In the matter of an Interest Arbitration
Pursuant to the Hospital Labour Disputes Arbitration Act

Between:

SERVICE EMPLOYEES INTERNATIONAL UNION
Local 1 Canada

(“Union”)

- AND -

THE PARTICIPATING HOSPITALS

(“Employer”)

RE: The terms of the parties’ Local Issues agreements for the period October 11, 2011 to October 10, 2013


Board of Arbitration: Brian Etherington, Chair
                           Harold Caley, Union Nominee
                           Michael Riddell, Employer Nominee

Appearances: Union
              Jesse Stanson, Senior Res. Officer
              Karen Brennan, Director of Research
              Carol McDowell, Hosp Sector Lead/RPN Div VP
              Helen Nowak, Union In-House Counsel

Employers
            Carolyn Kay, Joint Submission on RPN Issue
            Richard Baldwin, Listowel Hospital
            Stephanie Geronimo, Baycrest C.F.G.C.
            Barry Naylor, Baycrest Centre for Geriatric Care
            Nadine Zacks, Headwaters Health Care Centre
            Kate Dearden, Southlake Reg. Health Centre
            Ryan Wood, Sunnybrook Hospital
            Matthew Mihailovich, Halton Healthcare
            Phillip Cifarelli, OHA
AWARD

1. This is an interest arbitration award under the provisions of the Hospital Labour Disputes Arbitration Act ("the Act"). The award in this matter will complete a number of collective agreements for the members of the Participating Hospitals group that bargains centrally with the union. On May 7/13 this Board issued a renewal collective agreement dealing with central issues between the parties effective from October 11, 2011 to October 10, 2013. An addendum to that central award was issued on June 13/13. This award deals with outstanding local issues between the SEIU and the hospitals that participate in central bargaining with the union.

2. The employer group is composed of 34 participating hospital corporations located across Ontario in which the SEIU has bargaining rights for units of workers who perform service and clerical roles. SEIU, Local 1 Canada is the largest healthcare union in North America with approximately 2,000,000 members in Canada, United States and Puerto Rico. It has approximately 50,000 members in Ontario.

3. The Board heard oral submissions for two days, June 24 and 25, 2013 from the union and the individual hospitals that chose to appear to present orally. In addition, the Board received numerous written briefs from those hospitals that appeared during the two days of hearing and several hospitals that did not appear to present oral submissions. Finally, the Board received extensive oral and written submissions on a single compensation
issue, RPN wage adjustments, which affects all hospitals that have RPNs included in their SEIU bargaining unit. This group included all but a few hospitals and this resulted in a joint oral and written submission being presented on behalf of the group. In addition, several individual members of the group chose to present their own oral and written submissions on the RPN wage adjustment issue.

4. In arriving at its decision concerning the items described below the Board has given careful consideration to the oral and written submissions of the parties and the criteria that it is required to consider under s. 9 of the HLDAA.

5. The Board orders that the renewal agreements will consist of the unchanged items from the collective agreements which expired on October 10, 2011, the items agreed by the parties themselves, as amplified by agreements reached at or prior to the hearing, which are incorporated into this award, and the items we describe below on which submissions were made to us by the parties.

6. The items awarded herein are effective from the date of this award, unless expressly stated otherwise. Any outstanding issues on which submissions were made to the Board but those issues are not mentioned in the paragraphs below represent issues on which the board has decided to decline to order any change to the respective collective agreements.
ISSUE 1 – RPN WAGE ADJUSTMENT

UNION PROPOSAL

The union proposes to increase the RPN wage rate as follows:

- Increase job rate to $27.72 effective Sept. 29, 2012 and adjust all other steps in the RPN wage grids to reflect the previous percentage relationship to that job rate.

- Increase job rate to $28.55 effective June 1, 2013 and adjust all other steps on the RPN wage grid to reflect the previous percentage relationship to that job rate.

- Add the following steps and rates to the RPN wage grid to match 75% of the highest ONA rates effective at the start of the agreement.
  - Year 7 - $29.205
  - Year 8 - $31.275
  - Year 25 - $31.83

The union explained the proposals as being divided into two parts. The first part concerning minimum job rate increases effective September 29/12 and June 1/13 was explained as seeking parity with what CUPE has achieved for its RPNs in the 61 CUPE represented hospitals that bargain centrally. The proposed increase to minimum job rates would only affect RPNs who are earning less than the proposed minimum job rates. These proposed job rate minimums were achieved for CUPE represented RPNs in the 2012 CUPE Local Issues award issued by a Board chaired by Arbitrator Petryshen. The union noted that over the course of the last several rounds of local issues negotiations and awards for both CUPE and SEIU, the two unions have mirrored each other with regard to the minimum end rate for RPN’s. It presented a chart reflecting the final results of local issues awards for both unions for the past several rounds to demonstrate that although the timing of the implementation of new minimum end rates was different for the two unions, at the end of the implementation of each round the end rates for both were the same. It asked me to look closely at the Briggs, Petryshen and Burkett awards to
support that view. The second part of the wage proposals is an attempt to add 3 new steps to the RPN wage grid in an attempt to harmonize at least the structure of the wage grid with that employed for RNs involved in central bargaining in Ontario. It was justified on the basis of a need to recognize the commonality of the nursing profession and increasing responsibility being given to RPNs in recent years.

