

Ottawa Hospital v. C.U.P.E., Local 4000

In the Matter of an Arbitration between The Ottawa Hospital, ("the Hospital") and Canadian Union of
Public Employees, Local 4000, ("the Union")

In the Matter of Renewal Collective Agreement

Christopher Albertyn

May 24, 2019

For the Union:

Joe Herbert

Lou Burri

Robert Gauthier

Andrew Skinner

Dan Pike

Susan Arab

Rob Driskell

Marilena Fox

Pascal Lavigne

Thomas O'Meara

David Knister

Sarah Surrect

For the Employer:

Lynn Harnden

Laura MacDonald

Sara Davis

Mike LeJeune

Melanie Henderson

Tony Camposarcone

Marnie Houlahan

Guy Morency

Kevin Godsman

Mike Knight

Allison Harvey

Kevin Peters

This is an interest arbitration under the *Hospital Labour Disputes Arbitration Act* ("the Act").

The most recent collective agreement between the parties expired on September 28, 2017.

The parties agreed to a renewal term of September 29, 2017 to September 28, 2021.

In fashioning my award, I have considered the submissions of the parties and the statutory criteria the Arbitrator is required to consider under the Act. I have also taken into consideration well accepted principles of interest arbitration including replication, comparability, total compensation and demonstrated need.

The renewal collective agreement will consist of the unchanged items from the collective agreement which expired on September 29, 2017, the items agreed by the parties themselves and the items set out below.

Unless otherwise indicated, all changes to the collective agreement are effective on the date of the award. Any proposals not specifically addressed within this award are denied.

The following wage increases are awarded:

Effective September 29, 2017	1.4% General Wage Increase
Effective September 29, 2018	1.4% General Wage Increase
Effective September 29, 2019	1.6% General Wage Increase
Effective September 29, 2020	1.65% General Wage Increase

The following Trades Adjustments are awarded:

1. 4th Class Stationary Engineer – A \$4.50 per hour market premium added to the current wage scale.

2. 3rd Class Stationary Engineer (includes Building Equipment Operator, Building Control Centre Operator, Shift Engineer) – A \$4.50 per hour market premium added to the current wage scale.

3. AC/Refrigeration Mechanic – A \$4.50 per hour market premium added to the current wage scale.

4. Electricians – A \$4.50 per hour market premium added to the current wage scale.

5. Plumber – A \$4.50 per hour market premium added to the current wage scale.

Note: The market premiums will take effect on May 24, 2019 and are guaranteed until the expiry of the collective agreement. Upon expiry and before making any changes, the Hospital commits to conducting a further market review of the Trades wages and will share the results of the analysis with CUPE leadership.

The agreement to increases in the form of market premiums is without prejudice to the parties' respective rights and obligations under the *Pay Equity Act*.

The market adjustments for stationary engineers shall be made in accordance with the terms of the Memorandum of Agreement attached to this award.

The following amendments to the collective agreement are awarded:

9.01 Probationary Period

A new employee will be considered on probation until he has completed sixty (60) days of work from date of last hire (or 450 hours of work for employees whose regular hours of work are other than the standard work day)., **within any twelve (12) calendar months**. Upon completion of the probationary period, he shall be credited with seniority equal to sixty **(60)** working days.

With the written consent of the Hospital, the probationary employee and the President of the Local Union or designate, such probationary period may be extended. Any extensions agreed to will be in writing and will specify the length of the extension. The release or discharge of an employee during the probationary period shall not be the subject of a grievance or arbitration. **unless the probationary employee is released for reasons which are arbitrary, discriminatory, in bad faith, or for exercising a right under this Agreement.**

9.04 (d) Effect of Absence

Part-time employees shall accrue seniority for the duration of the absence, if an employee's absence is due to a disability resulting in WSIB benefits*, **or a disability in accordance with the Human Rights Code.**

Part-time employees shall accrue service for a period of fifteen (15) weeks if absent due to a disability resulting in WSIB benefits, on the basis of what the employee's normal regular hours of work would have been.

