In the matter of an arbitration

B E T W E E N

Hamilton Health Sciences

("the Hospital")

and

Canadian Union of Public Employees, Local 7800

("the Union")

Hearings at Hamilton October 11, 2018, February 15, July 11, October 21, 2019

Patricia Balfour, Hospital Nominee
Joe Herbert, Union Nominee
Elaine Newman, Chair

Appearances:

For the Union:	Mark Wright, Counsel
	Louis Rodrigues, Vice President, Ontario Council of Hospital Unions
	Dave Murphy, President CUPE 7800
	Bryon O'Neill, CUPE 7800
	Cathie Weaver, CUPE 7800
	Gus Oliveira, CUPE National Representative
	Bill Ferguson, Vice President, CUPE 7800
For the Hospital:	Robert Little, Counsel
	Cole Murdoch, Student at Law
	Sue Balonjan, Employment Relations
	Melina Senchyshak, Senior Specialist
	Erin Cardwell, Senior Specialist
	Carolyn Ferrante, Senior Specialist

A W A R D

Two grievances, one policy and one individual grievance, give rise to this issue:

In this combined full and part time agreement, when a Notice of Layoff is issued to a full-time employee, must the Hospital offer Voluntary Exit ("VE") and Early Retirement ("ER") options to those in the classification who are part-time, as well as to those who are full-time? When the Notice of Layoff is served to a part-time employee, must these options be offered to full-time employees in the classification, as well as to part-time employees?

The relevant language is that of the central agreement. There is no dispute that these local parties adopted a practice which, for the past 13.5 years since the amalgamation of the previously separate full and part-time collective agreements, through several rounds of bargaining, has meant that where a layoff is required among full-time employees, only full-time employees are offered the option. The same has been true of part-time layoffs. (This has been called "full-time to full-time, part-time to part-time")

There is no issue with the timeliness of these grievances, or with the jurisdiction of this Board of Arbitration

Agreed Facts

1. In 1996, Hamilton Health Sciences (the Hospital) was created by the amalgamation of the Chedoke McMaster Hospitals and The Hamilton Civic Hospitals.

2. At the time, CUPE locals 794 and 839 represented service employees at three of the Hospital's four sites.

3. In May 2001, as the result of a PSLRTA application, CUPE acquired bargaining rights for a composite office and service bargaining unit at all sites.(2001 OLRD 2089). It also had bargaining rights for a full-time trades bargaining unit.

4. At the time, CUPE had separate full-time and part-time bargaining collective agreements.

5. Article 18.02 of the full-time collective agreements and article 18.03 (b) of the part-time collective agreements read as follows:

18.02 – Retirement Allowance

Prior to issuing notice of layoff pursuant to article 9.08(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)(ii).

An employee who elects an early retirement option shall receive, following completion of the last day of work, a retirement allowance of two weeks' salary for each year of service, plus a prorated amount for any additional partial year of service, to a maximum celling of 26 weeks' salary, and, in addition, full-time employees shall receive a single lump-sum payment equivalent to $1,000 for each year less than age 65 to a maximum of $5,000 upon retirement.

6. This language had been centrally awarded in the hospital sector by the Haefling Board in 1993. It was awarded to "all full-time and part-time agreements".

7. CUPE 4800 was the successor union to the previous locals.

8. The Hospital and CUPE, Local 4800 negotiated a combined full-time and part-time service and clerical collective agreement with an expiry date of September 28, 2004

9. Article 18.03(b) of the Collective Agreement expiring September 28, 2004 provided, in part, as follows:

18.03(b) Retirement Allowance

Prior to issuing notice of layoff pursuant to article 9.08(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)(ii).

An employee who elects an early retirement option shall receive, following completion of the last day of work, a retirement allowance of two week's salary for each year of service, plus a prorated amount for any additional partial year of service, to a maximum ceiling of 26 week's salary, and, in addition, full-time employees shall receive a single lump-sum payment

equivalent to $1,000 for each year less than age 65 to a maximum of $5,000 upon retirement.

10. Sue Balonjan, Human Resource Coordinator, was the Hospital's Co-Chair of the Redeployment Committee required under article 9 of the Collective Agreement. She was responsible for managing the redeployment process on behalf of the Hospital, for CUPE 4800, starting in 2001.

11. At least by 2003, the CUPE Co-Chair of the Redeployment Committee was Jan Ouzas. Ms. Ouzas was the Local President from 2003-2007.

12. When Ms. Balonjan began managing the redeployment process under the combined Collective Agreement expiring September 28, 2004, the process in effect at the time between the Hospital and CUPE was that if full time employees were identified for layoff, the early retirement allowances (ERAs) required by article 18.03(b) were only offered to eligible full time employees within the classification regardless of whether there were more senior part time employees in the classification.

13. Similarly, if part time employees were identified for layoff, ERAs under article 18.03(b) were only offered to eligible part time employees in the classification, regardless whether there were more senior full-time employees in the classification.

14. For example, if two part time employees were identified for layoff, ERAs would only be offered to part time employees in that classification, regardless of whether there were more senior full-time employees in the classification.

15. In approximately 2007, Ms. Ouzas left the Hospital to become a CUPE National Representative. Bill Ferguson became the CUPE Redeployment Co-Chair Mr. Ferguson was and remained the Vice-President for the Local. Mr. Ferguson was trained by Ms. Ouzas to apply article 18.03(b) in the manner outlined above.

16. In the September 29, 2004-September 28, 2006 Collective Agreement, the relevant language of article 18.03(b) remained unchanged.

17. Between 2001 and September 28, 2006, there were approximately two redeployment initiatives per year that would have triggered the application of Article 18.03 The above-noted process was followed in all of these initiatives. In the Collective Agreement commencing September 29, 2006, the relevant language of article 18.03(b) remained unchanged.

18. On or about 12 June 2006 the Central Negotiating Teams negotiating the 2006-2009 Central CUPE collective agreement in the hospital sector entered into a Memorandum of Settlement that introduced the new article 18.03(c). The relevant language of that article provided:

    18.03(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"

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.

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.

