the purpose of job posting, supernumerary nurses will be deemed to have no seniority within the bargaining unit. If they are the successful applicant in a job competition they will then be credited with service and seniority credits equal to all hours worked in their supernumerary position.
11. If the nurse has not successfully posted into a permanent position by the end of the supernumerary appointment, they will be reclassified as casual and this will not be considered a layoff.
12. The Hospital bears the onus of demonstrating that such positions are supernumerary.

New Article re: Weekend Worker

A weekend worker schedule may be developed. Weekend worker schedules are available in units and/or departments where 12 hour extended tours exist.
A weekend worker schedule is defined as a schedule in which a full-time employee works a weekly average of thirty (30) hours and is paid for thirty-seven point five (37.5) hours at their regular straight time hourly rate.

The schedule must include at least two extended tours which fall within a weekend period as defined by the collective agreement, and an additional standard or extended tour as determined by the Hospital and the Union. An employee working a weekend schedule will work every weekend except as provided for in the provisions below.

If the Hospital and the Union agree to a weekend schedule, the introduction of that schedule and the manner in which the position(s) are filled, shall be determined by the local parties and recorded in the Appendix of Local Provisions. This schedule may be discontinued by either party with notice as determined within the Appendix of Local Provisions. Such agreement shall not be unreasonably withheld. The opportunity for an individual weekend worker to discontinue this schedule shall be resolved by the local parties.

All provisions/entitlements of the collective agreement apply except as amended herein.
(a) Weekend premiums shall not be paid.
(b) Vacation Bank

Vacation entitlement is determined by Article 17.01(A).
For the purposes of Article 17.01(A), hours worked or credited as paid leave will be based on an accelerated rate of 1.25 hours credit for each hour worked.
The mechanism for utilizing accrued vacation will be determined by the local provisions' appendix and the template agreement.
Drawing from the vacation bank will occur at an accelerated rate of 1.25 paid hours for every hour taken as vacation (i.e., 7.5 hours worked equals 9.375 paid; 11.25 hours worked equals 14.0625 hours paid).
Vacation must be taken as a full weekend off (i.e., Saturday and Sunday). The maximum number of weekends off cannot exceed the week entitlement level determined by Article 17.01(A).
Single vacation days may be taken on weekdays, which need not be in conjunction with the Saturday and Sunday. Single vacation days may be taken on the weekend subject to operational requirements.
Cash-out and carry-over provisions for the accrued vacation will be determined locally.
Article 17.03 does not apply.

(c) Paid Holiday Bank

Employees qualify in accordance with the Article 16.02. The paid holidays are identified in the Appendix of Local Issues.
Credit to the paid holiday bank is as set out in the local issues appendix.
Drawing from the paid holiday bank will occur at an accelerated rate of 1.25 hours paid for every hour taken (i.e., 7.5 hours worked equals 9.375 hours paid; 11.25 hours worked equals 14.05 hours paid)
If an employee works on a paid holiday as defined by the local parties, they will receive one and one-half (1½) pay for all hours worked on a holiday. Article 16.04 also applies.
The holiday bank can be used as income replacement for absences due to illness or injury or for lieu time off on a weekday.
Cash-out and carry-over provisions for the bank will be determined locally.

(d) Sick Leave

The employee will not receive pay for the first seventeen (17) weeks of any period of absence due to an illness or injury. Subject to the availability of paid holiday banked hours, the employee will be eligible for Employment Insurance for weeks two (2) through seventeen (17) for any absence due to an illness or injury.
The Hospital will provide the employee with sixty-five (65%) percent of their regular earnings for weeks eighteen (18) through thirty (30) for any absence due to an illness or injury.
The employee may utilize their accrued vacation bank, the overtime bank, the paid holiday bank, and the paid sick leave bank (where applicable) as income replacement for absences due to illness or injury, as described in (b), (c) and (g). For those hospitals that have an accumulating sick leave plan an employee's sick leave bank is frozen when they transfer to a weekend worker schedule. The employee may utilize their

sick leave bank available under Article 13.01(c) for unpaid absences due to illness and Employment Insurance top-up in accordance with the formula for converting hours as described in Article 9.07(A).
The employee is eligible for long-term disability benefits as described in Article 13.01, only in agreements providing LTD benefits.
Employees may be required to provide medical proof of illness for any absence of a scheduled shift, which is neither vacation nor an approved leave of absence.