12.07 Parental Leave

(a) Parental leave will be granted in accordance with the provisions of the Employment Standards Act, except where amended in this provision. The service requirement for eligibility for parental leave shall be thirteen (13) weeks of continuous service.

(b) An employee who qualifies for parental leave, other than an adoptive parent, shall be given written notification of at least two (2) weeks in advance of the date of the commencement of such leave and the expected date of return.

(c) For the purpose of this article, parent shall be defined to include a person with whom a child is placed for adoption and a person who is in a relationship of some permanence with a parent of a child and who intends to treat the child as his or her own.

(d) An employee who is an adoptive parent shall advise the Hospital as far in advance as possible of having qualified to adopt a child, and shall request the leave of absence, in writing, upon receipt of confirmation of the pending adoption. If, because of late receipt of confirmation of the pending adoption, the employee finds it impossible to request the leave of absence in writing, the request may be made verbally and subsequently verified in writing.

An employee who is an adoptive parent may extend the parental leave for such greater time as may be required by the adoption agency concerned to a maximum total of six (6) months.

The employee shall reconfirm his or her intention to return to work on the date originally approved in subsection (b) above by written notification received by the Hospital at least two (2) weeks in advance thereof.

(e) Effective on confirmation by the Canada Employment Insurance Commission of the appropriateness of the Hospital's Supplemental Unemployment Benefit (SUB) Plan, an employee who is on parental leave as provided under this Agreement who has applied for and is in receipt of Employment Insurance parental benefits pursuant to Section 23 of the Employment Insurance Act, shall be paid a supplemental unemployment benefit for a period not exceeding ~~ten (10)~~ **eleven (11)** weeks. That benefit shall be equivalent to the difference between ninety-three per cent (93%) of the employee's normal weekly earnings and the sum of his or her weekly Employment Insurance benefits and any other earnings, **calculated based on what EI would provide the employee if the employee opted to take a total of thirty-five (35) weeks (for birth mothers who also took pregnancy leave), or thirty-seven (37) weeks**

(for parents who did not take pregnancy leave), or less, notwithstanding the option to take a greater length of leave. Receipt by the Hospital of the employee's employment insurance cheque stub will serve as proof that the employee is in receipt of unemployment parental benefits.

Where an employee elects to receive parental leave benefits pursuant to Section 12(3)(b)(ii) of the *Employment Insurance Act*, the amount of any Supplemental Unemployment Benefit payable by the Hospital will be equal to what would have been payable had the employee elected to receive parental leave benefits pursuant to Section 12(3)(b)(i) of the *Employment Insurance Act*.

The employee's normal weekly earnings shall be determined by multiplying the employee's regular hourly rate on his or her last day worked prior to the commencement of the leave times the employee's normal weekly hours, plus any wage increase or salary increment that the employee would be entitled to if he or she were not on parental leave.

In addition to the foregoing, the Hospital shall pay the employee ninety-three per cent (93%) of his or her normal weekly earnings during the ~~first two (2)~~ **one (1)** week period of the leave while waiting to receive Employment Insurance Benefits.

The employee does not have any vested right except to receive payments for the covered unemployment period. The plan provides that payment in respect of guaranteed annual remuneration or in respect of deferred remuneration or severance pay benefits are not reduced or increased by payments received under the plan.

(f) Credits for service and seniority shall accumulate for a period of up to ~~thirty five (35)~~ **sixty-one (61)** weeks after the parental leave began, if the employee also took pregnancy leave, and ~~thirty seven (37)~~ **sixty-three (63)** weeks after the parental leave began otherwise, while the employee is on parental leave. For part-time employees credits for service and seniority shall be calculated on the basis of what the employee's normal regular hours of work would have been.

