IN THE MATTER OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT
AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

LONDON HEALTH SCIENCES CENTRE

(the “Employer”)

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 106

(“The Union”)

BOARD OF ARBITRATION

C. Michael Mitchell  Chair
Steve Coulihan  Employer Nominee
Larry Robbins  Union Nominee

APPEARANCES FOR THE EMPLOYER

Brian O’Byrne  Counsel

APPEARANCES FOR THE UNION:

Michele Haber  Senior Research Officer

A Hearing in this matter was held on September 17, 2018, at London, Ontario. An executive session took place in Toronto on October 16, 2018.
DECISION

1. This is interest arbitration under the Hospital Labour Disputes Arbitration Act ("HLDAA") to determine the terms and conditions of a collective agreement for a bargaining unit represented by OPSEU consisting of pharmacy technicians and, medication system technicians, (hereafter “pharmacy technicians”), occupational therapy assistants, and physiotherapy assistants, (hereafter “OTA/PTAs”) at the University Hospital in London. The bargaining unit is composed of approximately 92 employees, 67 of whom are pharmacy technicians and 25 of whom are OTA/PTAs. According to the Employer, London Health Sciences Centre ("LHSC") employs over 11,000 people.

The Issue

2. The labour relations issue in this case arises from the merger of two hospitals, and the different histories of organizing at each of them which took place over many years. As a result of a merger, which took place in 1996, London Health Sciences Centre has two locations, one at University Hospital and the second at Victoria Hospital. It employs pharmacy technicians and OTA/PTAs at both sites. At the Victoria Hospital site, the pharmacy technicians/OTA/PTAs are part of a large service bargaining unit represented by Unifor covering both hospital locations and encompassing over 1500 employees. At the University Hospital location the group is a stand-alone bargaining unit represented by OPSEU comprised of 93 employees.

3. The differences between the parties derives from a lack of agreement on the appropriate comparator. The Employer looks to the terms and conditions of employment set out in the service bargaining unit where the other pharmacy technicians and OTA/PTAs are employed at the Victoria Hospital location. The Union, on the other hand, engages in central bargaining with 54 hospitals, (not all have employees in these classifications) and seeks to apply the terms and conditions of central bargaining to this bargaining unit, essentially arguing that employees doing the same work in many other hospitals across the province constitute the appropriate comparator. The difficulty is that the wage rates and monetary terms and conditions that arise from OPSEU central bargaining are higher than in the Unifor collective agreement with this Employer.

The Facts

4. There are approximately 113 pharmacy technicians and 15 OTA/PTAs in the Unifor bargaining unit and constitute a small minority out of over 1500 employees. This group obtained a special increase in 2013 but not since.
5. While the service bargaining units at the Victoria and University Hospital locations have been organized and engaged in collective bargaining for some considerable time, and are now merged, the pharmacy technicians and OTA/PTAs at the University Hospital location remained non-union until 2013 when OPSEU organized the full-time employees. Then in 2014 the part-time employees were also organized by OPSEU.

6. OPSEU represents five other bargaining units of this Employer of various classifications of technical employees. The Employer participates in central bargaining with OPSEU for those five bargaining units.

7. Finally, it is material to this matter that the pharmacy technician jobs have been increasingly professionalized over the last 10 years and they are regulated now under the Regulated Health Professions Act. OPSEU filed a recent arbitration award wherein it was determined under the OPSEU Central Agreement that the classification of pharmacy technician has undergone substantial changes in the job content of the classification making it deserving of additional pay. The Board was not informed whether the current classification rate in the OPSEU central agreement reflects the new wage rate determined in that process, but we have assumed it does not yet reflect that change.

8. This is the second round of bargaining for these parties. In the first round there were numerous outstanding issues which could not be resolved because of the inherent tension over the proper comparator described above. The result was an Award in which there was no discussion of the comparators nor was there any rationale provided for the overall or individual issues decided by the Board.

9. However, neither party quarreled with the characterization that in general terms the prior Board of Arbitration awarded the monetary items in dispute as per the Unifor agreement and awarded the language issues mostly according to what OPSEU had proposed in keeping with the OPSEU Central Agreement. The Union argues that this represented a compromise by the Board only on the basis that this was a first agreement, but nothing in the Award addresses the rationale for the Board’s decision.