19. The parties applied the above-noted process to article 18.03(c). That is, if a full-time employee was identified for layoff, then Voluntary Exit Options (VEOs) would be offered only to full time employees in the classification where layoffs would otherwise occur. If a part time employee had been identified for layoff, then VEOs would only be offered to part time employees in the classification where layoffs would otherwise occur. Between 2006 and 2009, there were approximately two redeployment initiatives per year that triggered Article 18.03(b),(c) and the process above continued to be followed.

20. In 2009, the Hospital acquired St Peter's Hospital (SPH). The SPH/CUPE collective agreement contained the same article 18.03(b) language. Ms. Balonjan and Mr. Ferguson were the redeployment co-chairs for the SPH/CUPE collective agreement. The above-noted process was adopted for SPH as well.

21. CUPE, Local 7800 became the successor union to Local 4800.

22. The CUPE Collective Agreement renewed as follows: 2006-2009, 2009-2013, 2013-2017.

23. The present grievances allege violations of the central provisions of the HHS CUPE collective agreement from 2013-2017. Consistent with the central bargaining process, the bargaining for the 2013-2014 collective agreement was done pursuant a document executed by the parties and referred to as the Memorandum of Conditions for Joint Bargaining. There is also an Addendum to The Memorandum of Conditions for Joint Bargaining.

24. In January 2009, the Hospital announced a restructuring initiative. CUPE filed a grievance alleging that the Hospital's practice of holding vacancies on an "on hold" list to keep positions available to avoid layoffs was contrary to the Collective Agreement.

25. CUPE did not challenge the manner in which article 18.03 was being applied and the parties continued to apply their existing process to restructuring initiatives that engaged article 18. For example, that process was applied to the January 2010, redeployment initiative that identified 43 full time and 29 part time employees for lay off.

26. On March 30, 2010, the parties settled the grievance referred to above. They agreed that the Hospital would no longer withhold vacancies on an "on-hold" list and agreed to an award (the Etherington award) that stated in part:

> …going forward, the Hospital will conduct future restructuring in conformity with the provisions of the Collective Agreement.

27. After this award was issued in April 2010, both parties continued to follow the process noted above i.e. that if a full time employee was identified for layoff, ERAs and VEOs would only be offered to full time employees in the classification regardless of the seniority of part timers and vice versa.

28. At this point, CUPE's members made up approximately 30% of the Hospital's total workforce. When the Hospital faces budget pressures, the non-clinical areas are generally impacted more than the clinical areas. 66% of CUPE's members work in non-clinical areas. Between 2009-2019, CUPE Budget Affects (ie the number of employees/positions identified for layoff/elimination) were 462 as set out below.

Employee Name	(All)	includes VACANT positions	
Count of Employee Name	Ft/Pt		
Year	**Full-time**	**Part-time**	**Grand Total**
2010-2011	44	29	73
2011-2012	27	39	66
2012-2013	29	26	55
2013-2014	12	3	15
2014-2015	22	10	32
2015-2016	43	35	78
2016-2017	35	23	58
2017-2018	27	20	47
2018-2019	28	10	38
Grand Total	267	195	462

29. This constituted 44% of all Hospital Budget Affects for this period.

30. For example, following the Etherington award, in May 2011 a redeployment initiative identified 17 full time and 18 part time employees for layoff.

31. In June 2011, Arbitrator Fisher issued a decision between the Hospital and OPSEU in which he concluded that Article 11.07 of the OPSEU Collective Agreement required the Hospital to make offers of retirement allowances to all employees within the classification, without regard to whether they are full time or part time. The Hospital disagreed with the result and notes that Arbitrator Fisher acknowledged that "the result is not a necessarily logical labour relations scenario." However, the Fisher award was not judicially reviewed by the Hospital and the Hospital has complied with that award ever since when making offers of retirement allowances under the OPSEU collective agreement. The OPSEU unit has approximately 700 employees. Redeployments within that group occur occasionally.

32. Following the issuance of this OPSEU award, both CUPE and the Hospital continued to follow their pre-existing process with respect to the application of article 18.03 in all subsequent redeployment initiatives.

33. For example, in 2011- 2012 redeployment initiatives identified 27 full time and 39 part time employees for layoff.

34. In 2012- 2013, redeployment initiatives identified 29 full time and 26 part time employees for layoff.

35. In 2013- 2014, redeployment initiatives identified 12 full time and 3 part time employees for layoff.

36. In 2014-2015, redeployment initiatives identified 22 full-time and 10 part-time employees for layoff.

37. In 2015-2016, redeployment initiatives identified 43 full time and 35 part-time employees for layoff.

38. The first time the Hospital learned that CUPE might be taking a different position on the process was in May 2016, when it was advised that a CUPE Site Representative, who had never been on the Redeployment Committee, had complained to the Local President about the process. CUPE then filed the grievances that are before this Board.

39. The Collective Agreement under which the grievances were filed continued until May 31, 2018

Impact

40. Under the current process (full-time to full-time, part-time to part-time), offering ERAs/VEOs will have the potential to create vacancies to which employees identified for lay off can be reassigned, thereby avoiding the lay off.

41. If the Hospital were required to offer ERAs/VEOs to a part time employee when a full-time employee was identified for lay off, that would not create a reassignment opportunity to avoid a full time lay off.

42. Similarly, if the Hospital were required to offer ERAs/VEOs to a full-time employee when a part time employee was identified for lay off, CUPE takes the position that part time employee cannot be reassigned into a full-time position.

43. The chart at Tab 17a shows the examples of the costs associated with providing the senior part time employee with an ER package in situations in which a full-time employee has been identified for lay off. The chart identifies the full-time employee who received a package and the part time employee who was more senior to that full-time employee.

44. The chart at Tab 17b shows the examples of the costs associated with providing the senior full-time employee with an ER/VEO package in situations in which a part time employee has been identified for lay off. The chart identifies the part time employee who received a package and the full-time employee who was more senior to that part time employee.

45. The chart at Tab 17c shows how the costs on charts one and two compared to the total cost of packages awarded during the period 2010/2011-2018/2019 to date.

(The charts are not published in this award.)