(g) The Hospital will continue to pay its share of the premiums of the subsidized employee benefits, including pension, in which the employee is participating for period of up to ~~thirty five (35)~~ **sixty-one (61)** weeks after the parental leave began, if the employee also took pregnancy leave, and ~~thirty seven (37)~~ **sixty-three (63)** weeks after the parental leave began otherwise, while the employee is on parental leave. In cases where the employee receives a percentage in lieu of benefits, the Hospital will continue to pay the percentage in lieu of benefits and its share of the pension contribution for a period of up to ~~ten (10)~~ **eleven (11)** weeks while the employee is on parental leave. The Hospital will register these benefits with the Unemployment Benefit Plan.

(h) Subject to any changes to the employee's status which would have occurred had the employee not been on parental leave, the employee shall be reinstated to her former duties, on the same shift in the same department, and at the same rate of pay.

b) Extended Health Care

The Hospital agrees to contribute 75% of the billed premium towards coverage of eligible employees in the active employ of the Hospital under the existing Blue Cross Extended Health Care Benefits Plan in effect as of September 28, 1993 (as amended below) or comparable coverage with another carrier

providing for \$22.50 (single) and \$35.00 (family) deductible, providing the balance of monthly premiums are paid by the employees through payroll deductions.

Reimbursement for prescribed drugs covered by the Plan will be based on the cost of the lowest priced therapeutically equivalent generic version of the drug, unless there is a documented adverse reaction to the generic drug.

The Benefits Plan coverage includes:

- Vision care - maximum of \$300.00 every twenty-four (24) months in addition to eye examinations biennially;

Vision care coverage can be used for laser eye surgery.

- Hearing aide - acquisition every thirty-six (36) months;
- Private Duty Nursing – not to exceed 90 eight hours shifts to a maximum of \$20,000;
- Drug Formulary 2;
- Dispensing Fee Cap – at the current rate as that changes from time to time (The Hospital will continue to provide a preferred provider network which will not charge in excess of this rate);
- Orthopedic Shoes – 2 pairs per employee per year to a maximum of \$225.00 per year;
- Coverage for prosthetic appliances and durable medical equipment (no change to the current coverage);
- Out of Country (no change to current coverage);
- Services of a Chiropractor will be covered up to an annual maximum of \$350.00; and services of a licensed or Registered Physiotherapist will be covered up to an annual maximum of \$350.00.
- Effective September 29, 2014, the annual maximum for services of a Chiropractor will be increased to \$375.00.

Effective September 29, 2015, the annual maximum for the services of a licensed or Registered Physiotherapist will be increased to \$375.00.

- **Upon ratification, services of a Registered Massage Therapist will be covered up to a maximum of \$375.00 annually using a co-pay model of 20% employee paid, 80% employer paid per visit with customary and reasonable caps as per the industry standard. No referral from a physician is required.**

Article L.5.8 – Extended Shifts

L.5.8 The provisions of the Collective Agreement shall apply except where herein amended. Except where otherwise provided, any agreement reached between the Hospital and the Local Union concerning extended shifts will comply with the following provisions:

Trial Period and Evaluation

Prior to the implementation of a new extended shift schedule the Hospital will post the proposed schedule rotation prepared in ink at a location it is most likely to come to the attention of employees affected so they can individually evaluate the impact of the schedule. The proposed rotation shall consist of six (6) consecutive weeks and will be posted at least two (2) weeks prior to the beginning of the proposed rotation.

If the Hospital and ~~100%~~ **80%** of **impacted or affected permanent** full time and ~~regular~~ **permanent** part-time employees in the work unit mutually agree to implement the proposed extended shift schedule, it shall be implemented for a trial period of twelve (12) weeks. The support of ~~100%~~ **80%** of **impacted or affected permanent** full time and ~~regular~~ **permanent** part-time employee's in the work unit will be confirmed by a signed petition of such employees. **The Hospital shall endeavour to assist an employee who has a demonstrable conflict with the extended shift schedule by attempting to adjust the employee's hours.**

The schedule rotation will be evaluated by the respective parties no later than two (2) weeks prior to the end of the twelve (12) week trial period.

