

IN THE MATTER OF THE *HOSPITAL LABOUR DISPUTES ARBITRATION ACT*

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE REGIONAL MUNICIPALITY OF DURHAM -

Fairview Lodge and Lakeview Manor

- The Employer

- and -

ONTARIO NURSES' ASSOCIATION

- The Union

AND IN THE MATTER OF an arbitration to establish a new collective agreement

Arbitration Board:

Howard Snow - Chair
Michael Riddell - Employer Nominee
Larry Robbins - Union Nominee

Appearances:

On behalf of the Employer

Matthew R. Wilson - Director, Labour Relations and Compensation
Louise O'Dell - Director, Human Resources
Sue Collins - Officer, Human Resources
Judy Heffern - Director
Laura MacDermaid - Administrator, Fairview Lodge
Carol Hammet - Director of Nursing, Fairview Lodge

On behalf of the Union

Shalom Schachter - Counsel
Suzanne Crawford - Bargaining Unit President
Wendy Lenters - Negotiations Committee
Bea Miller - Negotiations Committee
Sheri Street - Labour Relations Officer

Hearing held September 15, 2006, in Oshawa, Ontario.

AWARD

I. INTRODUCTION

This is an award in an interest arbitration between the Regional Municipality of Durham, the Employer, and the Ontario Nurses' Association, the Union.

II. THE ISSUES AND THEIR RESOLUTION

This matter was referred to arbitration under the *Hospital Labour Disputes Arbitration Act* when the Regional Municipality of Durham and the Ontario Nurses' Association were unable to negotiate a new collective agreement. One day of hearing took place September 15, 2006, and the Board met in executive session October 30, 2006. Both parties provided the Board with additional submissions after the hearing.

This award settles the 2004-2006 collective agreement for the registered nurses working at Fairview Lodge and Lakeview Manor. This award reflects what I believe the parties would have agreed upon had they achieved their own settlement.

This Union has collective agreements with a large number of "participating hospitals." The Union and the participating hospitals negotiate one master agreement for the nurses in those hospitals. The Union and each hospital then negotiate separate local provisions and those local provisions together with the master agreement form the collective agreement for the nurses at that particular hospital. Because that master agreement regulates the employment of so many nurses within the province, it sets the trend for many other rounds of bargaining involving nurses employed outside those participating hospitals.

The practice of these parties has been to look to the Union's agreements with the participating hospitals during their negotiations. I have done likewise. In addition, I have relied upon collective agreements covering nurses working for other similar homes in

Ontario and upon the Employer's other collective agreements. Finally, I have considered the criteria specified in Section 9 (1.1) of the *Hospital Labour Disputes Arbitration Act*, criteria such as:

1. The economic situation in the province and the region;
2. The Employer's ability to attract and retain employees; and,
3. The terms and conditions of employment of these employees as compared with the terms and conditions of employment of other similar employees.

Section 10(11) of the *Hospital Labour Disputes Arbitration Act* provides that, unless the parties agree to a longer term, the new collective agreement shall cease to operate two years after the previous agreement ceased to operate, that is two years after March 31, 2004. The parties could not agree on a longer term.

The collective agreement shall operate for the two year period April 1, 2004, through March 31, 2006.

There were seven issues remaining in dispute as follows:

1. Staffing
2. Bereavement Leave
3. Premium payments
4. Benefit plans
5. Compensation - placement on the salary schedule
6. Retroactivity
7. Wages

1. Staffing

The Union sought to add a new provision to the collective agreement which would require the Employer to provide enough nurses so that at least 20 minutes of care per day would be provided to each resident. The Employer opposed adding the provision.

It is not surprising that staffing levels were a major concern for the Union in this round of bargaining. The issue of staffing levels has been considered in a number of reports in recent years, including Provincial Auditor's Reports, reports to the Chief Coroner from the Geriatric and Long Term Care Review Committee, and a 2001 study conducted by PricewaterhouseCoopers LLP for the Ontario Association of Non-Profit Homes and Services for Seniors and the Ontario Long Term Care Association.

Although the amount of nursing care received by residents is a matter of ongoing concern throughout the province, there was no suggestion of any unique concern arising in these two homes.

The Union has sought a similar staffing provision in other negotiations. While this staffing issue has been a matter of concern throughout the province and a matter of discussion in bargaining, no collective agreement for a long term care home in Ontario has an article providing for minimum staffing levels. To date, the issue has simply not been one which has been resolved in collective agreements. In fashioning a collective agreement which the parties might have freely negotiated, this factor alone persuades me that it is most unlikely that the parties would have agreed upon such a provision here.

