

IN THE MATTER OF AN ARBITRATION BETWEEN:

St. Joseph's Healthcare (Hamilton)

(the "Hospital")

-and-

Canadian Union of Public Employees, Local 786

(the "Union")

IN THE MATTER OF A POLICY GRIEVANCE 14-principal-00797

Chair: Christine Schmidt

Hospital Nominee: Michael Riddell

Union Nominee: Joe Herbert

Appearances

For the Hospital: Frank Angeletti, Counsel
Angela Slade, Senior Manager, Employee & Labour Relations
Danielle McCrindle, Manager, Employee and Labour Relations

For the Union: Mark Wright, Counsel
Louis Rodrigus, Vice Principal OCHU
Dominic DePasquale, President CUPE Local 786
Kevin Cook, Chief Steward, CUPE Local 786

This hearing was held at Hamilton on January 31, 2017.

AWARD

1. This award concerns a Policy grievance about the interpretation of articles 9.08 and 9.09 of the collective agreement between the parties. The language at issue is central hospital language, which has been in effect for some time. The matter proceeded by way of an Agreed Statement of Fact ("ASF"), attached in its entirety as Schedule A to this award. The key facts are as follows:

1. As a result of a transfer of services to Honeywell, and as a result of two employees electing not to transfer to Honeywell, the Hospital served notice of layoff to an employee in the Painter classification. There is no dispute that the Hospital made the necessary offers of Early Retirement Allowance ("ERA") and Voluntary Exit Option ("VEO") within the Painter classification.

2. Subsequent to a number of displacements occurring within the Painter classification, an employee in that classification who had received notice of layoff, Mr. Mark Shea ("Shea"), elected to displace an employee in the Cleaner classification, Ms. Christine Mclsaac ("Mclsaac").

3. The Hospital did not make offers of ERA or VEO in the Cleaner classification. Mclsaac, who was provided with an alternate assignment within the Cleaner classification was not provided with notice of layoff.

2. The provisions of articles 9.08 and 9.09 that are critical to the outcome of this dispute are:

9.08(A) - NOTICE AND REDEPLOYMENT COMMITTEE

(a) Notice

In the event of a proposed layoff at the Hospital of a permanent or long-term nature or the elimination of a position within the bargaining unit, the Hospital shall:

...

(ii) provide to the affected employee(s), if any, who will be laid off with no less than five (5) months' written notice of layoff, or pay in lieu thereof.

...

(b) A layoff shall not include a reassignment of an employee from her or his classification or area of assignment **who would otherwise be entitled to notice of layoff provided [emphasis added]:**

(I) reassignments will occur in reverse order of seniority;

(II) the reassignment of the employee is to an appropriate permanent position with the employer having regard to the employees skills, abilities, qualifications and training or training requirements;

(III) the reassignment of the employee does not result in a reduction of the employees wage rate or hours of work;

(IV) the job to which the employee is reassigned is located at the employee's original work site or at a nearby site in terms of relative accessibility for the employee;

(V) the job to which the employee is reassigned is on the same or substantially similar shift or shift rotation; and

(VI) where more than one employee is to be reassigned in accordance with this provision, the reassigned employees shall be entitled to select from the available appropriate vacancies to which they are being reassigned in order of seniority provided no such selection causes or would cause a layoff or bumping.

....

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).

....

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:

...

9.09 - LAYOFF AND RECALL

An employee in receipt of notice of layoff pursuant to 9.08(A)(a)(ii) may:

- (a) accept the layoff; or
- (b) opt to receive a separation allowance as outlined in Article 9.12; or
- (c) opt to retire, if eligible under the terms of the Hospitals of Ontario Pension Plan (HOOPP) as outlined in Article 9.08(8); or
- (d) displace another employee who has lesser bargaining unit seniority in the same or a lower or an identical-paying classification in the bargaining unit if the employee originally subject to layoff has the ability to meet the normal requirements of the job. **An employee so displaced shall be deemed to have been laid off and shall be entitled to notice in accordance with Article 9.08(A)(a). [emphasis added]**

... .

3. The positions of the parties are described in more detail later in this award, but they can be summarized here as follows.

4. The Union claims that the articles 9.08(B) and 9.08(C) required that the Hospital make offers of ERA, and potentially VEO (only if the offers of ERA are not accepted), in the Cleaner classification. It further argues that article 9.09(d) required the Hospital to issue notice of layoff to Mclsaac, which notice would have allowed her to exercise certain rights provided pursuant to article 9.09 of the collective agreement. What happened instead, in the Union's submission, is that Mclsaac was reassigned by the Hospital, notwithstanding its inability to do

so to an employee in Mclsaac's circumstances - an employee who has been displaced by another employee pursuant to article 9.09(d)).

