

**In the Matter of an Interest Arbitration pursuant to *The Hospital Labour Disputes Arbitration Act***

**Between:**

**The Hospital for Sick Children**

“the Hospital”

**And**

**Canadian Union of Public Employees, Local 2816**

“the Union”

**In the Matter of a Renewal Collective Agreement**

**Before:**

Kevin Burkett, Chair

Harold Ball, Hospital Nominee

Joe Herbert, Union Nominee

**Appearances For the Hospital:**

Amanda Cohen (Counsel)

Rebecca Feldman (Articling Student)

Cristina Amaral (Senior Manager, HR Operations and Labour Relations)

Kimberley McLean (Labour Relations Consultant/HR Business Partner)

**Appearances For the Union:**

Jonah Gindin, CUPE National Research

Leonora Foster, CUPE 2816 President

Donald Hall, CUPE 2816 Vice President

Garrington Simpson, Bargaining Committee Member

Chad Sopha, Bargaining Committee Member

Rodel Mateo, Bargaining Committee Member

Luke McCann, CUPE National Staff Representative

Robin McKenna, CUPE National Healthcare Coordinator

The matters in dispute proceeded to a hearing by Zoom on October 6, 2022.

## **Introduction**

1. This is an interest arbitration under the *Hospital Labour Disputes Arbitration Act*, R.S.O. 1990, c. H. 14, as amended (“*HLDAA*”). I was appointed to adjudicate upon the issues in dispute between the parties in respect of the negotiation of a renewal collective agreement to the agreement between them that expired on September 28, 2020.

## **Background**

2. The Hospital for Sick Children (“SickKids” or the “Hospital”) is an internationally recognized healthcare facility. It was founded in 1875 and has gone on to become one of the top four children’s hospitals in the world. The Hospital has over 12,751 employees, staff, students, trainees and volunteers who have provided treatment and assistance to approximately 250,000 patient visits in the fiscal year ending March 31, 2021. There are three bargaining units at SickKids, represented by two different unions.
3. CUPE, Local 2816.01 is a part-time and casual unit representing approximately 326 employees in service classifications. The full-time service unit at the Hospital is also represented by CUPE and participates in central bargaining. The part-time and casual unit does not. Employees in both of these units work at the Hospital in the same classifications and often side by side.
4. The parties met for collective bargaining negotiations on May 3, 4 and 5, 2021. The parties were able to agree upon a small number of issues in dispute. The parties have asked that I incorporate the agreed upon items into this award.

## **Discussion**

5. One of the key issues before the Board was the appropriate wage increases to be applied to these employees. To provide transparency to this Award, I have outlined the unique background to this issue and the resolution of the parties on this matter below.

6. As noted above, the Hospital has a full-time CUPE bargaining unit, which participates in central bargaining, while the part-time and casual CUPE bargaining unit does not. Prior to the last round of bargaining these groups had wage parity - employees in the part-time and casual bargaining unit were paid the same wage rate as employees in the full-time bargaining unit in the same classification performing the same work.
7. At the time that Bill 124 (*Protecting a Sustainable Public Sector for Future Generations Act, 2019*) came into effect, the full-time employees were in the middle of a collective agreement with a term of September 29, 2017 to September 28, 2021. This agreement provided for wage increases of 1.4%, 1.4%, 1.6% and 1.65%, respectively.
8. In contrast, when Bill 124 came into effect the part-time and casual agreement had expired and the parties were in negotiations for a renewal agreement. This agreement – which was resolved through arbitration by a Board chaired by Arbitrator Kaplan – was subject to the three-year moderation period under Bill 124. The Kaplan Board determined that in accordance with Bill 124 the salary increases to employees during the term of the agreement were limited to an increase of 1% per year. More specifically, the employees in this bargaining unit received 1% wage increases effective September 29, 2017, September 29, 2018 and September 28, 2019. These 1% wage increases occurred at the same time that the full-time unit received the 1.4%, 1.4% and 1.6% increases noted above.
9. As a result of the above, as of September 28, 2017, the wage rates for employees in the part-time and casual bargaining unit were no longer aligned with the wage rates of employees in the full-time bargaining unit.
10. CUPE has also noted in their brief that the full-time CUPE bargaining unit is currently awaiting an award from central negotiations. I understand that this award will be for the term of September 29<sup>th</sup>, 2021 to September 29<sup>th</sup>, 2023 and will be subject to the moderation period under Bill 124.