The Collective Agreement

Since 2003, both full- and part-time employees are addressed in the same collective agreement. It has been renewed four times. The relevant excerpts from that agreement are these:

7.12 – The Arbitration Board shall not be authorized to make any decision inconsistent with the provisions of this Agreement, nor to alter, modify, add to or amend any part of this Agreement.

9.02 – Seniority

Full-time employees will accumulate seniority on the basis of their continuous service in the bargaining unit from the last date of hire, except as otherwise provided herein.

Part-time employees, including casual employees, will accumulate seniority on the basis of one (1) year's seniority for each 1725 hours worked in the bargaining unit as of the last date of hire, except as provided herein.

Seniority will operate on a bargaining unit wide basis.

A part-time employee cannot accrue more than one year's seniority in a twelve (12) month period. The twelve (12) month period shall be determined locally.

9.08 (A) – Notice and Redeployment Committee

(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 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.

(d) Redeployment Committee

At each Hospital a Redeployment Committee will be established no 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 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 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 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 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.

23.02 – Central Bargaining

Notwithstanding the foregoing provisions, in the event the parties to this Agreement agree to negotiate for its renewal through the process of central bargaining, either party to this Agreement may give notice to the other party of its desire to bargain for amendments on local matters proposed for incorporation in the renewal of this Agreement and negotiations on local matters shall take place during the period from 120 to 60 days prior to the termination date of this Agreement. Negotiations on central matters shall take place during the period commencing forty-five days prior to the termination date of this Agreement.

It is understood and agreed that "local matters" means, those matters which have been determined by mutual agreement between the central negotiating committees respectively representing each of the parties to this Agreement as being subjects for local bargaining directly between the parties to this Agreement. It is also agreed that local bargaining shall be subject to such procedures that may be determined by mutual agreements between the central negotiating committees referred to above. For such

purposes, it is further agreed that the central negotiating committees will meet during the sixth month prior to the month of termination of this Agreement to convey the intentions of their principals as to possible participation in central negotiations, if any, and the conditions for such central bargaining.

Union Position

The Union concedes that the past practice creates an estoppel on the unique facts of this case, while preserving without prejudice its right to argue here, and in subsequent cases, that local past practice cannot be used to create an estoppel with respect to central language. The parties require interpretation of the collective agreement language.

The Union asserts that the collective agreement, which covers both full-and part-time employees, does not specify that the options are limited. The language is clear and unambiguous and does not limit the obligation to the full- or part-time category. A significant benefit of seniority, it argues that absent such clear language, an interpretation that would deny the benefit contradicts the primacy of the seniority principle. A linguistic analysis is all that is permitted.

The Union asserts that the Board of Arbitration lacks jurisdiction to alter that language. Absent ambiguity, it would be improper for the Board of Arbitration to consider the past practice which, for 13.5 years, has reflected the practice of offering ER and VE options only to those in the same category (full-time to full-time and part-time to part-time).

If a contextual approach is required, the Union asserts that the primary factor is that the language was the product of central bargaining. A local practice can not influence the interpretation of central language. To do so would be to undermine central bargaining. The

local parties can not bargain what has been bargained centrally, and they cannot achieve indirectly what they are prohibited from doing directly.

The Union argues that the language of the collective agreement is clear and unambiguous. In each provision, 9.08 (B) and (C), the language refers to the employees in the classification, and not to full-time or part-time employees. In this collective agreement, both full- and part-time employees are considered. Seniority operates on a bargaining unit wide basis. There is a provision for converting part-time hours to full-time seniority. As a seniority provision, fundamental labour relations law requires that the benefit not be restricted in the absence of very clear language – none of which exists here.

The Board of Arbitration is required to interpret the collective agreement as it finds it, and not to alter that language in any way. This, the Union asserts, would be the result if the Hospital's interpretation were applied.

The Union acknowledges that there has been a longstanding local practice of interpreting these provisions in the manner consistent with the Hospital's argument. It has, for the past 13.5 years, only offered E.R. and V.E. options to full-time employees when the layoff pertains to full-time staff and has only offered these options to part-time employees when the layoff pertains to part-time staff.

The longstanding practice gives rise to an estoppel, and the Union concedes this point. However, regard ought not be had to practice as an aid to interpretation where the language of the collective agreement is unambiguous. The Union argues that the Agreed Statement of Fact, which is the totality of the evidence before this Board, does not include evidence of a shared understanding of the meaning of the disputed provisions that is different from the clear language.

Even if the Board of Arbitration is persuaded to adopt a contextual approach to interpretation of the language, the critical context is that the language was negotiated in central bargaining. A local practice, such as that here evidenced, may not be used to interpret language that results from a centrally negotiated provision. According to the conditions of bargaining, it would be illegal for the parties to bargain locally what has been

bargained centrally. They may not accomplish through indirect means what can not be achieved directly.

A contextual approach to the interpretation must reflect the circumstances that existed when the contract was made. The central, most important factor is that the language was the product of central bargaining. At the time of the Haefling award, there were combined bargaining units. The language was renewed and maintained in subsequent central bargaining rounds. The Union urges that three factors are to be considered:

The genesis of the language, as described above.

The purpose of the provisions, which is to avoid layoffs and enhance job security.

The context, which in this case is the labour relations context.

The purpose of the provisions was to avoid layoffs, but it was also to enhance job security and benefits that accrue with seniority. There will be a cost consequence if these grievances succeed. The Union argues that impact was intended. The Union intended to create a situation that would deter costly consequences for the Hospital.

These sophisticated parties do distinguish between part-time and full-time employees in their agreement, in which seniority operates on a bargaining unit wide basis. There are many examples of places in which they have decided that a benefit or scheme will apply to full or part-time employees, and they say so. They have not drawn that distinction in respect of the E.R. and V.E. rights.

The parties, who the union agrees are autonomous, may establish local practice. But that only goes to establish an estoppel, as the union has conceded.