5. The Hospital's primary argument is that it issued no notice of layoff to Mclsaac because she was not affected within the meaning of article 9.08 (A)(a)(ii). The parties agreed that this argument would be held in abeyance. They agreed, for the purpose of the first day of hearing, to proceed on only two issues: first, whether the Hospital was entitled to reassign Mclsaac rather than serve notice of layoff to her, and secondly whether the Hospital was obliged to offer ERA, and potentially, VEO.

6. On the first issue, the Hospital argues that it was entitled to reassign Mclsaac in accordance with article 9.08(A)(b) of the collective agreement. On the second, the Hospital says that because it was not obligated to issue notice of layoff to Mclsaac and was entitled to reassign her, it had no obligation to make any offer of ERA or VEO.

7. Of significance in this case, is that there have been a number of arbitration awards, which address the same issues as those before us in this proceeding. Whether an employee who is displaced pursuant to 9.09(d), and thereby is "deemed to have been laid off" is entitled to notice of layoff, was determined in *Sudbury Regional Hospital and Canadian Union of Public Employees, Local 1623*, [2007] O.L.A.A. No.439 (Albertyn) ("*Sudbury Regional Hospital*" or "*2007 Albertyn decision*"). More recently, the parties in this proceeding argued this same issue in *St. Joseph's Healthcare (Hamilton) and CUPE Local 786*, [2014] O.L.A.A. No.277 (Kaplan) ("*St. Joseph's Healthcare*" or "*2014 Kaplan decision*"). Both boards of arbitration concluded that an employee who is displaced by another employee is, pursuant to article 9.09(d), deemed to have been laid off and entitled to notice of layoff; and that an employer cannot substitute a

reassignment for the notice. Whether an employer must make offers of ERA, and potentially VEO, to employees in a classification not initially targeted for layoff but who may subsequently be given notice of layoff because a more senior employee in a targeted classification elects to displace or “bump” in a different classification is addressed in *St. Peter’s Hospital v. Canadian Union of Public Employees, Local 778 (Early Retirement Grievance)*, [1998] O.L.A.A. No. 867 (Kaplan) (“*St. Peter’s*”). That board of arbitration decided that an employer is required to make such offers to employees in the classification not initially targeted but who are ultimately bumped or displaced.

THE POSITIONS OF THE PARTIES

8. The Union argues that the collective agreement compels the offering of ERA, and potentially VEO, in the Cleaner classification. The Union submits that the wording of article 9.08(B), which has remained unchanged for many years, is clear and unambiguous. The reference to “any classification(s)” in article 9.08(B) on its face includes any classification where a layoff may occur and is not limited to only the original classification targeted for layoff.

9. The Union points out that this issue was decided in 1997 by the *St. Peter’s* decision, also referred to in the *2014 Kaplan decision*. The jurisprudence requires that the Hospital make offers in subsequent classifications above and beyond the original targeted classification to which the layoff is aimed. In this regard, the Union also directs the Board to the dissent of the employer nominee in the *Sudbury Regional Hospital* case, who recognized that obligation.

10. The Union also argues that the Hospital cannot be released from offering the allowances by virtue of its failure to issue notice of layoff to Mclsaac (in the Cleaner classification), because the notice was clearly required by article 9.09(d). It provides that an employee who is displaced by another employee shall, pursuant to 9.09(d) “be deemed to have

been laid off and shall be entitled to notice pursuant to article 9.08((a))." The Union submits that the Hospital is unable to reassign an employee who is "deemed to have been laid off," and must provide Mclsaac a notice of layoff. That conclusion was made clear by both boards of arbitration in the *Sudbury Regional Hospital* and *St. Joseph's Healthcare* decisions cited above.

11. Finally, the Union emphasizes that the *Sudbury Regional Hospital* decision was issued almost a decade ago, and that the language of this central collective agreement has not changed to provide for a different result. Moreover, the *St. Joseph's Healthcare* decision involved the same parties as those before this Board and the identical issue. That decision was not judicially reviewed.

12. By way of remedy, the Union seeks declarations that the Hospital breached the collective agreement by failing to offer ERA and VEO in the Cleaner classification and by failing to issue notice of layoff to Mclsaac. It seeks an order that ERAs be offered and an order that Mclsaac be provided with notice of layoff so that she might exercise her options pursuant to article 9.09. Finally, the Union seeks a compliance order. In its submission, such an order is necessary and appropriate because of the Hospital's blatant disregard of the determination made by the board of arbitration in the previous award – *St. Joseph's Healthcare*.