(e) Leaves of Absence
For the purposes of an unpaid 7.5 hour shift, the deduction from pay shall equate to 9.375 hours. For the purposes of an unpaid 11.25 hour shift, the deduction from pay shall equate to 14.05 hours

(f) Tour Exchange
In all instances of tour exchange, the tours must be of the same duration.

(g) Overtime
Overtime will begin to accrue after sixty (60) hours in a two (2) week period averaged over the scheduling period determined by the local parties.
Overtime will apply if the employee works in excess of the normal daily hours.

(h) Scheduling Provisions
The scheduling and premium provisions relating to consecutive weekends off in the Local Appendix where they exist do not apply to employees working under this provision.

Article 9.08

Amend Article 9.08 (B) and (C) as follows:

9.08(B) – RETIREMENT ALLOWANCE
Prior to issuing notice of layoff pursuant to article 9.08(A)(a)(ii) in any classification(s), the Hospital will offer early retirement allowance to a sufficient number of employees eligible for early retirement under HOOPP within the classification(s) in order of seniority, to the extent that the maximum number of employees within a classification who elect early retirement is equivalent to the number of employees within the classification(s) who would otherwise receive notice of layoff under article 9.08(A)(a)(ii).
The Hospital need not approve an employee's request for an early retirement allowance if approving such allowance will not reduce the number of layoff notices which would otherwise be made under article 9.08(A)(a)(ii).
An employee who elects an early retirement option shall receive, following completion of the last day of work, a retirement allowance of two (2) weeks' salary for each year of service, plus a prorated amount for any additional partial year of service, to a maximum ceiling of fifty-two (52) weeks' salary.

9.08(C) - VOLUNTARY EXIT OPTION**:**
If after making offers of early retirement, individual layoff notices are still required, prior to issuing those notices the Hospital will offer a voluntary early exit option in accordance with the following conditions:

(i) The Hospital will first make offers in the classifications within department(s) where layoffs would otherwise occur. If more employees than are required are interested, the Hospital will make its decision based on seniority.
(ii) If insufficient employees in the department affected accept the offer, the Hospital will then extend the offer to employees in the same classification in other departments. If more employees than are required are interested, the Hospital will make its decision based on seniority.
(iii) In no case will the Hospital approve an employee's request under (i) and (ii) above for a voluntary early exit option, if the employees remaining are not qualified to perform the available work.
(iv) The number of voluntary early exit options the Hospital approves will not exceed the number of employees in that classification who would otherwise be laid off. The last day of employment for an employee who accepts a voluntary early exit option will be at the Hospital's discretion and will be no earlier than thirty (30) calendar days immediately following the employee's written acceptance of the offer.

The Hospital need not approve an employee's request for a voluntary early exit option if approving such option will not reduce the number of layoff notices which would otherwise be made under article 9.08(A)(a)(ii).
An employee who elects a voluntary early exit option shall receive, following completion of the last day of work, a separation allowance of two (2) weeks' salary for each year of service, to a maximum of fifty-two (52) weeks' pay.

Conclusion

At the request of the parties, we remain seized with respect to the implementation of our award.

DATED at Toronto this 18th day of April 2024.

"William Kaplan"

William Kaplan, Chair

I dissent. Dissent attached.

Brett Christen, OHA Nominee

I dissent. Dissent attached.

Tim Gleason, OCHU/CUPE Nominee

DISSENT

I respectfully dissent from the Award of the Chair dated April 18, 2024 (the "Award").

Background

The Award is the first central award between these parties since the central re-opener award dated June 13, 2023 (the "Re-Opener Award") between the Participating Hospitals and CUPE/OCHU and SEIU (in that central round CUPE/OCHU and the SEIU bargained together). The Re-Opener Award settled the terms of the collective agreement with the term of September 29, 2021 to September 28, 2023 (the "2021 Collective Agreement"). The prior collective agreement covered a four-year period from September 29, 2017 to September 28, 2021 (the "2017 Collective Agreement") and provided for general annual wage increases of 1.4%, 1.4%, 1.6% and 1.65% (which were in line with the relevant comparators).

During the term of the 2017 Collective Agreement, hospitals faced a period of unprecedented change and challenge: the sudden on-set of the COVID Pandemic, the resulting spike in staff shortages, a quick and sharp rise in inflation, and numerous related challenges. These challenges required hospitals to quickly innovate and continuously adapt to continue to meet patient care demands despite the severe fiscal pressures that they were operating under. The bargaining for the 2021 Collective Agreement was the first opportunity for the hospitals and Union to negotiate with respect to the significantly changed landscape which had developed under the 2017 Collective Agreement.