10. The issues in dispute here are:

(a) Term
(b) Wages
(c) Vacation
(d) Vision Care
(e) Shift and Weekend Premiums
The Positions of the Parties

11. The Employer argues that the only appropriate comparator here is the internal one where other employees doing exactly the same work are represented by another trade union. The Employer asks rhetorically how there could be a better comparator than other employees of the same employer doing exactly the same work covered by a collective agreement negotiated by another trade union.

12. The Union counters that it bargains centrally with 54 other hospitals, many of which have employees in the same classifications in dispute here, where a provincial rate is set. Unlike central bargaining with some other unions where all that is negotiated centrally is the rate of wage increases, and individual wage rates may vary from hospital to hospital, in the case of paramedical/professional employees the longstanding practice has been to negotiate a single province-wide wage rate for each classification. OPSEU argues that central bargaining has long been recognized by arbitrators as a powerful and dominant consideration in wage determination in this sector.

13. OPSEU essentially characterizes the central bargaining terms and conditions of employment as the market leader in bargaining for these classification across Ontario. It points out that while the Employer attacks the importance of the central bargaining process, it is not really in a position to do so persuasively given that it participates in that very process in respect of five of its own bargaining units.

14. The Union also submits that the self-determination of this bargaining unit is important as it emphasizes that these employees, having been non-union for a long time, ultimately chose a union that largely represents professional employees in this sector when there were opportunities for them to be represented inside the larger service unit along with their counterparts at the Victoria Hospital location.

15. The Employer challenges the importance or dominance of OPSEU central bargaining, and the inferences that can properly be drawn from the OHA wage survey. The Employer points out that while the survey covers approximately 2/3 of Ontario hospitals, it, and presumably other large employers did not participate. Moreover, the survey does not report on the number of employees in total or by classification or by hospital.

Analysis

16. The Board has carefully reviewed the caselaw, particularly the cases relied on by the Union, where the Board awarded OPSEU central bargaining rates, including first agreement situations. Ordinarily those awards would be persuasive and perhaps decisive as the central rate itself represents the collective judgement not only of the Union but of many other hospital employers in the province.
17. However, those awards do not have the same facts as here, and the central rate was not agreed to by other Employers who had the same situation as this Employer. In particular, the central rate was not agreed or awarded in respect of an employer who had other employees doing the very same work represented by another trade union where the rates are lower than the central rate. Nor in those awards relied upon by the Union was there, as here, an extant interest arbitration award in the immediately preceding round of bargaining where the arbitration Board maintained absolute uniformity in monetary terms with the Unifor bargaining unit.

18. In *St. Joseph’s Health Care and OPSEU Local 152* the OPSEU represented employees had previously been paid at or close to the OPSEU central rates while the then CAW (now Unifor) employees had lower rates. The Employer there apparently proposed that the rates for the OPSEU represented employees be lowered to the rates paid under the Unifor agreement. The Board rejected that argument. In our view, that case is not applicable here because there the OPSEU represented employees already enjoyed the higher rates and the Employer was seeking to lower them which is not the case here.

19. *Providence Care Centre (St. Mary’s of the Lake Hospital Site) and CNFIU and its Local 3001*, the Union sought a rate for the classification of Pharmacy Assistant to match the higher rate paid by the employer at another location, which is not the case here. In this case, if there were unionized or non-unionized employees of this Employer doing the same work at a higher rate, the Board would take that into account, but those are not the facts here.

20. The Board has examined the criteria as set out in section 9(1.1) of HLDAA as advanced by the parties who only made submissions based on comparability and retention. The Union argued that the employer is unable to attract and retain qualified employees but the Employer hotly disputed this and there was insufficient evidence for the Board to reach that conclusion.

21. Comparability encompasses attempting to replicate in this workplace the results that free collective bargaining would have produced by looking at terms and conditions of employment for comparable employees in the public and private sectors.