13. The Hospital asks the Board to consider the purpose of article 9.08(A)(b). It argues that the reassignment provision in 9.08(A)(b), awarded in *The Participating Hospitals and Participating Locals of The: Canadian Union of Public Employees and Service Employees*, unreported, June 28, 1999 (Adams)("1999 Adams award"), was expressly intended to provide the Participating Hospitals with what that interest board of arbitration identified as "greater flexibility to reassign employees within the bargaining unit without triggering the layoff provisions." The Hospital also refers to *Hamilton Health Sciences Corp. and Canadian Union of*

Public Employees, Local 4800 (Contracting Out), [2005] O.L.A.A. No. 305 (Burkett) ("*Hamilton Health Sciences*"), where that board of arbitration made reference to the *1999 Adams award*, concluding that it provided the Hospital with the flexibility sought in that case.

14. The Hospital asks the Board to carefully examine the wording of the sentences at article 9.09(d) of the collective agreement and the introductory paragraph to article 9.08(A)(b), having regard to the purpose behind the reassignment provision in article 9.08(A)(b). The Hospital submits that while a displaced employee "is deemed to be laid off" in the opening portion of that sentence in article 9.09(d), no such "deeming provision" applies to the second half of the sentence: "and shall be entitled to notice in accordance with Article 9.08(A)(a)(ii)." While the provision could similarly have "deemed" the employee to be entitled to notice of layoff it does not do so. Therefore, while the employee may be deemed to have been laid off, the entitlement to notice is not incontrovertible and is subject, in the Hospital's submission, to the introductory paragraph of article 9.08(A)(b). Such an employee then, is one "who would otherwise be entitled to notice of layoff" within the meaning of article 9.08(A)(b). The Hospital argues that nothing on the face of article 9.08(A)(b) limits its application in such a manner that would exclude an employee who is otherwise entitled to notice of layoff under 9.09(d). Accordingly, the Hospital asks the Board to conclude that it was entitled to reassign McIsaac and was not required to issue her notice of layoff.

15. With respect to the *Sudbury Regional Hospital* decision and the more recent *St. Joseph's Healthcare* decision, the Hospital speculates the arguments it has made in this proceeding may not have been made in those proceedings, and that the decisions were incorrect. The Hospital submits that this Board need not be concerned with how the Albertyn and Kaplan boards of arbitration reached their conclusions, and that we need not concern ourselves with the fact that the language at issue in those cases and this one has remained the

same in successive rounds of collective bargaining. Instead, the Hospital submits that the awards in *Sudbury Regional Hospital* and *St. Joseph's Healthcare* were wrongly decided based on arguments that apparently were not made in those matters, and urges this Board to focus on what it says has been the proper interpretation of the collective agreement language all along.

16. The Hospital's comments in respect of the issue of offering ERA (and potentially VEO) were that the issue does not arise in this case. Since no notice of layoff to Mclsaac is required, the condition precedent to the making of ERA offers has not arisen.

17. Finally, even if the Union is successful in the matter before this Board, the Hospital submits that a compliance order should not issue. None was requested by way of remedy in the grievance. Moreover, and in any event, the matter is proceeding on the Hospital's alternative argument as set out above, and therefore any compliance order would be premature.

18. In addition to the cases cited above, the Hospital provided the Board with one additional case: *Scarborough Hospital and Ontario Public Service Employees Union, Local 581 (Early Retirement Grievance)*, [2014] O.L.A.A. No. 344 (Herman) ("*Scarborough Hospital*"). In that case, the employer appears to have argued that by finding a displaced employee is "deemed to have been laid off" and entitled to notice of layoff, the *Sudbury Regional Hospital* award should be read as having found that there is no intermediary step of making offers of ERA or VEO. On very similar collective agreement provisions, Arbitrator Herman rejects that argument. He says that the issue decided in *Sudbury Regional Hospital* was a different one. Arbitrator Herman also finds that the "fact the collective agreement deems the employee to be laid off as of when they are displaced does not nullify the requirement to nevertheless give notice of layoff to the affected employee, nor therefore, the requirement ... to offer the affected employee the ERA and VEO prior to when notice of layoff is given."

19. By way of reply, the Union submits that the *Scarborough Hospital* decision provides support to the Union's claim that offers of ERA and VEO must first be made in an affected classification where an employee is displaced. In the Union's submission, the *Scarborough Hospital* decision does not support the Hospital's position in this proceeding.

20. In addition, the Union submits that the Hospital's argument misconstrues article 9.08(A)(b). As is clear from the *1999 Adams award*, the purpose of the article was to redefine layoff in a manner that offered a hospital additional flexibility. In the Union's submission the phrase "otherwise entitled to layoff" cannot be read to mean that any employee who is entitled to notice of layoff pursuant to the plain wording of article 9.09(d), can become disentitled by virtue of the Hospital's decision to reassign the employee.