When the bargaining for the 2021 Collective Agreement commenced the *Protecting Sustainable Public Sector for Future Generations Act*, 2019 ("Bill 124") was in effect. The parties were, not surprisingly, unable to conclude a voluntary settlement of the central terms of the hospitals' collective agreements and the impasse proceeded to interest arbitration before a Board Chaired by Arbitrator Sheehan. Although the hospitals had many issues, including the need for increased scheduling flexibility, that they would have liked to achieve at the arbitration, given the existence of Bill 124, the hospitals realistically assessed that few gains could likely be made in the proceeding and advanced only modest demands at arbitration. Regrettably, but like other awards in the hospital sector issued under Bill 124, the Board's Award dated November 3, 2022 (the "Initial Award") did not seriously consider any of the employer's modest proposals and none were

awarded. The Initial Award did award, however, new non-monetary language to the Union in the form of a new provision on infectious disease and enhanced language on workplace violence. In addition, and within the monetary constraints of Bill 124, the Initial Award provided a 1% wage increase, increases to shift and weekend premiums, the introduction of a charge nurse premium at $2/hr, an increase to the temporary transfer/responsibility premium to $1/hr and the introduction of a new mental health benefit, capped at $800 annually.

The Initial Award, like other awards in the hospital sector issued under Bill 124, also contained a typical re-opener clause which allowed for monetary issues to be re-visited in the event that Bill 124 was determined to be unconstitutional. After the Initial Award was issued, the Ontario Superior Court declared Bill 124 to be unconstitutional and of no force or effect (in 2024, the Ontario Court of Appeal dismissed the Ontario Government's appeal of that decision).

The Re-Opener Award (issued by a Board chaired by Arbitrator Kaplan) addressed the additional compensation to be awarded under the re-opener provision of the Initial Award. Like other situations involving re-openers, there was no opportunity for the hospitals to negotiate any trade offs against the monetary gains sought by the unions. Further, due to the delay related to the Bill 124 litigation and the re-starting the of the central and local processes following the striking down of Bill 124, the Re-Opener Award wasn't able to be released until June, 2023 a few months before the expiry of the Collective Agreement. In this anomalous circumstance, the Union was able to rely upon actual inflation data relating to the entire first year of the agreement and the majority of the second year of the agreement, recruitment and retention data relating to most of the period covered by the collective agreement, data which showed that inflation had exceeded the general wage increase for the last year of the 2017 collective Agreement, and upon significant wage and benefit enhancements granted in two ONA separate Re-Opener Awards (relating to two earlier Bill 124 Awards) which due to the Bill 124 delays had, again anomalously, both been issued in April 2023.

In these unusual circumstances, the Re-Opener Award granted significant wage increases and several other enhancements to the Union such as a $2/hour RPN wage adjustment, the folding of the legislated PSW wage adjustment into the wage grid prior to the implementation of the awarded general wage increases, an increase in call back pay from time and a half to double time, an

increase in the vision benefit (over 24 months) from $300 to $450, the introduction of coverage for massage therapy at $375/yr, the replacement of the per visit cap for physiotherapy, chiropractic and massage with a reasonable and customary limitation, a further increase to shift ($1.00 increase) and weekend ($1.50 increase) premiums (the Initial Award had also increased these premiums) and an allowance for the payment of both shift and weekend premiums on hours worked (where such entitlement did not already exist).

On any balanced assessment, the Initial Award and the Re-Opener Award represent a significant increase in wages, benefits and other enhancements for a two-year collective agreement. When it is remembered that no employer proposals were awarded in either the Initial Award or Re-Opener Award, the imbalance of these two awards is even more pronounced.

Numerous locals of the Union have also sought additional enhancements to the local portion of their collective agreement, which, again as a result of the delays related to Bill 124, are still in the process of being determined by a local issues arbitration board. Together the local unions have sought numerous wage adjustments to specific classifications, increases to uniform and meal allowances, the introduction of mentorship and student supervision premiums (or increases to existing premiums), and other enhancements and amendments, including to already overly restrictive local scheduling provisions. To the extent that any of these local union proposals are actually granted by the local issues board, the imbalance of the 2022-2023 Collective Agreement applicable to each particular participating hospital will be exacerbated.