22. The Board agrees with the employer that comparisons inside the enterprise where employees are performing the same work represented by another union is of great importance. The reason for this is that not only is this a matter of fairness for people doing the same work to receive the same remuneration, but if one does not maintain internal equities, it can create labour relations issues for everyone. Normally in the case of a merger the tensions arising from different bargaining agents representing employees doing the same work would be addressed by the process under the *Public Sector Labour Relations Transition Act, 1997* of
reconciling bargaining rights, but that did not occur here because of the particular history.

23. The Board agrees that the Unifor agreement is a very important factor in this bargaining in respect of monetary items, especially because that position was upheld by the previous Board of Arbitration. What another union agreed to with this Employer for employees doing identical work is of great weight in determining how this Board should replicate free collective bargaining. However, it is not absolute. For example, if an issue pertains only to the University location and not to the other location, there is a good reason to differentiate the two situations. And where the Unifor agreement is demonstrably out of keeping with provincial norms, that may also be a circumstance where a different result is justified. This was implicitly recognized by the prior Board of Arbitration when it awarded different contract language provisions for this unit and declined to maintain absolute uniformity between this group and the Unifor group.

Decision

24. The Board awards that the new collective agreement shall consist of the expired agreement, plus all of the items agreed upon by the parties, plus the Board’s decision on all of the items in dispute which are set out below.

Wages

25. The Union proposes moving all the employees to the central OPSEU rate and then providing increases of 1.4% and 1.4% in each of April 1, 2016, and April 1, 2017 which was the normative increase across the province for this group. The Hospital proposes an increase of 1% on October 11, 2016 and 1.4% on October 11, 2017, which keeps the OPSEU rate identical to the Unifor rate.

26. The Union relied on an OHA survey of approximately 2/3 of Ontario hospitals which showed the rates for these classifications overall in the province as of September 2017. The key results are summarized as follows:
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<tr>
<td>PHARMACY TECHNICIANS</td>
<td>28.29</td>
<td>29.47</td>
<td>28.97</td>
<td>29.47</td>
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<tr>
<td>OTA/PTA</td>
<td>23.99</td>
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The pharmacy technician rates for September 2017 are based on 94 hospitals. The OTA/PTA Q2 (median/second quartile) survey results were weighted by the Board in the Table because there were two classifications for these employees in the survey.¹

27. The Table illustrates that the hospital position of a 1% increase for the Pharmacy technicians on October 11, 2016, and 1.4% on October 11, 2017, to take the rate to $28.97, which is the Unifor rate, would leave the employees at 98.25% of the median rate for the province or a $.50 difference. We want to be clear that we do not suggest that the difference between the Unifor and the provincial median is appropriate or inappropriate. What we do find is that unless there are compelling circumstances to depart from the rate, the responsibility of an interest arbitration Board is primarily to replicate free collective bargaining. The closest comparator here is what a different Union agreed to for employees of this same employer doing the same work. There are not compelling circumstances with respect to the wage rates for the pharmacy technicians to justify a departure from the Unifor rate. In other words, based on the principle of fairness to employees of the same employer being paid the same rate for the same job, and the problems for the employer that departing from that practice would entail, the difference here between the Unifor rate and the median rate in the province is not so great as to justify a departure from the Unifor rate.

28. The situation for the 25 OTA/PTAs is very different. The survey shows that the hospital proposal of an increase of 1% in October 2016 and 1.4% in October 2017, would leave the classification at 89.5% of the provincial median. It is apparent from the OHA survey, that the Unifor OTA/PTA rate is much closer to the very bottom of rates across the entire province than to the median for the province. At closer to the bottom for the entire province, the Unifor OTA rate is dramatically out of line with normative rates across Ontario for this classification.

29. The dissent of the Employer nominee opposes this change and relies among other

¹ There were two classifications in the OHA survey for OTA/PTAs, one comprised 23 hospitals and one comprised 72 hospitals.
things, on the principle of total compensation and the fact that this bargaining unit enjoys retiree benefits that the OPSEU central agreement does not contain. With great respect, there were no facts or arguments put forward in this case to the Board that argued or supported a total compensation reason for differentiating this bargaining unit or the OTA/PTA rate from others, nor was there any reference by the parties to the fact of retiree benefits in this collective agreement, much less its cost and value.