DECISION

21. This Board has carefully reviewed the jurisprudence provided to us by the parties, as well as their submissions.

22. This Board's first observation is that the issues before us relate to central language provisions that have remained unchanged in successive rounds of bargaining. The very questions and collective agreement language put before this Board have been adjudicated on several occasions by other boards of arbitration. Faced with the same contract interpretation issue that was dealt with in *Sudbury Regional Hospital* some seven years and several collective bargaining rounds prior, Arbitrator Kaplan wrote in *St. Joseph's Healthcare*: "We find it implausible the suggestion that the parties negotiating the current collective agreement would have assumed or intended that the identical collective agreement provision would now be given

a meaning exactly opposite to the interpretation found in the *Albertyn Award* in 2007." We agree. The Hospital is vying in this proceeding for the precise opposite interpretation that has been attributed to this language by two independent arbitration panels.

23. Notwithstanding this, the *2007 Albertyn decision* and the *2014 Kaplan decision* are correct, and this Board has come to the same conclusion reached by both boards of arbitration on identical facts and identical collective agreement language (and the same parties in the *2014 Kaplan decision*).

24. We accept that the *1999 Adams' award* was intended to provide a "balanced redefinition of layoff." Article 9.09(A)(b) (9.08b at the time) was intended to affect the "definition of layoff" rather than detract from the rights of employees who are already "deemed to have been laid off" under the collective agreement. A layoff has consequences that are different from the consequences of a reassignment. A hospital is entitled to endeavor to avoid the consequences of a layoff, and opt for reassignment provided it can satisfy all the conditions of the reassignment. However, that is not the issue before this Board. The option of reassignment is not available to the Hospital in this case because McIssac was, by virtue of her displacement by Shea "deemed to have been laid off" pursuant to article 9.09(d). Nothing in the reassignment language awarded in the *1999 Adams award* purports to disturb the rights of an employee who is laid off or is deemed to be laid off. The Burkett arbitration board's decision in *Hamilton Health Sciences* does not further the Hospital's case.

25. This Board is unable to accept the Hospital's analysis of the critical sentence in article 9.09(d): "An employee so displaced shall be deemed to have been laid off and shall be entitled to notice in accordance with Article 9.08(A)(a)." The Hospital would have us sever entirely the second part of the sentence, find that the "deeming" provision applies only to the employee being laid off, and that the employee is not similarly "deemed" to be entitled to notice under 9.08(A)(a). The Hospital's argument fails for the following reasons.

26. First, the words "shall be entitled" expressly provides a mandatory entitlement to the employee, one which is entirely consistent with their collective agreement status of having been deemed to have been laid off. As articulated by Arbitrator Albertyn in *Sudbury Regional Hospital*: "The critical words in 9.09(d) are that the displaced employee is "deemed to have been laid off." The entitlement to notice of layoff flows automatically from this."

27. While receiving notice of layoff is consistent with the status of "deemed to have been laid off," being reassigned is inconsistent with being deemed to have been laid off. As set out by Arbitrator Kaplan in *St. Joseph's Healthcare*: "A laid off employee cannot be reassigned under 9.08(b) (now 9.08(A)(b)) as that provision is an alternative to layoff." Reassignment is a definitional alternative to layoff, a means of redeployment. It is not an alternative option available to the Hospital once the employee is "deemed to have been laid off."

28. Like the two previous boards of arbitration, we find that the wording of article 9.09(d) is clear. It entitles an employee who has been displaced to notice of layoff, so that the employee is entitled to make the resulting elections available to an employee in receipt of such notice. The

Hospital cannot instead reassign in accordance with 9.08(A)(b) in a manner that would defeat the employee's entitlement to notice and the attendant choices.

29. Having regard to all of the foregoing, we find that Mclsaac, as an employee displaced by another employee, by the terms of article 9.09(d), was unable to be reassigned by the Hospital. We so declare and direct that the Hospital comply with this interpretation, which is consistent with prior arbitration awards interpreting precisely the same collective agreement language that has remained unchanged over successive rounds of bargaining. The Board would have also directed that the Hospital provide Mclsaac with notice of layoff and the options associated therewith. However, the Hospital reserved its primary argument, which it submits may bear upon the entitlement to notice. In the circumstances we will allow for the Hospital to review this award and determine how it wishes to proceed. Once we are advised in this regard, we will be in a position to determine whether final directions are appropriate or whether further hearing dates are required.