I reject the Union's request for a staffing provision.

While I award nothing to address the Union proposal on staffing, it is clear that this is an important matter and I strongly encourage the parties to discuss this issue and attempt to find their own solution. The Employer made an alternative submission that the Board might order the parties to jointly discuss the amount of nursing care for residents. Rather than order a discussion and direct how that discussion should occur, I prefer to encourage the parties to acknowledge the importance of this issue and examine approaches which might suit their needs.

2. Bereavement Leave

The Union sought two changes in the amount of bereavement leave. It sought an increase from three days to seven days in the event of the death of an employee's father or mother and an increase from two days to three days in the event of the death of a grandchild. The Union identified the change relating to grandchildren as its priority.

A comparison with other collective agreements suggests that the current three days for the death of a father or mother is within the normal range. I make no change to the bereavement leave in the event of the death of a father or mother.

However, the situation with respect to a grandchild is less clear - I note that the Employer's other collective agreement with this Union provides for three days and that the Union's agreements with the participating hospitals similarly provide for three days.

I direct an increase in bereavement leave for the death of an employee's grandchild to three days.

3. Premium payments

The old collective agreement contained provisions for premium payments for evening shifts, night shifts and weekend shifts. In the last agreement the evening and night shift premiums were the same as the premiums within the Union's collective agreements with the participating hospitals. The rates in the participating hospitals agreements then increased effective September 8, 2005. The Union sought to maintain that parity.

I direct an increase effective October 1, 2005, in the evening and night shift premiums to match the participating hospitals rates, that is to \$1.30 per hour for evening shifts and \$1.55

per hour for night shifts.

The premium for weekend shifts under the old collective agreement was \$1.00 per hour as opposed to the weekend premium of \$1.45 in the participating hospitals collective agreements. The premium in the participating hospitals agreements was then increased by a further \$0.25 per hour in the current agreement to \$1.70. The Union sought to achieve parity on the weekend premium with the current participating hospitals agreements.

I direct an increase effective October 1, 2005, of \$0.25 per hour, that is to \$1.25 per hour, for the premium for weekend shifts. This is not parity; instead this increase leaves the weekend premium \$0.45 per hour behind the premium in the participating hospitals agreement, the same difference as existed under the last agreement.

Finally, the Union sought to extend the definition of weekend to include the night shift starting at 2230 hours Sunday evening.

I make no change in the definition of weekend.

4. Benefit plans

The Union sought several changes in the benefit plans.

The old collective agreement provides for life insurance of two times salary to a maximum of \$135,000. The Union said that, with the increase in wages, the \$135,000 maximum would soon be outdated and sought its removal. The Employer asked that the maximum be maintained as it is or, at least, that the maximum not be removed entirely. I note that the Employer has a maximum of \$200,000 in several of its other collective agreements.

I direct that the life insurance coverage be amended to provide for a maximum insured amount of \$200,000.

The old collective agreement provides for dental benefits using the previous year Ontario Dental Association (ODA) fee schedule. The Union sought to change that to the current fee schedule. Other than pointing out that many other agreements have the current fee schedule, the Union raised no particular problems with the current provision and gave no persuasive reason for changing this provision.

I make no change to the dental plan coverage.

The parties have an Extended Health Care Plan with deductibles. The Union asserted that the deductibles were high in comparison with other collective agreements. While I accept that the deductibles may be higher than exist in some other agreements, the Union cited no particular problems with the deductibles and no persuasive reason for changing them.

I make no change to the Extended Health Care Plan deductibles.

Part of the Extended Health Care Plan is vision care. The plan now provides \$200 every two years for glasses, etc. The Union sought an increase to \$250 and also sought coverage for eye exams. The Employer opposed the changes but stated that, if the Board should be persuaded to make a change to provide eye exam coverage, it sought a maximum for the cost of the eye exams.

As for the amount of the benefit for the purchase of eyeglasses, this amount can reasonably be adjusted on a periodic basis to reflect the increase in costs. I note that several of this Employer's other collective agreements provide for \$250.

I direct a change to the vision coverage to provide for a maximum of \$250.00 every 24 months toward the cost of eyeglasses.

The Union also sought a provision to pay for an eye examination every 24 months. Eye exams used to be covered under OHIP. Following the removal of eye exam coverage from OHIP, a number of collective agreements have included eye exam coverage as part of their vision care coverage. Several of the Employer's other collective agreements provide for coverage for an eye exam every 24 months to a maximum of \$80.00.

I direct a change to the vision coverage to provide for the payment for an eye examination every 24 months to a maximum of \$80.00.