Hospital Position

The Hospital argues that the language of Article 9.08 (B) and Article 9.08 (C) is patently, or in the alternative, latently, ambiguous. Interpretation of the language of the collective agreement, requires that the Board apply a contextual approach. These parties adopted a practice which has survived several rounds of bargaining and four renewals , and a restructuring that brought the administration of layoffs to arbitration, yet the practice remained unaltered. Context reflects, in the Hospital's submission, a shared interpretation

of the language. There are unique facts in this case that take it outside of any precedent offered by the Union, including the unique fact that these local parties were deliberate in their mutual adoption of a shared meaning. That meaning is reflected in the practice that has withstood 13.5 years.

It was in 2004 that the parties combined the full- and part-time agreements into one. Yet, at a time when the factual matrix changed radically, and when the parties for the first time had to consider how to interpret and apply the language of these provisions, they continued their practice of limiting the offer of retirement and exit options to those in the same category (full-or part-time). Their shared interpretation is obvious and consistent. This was not oversight. It was deliberate. It was agreement on a significant benefit.

The Local President in 2007 trained her replacement to administer the provision in the same way. This was not inadvertence – it was deliberate.

In 2006 the parties added the voluntary exit language (without interest arbitration), and during this opportunity to reconsider how the language would be applied, intentionally adopted the same approach.

In 2009 a new hospital, St. Peter's Hospital, was acquired, and the parties continued to take the same approach.

Also, in 2009, the hospital announced a restructuring and the union grieved the practice of keeping vacancies on hold. Redeployment was actively considered at this point, but the manner in which these provisions were administered was not grieved. The grievance on withholding vacancies was settled, and the parties agreed that the hospital would revert to the strict language of the collective agreement. The practice continued.

In 2013 the parties joined central bargaining. This had no impact on the way in which they interpreted and administered these provisions.

In 2016 someone who had not served on the Redeployment Committee raised the issue, seeking a linguistic analysis without regard to the factual context.

These unique facts, argues the Hospital, inform the interpretation of the language.

The Hospital argues that the longstanding past practice in this case is unique and determinative since the language was awarded in 1993. It discloses more than just a situation in which the parties disregarded the actual language of the central agreement – it discloses a situation in which the parties deliberately considered and adopted a shared interpretation of that language. They did this repeatedly throughout several rounds of negotiations.

The parties adopted that same meaning when they combined full- and part-time bargaining units. The Union itself trained its new Redeployment Co-Chair, in 2007, to apply the article in the same manner. The practice continued when these parties negotiated a redeployment initiative and through multiple redeployment initiatives each year, when they acquired a new hospital, when they underwent restructuring, when they settled a grievance arising under their redeployment initiative (agreeing that the Hospital would no longer withhold vacancies on an on-hold list) and agreed to an award that said, "going forward the Hospital will conduct future restructuring in conformity with the provision of the Collective Agreement"), and when, in June of 2011, Arbitrator Fisher released an award requiring this Hospital (in its agreement with another unit) to make offers of retirement allowances to all employees within the classification, without regard to whether they are full- or part-time.

Over the years, hundreds of employees have been affected by the parties' mutually adopted practice. The notion that the language might require a different interpretation did not arise until 2016 when a CUPE site representative, who had not been a part of the Redeployment Committee, raised the issue.

The Hospital argues that the unique fact of this longstanding practice does more than give rise to an estoppel – it must inform the interpretation of the provision. This is how the parties, themselves, have deliberately interpreted the language for 13.5 years.

The interpretive analysis must be an expansive contextual approach. The Board of Arbitration is more than merely a "linguistic technician" – it is required to interpret the language in the circumstances, and the circumstances in this case include the practice. The practice reflects the mutual intention of the parties.

A purposive, contextual analysis requires consideration of the purpose of the provisions. The purpose was to avoid layoffs. If the Hospital identifies that there is a need for a full-time layoff, an offer of voluntary exit or retirement options to a part-time employee does not serve that purpose. If the Hospital identifies need for a part-time lay off and the senior employees within the classification are full-time, the Hospital may be obliged to reduce the workforce more than is necessary, then hire up to meet its needs.

The Hospital argues that the local parties are autonomous and enjoy the authority to administer the central language in a manner that makes sense to their environment. There is no authority to the contrary. The cases cited by the Union do not establish that principle. The interpretation of the central language must be based on a contextual analysis, and at the time this collective agreement was made, that context included a long history of established practice.

All cases relied upon by Counsel are listed in Appendix 1 to this Award.

Analysis and Conclusions

Analysis begins with the language itself: Article 9.08 (B) pertaining to the retirement allowance, and Article 9.08 (C) pertaining to the voluntary exit option, both of which are significant benefits, administered according to seniority. I categorize these as seniority benefits and acknowledge that the they must be interpreted broadly. As said in Tung-Sol of Canada at para 4:

Seniority is one of the most important and far-reaching benefits which the trade union movement has been able to secure for its members by virtue of the collective bargaining process. An employee's seniority under the terms of a collective agreement gives rise to such important rights as relief from lay-off, right to recall to employment, vacations and vacation pay, and pension rights, to name only a few. It follows, therefore, that an employee's seniority should only be affected by very clear language in the collective agreement concerned, and

that arbitrators construe the collective agreement with the utmost strictness wherever it is contended that an employee's seniority has been forfeited, truncated or abridged under the relevant sections of the collective agreement.

The question remains, can the language of these two provisions be read broadly enough to provide the seniority benefit that the Union now seeks - the requirement that all employees in the classification of the lay off, whether full- or part-time, must be offered early retirement or voluntary exit?

In his 2011 award between this same Hospital and its OPSEU bargaining unit, Local 273, Arbitrator Fisher interpreted the same language. The question was precisely that put to this Board.

Arbitrator Fisher determined that the words of the collective agreement did not speak of FTE's and made no distinction between full-and part-time employees. He concluded that the language "can only mean" that all employees, whether full- or part-time, had to receive the offers. He said:

In the Hospital's written submissions, [Counsel] emphasizes the fact that under the Management Rights clause the Hospital alone decides the size of the workforce and that to follow the Union's logic would result in a situation where the Hospital would be required to provide Retirement Allowances and lose the services of two FTE's when they only wanted to reduce by one FTE. Presumably after the reduction in workforce the Hospital would have to hire one FTE. I agree that not only does this properly set out the consequences of the Union's position but also that the result is not a necessarily logical labour relations scenario. The Hospital could have at any time called off the proposed layoffs, however once it decided to proceed with offering the Retirement Allowances and Voluntary Exit Options, it must do so within the language of the Collective Agreement. I agree with the Union's written reply that the article is clear and any change can only be achieved through collective bargaining or through an interest arbitration.