30. The only other issue is whether offers of ERA, and potentially VEO, must be made prior to issuing the notice of layoff. This issue has been answered in the affirmative in both the *St. Peter's* case and the *Scarborough Hospital* case previously mentioned. The Hospital did not take issue with the conclusions reached in either case. Its argument, which this Board has not accepted, was that Mclsaac could be reassigned rather than provided notice of layoff. We therefore conclude that offers of ERA, and potentially VEO, must be made to displaced employees in any classification where notice of layoff is to issue as a result of bumping.

31. We will await to be advised by the parties as to whether further declarations or hearing dates are necessary and remain seized for the purposes of the implementation of this award.

Dated at TORONTO this 11th day of April 2017.



Christine Schmidt, Chair

"I dissent" (attached)

Michael Riddell, Employer Nominee

"I concur"

Joe Herbert, Union Nominee

Appendix 1

AGREED STATEMENT OF FACT

FACTS

I. GRIEVANCE

1. On December 1, 2014, the Union filed Grievance 14-P-00797, alleging a violation of Articles 1.01, 5.04, 9.05, 9.08, 9.09 and Appendix E of the Collective Agreement. In its grievance, the Union alleged that a member picked to bump into another classification but the Employer is not offering early retirement or voluntary exit to that classification. Then the bumped member in the classification was placed in a vacancy.

By way of remedy, the Union requested:

- that the Employer post and fill the vacant full-time USSP vacancy immediately,
- that the Employer offer early retirement/voluntary exit to the classification and every other classification affected by the bump, and
- that the Employer abide by the award from arbitration and allow the bump to continue until done.

II. BACKGROUND

2. As a result of the transfer of Building Services work to Honeywell, employees were offered the option to remain employed with SJHH or transfer to the new employer. All employees with the exception of two elected to transfer:
 - a. Gary Moore - the Hospital provided Moore with an early retirement offer in accordance with an agreement with CUPE.
 - b. Mike Smith - Smith declined a transfer and was provided with Notice of Layoff.

III. ERO/VEO

3. The Hospital offered early retirement ("ERO") and voluntary exit offers ("VEO") to affected classifications in April and May 2013.

No Painter EROs or VEOs were accepted.

No further EROs or VEOs were offered through the bump chain.

IV. NOTICE OF LAYOFF AND BUMPING PROCESS

4. On November 22, 2013, the Hospital gave notice of layoff to Mike Smith, as a result of the elimination of his Painter position in the West 5th Building Services Department.

Smith was provided with his options in accordance with the Collective Agreement.

5. On November 29, 2013, Smith elected to displace Danny Vaughan, Painter.

6. On December 17, 2013, the Hospital gave notice of layoff to Vaughan.

In the notice, Vaughan was provided with his options in accordance with the Collective Agreement.

7. On December 24, 2013, Vaughan elected to displace Mark Shea, Painter.

8. On February 7, 2014, the Hospital gave notice of layoff to Shea.

In the notice, Shea was provided with his options in accordance with the Collective Agreement.

9. On March 12, 2014, Shea elected to displace Christine McIsaac, Cleaner.

10. The Hospital did not provide McIsaac with notice of bumping nor was she provided with any layoff options.

The Hospital placed Shea in the Cleaner position.

McIsaac also remained a Cleaner in the Department however she was provided with an alternate assignment.

No position was posted.

V. REDEPLOYMENT PROCESS

11. The Hospital met with CUPE on a number of occasions as part of the Redeployment process.

12. At the Redeployment meeting on May 20, 2014, the Hospital provided an update on the bumping process for Shea and the subsequent impact to McIsaac.

The Hospital advised that as per previous discussion, Environmental Services was reviewing the staffing needs in the tower in relation to the previous changes.

The Hospital anticipated one full-time Cleaner position to which McIsaac would be redeploying to offset the bump chain.

The Hospital indicated it was aware of the Union's position related to redeployments after the initiation of the bump chain however while the arbitration is pending, the Hospital would be redeploying to offset the bump chain.

The Union provided the suggestion to not impact McIsaac and place Shea in the new position if they were to be the same position anyway as this would minimize the impact to McIsaac.

The Hospital indicated it would review and consider.

The Union also raised concerns related to the perception of hoarding vacancies for the purpose of future redeployment.

13. At the June 6, 2015 Redeployment meeting, the parties discussed the West 5th Building Services redeployment.

At the previous Committee discussions, the Hospital advised that it anticipated a position created to which McIsaac could be reassigned.

The Hospital considered the vacancy as an option for Shea, however, it was not a match for Shea based on the Collective Agreement reassignment language but was a match for McIsaac.