30. Having regard to all the factors the Board awards the following increases:

   Pharmacy Technicians
   
   October 11, 2016: 1%
   October 11, 2017: 1.4%
   
   OTA/PTAs
   
   April 1, 2016: 7 %
   October 11, 2016: 1%
   October 11, 2017: 1.4%

All retroactive wage increases shall be paid on the basis of hours paid and will include any payments based on the wage rate. Such payments will be paid out no later than the third full pay period following the date of the award.

Term

31. Despite the urging of the Board, the parties were unable to agree on term despite the fact that the Award of this Board will mean the collective agreement that results from it already expired. Accordingly in the absence of agreement of the parties, under the provisions of the HLDAA, this Award will be in place for two years from the date of the expiry of the prior collective agreement, i.e., through March 31, 2018.

Vision Care

32. The Employer proposes the increased amount of $325 every 24 months and a cap of $80 for eye exams that it agreed to in bargaining with Unifor while OPSEU seeks the higher amount of $350 and a cap of $100, which was arrived at in its central agreement. The Board awards the Employer proposal.

Vacation Entitlement, and Vacation Entitlement on Parental Leave and Extended Parental Leave
33. The Union proposed an increase to vacation entitlement after 27 years of service. At the hearing, the Employer proposed a better increase with higher vacation entitlement after 27, 21 and 12 years of service which it had agreed to with Unifor, but also wanted OPSEU to agree to the same tradeoffs Unifor had agreed to in terms of new language for SUB benefits under both the standard and extended parental leave. The Union agreed in principle but wanted the SUB language to be the same as in the OPSEU agreement as opposed to the language in the Unifor agreement. The Board awards the Employer proposal in the same terms as exist in the Unifor collective agreement.

Shift and Weekend Premiums

34. The Union proposes that the central agreement language on shift and weekend premiums apply instead of the current Unifor language which it says are outdated provisions from a service collective agreement which is inappropriate for this newly professionalized group. The monetary entitlements and provisions of the OPSEU central agreement are significantly higher and different from the Unifor agreement. The Union stressed the importance of compensating shift work, especially rotating shift work and weekend hours appropriately, and that LHSC has the only group of pharmacy technicians in the London area who work three rotating shifts.

35. The Employer in these proceedings challenged the importance of the centrally bargained OPSEU agreement with 54 other hospitals, but this is belied by this Employer’s own decision to bargain centrally with OPSEU for five other bargaining units at this hospital. The Board believes that the OPSEU central agreement is strong evidence that the norm for shift work provisions for this newly emerged professional group has changed. The shift premium language in the Unifor service agreement appears increasingly outdated for this group of employees who, together with their colleagues at Victoria hospital, are the only group of pharmacy technicians in the London area to work three rotating shifts. While the Board is not prepared to award different shift premium provisions which would mean different terms and conditions of employment for the two separately represented groups of pharmacy technicians, at this time, it urges the parties themselves to find some local resolution to address this situation, where the terms and conditions of employment for pharmacy technicians appear to be increasingly out of line with provincial norms in relation to conditions of employment which affect work-life balance and incomes in a significant way.

36. In accordance with section 9(2) of HLDAA, the Board of Arbitration shall remain seized of and may deal with all matters in dispute between the parties until a collective agreement is in effect between the parties.
Dated at Toronto this 20th day of January, 2019.

**DISSENT**

I have reviewed the award of the chairperson in this matter, and must dissent. I am especially concerned about the decision of the chairperson to award the UNIFOR rates of pay for the pharmacy technicians, who represent the majority of the bargaining unit. The award indicates that replication of free collective bargaining is a very important criterion. But replication must take account of the view of the Union and the employees as well as the Employer. The pharmacy technicians are the major classification in this bargaining unit, representing 67 of the 92 positions. They joined OPSEU because they wanted to be compensated in accordance with the standards for professional employees, and to move to OPSEU Central rates for wages, not to be pegged to the UNIFOR rates at the Victoria site.

While I appreciate that internal comparison is a significant issue that the board must take into account, to me it is inconceivable that the union would have freely agreed to UNIFOR rates, which was the exact Employer position, for the large majority of the bargaining unit.