It does not appear that Arbitrator Fisher had the benefit of the fulsome arguments asserted in this case, or that he had the benefit of considering the extrinsic evidence here presented. He also identified the fact that the result did not make good "labour relations sense". However, the decision stands as some precedent for the interpretation of the same words in a collective agreement that bind the same Hospital. I take the 2011 Hamilton

Health Science and OPSEU award as a starting point for the analysis. The language, on its face, is clear and unambiguous.

That conclusion is strengthened, in my view, when one reads the plain language in the context of the collective agreement, as suggested in Royal Victoria Hospital, (2010) (at para 17), in which Arbitrator Stout said:

Interpreting the collective agreement … to discover the intention of the parties as found in the language they have written in context and with regard to the collective agreement as a whole. In a situation involving language awarded by an interest arbitration board, the object is to discover the intent of the interest arbitration board. (para 17)

Again, in the VON and OPSEU (2017) matter, Arbitrator Stout addressed the interpretation of collective agreement language where early retirement options had been denied. Even in this case, in which there was a total permanent lay off of all employees, and where no lay off could be avoided by offering the early retirement option, and the apparent purpose of the provision would be thwarted, it was held that the language established the seniority benefit and the benefit was available. Arbitrator Stout, however, recognized the importance of interpreting collective agreements in their special labour relations context when he said, at para 12:

It goes without saying that collective agreements are not negotiated in a vacuum. A collective agreement must be interpreted within a labour relations context. A purposive labour relations interpretation recognizes that collective agreements are not the same as other agreements. The labour relations context provides a basis for determining the objective intent of the parties as evidenced by the language they included in their collective agreement. In other words, the meaning of the words used by the parties may be gleaned from a number of contextual factors, including the purpose of the agreement and the nature of any benefit provided. However, caution must be exercised to ensure that any objective external contextual factors do not change or undermine the meaning of the words chosen by the parties to the extent that they, in effect, rewrite the parties' agreement. If the collective agreement language is clear, then an arbitrator has a duty to interpret and apply the language as written…

In the present case, the disputed provisions appear in a combined collective agreement that includes both full- and part-time bargaining unit members, in which Article 9.02 provides a mathematical method of converting the accumulated hours of a part-time

employee for the purpose of determining seniority – which, according to that Article, operates on a bargaining unit wide basis.

In the present case, the disputed provisions appear within a collective agreement that distinguishes between those items that are intended to apply to full-time employees from those that are intended to apply to part-time employees. (For example, Article 14.02 and 14.02 (B) provide for rest periods and distinguish between full- and part-time employees. Articles 16.01, 16.02, 16.03 (A) and (B) pertain to holiday computations and distinguish between full-and part-time. Articles 17.01 (A) and (B), and Articles 17.03 and 18.01 draw the same distinction.) The parties are assumed to have intended the effect of their language choices, and the failure to draw any distinction in the construction of Articles 9.08 (B) and (C) supports the conclusion that no distinction was intended.

On its own, and read in the context of the collective agreement, it is reasonable to conclude that the language, originating by interest arbitration in 1993, was intended to provide for E.R. and V.E. benefits without distinguishing between full- and part-time employees. Taken in isolation, the language itself seems to achieve the result that the Union seeks. There is no limitation of the obligation to offer early retirement or voluntary exit to either full- or part-time employees. My view that the language is unambiguous is strengthened by these observations of the language, taken in the context of the collective agreement.

The Hospital argues that the language be considered in its context, and in light of past practice. Even in the face of unambiguous language, (which characterization the Hospital disputes here), such evidence may reveal a latent ambiguity in the language or reveal a clear indication that the parties jointly intended a different interpretation. If the evidence supports the assertion that there was a deliberate and shared mutual interpretation of the language, the practice may be entrenched into the collective agreement.

I acknowledge the Union's argument that the case of John Bertram & Sons (1967), warns against the admissibility of past practice evidence:

Indiscriminate recourse to past practice has been said to rigidify industrial relations at the plant level, or in the lower reaches of the grievance process. It does so by forcing higher management or union officials to prohibit (without their clearance) the settling of grievances

in a sensible fashion, and a spirit of mutual accommodation, for fear of setting precedents which may plague either side in unforeseen ways in future arbitration decisions. A party should not be forced unnecessarily to run the risk of losing by its conduct its opportunity to have a neutral interpretation of the terms of the agreement which it bargained for. (at para 368)

In that case, Arbitrator Weiler suggested four preconditions to the admissibility of past practice evidence:

1. *No clear preponderance of meaning in the language*
2. *Conduct by one party based on one meaning of the language*
3. *Acquiescence by the other party*
4. *Evidence that members of the union or management hierarchy who have some real responsibility for the meaning of the agreement have acquiesced in the practice.*

I do not share the same concern about the use of past practice evidence. Nor do I consider the warning reason to disregard the context in which this collective agreement evolved. Regardless of the practice or how longstanding its use, the parties are entitled to access neutral evaluation of the language. The neutral evaluation will determine whether the practice has become enshrined in the collective agreement, or whether it gives rise to an estoppel. In any event, I have some doubt as to whether Bertram remains persuasive, given subsequent judicial rulings on point that encourage consideration of context, to which the Hospital refers:

In Leitch Gold Mines, (1969) in which the judgement of Mr. Justice Gale C.J.O. stated:

Where the language of the document and the incorporated manifestations of initial intention are clear on a consideration of the document alone and can be applied without difficulty to the facts of a case, it can be said that no patent ambiguity exists. In such a case, extrinsic evidence is not admissible to affect its interpretation. On the other hand, where the language is equivocal but its application to the facts is uncertain or difficult, a latent ambiguity is said to be present. The term "latent ambiguity" seems now to be applied generally to all cases of doubtful meaning or application.