Continuation

Before the end of the trial period, continuation of the extended shift rotation after the initial trial period will be agreed to by the Union dependent upon employee support for continuation of the new rotation by ~~100%~~ **80%** of **impacted or affected permanent** full time and ~~regular~~ **permanent** part-time employees in the work unit. This continued support will be confirmed by a signed petition of the above noted employees.

Discontinuation

Either party may provide written notice of its desire to discontinue an extended shift schedule. Upon receipt of such notice the parties shall meet within thirty (30) days to discuss the reasons for the discontinuance. If, following the meeting the party who has served the notice still wishes to discontinue the schedule, the Hospital shall discontinue the schedule no later than 90 days from the date of the meeting of the parties.

Sick Leave

For employees who work an extended shift schedule, the short term sick leave plan will provide payment for the number of hours of absence according to the extended scheduled shift to a total of 562.5 hours. All other provisions of the existing plan shall apply mutatis mutandis.

Daily and Weekly Hours of Work

(i) For employees participating in the extended shift schedule, Article 14.01 Daily and Weekly Hours of Work is amended to read as follows:

The average regular work week for full-time employees will be thirty-seven and one-half (37.5) hours averaged over 6 weeks for a total of two-hundred and twenty-five (225) hours. The regular workday will be eleven and one quarter (11.25) hours excluding an unpaid meal period.

(ii) The regular work week for part-time and casual employees will not exceed thirty-three and three quarters (33 $\frac{3}{4}$) hours per week, and the regular workday will be eleven and one quarter (11.25) hours excluding an unpaid meal period.

(iii) The meal period shall be an uninterrupted period except in cases of emergency.

Rest and Meal Periods

Employees working an extended shift of eleven and one quarter (11.25) hours will be provided with a total of 45 minutes of unpaid meal time and a total of 45 minutes of paid rest periods.

Definition of Overtime

Overtime is defined as authorized hours worked in excess of the regular workday or workweek as described above.

Statutory Holidays

If an employee is required to work on any of the holidays set out in the Local provisions Appendix, the employee shall be paid at the rate of time and one half (1 $\frac{1}{2}$) her regular straight time hourly rate of pay for all hours worked on such holiday subject to Article 16.04. In addition, if the employee qualifies in accordance with Article 16.02, the employee will receive a lieu day off with pay in the amount of the employee's regular 79 straight time hourly rate of pay times the hours worked to a maximum of seven and one-half (7 $\frac{1}{2}$) hours.

Work Schedule

The sixteen (16) hours referred to in Article L.5.1(b) is amended to twelve (12).

The six (6) consecutive days referred to in Article L.5.1(e) is amended to three (3) consecutive days and not more than four (4) days in a week for full-time employees.

Two Day/Two Night Scheduling

The three consecutive days above may be amended to four consecutive days where the employee works two consecutive days followed by two consecutive nights.

Employees working 2D/2N will receive not less than one weekend off in four. Where an employee works a fourth weekend or portion thereof, he shall be paid as per the provisions of 15.03

Assignment of Work

The ten (10) pre-scheduled shifts referred to in Article L.5.2(a), (c), and (e) is amended to read seven (7).

Vacation

The five (5) consecutive working days referred to in L.7.4 is amended to read three (3) **for extended shifts or four (4) for employees working 2D/2N.**

Vacation entitlement provided for in Article 17.01(a) shall be converted on the basis that one week equals thirty-seven and one half (37.5) hours. *Vacation* payments will be provided based on the number of vacation hours taken.