The chairperson stresses that “the closest comparator here is what a different union agreed to for employees of this same employer doing the same work.” But one shouldn't lose sight of the fact that the UNIFOR agreement was made by a different union with different objectives, not OPSEU. OPSEU had no input into that result, and represents a bargaining unit with different priorities. While the internal comparison is still a significant factor it is far from absolute, and other factors should have been given more weight, in my respectful view.

First of all, OPSEU demonstrated that it represents the majority of unionized hospital pharmacy technicians. They indicated, based on an OHA survey that as of 2017 they
were the union at more hospitals than all other unions combined. They showed that as of September, 2017 the OPSEU Central rate for Pharm. Techs. was also the provincial median. Moreover, OPSEU is the only union that has negotiated a standard wage scale for this classification. This should have given it far more significance.

OPSEU also provided numerous awards where the Pharm. Techs. were either brought all the way to parity with OPSEU Central rates or at least much closer to parity, even where significantly larger increases were required to close the gap than is the case here. By way of contrast, the Employer did not provide us with any awards in support of its position.

It's also significant that the Pharmacy Technician position has become much more of a profession in the last several years. Pharmacy Technicians are now required to become registered with the College of Pharmacists and their role has become much more independent in the last several years. Pharm Techs have completely taken over the more basic dispensing duties that used to be carried out by Pharmacists. Moreover, long-service Pharmacy Technicians had to take 24 months of re-education at considerable cost. In fact, those who were either unwilling or unable to retrain were terminated. This change in my view needs to be better reflected in the resulting salary grid.

Recently the question of whether there had been a significant change in this classification so as to warrant a new wage scale was referred to arbitration by the Central parties and an award was issued by Arbitrator Diane Gee on July 30, 2018. Arbitrator Gee concluded that the changes that have taken place in this classification since 2008 amount to a substantial change. This award has not yet been implemented, but once a new wage scale is either negotiated or awarded, then the gap in wages between Pharm. Techs. here and those covered by the Central Agreement is likely to grow even further.

In addition, one has to consider the different structure of the bargaining unit for the
UNIFOR and the OPSEU Pharm. Techs. at the two sites. At the Victoria site, they are members of a large wall to wall service bargaining unit. Wage settlements in the service sector, even where there is a Central Agreement, tend to be in the form of across-the-board wage increases covering all employees, and there are no standard wage rates across the province. In our case, at the University Hospital site, the Pharm. Techs. are in the majority of a small bargaining unit, which looks to OPSEU Central as the appropriate comparator, so the emphasis and priorities of the union in each case are very different.

The chairperson relies heavily on a table based on a 2017 OHA Salary Survey Report, and finds that the UNIFOR rates represent 98.25% of the median rate for the province, which is close enough not to disturb the internal relationship. In my view, one must be careful in drawing conclusions from the table. First of all, it represents a snapshot of hourly rates of pay as of September, 2017. But the Employer proposal takes effect in October, 2017. Moreover, the effective date for wage increases at each hospital in the survey occurs at different times in the calendar year. All of the collective agreements that participate in OPSEU Central bargaining have an April 1st effective date for increases. The resulting comparison actually makes the UNIFOR rates look somewhat better. When one considers the timing and the six-month lag in the application of the UNIFOR rates in 2017 the gap would obviously widen. In any event, a gap of even $0.50 per hour would equate to about $975.00 per year for a full-time employee, which is hardly trivial.

More importantly, the fact that the gap may not be extreme should hardly be a reason not to close it completely. Given all of the above, there were compelling reasons in this case, notwithstanding the UNIFOR settlement at the Victoria site, to close the wage gap entirely, and I would have done so in this round.

In addition, I would have awarded the Union’s proposal on shift and weekend premiums. The award itself already articulates why the Union proposal based on the OPSEU Central Agreement is more appropriate for this particular group rather than the current
rates. The Union also advised us that all OPSEU represented pharmacy techs and PTA/OTA’s receive the same graduated shift premiums.

It’s also very easy to see why the UNIFOR collective agreement would be unlikely to reflect the industry standard for pharmacy techs and PTA/OTA’s. As indicated above, at the Victoria site, those employees are members of a large wall to wall service bargaining unit. For the large majority of that bargaining unit, their premiums are in line with industry standards. It would be very unusual for the parties to voluntarily agree on different premiums for different classifications in the same bargaining unit. In our case, with a separate bargaining unit for this category of employees, there is very good reason for them to look elsewhere than UNIFOR in finding the appropriate comparator for shift and weekend premiums.