The labour arbitration arena adopted the words of the then Chief Justice with no hesitation. Extrinsic evidence may be admitted and considered to reveal a latent ambiguity. Arbitrator Burkett, in Canada Post Corporation and CUPW, (1990) declared that the

language before him appeared clear on its face. However, when considered in light of the facts before him, it was "difficult to comprehend how it could ever have been intended" that the result urged by the Union, and in light of the purpose of the provision, could have been intended. He said, (at para 9):

In my view the language… read in the context of its purpose, is latently ambiguous thereby permitting me to rely on the extrinsic evidence to resolve the ambiguity.

The Ontario Court of Appeal adopted the Leitch analysis in the labour relations context, in the matter of Windsor Board of Education and Windsor Women Teachers' Association in 1991. The Court of Appeal did the same in Hi-Tech v Sears, in 2001, in a non-union employment matter, noting, at para 23, that:

Words take their meaning from their context, evidence of the circumstances surrounding the making of a contract has been regarded as admissible in every case…

Then, in a 2003 award, Arbitrator Surdykowski addressed the question in Dominion Colour Corp and Teamsters and affirmed the adoption of the Leitch reasoning in the labour relations arena.

In 2007, the Ontario Court of Appeal released its judgement in Dumbrell v. Regional Group of Companies, a decision that required interpretation of a commercial contract pertaining to a commission in a real estate transaction. The contract said that an employee would be entitled to 50% of the profits from the transaction. The employment contract was terminated by the time the deal crystallized, and the profits were realized. The contract did not expressly address the circumstances that gave rise to the problem. The court found that Dumbrell's entitlement had to be found in the contract itself. The Court, (at paragraphs 52 to 55 inc.):

52. No doubt, the dictionary and grammatical meaning of the words (sometimes called the "plain meaning") used by the parties will be important and often decisive in determining the meaning of the document. However, the former cannot be equated with the latter. The meaning of the document is derived not just from the words used, but from the context or the circumstances in which the words were used. Professor John Swain puts it well in Canadian Contract Law (Markham, Ont. Butterworths, 2006) at 493:

There are a number of inherent features of language that need to be noted. Few, if any, words can be understood apart from their context

and no contractual language can be understood without some knowledge of its context and the purpose of the contract. Words, taken individually, have an inherent vagueness that will often require courts to determine their meaning by looking at their context and the expectations that the parties may have had.

53. The text of the written agreement must be read as a whole and in the context of the circumstances as they existed when the agreement was created. The circumstances include the facts that were known or reasonably capable of being known by the parties when they entered into the written agreement…

54. A consideration of the context in which the written agreement was made is an integral part of the interpretative process and is not something that is resorted to only where the words viewed in isolation suggest some ambiguity. To find ambiguity, one must come to certain conclusions as to the meaning of the words used. A conclusion as to the meaning of words used in a written contract can only be properly reached if the contract is considered in the context in which it was made…

55. There is some controversy as to how expansively context should be examined for the purpose of contractual interpretation… Insofar as written agreements are concerned, the context, or as it is sometimes called, the "factual matrix" clearly extends to the genesis of the agreement, its purpose, and the commercial context in which the agreement was made…

The Hospital has provided several examples of arbitral awards that have followed the Court's direction in Dumbrell. Notable among these is that of Arbitrator Burkett, in Air Canada v Air Canada Pilots' Association, (2012). At para 39, he persuasively says:

The issue before me is one of interpretation. I must decide if the term "aircraft" in paragraph 1 of LOC 50 mean both jet and propeller aircraft such that the paragraph expands the Union's scope to encompass all propeller aircraft in the 76-110 seat range. As with any issue of interpretation, I must give effect to the language used by the parties, albeit read within the context of the specific clause or provision, read within the context of the agreement as a whole, and read with the context within which the disputed letter was negotiated into the agreement. A failure to consider these contextual factors renders the arbitrator as nothing more than a linguistic technician. An arbitrator, however, is far more than that. An arbitrator

is required to bear a specialized knowledge of labour relations generally and of collective agreement applications specifically in order to decipher the meaning of the contested language read in context. The objective must always be to find the meaning of the disputed language within the context of the particular collective bargaining relationship.

Burkett goes on to say that any doubt about the need for a contextual analysis is put to rest by the Court's "eloquent and forceful" direction in Dumbrell, (while cautioning that a contextual analysis is different from the "subjective intention" of the parties). In the case before him, Burkett added, at paragraph 43, that "an interpretation based on a narrow linguistic reading can be rebutted on a full contextual analysis".

Then, in 2014, the Supreme Court of Canada weighed in with the reasoning of Sattva Capital Corp v. Creston Moly Corp. In the context of a commercial arbitration, the Court addressed the issue of contractual construction and interpretation. It rejected the notion that interpretation was only a question of law and found that it was a mixed question of fact and law, requiring consideration of the context, "the factual matrix", to discern the intention of the parties. The Court traced the development of the concept (at para 46 through 50) of its decision and concluded that the "historical approach" of considering contractual interpretation only a question of law should be abandoned. The Court emphasized the need to read the contract as a whole, giving the words their ordinary and grammatical meaning, but ensuring consistency with the surrounding circumstances.

Words alone may be insufficient to reflect the intention of the parties. The circumstances, the context, will often be required to give them meaning. This is the message I take from Sattva. I take from the decision the permission, the direction, from the Supreme Court of Canada, to approach collective agreement interpretation from the perspective of experts in the field of labour relations, rather than from the perspective of Burkett's mere "linguistic technicians".

I find support in that view by Arbitrator Hayes in Waterloo Region Record v. Unifor, who provides a detailed review of the cases that develop these concepts, from Hayes in Sault Ste Marie, McNamee in White River, Stout in OPG, Stephens in Hamilton Health Sciences and ONA, and Solomatenko in Toronto Electric Commissioners.

The Union argues that the Dumbrell analysis does not apply to this case, because there is no singular "word" or "words" that can be said to be ambiguous. There is no "aircraft" as there was in Burkett's Air Canada case, no "all sales" as there was in Waterloo.

I disagree with an approach that would restrict a Dumbrell analysis to such cases. I would say that the provision itself may require context to be understood, rather than the singular word or phrase. It is the context that may give meaning to the parties' choice of language.

