IN THE MATTER OF A FIRST COLLECTIVE AGREEMENT INTEREST ARBITRATION PURSUANT TO THE LABOUR RELATIONS ACT, 1995

BEWEEN;

LIFELABS LP

(“the Employer”)

and

ONTARIO PUBLIC SERVICE EMPLOYEES UNION on behalf of its Local 389

(“the Union”)

Before:
Larry Steinberg, Chair
Terry Moore, Union Nominee
Ryan Wood, Employer Nominee

Appearances
For the Employer:
Brian O’Byrne, Counsel
John Coletti, National Director, Labour Relations/Employee Health and Safety
Carrie St. Martin, Manager, National Labour Relations

For the Union:
Manzur Malik, Research Officer
Andrew Ruszczak, Negotiator
Renee Aiken Kearsley, Bargaining Committee
Joanne Luttrell, Bargaining Committee
Susan Berriault, Bargaining Committee

Hearing held in Vaughan Ontario on December 12, 2018; Executive Session held on April 15, 2019
This is a voluntary first contract interest arbitration.

The union was certified on November 29, 2017. Notice to bargain was given on December 6, 2017. The parties bargained on 12 days between March and July, 2018. A No Board Report was issued on July 27, 2018. Mediation took place over 3 days in August and September, 2018. This Board of Arbitration has been appointed by the parties to settle the outstanding terms and conditions of employment. There is no objection to our jurisdiction to do so.

The bargaining unit is comprised of approximately 75 employees working at 10 Patient Service Centres in Barrie, Orillia, Wasaga Beach, Collingwood, Clearview Township and CFB Borden. The employees in the bargaining unit perform a variety of diagnostic medical testing functions.

The employer is the largest community lab provider (diagnostic testing outside of hospitals) in the province of Ontario where it operates six testing laboratories and 240 Patient Service Centres. It performed 81 million laboratory tests in the past year.

In deciding the issues before us we have had regard to the well-established principles of interest arbitration including replication, total compensation and demonstrated need.

In applying the above principles, we have relied on the following collective agreements as comparators, namely the collective agreement between OPSEU and Cybermedix Health Services, a division of LifeLabs LP which expires on December 31, 2019 and the collective agreement between S.E.I.U., Local 2 and LifeLabs LP., Labcare Division which expired on January 31, 2019.

Unless otherwise indicated, all terms and conditions will take effect on the date of the award. Any proposal not awarded is dismissed.
[8] The collective agreement shall consist of the matters agreed to by the parties in collective bargaining and the following provisions:

[9] **Article 2—Part Time Scheduling**

Article 2.03(d) All part-time employees must complete and submit to their Supervisor an Availability Form on or before January 1 of each year, and updated on a quarterly basis.

[10] **Article 6.01—Union Stewards**

The Employer agrees to recognize up to nine (9) Union Stewards, elected or appointed from amongst the employees in the bargaining unit.


In filling posted vacancies, the selection shall be made based on skill, ability, experience and relevant qualifications of the applicants. Where these factors are relatively equal, bargaining unit seniority shall be the governing factor provided the successful applicant meets the job requirements.


Except as required to achieve operational efficiencies, employees of the Employer not within the bargaining unit shall not perform work of the bargaining unit to the extent it results in the layoff or reduction of regular hours of work of bargaining unit employees or prevents the posting and filling of a permanent vacancy.

[13] **Article 15—Hours of Work/Overtime**

Article 15.01(a) Applicable to Full-Time Employees Only-The normal or standard work week shall be 37.5 hours per week with a normal or standard work day of 7.5 hours.
Article 15.01(b) Applicable to Part-Time Employees Only-The normal or standard workdays shall be between 4 hours and 7.5 hours per day as per operational requirements.

Article 15.03(a) Each employee shall be paid over time at the rate of time and one-half for all hours worked in excess of 37.5 hours in a calendar week

Article 15.03(b) Where an employee has worked and accumulated overtime under this article such employee shall have the option of electing pay at the rate of time and one half or electing to take time off in lieu for a total of time and one-half the overtime worked.

Article 15.03(c) The number of paid hours off to which an employee is entitled is equal to the number of hours worth of straight time pay in the bank for that employee. The maximum paid time off that an employee may bank at any one time is equivalent to a normal work week for that employee. The in-lieu time must be taken at a time mutually acceptable to the employer and the employee, but in any event no later than six months after the week in which it was earned.

[14] Article 19—Shift Premium

19.01(a) An employee shall receive a shift premium of one dollar ($1.00) per hour for all hours worked between 5:00 p.m. and 11:00 p.m.

19.01(b) An employee shall receive a shift premium of two dollars ($2.00) for all hours worked between 11:00 p.m. -7:00 a.m.

19.01(c) An employee shall receive a shift premium of eighty-five cents ($0.85) for all hours worked between 7 a.m. and 5:00 p.m. on Saturday and Sunday.

19.01(d) Employees must work a minimum of 3 hours in a shift premium period to be eligible.

19.01(e) If employees work a period that consists of non-premium and premium hours, only hours worked during the premium period will be eligible for shift premiums.

19.01(f) If employees work a period that is eligible for 2 or more types of shift premiums, they are eligible to receive a combination of shift premiums. Employees are also eligible for shift premiums for periods where overtime is applicable.
Shift premiums must be approved by the employee’s manager

[15] Article 20--Wages

The employer's wage proposal for 2018 is awarded. The 2019 increase is adjusted to 1.75%.

Current employees on staff, from the date of this award, will be paid retroactivity, within three (3) full pay periods, from the date of this award, on the basis of hours paid.