Instead of urging the parties to address the issue next time around, it would have made a lot more sense, in my respectful view, to deal fully with the matter now. The comments in the draft award will simply ensure that the parties will return to arbitration next time around. The parties brought these issues to arbitration because they were unable to resolve them in direct bargaining. I am concerned that the same thing is likely to happen during the next round as well.

For all of the above reasons I would have awarded the Union position both on wage increases for Pharm Techs and on shift and weekend premiums for all employees.

DATED AT TORONTO, ONTARIO   this 16th date of January, 2019

“Larry Robbins”
Larry Robbins, Union Nominee
I dissent from the Chair’s award in this matter.

The primary issue in this case was what should the appropriate comparator be for Pharmacy Techs and OTA/PTAs who work at London Health Sciences Centre’s University Hospital site.

In my view, the appropriate comparator should be the collective agreement between London Health Sciences Centre and UNIFOR that covers the exact same group of employees who work at London Health Sciences Centre’s Victoria Hospital site and who perform that exact same duties and have the exact same responsibilities as their counterparts at the University Hospital site.

The Chair, in his award at paragraphs 22 and 23, makes the following comments:

“The Board agrees with the employer that comparisons inside the enterprise where employees are performing the same work represented by another union is of great importance. The reason for this is that not only is this a matter of fairness for people doing the same work to receive the same remuneration, but if one does not maintain internal equities, it can create labour relations issues for everyone. …

The Board agrees that the UNIFOR agreement is a very important factor in this bargaining in respect of monetary items, especially because that position was upheld by the previous Board of Arbitration. What another union agreed to with this Employer from employees doing identical work is of great weight in determining how this Board should replicate free collective bargaining.”

In my view, not only is the UNIFOR agreement “a very important factor” and one that “is of great weight in determining how this Board should replicate free collective bargaining” (the Chair’s words), it is the clearest and most persuasive factor that should be taken into account by our Board in determining the wages and other monetary benefits for the University Hospital Pharmacy Techs and OTA/PTAs.

The Chair, however, says that while he agrees that the UNIFOR agreement should be given great weight, it is not absolute. He says that if the UNIFOR agreement is “demonstrably out of keeping with provincial norms, that may be a circumstance where a different result is justified”.

I do not agree with that statement. Nevertheless, even if there was some merit to it, the Union, at the very least, bears the onus of demonstrating that the UNIFOR wages are out of keeping with provincial norms and clearly the Union has not met that onus in the case before us.

In dealing with wages, the Chair considered a September, 2017 salary survey
report prepared by the Ontario Hospital Association that was filed and relied upon by the Union. That survey showed that with respect to Pharmacy Techs, the median job rate was $29.47 whereas the hospital’s proposed rate was $28.97. The Chair said that the hospital’s proposed rate was 98.25% of the median rate and in his view, there was no compelling circumstances to justify a departure from the hospital’s rate which was the rate for Pharmacy Techs in the hospital’s UNIFOR agreement.

With respect to the OTA/PTAs, however, the salary survey showed that the median rate was $27.14 whereas the hospital’s proposed rate (the same rate as the UNIFOR rate) was $24.57 which was 89.5% of the median. The Chair stated that the UNIFOR rate, therefore, was “dramatically out of line with normative rates across Ontario for this classification”. As a result, he awarded a 7% increase to the OTA/PTAs effective April 1, 2016 in addition to the UNIFOR increases of 1% effective October 11, 2016 and 1.4% effective October 11, 2017.

I disagree with the Chair’s reliance on this OHA salary survey as the main determining factor in deciding the wage rates for the University Hospital Pharmacy Techs and the OTA/PTAs. In my view, the determining factor should have been the freely negotiated collective agreement between the LHSC and UNIFOR which established the rates for those classifications at London Health Sciences Centre’s Victoria Hospital.

I have a number of problems with the Chair’s use of the OHA salary survey as follows:

1. There are over 150 hospitals in Ontario. However, the survey shows that only 94 hospitals reported a Pharmacy Tech wage rate. In the case of OTA/PTAs, only 72 hospitals (less than 50% of Ontario hospitals) reported a wage rate.