For the purpose of analysing these provisions I am prepared to consider the context. So it is that in interpreting the words of Article 9.08 (B) and (C), I take into account not only the evidence of purpose, but also of the context in which they arose, and the evidence of past practice, in this exercise of mixed fact and law.

Do the words serve their purpose? To answer that question, one must determine the purpose, or intent, at the time the contract was made. In this case, there are no fewer than four options:

1. Was the purpose, when the words were first awarded by interest arbitration in 1993, intended, in the context of an economic crisis, to reduce the number of layoffs without generating additional expense for the Hospital or the Province?
2. Was the purpose, when the words were renewed in 2004, and the separate bargaining units combined, to reduce layoffs in the category in which layoffs were required – full-time or part-time? Or, was the provision then merely overlooked in the context of the combined bargaining unit?
3. Has the purpose always been, as Arbitrator Kaplan said in his unchallenged 1998 award, to promote job security and reduce the impact of layoffs?
4. Is the purpose, as the Union urges, primarily to provide a seniority benefit to bargaining unit members, protect job security, and incidentally and frankly, to make layoffs as inconvenient and expensive for the Hospital as reasonable? The Union, after all, is not in business to make layoffs easy.

Having considered the evidence and submissions on this point, I find myself in agreement with Mr. Kaplan. I conclude that the purpose of these provisions, on their face, was and is, a mixed purpose - to promote job security and reduce the impact of layoffs. The

Union's interpretation here is at odds with that purpose, to the extent that there will be cases in which making the offers will not numerically align with the numbers of layoffs required, and in some cases, will not prevent layoffs at all.

The unambiguous language of the collective agreement conflicts with the obvious purpose of the provision. The board is reminded that care must be taken to ensure that the purpose of a collective agreement provision cannot be taken as the governing factor, if the language provides something to the contrary. The concern is highlighted by the Fisher award in which his result "may not have made labour relations sense". But, acknowledgment of a general purpose does not overrule plain language. As stated by Arbitrator Charney in the Temiskaming Hospital and CUPE matter, at para 16:

We begin by agreeing with the Hospital that a purposive approach to the interpretation of collective agreement provisions is frequently of necessity to arbitration boards. In circumstances where arbitration boards are confronted with competing compelling interpretations, it is often necessary to consider the purpose served by a provision in uncovering the meaning intended by the parties. We further agree that one general purpose intended by provisions such as Article 30.01 (g) is to secure the retirement of senior employees by inducement, in order to provide the opportunity for continued employment to other more junior employees. Such provisions permit senior employees to retire on terms preferable to those which would otherwise exist, permit other employees to continue employment, and provide an employer with the opportunity to retain a workforce which will remain stable for a longer period….

At the same time, an arbitration board cannot utilize one general unstated purpose of a provision to override its clear meaning, and the specific requirements of a collective agreement provision are not negated when each such purpose is not served in a particular instance…

The only two conditions included in the language in that case were that the employee be eligible for early retirement under HOOPP, and that employees be "within the classification". There, the Hospital asserted that another term was required to be inferred – that the employee seeking the early retirement option was in a position that stood to be re-filled after their departure. The board declined to add that concept, and the grievor was awarded her option – even though to do so would not meet the purpose of reducing layoffs.

I am satisfied that the language of this collective agreement must take primacy over its apparent purpose. The language can not be contorted to achieve the limitation that the Hospital seeks. There is no doubt that the goal of avoiding layoffs might be more efficiently achieved by limiting the offers of early retirement and voluntary exit to only those in the full- or part-time category in which layoffs are required, but that, simply enough, is not what is provided in this agreement.

Has the practice given rise to an estoppel, which may be ended by the giving of appropriate Notice, or does the evidence reveal a shared understanding of the language that requires interpretation of it that entrenches the practice?

We know that the language was first centrally awarded through interest arbitration in 1993. We are told, and there is no dispute, that the participating parties included those in which full- and part-time bargaining units were separate, as well as some in which they were combined. We do not know whether this point was addressed in the submissions of the parties during that process. The full-time to full-time and part-time to part-time practice arose immediately and generated no grievance. There is no evidence of any particular discussion that gave rise to the practice.

We know that in 2004, these local parties negotiated a combined full- and part-time service and clerical collective agreement. At that time, which was a logical point at which to re-visit this language and the practice, no issue was taken with continuation of the *status quo*. There is no evidence of representation or discussion between the parties. There is no evidence of negotiation on point. There is no evidence, as there commonly is in such cases, of a dispute regarding who said what to whom about such an understanding. There is no evidence of anything other than the parties' conduct in continuing the practice in the new circumstances of the combined agreement. I take this evidence to reflect inadvertence, rather than mutual understanding.

The Local President was the Co-Chair of the Redeployment Committee in 2003. In 2004, the full-time to full-time and part-time to part-time practice was in effect. When the Local Chair left the Hospital in 2007, she trained her replacement to apply Article 18.03 (B) in the same manner. This continued for two redeployment initiatives per year, in a well-established routine. There is no evidence at this point of discussion or negotiation on

point. Again, there is no evidence of anything other than inadvertence in continuing the practice.

When Article 18.03 (C) was centrally negotiated in 2006, these local parties continued their practice. There is no evidence of discussion or negotiation on point.

When in 2010, when these parties negotiated the settlement of a grievance pertaining to redeployment and agreed that they would revert to the strict language of the collective agreement in respect of the practice of keeping vacancies on hold, they continued their practice in respect of these provisions. Again, there is no evidence that the point was specifically addressed, argued, or negotiated.

The evidence is that the practice adopted by these parties was longstanding. The evidence is that the practice survived four collective agreement renewals, restructuring, and more than thirteen years of redeployments. We know that the issue emerged not from high level union executive, but from a site representative who may have had little or no appreciation of the history of the practice. But there is no evidence at all indicating that the parties did, at any point, actually turn their minds to the way in which these provisions were being administered, and jointly discuss whether their practice conformed to the language. There is no evidence that one party represented to the other that the practice would continue into the future, and certainly no evidence that one party represented that the practice would survive the expiration of the collective agreement. This is, more probably than not, a case in which the parties' inattention gave rise to a practice that is contrary to the clear words of their agreement. The facts raise an estoppel, as the Union has conceded.