The employer will contact former employees at their last known address on record, within three (3) full pay periods from the date of this award, to advise them of their entitlement to retroactivity. Former employees will have a period of three (3) full pay periods from the date of the notice to claim such retroactivity and, if they failed to make a claim within the three (3) full pay periods, their claim will be deemed to be abandoned.

Article 20.04 Claims for recent related experience, if any, shall be made in writing by the employee at the time of hiring on the application for employment form or otherwise. The employee shall cooperate with the Employer by providing verification of previous experience. At the request of the union, the employer shall disclose the basis on which a claim for recent related experience was awarded.

Prior experience shall be credited at the rate of one (1) step on the wage grid for every one (1) year of recent, related, full-time experience as determined by the Employer.

For the purposes of this clause, as it relates to part-time employees, part-time experience will be calculated on the basis of 1950 hrs. worked equaling one (1) year of experience.

[16] Article 21.04 -- Work on a Holiday

An employee required to work on any of the holidays stated in Article 21.01 shall be paid for all work performed at one and one-half (1 ½) times the regular hourly rate for all normal hours of work on that day and shall receive another day off with pay in lieu of the holiday to be scheduled at a time mutually agreed between the employee and the Employer.
Article 22—Vacations

The employer proposal is awarded.

Article 23—Sick Leave

23.01 All full-time and regular part-time employees shall be paid for all hours they were scheduled to work on a day of absence due to sickness in accordance with the pre-certification practice of administering sick leave. Ten (10) paid sick days shall be granted per sick occurrence after which an employee shall apply for Short Term Disability. For greater clarity, and employee who does not use ten (10) consecutive days of sick leave in one (1) sick occurrence will have their sick bank reset to ten (10) days after each sick occurrence.

23.02 The employee must observe all of the following regulations to obtain the benefits available:

(a) Advise her supervisor of sickness or accident on the first day of disability.

(b) Furnish medical certificates after five (5) consecutive days of absence, if required. The Employer shall bear the full cost of the medical certificates it requires.

Article 24—Insured Benefits

The status quo to remain as reflected in the employer’s proposal at page 48 of its brief with the addition of the enhancements (mental health, paramedical services, biennial benefits review schedule) referred to at page 52 of its brief.

Article 25

Article 25.01 Where an employee uses her own vehicle to travel for the Employer’s business purposes, as required in her role, the employee shall be reimbursed for distances so travelled at the rate of forty-three ($0.43) per kilometre. For purposes of clarity, personal travel time or commutes to and from the employee’s regular place(s) of work are not subject to reimbursement under this paragraph.
Non-Slip Shoes—we award the status quo which includes non-slip shoes as part of uniform allowance. The parties have agreed (Article 25.02(2) of the Agreed Items) that the amount of the uniform allowance is the same as in the *Professional Image Policy* at p. 4. The parties did not include the greater amount paid to the Mobile Lab Patient Technicians under the *Policy* in agreed item Article 25.02(2) and should do so.

[21] **Article 27—Duration**

The term of the collective agreement shall be from January 1, 2018 until December 31, 2019.

[22] We remain seized until the parties have entered into the collective agreement.

Dated at Toronto Ontario this 1st day of May 2019

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Larry Steinberg, Chair

“I dissent”

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Terry Moore, Union Nominee

“I dissent in part”

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Ryan Wood, Employer Nominee
Dissent of Union Nominee

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BEWEEN:
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I have read the Chair’s award resolving the first agreement issues in dispute between the above-captioned parties and find I must dissent.

In particular, I do not agree with the outcome with respect to the following matters:
1. Appropriate comparator determination
2. Part-time Scheduling
3. Schedule Changes After Posting

1. Appropriate comparators

The union argued that a number of comparator collective agreements ought to be seen as relevant by the Board, beyond the Cybermedix (LifeLabs)/OPSEU Agreement emphasized by the Chair. These other comparators should, in my view, have included the OPSEU Central Hospital Agreement with Participating Hospitals. There is merit to the union’s argument that the labour market in which this bargaining unit operates (Barrie and surrounding areas) is different than the labour market within which the Cybermedix bargaining unit finds itself (Toronto).

The key competitor for the type of skilled labour required by LifeLabs within the geographical area covered by this bargaining unit is the public hospital sector. OPSEU’s Central Hospital Agreement sets the "industry standards" within this sector for work that includes job duties that are equivalent to the work performed by members of this bargaining unit.

If the Chair had accepted the union’s argument that the OPSEU Central Agreement is a relevant comparator, the outcome would have been different on a number of issues dividing these parties, including wages and benefits.
2. Part-time Scheduling

Half of this LifeLab bargaining unit is part-time and the evidence is that fully 70% of them must work at more than one job in order to earn a reasonable livelihood. Given this reality, part-timers need to have a reasonable expectation that the employer will only schedule them to work for LifeLab shifts that they are actually available to work, given their obligations to other employers.

The union proposed language that required employees to fill out availability forms four times a year and, in return, asked the Board to award a reciprocal requirement for the employer to use that availability when assigning shifts.

The Chair awarded the requirement for employees to provide their availability but chose not to require the employer to use that availability information when assigning shifts. I think this outcome is extremely unfair and impractical and I would have awarded the union’s proposal.

3. Schedule Changes After Posting

The union sought to write-in to the Agreement the provisions of Bill 148 related to changes to posted schedules that would compensate part-time employees for employer changes to their posted schedules within 96 hours of the start of affected shifts.

These Bill 148 provisions recognized the unique scheduling problems encountered by part-time employees but were repealed by the Ford government during the period in which these parties were in negotiations.

I would have awarded these provisions.

All of which is respectfully submitted,

Terry Moore
Union Nominee