2. We have no idea which hospitals reported wage rates and which hospitals did not report wage rates. Hence, we don’t know the locations of the hospitals that reported nor the size of those hospitals nor how many actual employees were employed in each of these classifications at the reporting hospitals. As a result, we don’t know how the median rates were derived. Did the OHA base the median rate on the number of hospitals reporting or on the total number of employees in the classifications at the reporting hospitals? In my view, the survey we were given is not at all helpful in the absence of the information I have referred to above. Certainly, in my view, it does not demonstrate that the OTA/PTA rate is “dramatically out of line with normative rates across Ontario”. The Chair simply did not have sufficient information to justify this conclusion.

In addition, we have no idea what the other terms and conditions of employment are for the OTA/PTAs and the Pharmacy Techs at the reporting hospitals and, in particular, what the total compensation of these employees was. Wages are simply one component of total compensation. There are many additional components such as health and welfare benefits, pensions, vacations, paid holidays, premiums, etc.
Arbitrators have long recognized that they must consider total compensation when considering the Union’s individual monetary demands. In the case of Meadow Park Nursing Home and SEIU (October 24, 1990) Arbitrator Joseph Samuels articulated what arbitrators must do in the following words:

“…when comparing the wages and benefits of one group of employees to another group, it is essential to do this on a total compensation basis, rather than a simple comparison of the treatment in one area. It is the overall comparison which is significant, not the piece by piece comparison. For example, Group A may have foregone some wages in order to have a rich health and welfare package. It would not be fair for Group B to demand the same health and welfare package as Group A if it insisted on retaining its more generous wage structure”

The Chair has ignored the concept of total compensation by looking solely at a median wage rate and not having regard to all the other elements of total compensation at the various reporting hospitals. This is unreasonable and unfair. In stark contrast, we can see what the total compensation for the Victoria Hospital Pharmacy Techs and OTA/PTAs is by looking at the LHSC and UNIFOR collective agreement which was provided to us. We know what the wage rates for these classifications are and we also know all the other perqs and benefits they receive. A significant benefit that the Victoria Hospital Pharmacy Techs and OTA/PTAs receive is retiree benefits which is a very costly benefit and which, I note, is not a benefit that employees covered by the OPSEU central collective agreement enjoy.

In my view, the OHA salary survey, as presented to us, is of limited use and significantly incomplete and should have been given very limited weight by the Chair.

Accordingly, in my view, the only appropriate comparator based on the evidence before us in this case was the London Health Sciences Centre and UNIFOR collective agreement which covered the Pharmacy Techs and OTA/PTAs working at London Health Sciences Centre’s Victoria Hospital. In my view there was no compelling need to look to other hospitals for guidance. The precise guidance exists within the hospital itself. In my view, the wage rates for London Health Sciences Centre’s University Hospital Pharmacy Techs and OTA/PTAs should match the rates for LHSC’s Victoria Hospital Pharmacy Techs and OTA/PTAs.

In addition, the Chair, in his award on shift premiums recommends both parties locally negotiate shift premiums more in line with central contracts. For obvious reasons I completely disagree with the recommendation. Again, the comparators related to shift and weekend premiums are available currently in the hospital. I see no need to rely on other hospitals when a clear and obvious comparator exists within.

**Conclusion**

In summary, the Chair’s award is unreasonable and ill-conceived.
The Chair, in determining the wage rates for the OTA/PTAs based his decision on an OHA salary survey which is a limited use and highly incomplete rather than on the freely negotiated agreement between London Health Sciences Centre and UNIFOR which set out the wage rates for the OTA/PTAs at London Health Sciences Centre’s Victoria Hospital who do exactly the same work as the OTA/PTAs at London Health Sciences Centre’s University Hospital. Internal equity is extremely important in my view and yet the Chair ignores this in favour of the survey. He also ignored a very important principle in interest arbitration, namely total compensation by focusing on the median rate in the salary survey without examining what the total compensation was for the various OTA/PTAs covered by the flawed salary survey.

I dissent from the Chair’s award.

Dated at London this _12th_ day of January, 2019.

________________________________________
Stephen Coulahan