The Hospital recognized the position of the Union that there are no reassignments after bump.

The Hospital requested that the Union consider and respond regarding the discussion about reassigning Shea versus McIsaac.

The Union advised that they would need to confirm the language and would provide a response.

14. At the July 14, 2014 Redeployment meeting, the Hospital advised that it met with McIsaac on July 14, 2014 to advise that she had been bumped by Shea, however, the intent of the Hospital was not to impact her position within EVS.

The Hospital advised that McIsaac would be absorbed by the Department.

McIsaac was transferring to an alternate assignment within EVS. The position had previously been held by Paul Canning but his assignment required coverage as his

permanent restrictions prevented him from being able to work within that assignment and he required a work trial for permanent accommodation.

The Hospital took the position that maintaining McIsaac's position within the same Department and at the same rate of pay was not a reassignment. The Hospital has the ability to alter work assignments within EVS as they do not post to a defined area of responsibility.

The Union took a different position and advised that they viewed the action as reassigning McIsaac into a vacancy. It was CUPE's position that a bump chain could not be interrupted once it started.

The Hospital recognized the difference in the Hospital and the Union's position and currently there was an arbitration pending that may provide clarity on the appropriate next steps.

15. At the November 27, 2014 Redeployment meeting, the Committee discussed the process related to Shea and his displacement into EVS.

The Hospital indicated that EROs would not be offered to Cleaner staff as the outcome of a judicial review was still pending.

It was stated that the Hospital's position was that the Collective Agreement does not require EROs to be offered when there is a displacement into another classification.

In relation to Shea specifically, the Hospital indicated that there was a position in EVS that was vacant and offset the impact, therefore, McIsaac was not bumped. The Union advised that a grievance would be filed on the matter.

RELEVANT COLLECTIVE AGREEMENT PROVISIONS

ARTICLE 1 - PREAMBLE

1.01 -PREAMBLE

The general purpose of this Agreement is to establish and maintain collective bargaining relations between the Hospital and the employees covered by this Agreement; to provide for ongoing means of communication between the Union and the Hospital and the prompt disposition of grievances and the final settlement of disputes and to establish and maintain mutually satisfactory wages, hours of work and other conditions of employment in accordance with the provisions of this Agreement.

It is recognized that the employees wish to work efficiently together with the Hospital to secure the best possible care and health protection for patients.

5.04 - NO OTHER AGREEMENTS

No employee shall be required or permitted to make any written or verbal agreement with the Hospital or its representative(s) which conflicts with the terms of this agreement.

No individual employee or group of employees shall undertake to represent the union at meetings with the Hospital without proper authorization from the union.

9.05- JOB POSTING

Any provision pertaining to definition of temporary vacancies, non-bargaining unit applications, outside advertising, interim placements or criteria for selection except as it relates to promotions and transfers that existed in the hospital's expiring collective agreement will be continued as the last paragraph of this Article.

- (a) Where a permanent vacancy occurs in a classification within the bargaining unit or a new position within the bargaining unit is established by the Hospital, such vacancy shall be posted for a period of seven (7) consecutive calendar days. Applications for such vacancy shall be made in writing within the seven (7) day period referred to herein.
- (b) The postings shall stipulate the qualifications, classifications, rate of pay, department and shift and a copy shall be provided to the Chief Steward.
- (c) Vacancies created by the filling of an initial permanent vacancy will be posted for a period of three (3) consecutive calendar days, excluding Saturdays, Sundays and Holidays. Applications for such vacancies shall be made in writing within the three (3) day period referred to herein.
- (d) In matters of promotion and staff transfer appointment shall be made of the senior applicant able to meet the normal requirements of the job. Successful employees need not be considered for other vacancies within a six (6) month period unless an opportunity arises which allows the employee to change his or her permanent status.
- (e) The Hospital agrees that it shall post permanent vacant positions within 30 calendar days of the position becoming vacant, unless the Hospital provides the Union notice under Article 9.08(A)(a) of its intention to eliminate the position.
- (f) The name of the successful applicant will be posted on the bulletin board for a period of seven (7) calendar days.
- (g) Where there are no successful applicants from within this bargaining unit for vacant positions referred to in this Article, employees in other CUPE bargaining units at the Hospital will be selected in accordance with the criteria for selection above, prior to considering persons who are not members of CUPE bargaining

units at the Hospital. The employees eligible for consideration shall be limited to those employees who have applied for the position in accordance with this Article, and selection shall be made in accordance with this Article.