The Board is required to assess the evidence and determine the outcome of this complex matter, a matter of mixed fact and law, as required by Sattva. Where that evidence demonstrates that a party has failed to enforce a right to which it would otherwise be entitled under the clear and unambiguous language of its collective agreement, it is entitled to give notice and assert a right to revert to the terms of the collective agreement. This critical equitable element of an estoppel is available to the Union in this case. A party who

has forgone a right is not, by its imperfect conduct, forever defeated in the assertion of that right.

The Hospital urges that the practice reveals a shared understanding – a mutual intent – to interpret the disputed provisions. I have found that the practice conflicts with clear and unambiguous language of the collective agreement. To conclude that there was a mutual intent I would require more than evidence of conduct consistent with inattention or inadvertence. I would require at least some evidence of discussion on the point.

Articles 9.08 (B) and (C) require the Hospital to give notice to all employees in the classification of the intended layoff, whether they are full- or part-time. The grievances are dismissed, due to the estoppel that the Union concedes.

In my view, even in the face of a longstanding practice, in the absence of evidence of the parties expressly agreeing to continue to the practice, one party is entitled, as a matter of law and as a matter fairness, to give notice that it intends to revert to the clear language at the expiry of the collective agreement. It has to provide that bargaining opportunity, and that is what the Union did here. I do not consider the practice to have become entrenched into this collective agreement.

In light of these conclusions, it is unnecessary to address the Union's alternative position pertaining to the question of whether local practice can influence central language.

DATED at Toronto this 24 day of March, 2020

Elaine Newman, Chair
Joe Herbert, Concurring

APPENDIX

Tung-Sol of Canada Ltd. and U.E., Local 520, 1964 CarswellOnt 520, (Reville)

Hamilton Health Sciences and OPSEU, Local 273 [2011] CarswellOnt 4590, 106 C.L.A.S. 103, (Fisher)

Sault Area Hospital and ONA (Moss) 2004 CarswellOnt 10461 (Beck).

Royal Victorian Hospital of Barrie and ONA, 2010 CarswellOnt 3310, (Stout)

Victorian Order of Nurses and OPSEU, 2017 CarswellOnt 14618, (Stout)

Temiskaming Hospital and CUPE, Local 904, 1995 CarswellOnt 6763, (Charney)

Leitch Gold Mines Ltd v. Texas Gold Sulphur, [1969] 1 O.R. 469 (Gale, C.J.O.)

Canada Post Corp. v. C.U.P.W. 1990 CarswellNat 860 (Burkett)

Windsor Board of Education v. Windsor Women Teachers' Association, [1991] O.J. No. 1248

Hi-Tech Group Inc. v Sears Canada Inc. 2001 Canlii 24049 (ON CA)

Dominion Colour Corp. and Teamsters Chemical, Energy and Allied Workers, Local 1880, 2003 CarswellOnt 10054, (Surdykowski)

Dumbrell v. Regional Group of Companies Inc., [2007] O.J. No 298

Air Canada v. Air Canada Pilots Association, [2012] O.L.A.A. No 164 (Burkett)

Sattva Capital Corp. v. Creston Moly Corp, [2014] S.C.J. No 53

Waterloo Region Record and UNIFOR, Local 87 – M, 2014 CarswellOnt 16763, (Hayes)

Sault Ste Marie and ATU, Local 1767 2014 CarswellOnt 17774, (Hayes)

Sault Ste Marie and ATU, Local 1767, 2014 CarswellOnt 16763, (Hayes)

White River Forest Products Ltd. and USW, Local 1-2010, 2017 CarswellOnt 17689 (McNamee)

OPG and Society (STOUT)

Hamilton Health Sciences and ONA January 22, 2016 (Stephens) unreported

Toronto Electric Commissioners and CUPE, Local 1, [1994] O.L.A.A. No 139 (Solomatenko)

Re Int'l Ass'n of Machinists, Local 1740 and John Bertram & Sons Co. Ltd, (1967) 18 L.A.C. 363, (Weiler)
Ottawa Civic Hospital and ONA, 1986 CarswellOnt 4278, (Brandt)
St. Joseph's Hospital, London and ONA, 1988, 1988 CarswellOnt 3899, (Burkett)

Religious Hospitallers of Saint Joseph of the Hotel Dieu of Kingston and ONA, 1989 CarswellOnt 4753, (Verity)
Brantford General Hospital and ONA, 1990 CarswellOnt 5476 (Knopf)
Rouge Valley Health System and OPSEU, 2002 CarswellOnt 9255 (Devlin)
Centennial College and OPSEU, 2003 CarswellOnt 3025 (Carter)
Lakeridge Health Corporation and OPSEU, 2004 CarswellOnt 10450 (Kaplan)
Collingwood General and Marine Hospital and ONA, 2012 CarswellOnt 2805, (Herlich)
Rainy River District School Board and ETFO, 2015 CarswellOnt 2015)Surdykowski)
Peel District School Board and OSSTF, 2017 CarwellOnt 4361, (Goodfellow)
Royal Victoria Victoria Hospital of Barrie v. ONA (Carter grievance) [2011] O.L.A.A. 236
TEGH and ONA, 1987 CarswellOnt 6366 (Stanley)
Re Kemptville District Hospital and ONA 1988 CarswellOnt 3807 (Burkett)
Hamilton Civic Hospitals and CUPE, Local 794 1991 CarswellOnt 7441(Gorsky)
Sudbury General Hospital of the Immaculate Heart of Mary and ONA, 1988 CarswellOnt 6003 (Betcherman)
Isabelle v. OPSEU, 1981 CarswellOnt 621 (S.C.C.)
Georgian College of Applied Arts and Technology and Ontario Public Service Employees Union, (January 20, 1997) unreported (Murray)
Seneca College and OPSEU, (September 29, 1986) unreported (Samuels)
Algonquin College and OPSEU, 2018 CarswellOnt 17986 (Stout).