Pre-existing Extended Shift Schedules

In areas of the Hospital where there are pre-existing extended shift schedules that do not comply with the above, they will continue and will be amended to comply with the above-noted provisions within 120 days following **the date of the award** of the renewal Collective Agreement, failing which the extended shift schedule will be discontinued. Existing practices shall remain in effect during the above-noted period and there shall be no increased costs to the Hospital during this period. **The 31 pre-existing extended shift schedules identified in Appendix __ will continue on a without prejudice basis and will not be subject to the “Pre-existing Extended Shift Schedules” clause.**

L.7.4 - Granting of Vacation Requests

L.7.4 Granting of Vacation Requests

Approval of vacation requests for those employees who have requested five (5) consecutive working days' vacation or more during this period will be granted in order of seniority. After having satisfied such vacation requests to the extent possible, approval of vacation requests of less than five (5) consecutive working days during the same period will be granted in order of seniority.

Employees will submit their vacation request in advance and the Department Managers or designates will advise the employees of the granting of such requests in accordance with the following time table:

Dec. 15 to Mar. 31	Request by Oct. 1	Authorized by Nov. 1
April 1 to June 14	Request by Jan. 15	Authorized by Feb. 15
June 15 to Sept. 15	Request by March 1	Authorized by Apr. 15
Sept. 16 to Dec. 14	Request by June 15	Authorized by Aug. 1

April 1 to September 15	Request by Jan. 15	Authorized by Feb. 15
Sept. 16 to March 31	Request by June 15	Authorized by July 15

Failing application under Article L.7.3, employees must submit vacation requests for a minimum of two (2) weeks in a vacation year, no later than the June 15 request date.

Approval of vacation requests submitted after the deadline dates will be granted on a first come, first served basis.

Approval of vacation requests for the period beginning December 23 to January 3 of the following calendar year will be granted subject to the requirements of Article L.5.1(g).

Under extenuating circumstances employees may request to have an approved vacation period rescheduled.

Retroactivity:

Retroactivity to be paid on all paid hours by separate deposit by not later than September 13, 2019. For any Employee whose employment has terminated in the period following September 28, 2017 and for whom the Hospital is unable to make direct deposit, the Hospital will notify the Employee of the entitlement to retroactivity by registered mail to the Employee's address last known to the Hospital, and the Employee will have an additional sixty (60) days to claim payment from the Hospital.

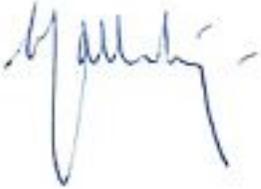
The agreement of the parties to renew the following LOU's/MOA's is confirmed with the understanding that others will be discontinued:

- LETTER OF UNDERSTANDING No. 2 – Re: Voluntary Part-Time Benefits
- LETTER OF UNDERSTANDING No. 4 – Re: HOODIP
- LETTER OF UNDERSTANDING #4 – Re: Grand-Parenting Part-Time Hours
- LETTER OF UNDERSTANDING #5 – Re: Telework
- LETTER OF UNDERSTANDING #6 – Re: Extended Shifts
- LETTER OF UNDERSTANDING #8 – Re: Orientation or Training Period
- LETTER OF UNDERSTANDING #9 – Re: Master Schedule
- LETTER OF UNDERSTANDING #10 – Re: Scheduling Committee
- LETTER OF UNDERSTANDING #11 – Re: Violence in the Workplace
- LETTER OF UNDERSTANDING #12 – Re: Implementation of Electronic Services and Cessation of Paper Services
- MEMORANDUM OF AGREEMENT – Re: Catering (with agreed upon amendments providing that staff may apply to jobs as per Article 9.05 and wage adjustments to comply with ESA)
- MEMORANDUM OF AGREEMENT – Service Excellence
- MEMORANDUM OF AGREEMENT – CUPE Operating Room (RPN Hours)
- MEMORANDUM OF AGREEMENT – RPN Professional Development, Mentorship and Student Supervision

Seized

Pursuant to section 9(2) of the Act, I remain seized of the implementation of this award. I further remain seized to deal with any errors or omissions

Dated at Toronto, Ontario this 24th day of May 2019

A handwritten signature in blue ink, appearing to read 'C. Albertyn', with a horizontal line extending to the right from the end of the signature.

Christopher Albertyn