- (h) The successful applicant shall be allowed a trial period of up to thirty (30) days, during which the Hospital will determine if the employee can satisfactorily perform the job. Within this period the employee may voluntarily return, or be returned by the Hospital to the position formerly occupied, without loss of seniority. The vacancy resulting from the posting may be filled on a temporary basis until the trial period is completed.
- (i) A list of vacancies filled in the preceding month under this Article and the names of the successful applicants will be posted, with a copy provided to the union.

9.08(A) - NOTICE AND REDEPLOYMENT COMMITTEE

- (a) Notice

In the event of a proposed layoff at the Hospital of a permanent or long-term nature or the elimination of a position within the bargaining unit, the Hospital shall:

- (i) provide the Union with no less than five (5) months' written notice of the proposed layoff or elimination of position; and
- (ii) provide to the affected employee(s), if any, who will be laid off with no less than five (5) 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.

- (b) A layoff shall not include a reassignment of an employee from her or his classification or area of assignment who would otherwise be entitled to notice of layoff provided:
 - (I) reassignments will occur in reverse order of seniority;
 - (II) the reassignment of the employee is to an appropriate permanent position with the employer having regard to the employees skills, abilities, qualifications and training or training requirements;
 - (III) the reassignment of the employee does not result in a reduction of the employees wage rate or hours of work;
 - (IV) the job to which the employee is reassigned is located at the employee's original work site or at a nearby site in terms of relative accessibility for the employee;

(V) the job to which the employee is reassigned is on the same or substantially similar shift or shift rotation; and

(VI) where more than one employee is to be reassigned in accordance with this provision, the reassigned employees shall be entitled to select from the available appropriate vacancies to which they are being reassigned in order of seniority provided no such selection causes or would cause a layoff or bumping.

The Hospital bears the onus of demonstrating that the foregoing conditions have been met in the event of a dispute. The Hospital shall also reasonably accommodate any reassigned employee who may experience a personal hardship arising from being reassigned in accordance with this provision.

(c) Any vacancy to which an employee is reassigned pursuant to paragraph (b) need not be posted.

(d) Redeployment Committee

At each Hospital a Redeployment Committee will be established not later than two (2) weeks after the notice referred to in 9.08(A)(a) and will meet thereafter as frequently as is necessary.

(i) Committee Mandate

The mandate of the Redeployment Committee is to:

(1) Identify and propose possible alternatives to the proposed layoff(s) or elimination of position(s), including, but not

limited to, identifying work which would otherwise be bargaining unit work and is currently work contracted-out by the Hospital which could be performed by bargaining-unit employees who are or would otherwise be laid off;

(2) Identify vacant positions in the Hospital or positions which are currently filled but which will become vacant within a twelve (12) month period and which are either:

- (a) within the bargaining unit; or
- (b) within another CUPE bargaining unit; or
- (c) not covered by a collective agreement.

(3) Identify the retraining needs of workers and facilitate such training for workers who are, or would otherwise be, laid off.

- (4) Subject to article 9.11, the Hospital will award vacant positions to employees who are, or would otherwise be laid off, in order of seniority if, with the benefit of up to six (6) months retraining, an employee has become able to meet the normal requirements of the job.
- (5) Any dispute relating to the foregoing provisions may be filed as a grievance commencing at Step 2.

- (ii) Committee Composition

The Redeployment Committee shall be comprised of equal numbers of representatives of the Hospital and of the Union. The number of representatives will be determined locally. Where for the purposes of HTAP (the Ontario Hospital Training and Adjustment Panel) there is another hospital-wide staffing and redeployment committee created or in existence, Union members of the Redeployment Committee shall serve on any such hospital-wide staffing committee established with the same or similar terms of reference, and the number of Union members on such committee will be proportionate to the number of its bargaining unit members at the particular Hospital in relation to other staff groups.

Meetings of the Redeployment Committee shall be held during normal working hours. Time spent attending such meetings shall be deemed to be work time for which the representative(s) shall be paid by the Hospital at his or her regular or premium rate as may be applicable.

Each party shall appoint a co-chair for the Redeployment Committee. Co-chairs shall chair alternative meetings of the Committee and will be jointly responsible for establishing the agenda of the Committee meetings, preparing minutes and writing such correspondence as the Committee may direct.

- (iii) Disclosure

The Hospital shall provide to the Redeployment Committee all pertinent staffing and financial information.

- (iv) Alternatives

The Redeployment Committee or where there is no consensus, the committee members shall propose alternatives to cutbacks in staffing to the Hospital's Chief Executive Officer and to the Board of Directors.

At the time of submitting any plan concerning rationalization of services and involving the elimination of any position(s) or any layoff(s) to the District Health

Council or to the Ministry of Health, the Hospital shall provide a copy, together with accompanying documentation, to the Union.

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).

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.

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.