11. The parties agreed in this round of bargaining that a key issue was reinstating parity between these groups of employees. CUPE was focused on achieving immediate parity between the groups. In line with this objective, CUPE put forward the following wage proposal:

Effective September 29<sup>th</sup>, 2020, adjust wages for all classifications in the part-time bargaining unit to match wages for the equivalent classification in the full-time bargaining unit that were in effect on September 28<sup>th</sup>, 2020.

Effective September 29<sup>th</sup>, 2020, increase wages for all classifications by 1.65%.

For the remainder of the term of this agreement, adjust wages for all classifications in this bargaining unit on the same date and by the equivalent amount for which wages are increased in the full-time unit, as a result of the central Memorandum of Settlement or award, such that wages for the part-time unit match the wages for the equivalent classifications in the full-time unit.

12. CUPE's proposal would mean that effective September 29, 2020 (i.e. the first day of the new collective agreement for this unit) part-time and casual CUPE employees at the Hospital would be paid the same rate as their full-time counterparts. Further, effective September 29, 2020, the part-time and casual employees would receive the same 1.65% wage increase that was received by the full-time bargaining unit on September 29, 2020. The wage increases for the part-time and casual bargaining unit in 2021 and 2022 would then mirror the increases awarded under the forthcoming central award.
13. The Hospital agreed with the proposal put forward by CUPE at the hearing of this matter. More specifically, the Hospital acknowledged and accepted the importance of immediately reinstating wage parity between these employees.
14. The increase proposed by CUPE would only result in the parties replicating the wages already found in the full-time agreement, restoring a relationship that existed previously. This proposal is solely focused on achieving immediate wage

parity - at no time would part-time or casual employees be paid at a higher rate than employees of the same classification covered under the full-time agreement.

15. Further, the CUPE proposal is in keeping with the awarded outcome between this same Hospital in respect of paramedical employees represented by the OPSEU in an analogous circumstance, in which a similar adjustment was awarded to restore parity with central (see *Hospital for Sick Children v Ontario Public Service Employees' Union, Local 5114*, 2022, unreported (Brownlee)). In that case, wage parity had similarly been disrupted by the Bill 124 moderation periods being served at different times.
16. In the specific circumstances of this case where the two groups have employees in the same classifications performing the same work and where the period of moderation for the part-time and casual and full-time units are not aligned, we find that the interest arbitration principle of replication supports this proposal.
17. We remain seized to deal with any issue arising in connection with the implementation of this award and, in any event, are seized until the parties enter into a collective agreement.

## A W A R D

### Term

The parties agree to a term for this agreement that extends from September 29<sup>th</sup>, 2020 until such date as the central hospital agreement expires.

### Wages

Union proposal awarded on the agreement of the parties.

Retroactive compensation to all current and former employees within 4 pay periods of the date of the Award.

### Inactive Employees LOU

The Hospital is awarded its proposal to renew this LOU with the below language added:

Employees with extenuating circumstances may apply for a Personal Leave in accordance with Article 14.01 of the Collective Agreement. Such requests will be considered by the Hospital in accordance with Article 14.01 of the Collective Agreement.

### Article 2 – Definitions

Add to Article 2.02 and 2.03: "... based on their availability, **and in seniority order**".

Add the below language to the end of Article 2.04:

Casual employees that normally work on that department/unit and that are called in on a relief or replacement basis will be called in based on their availability and in seniority order.


Letter of Understanding – Scheduling

A Letter of Understanding regarding Scheduling will be added to the collective agreement, which will include the following language:

The Hospital commits to make the Master Schedule with updates available for employees to view on a weekly basis for all departments utilizing ShiftMatch.

The above change shall be implemented within three (3) months of the date of the Award.

Dated at TORONTO this 31 day of October, 2022.



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Kevin Burkett, Chair

“Harold Ball”

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Harold Ball, Employer Nominee

“Joe Herbert”

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Joe Herbert, Union Nominee