As for the effective date of the benefit plan changes, it is difficult to make these changes retroactively. I direct that the changes in life insurance and vision care be effective January 1, 2007.

5. Compensation - placement on the salary schedule

The old collective agreement provided for a salary schedule but then specified that not all experience would be considered in terms of an employee's placement on the schedule. In effect, two years of an employee's experience might be discounted. The Union sought to remove that discounting and provide a "one for one" recognition of experience, advising that no other Union agreement had such a provision discounting years of experience.

The Employer opposed this change for existing employees, although it indicated it saw merit in the proposal for newly hired employees.

There was no explanation for why such a unique provision should be maintained.

I direct that the agreement be amended effective January 1, 2006, to provide one for one recognition of experience in terms of placement on the salary grid.

As it appears that two employees are already paid a higher salary than is required in the old agreement and, as neither party sought to reduce their pay, I direct that any such employee's salary be "red-circled," that is frozen until the grid salary reaches the employee's current salary.

On this issue I award the Union's proposed language for Article 24.03, including the language on the process for implementing this change, a process involving a limited time for employees to provide verification of their experience and access to the grievance procedure in the event of a dispute. I repeat, however, that the implementation date for any increase is to be January 1, 2006.

6. Retroactivity

While both parties acknowledged that there would be retroactive increases in compensation, they differed as to how to deal with this. The Employer sought to exclude some ex-employees from the increases. The Union sought the increases for all current and ex-employees, and indicated it was content with the normal administrative practice of contacting ex-employees, advising them of their right to seek retroactive monies, and indicating how to do so.

I see no reason to deny an employee who worked after March 31, 2004, any of the increases in compensation directed in this award. Thus no distinction is to be made in terms of retroactive monies based on whether an employee has left the employ of the Employer. Moreover, in paying the retroactive increases I direct the Employer to follow the normal administrative practice of the type outlined by the Union.

7. Wages

In their first collective agreement for this bargaining unit, the parties had a one year lag in wages in comparison with the agreements with the participating hospitals. In the last agreement the lag was cut to six months by way of an extra increase effective October 1, 2003, that is half way through the final year of that agreement. The Union sought to eliminate that lag entirely by adopting the hospital rates effective April 1, 2004.

The Employer was amenable to the adoption of hospital rates generally.

I direct a 3% increase in salary rates effective April 1, 2004, and the lag is thereby eliminated. I direct a further 3% salary increase effective April 1, 2005. Those are the same increases as in the Union's agreements with the participating hospitals.

The final issue is whether to adopt the entire salary structure in the participating hospitals by also adopting an additional 2% increase effective January 1, 2006, for those employees with 25 years experience.

The Union sought to include the new "25 year rate" which was effective in the participating hospitals agreements as of January 1, 2006, for those nurses with 25 or more years of experience.

Although, as mentioned, the Employer was amenable to the adoption of hospital rates generally, it was strongly opposed to adopting this new 25 year salary rate.

The parties did not have parity with the participating hospitals in terms of the salary schedule in their last agreement. The salaries lagged behind the hospital rates by six months as of the end of that old agreement. I have directed that the lag be removed as of April 1, 2004. In

addition, the placement of employees on the salary structure discounted some of the employee's experience and I have directed changes to that in section 5 above effective January 1, 2006. Effective January 1, 2006, the parties will have the same salary schedule as the participating hospitals had in their agreements during the April 2005 through December 2005 period and these nurses will be on the same place on that schedule as they would be if they had worked in the participating hospitals, with no discounting of their experience.

I have decided not to award this additional 2% change for three reasons.

- 1. The rationale for the increase expressed by the arbitration board in the award which provided this additional 2% increase was clearly a concern about retention of nurses. The concern for the retention of nurses here is not nearly as clear; there does not appear to be any retention problem in these two homes.*
- 2. The 2% premium after 25 years has not been adopted in bargaining in this sector. At the time of the hearing it seemed that in the year after the arbitration award which had initially provided for that increase, no Regional Long Term Care Home had freely bargained this increase with the Union.*
- 3. Most importantly, for the last two collective agreements the salary rates in these parties' agreements lagged behind the rates in the Union's collective agreements with the participating hospitals. While I believe that if the parties had negotiated their own collective agreement in this round of bargaining they would have moved closer to the participating hospitals' agreements on salaries (something which is reflected by the directions I have provided earlier in this award), I do not believe they would have moved to complete parity.*

If the parties wish to fully "catch-up" to the salaries in the participating hospitals, they will have an early opportunity to further discuss this 2% increase in the next round of bargaining.