9.09- LAYOFF AND RECALL

An employee in receipt of notice of layoff pursuant to 9.08(A)(a)(ii) may:

- (a) accept the layoff; or
- (b) opt to receive a separation allowance as outlined in Article 9.12; or
- (c) opt to retire, if eligible under the terms of the Hospitals of Ontario Pension Plan (HOOPP) as outlined in Article 9.08(8); or
- (d) displace another employee who has lesser bargaining unit seniority in the same or a lower or an identical-paying classification in the bargaining unit if the employee originally subject to layoff has the ability to meet the normal requirements of the job. An employee so displaced shall be deemed to have been laid off and shall be entitled to notice in accordance with Article 9.08(A)(a).

An employee who chooses to exercise the right to displace another employee with lesser seniority shall advise the Hospital of his or her intention to do so and the position claimed within seven (7) days after receiving the notice of layoff.

For purposes of the operation of clause (d), an identical-paying classification shall include any classification where the straight-time hourly wage rate at the level of service corresponding to that of the laid off employee is within 1% of the laid off employee's straight time hourly wage rate.

- (e) In the event that there are no employees with lesser seniority in the same or a lower or identical-paying classification, as defined in this article, a laid-off employee shall have the right to displace another employee with lesser seniority in a higher-paying classification provided they are able to meet the normal requirements of the job, with orientation but without additional training.
- (f) In addition, in combined full-time/part-time collective agreements, a full-time employee shall also be entitled to displace another full-time employee with lesser seniority in a higher-paying classification provided that they are able to meet the normal requirements of the job, with orientation but without additional training, when there are no other full-time employees in the same or a lower or similar-paying classification with lesser seniority, prior to being required to displace a part-time employee.
- (g) An employee who is subject to layoff other than a layoff of a permanent or long-term nature including a full-time employee whose hours of work are, subject to Article 14.01, reduced, shall have the right to accept the layoff or displace another employee in accordance with (a) and (d) above.

- (h) No full-time employee within the bargaining unit shall be laid off by reason of his/her duties being assigned to one or more part-time employees.
- (i) In the event of a layoff of an employee, the Hospital shall pay its share of insured benefits premiums for the duration of the five-month notice period provided for in Article 9.08(A)(a).
- (j) The Hospital agrees to post vacancies during the recall period, as per the job posting procedure, allowing employees on recall to participate in the posting procedure. Should the position not be filled via the job posting procedure, an employee shall have opportunity of recall from a layoff to an available opening, in order of seniority, provided he or she has the ability to perform the work.
- (k) In determining the ability of an employee to perform the work for the purposes of the paragraphs above, the Hospital shall not act in an arbitrary or unfair manner.
- (l) An employee recalled to work in a different classification from which he or she was laid off shall have the privilege of returning to the position held prior to the layoff should it become vacant within six (6) months of being recalled.
- (m) No new employees shall be hired until all those laid off have been given an opportunity to return to work and have failed to do so, in accordance with the loss of seniority provision, or have been found unable to perform the work available.
- (n) The Hospital shall notify the employee of recall opportunity by registered mail, addressed to the last address on record with the Hospital (which notification shall be deemed to be received on the second day following the date of mailing). The notification shall state the job to which the employee is eligible to be recalled and the date and time at which the employee shall report for work. The employee is solely responsible for his or her proper address being on record with the Hospital.

Dissent of Hospital Nominee

I have reviewed the Award of the Chair, and I dissent from the conclusion that "...we find that Mclsacc, as an employee displaced by another employee, by the terms of Article 9.09 (d), was unable to be reassigned by the Hospital."

In his 1999 Interest Arbitration Award involving Participating Hospitals and Participating Locals of CUPE and SEIU, Arbitrator Adams at Pages 4 & 5 awarded new language intended "...on providing the hospitals with greater flexibility to reassign employees within the bargaining unit without triggering layoff provisions. This type of change has the potential to reduce the need to contract out and the dislocating effect of layoffs ...". In the instant case, the Hospital was complying with the intent of the Adams' Award and Article 9.08 (A) (b) of the Collective Agreement between the Parties by reassigning Mclsacc within the bargaining unit without triggering the layoff provisions.

The Award of the Chair relies on decisions by Arbitrators Albertyn and Kaplan who both mistakenly based their decisions on limitations not awarded by Arbitrator Adams. Both decisions effectively negated the flexibility that Arbitrator Adams awarded to avoid layoffs subject to complying with conditions that were met by the Hospital in the instant case. Based on the foregoing, I would have dismissed the grievance.

Dated at Toronto, Ontario this 10th day of April, 2017

"Michael Riddell"

Hospital Nominee