The Chair's Award

My first concern then with the Award is that it awards any union proposals at all. In light of the Bill 124 and subsequent re-opener process in which the Hospitals were practically and effectively precluded from pursuing any proposals and the resulting 2022-2023 collective agreements in which no hospital proposals were awarded, the ledger needed to be righted. In my view, the Award would have gone some way to doing so by, at the least, awarding only the Hospital proposals granted in the award and declining to award any of the union's proposals.

The hospitals proposals relating to Nurse Graduate Guarantee Program and Weekend Worker, which were awarded by the Chair, are directly responsive to the recruitment and retention issues

raised by the Union in the Re-Opener proceeding and would likely have been awarded in that proceeding, in my view, had the hospitals been able to advance proposals. The amendments granted by the Chair to Article 9.08 (relating to the circumstances in which a retirement allowance is to be available) are analogous to the severance pay amendments made in the recent ONA central award and also, in my view, would likely have been awarded in the Re-Opener proceeding had the hospitals been able to advance proposals. For these reasons, I would have awarded the Hospital proposals which were awarded in the Award but would not have awarded the Union's proposals awarded in the Award given the gains made by the Union under the unusual circumstances in which the settlement of the last collective agreement occurred.

My second concern with the Award is with the wage increases awarded. In light of the trend, albeit erratic, of declining inflation, I would have awarded the 3% (in year 1) and the 2.5% (in year 2) wage increases proposed by the Hospitals to reflect this declining trend.

It must, however, be acknowledged that the arbitrator, recognized (as he did in *ONA and Participating Hospitals*, unreported award of Arbitrator Kaplan dated July 20, 2023; and re-affirmed in *OPSEU and Participating Hospitals*, unreported award of Arbitrator Kaplan dated August 3, 2023, at page 26) that real collective bargaining involves give and take on the part of both parties. In hospital interest arbitration, experienced Arbitrators with a sophisticated understanding of collective bargaining have in the past, as the Arbitrator did in this case, recognized that the replication of authentic collective bargaining must include trade-offs including the award of important employer proposals. These arbitrators have recognized that for true replication to be achieved, even employer proposals which are strongly opposed by the union must be awarded such as occurs in collective bargaining between parties without recourse to interest arbitration where unions are often required to accept employer proposals they strongly oppose to conclude a collective agreement.

For example, Arbitrator Adams, in the 1995-2001 CUPE/SEIU Central award (*CUPE and SEIU and the Participating Hospitals*, unreported award of Arbitrator Adams dated June 28,1999) granted two important employer proposals (at p.7 and p.8), the second of which significantly modified the layoff process under the collective agreement by amending the definition of layoff

and reducing the required notice of layoff. The amendments to the layoff process were made notwithstanding that the employer's proposal was strongly opposed by the union.

Similarly, in a case arising out of the amalgamation of several hospital sites into the Scarborough Health Network (*Scarborough Health Network and CUPE, Local 5852*, unreported award of Arbitrator Gedalof dated May 26, 2019) Arbitrator Gedalof awarded hospital proposals relating to Temporary Vacancies/Posting (p.6) and Mobility Between Sites (p.6). Arbitrator Gedalof discussed his award of the latter hospital proposal in a subsequent award (*Scarborough Health Network and CUPE, Local 5852*, unreported award of Arbitrator Gedalof dated December 15, 2020, at p.20) noting, at para. 50, that the Hospital had been awarded a "substantially more favourable" mobility provision notwithstanding the "vociferous objections" of the union.

Accordingly, experienced interest arbitrators in the hospital sector have in the past recognized that the replication of real collective bargaining requires the award of important employer proposals notwithstanding strong and vociferous objection from the union.

The predominate and unfortunate history of interest arbitration in the hospital sector in Ontario, however, is that too often arbitrators (in both central and local negotiations) have awarded only union proposals and, in doing so, have spectacularly failed to replicate true collective bargaining results. Where this flawed approach continues un-checked the result is both inevitable and consequential. Unions learn that they don't need to give serious consideration to any employer proposal since there is little risk that they will be awarded at interest arbitration. Where the employer proposals are in respect of changes needed to address the evolving workplace, costly inefficiencies continue. Worse, where the employer proposals are in respect of changes needed to match available staff to areas of greatest need, patient care continues to be compromised. Unions also learn to maintain proposals which should be dropped and proceed to interest arbitration with a laundry list of proposals greatly increasing the time and expense associated with the interest arbitration process. Where agreements at bargaining on particular proposals are occasionally reached, they tend to be to be in the nature of agreements on "chickenfeed". In short, the collective bargaining process in the hospital sector has often been undermined rather than facilitated by the interest arbitration process. Where the parties, whether at local or central negotiations, do

occasionally achieve a freely negotiated settlement it is despite, and not because of, the history of interest arbitration in this sector.

As noted above, I would have decided this matter differently given the significant advances made by the Union under the unusual circumstances relating to the settlement of the 2021 collective agreement. However, if one considers the Award without this context, it must be acknowledged that the Award replicates a possible outcome that could have occurred in free collective bargaining. Both parties made progress on some of their key items without getting exactly what they wanted, failed to achieve other key proposals, and both undoubtedly would have preferred the other party to have achieved less. In other words, the result of the Award is one which is not that different from most freely negotiated collective bargaining settlements.

While I do not agree with the manner in which the Chair dealt with some of the particular proposals before the Board, providing a detailed explanation of these concerns would only tend to distract from a more important point. The Award, like the Chair's 2023 central award in *ONA and Participating Hospitals*, goes some significant way to addressing the bleak history of interest arbitration in this sector by providing an award which attempts to fairly balance the respective interests of both the parties and which attempts to replicate the types of trade-offs and compromises which occur everyday in real collective bargaining where resort to interest arbitration is not an option. The interest arbitration process in this sector will be greatly improved if other interest arbitrators in future do the same.

Dated April 18, 2024

Brett Christen

Nominee of the Participating Hospitals

DISSENT OF UNION NOMINEE

While I am in agreement with the Chair's recognition of the serious challenges faced by the Union's members, and the circumstances which justify important improvements to the collective agreement, I would have gone further to address these, and I must therefore dissent. The Chair's award is an important step toward the necessary goal of parity with other collective agreements in the health care sector, and I anticipate that in the next round of bargaining, full parity should and will be achieved, but in my view, this was warranted in this award.

Furthermore, while the wage increases awarded by the Chair represent significant improvements, for the reasons urged upon the board by the Union, an increase of 4% in the first year would have been more than justified. Leaving aside uncertainty about what the future holds for the economy, there is compelling evidence of a serious crisis of recruitment and retention in the hospital sector, and the Union's members are paying the price in the form of burnout, stress and overwork. The demonstrated effect of inflation on workers' spending power more than justifies this increase, and a similar (or greater) increase, in year two.

The Chair's award goes a long way toward bringing the Union's benefits and premiums into line with other employee groups, and I expect this to continue in subsequent rounds, but I fear that an incremental approach to addressing discrepancies in important benefits for mental health and well being as well as vacation will be counterproductive, as the hospital sector continues to struggle to attract new employees. The Union presented evidence of serious mental health challenges faced by its members, which cannot be readily distinguished from those faced by ONA members, who receive unlimited mental health support. It is broadly understood that the cost of mental health

treatment far exceeds the limits of the existing benefits in the Union's collective agreement. In my view, there is no justification for perpetuating these disparities, and I fully expect them to be addressed in the next round of bargaining.

The evidence presented by the Union demonstrated that years of neglect of health care workers has led to serious consequences for the health care system, and these have implications for the broader society. While OCHU members have carried much of this burden, the retention and recruitment crisis will need to be addressed, and an important first step would be to acknowledge that disparities between the Union's members and RNs simply cannot be justified or sustained in the future.

In my view, the Participating Hospitals failed to establish a demonstrated need for changes to the voluntary exit provisions in the collective agreement. While I appreciate the Chair's observation that these are not, in his view, concessions, I would emphasize the Union's submissions about the important incentives and deterrent effect that these job security protections afforded. However, given the basis for the Chair's change in this regard, I am certainly confident that the Chair did not intend that these changes would be seen as a precursor for any further erosion of the Union's longstanding, critical and hard fought job security protections in future rounds, and that they will not be used to justify any future excursion onto that slippery slope. I take the Chair's observation as confirming that this change is not a signal that any such erosion is appropriate.

In summary, while I agree with the direction and objectives of the Chair in his award, I would have awarded more substantial improvements in wages and benefits, on the basis that there is both a

demonstrated need together with an absence of any justification for perpetuating the disparities highlighted by the Union, and no demonstrated need for the voluntary exit change the Chair has directed.

Tim Gleason, OCHU/Union Nominee