**EMPLOYER POSITION**

The co-ordinated submission of the hospitals began by repeating an argument that has been presented consistently to Local Issues panels on behalf of employers for more than a decade. In essence it is the argument that it is wrong for local issues interest boards to award a standardized minimum job rate for RPNs because that type of order in effect deals with RPN wage adjustments as a central issue despite the fact the parties have never agreed to treat them as a central issue. It went on to suggest that the conduct of local issue board chairs in awarding standardized minimum job rates for RPNs in all but a few of the CUPE and SEIU local issues awards since 2003 have demonstrated a failure to understand the fundamental distinction between central and local issues.

The employers joint submission went on to argue that application of the traditional or required criteria for HLDAA interest arbitrations - including replication, comparability, total compensation, demonstrated need, no leapfrogging, ability to pay, economic situation, recruitment and retention – did not justify the RPN wage adjustments sought by the union.

In addition several local hospitals filed separate briefs and/or presented oral arguments about the impact of the RPN wage adjustment proposal for their hospital’s situation.
BOARD ORDER

The Board orders that the following concerning the RPN job rate:

- Increase minimum end job rate to $27.72 effective October 12, 2012 and adjust all other steps in the RPN wage grids to reflect the previous percentage relationship to that job rate.

- Increase minimum end job rate to $28.55 effective September 1, 2013 and adjust all other steps on the RPN wage grid to reflect the previous percentage relationship to that job rate.

- Retroactivity is to be paid, by separate cheque, with respect to the RPN wage adjustments, on all paid hours to all employees who have worked since October 12, 2012, within sixty (60) days of the date of this award. Any employee who has left the employ of a hospital is to be notified in writing at his/her address on file within thirty (30) days of the date of this award and payment is to be made within thirty (30) days of acknowledgement of receipt of such notice.”

The second part of the Union’s proposal on RPN wage rate adjustments, concerning the addition of wage grid steps for Years 7, 8 and 25, is denied.

BAYCREST CENTRE FOR GERIATRIC CARE

OTA/PTA Wage Rate Adjustment

The Board orders the Union proposal concerning a new wage grid for Occupational Therapy Assistants and Physical Therapy Assistants classification, effective the last day of the agreement (Oct. 10, 2013), subject to the following changes to the proposed grid: Year 3 rate will be $24.75 (not $25.21) and Year 4 rate will be $25.25 (not $26.07).

Paid Holidays: L20.1

The Board orders the Employer proposal for changes to the language of the paid holidays article L20.1 concerning Rosh Hashanah.
SOUTHLAKE REGIONAL HEALTH CENTRE

Article L20 - Paid Holidays

The Board orders the Employer proposal concerning the deletion of the employee’s birthday as a paid statutory holiday to be replaced by a floating statutory holiday day to be used at any time during the year with requests for the required time off to be submitted by employees as per the collective agreement (as set out as alternative #2 in the employer proposal).

ORILLIA SOLDIERS MEMORIAL HOSPITAL

Paid Holidays

The Board orders the adoption of the Employer proposal concerning the Remembrance Day Holiday (replace the 1st Monday in November with Remembrance Day).

NIAGARA HEALTH SYSTEM

Pharmacy Technician Wage Adjustment

The Board orders the adoption of the Union proposal on a special adjustment for Pharmacy Technicians with the following changes to the union proposal (in bold).

New Wage Grid for Pharmacy Technicians – effective October 10, 2013.

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<td>Start</td>
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<tr>
<td>1 Year</td>
<td>$25.12</td>
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<tr>
<td>2 Year</td>
<td>$26.03</td>
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<tr>
<td>3 Year</td>
<td>$26.95</td>
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<tr>
<td>4 Year</td>
<td>$27.20</td>
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Any employees currently at a rate higher than the grid rate shall be red circled.

RUNNYMEDE HEALTH CENTRE
OTA/PTA WAGE ADJUSTMENT

The Union seeks the same wage adjustment for OTA/PTAs under this agreement as it did for the same classification at Baycrest.

The Board orders the Union proposal concerning a new wage grid for Occupational Therapy Assistants and Physical Therapy Assistants classification, effective the last day of the agreement (Oct. 10, 2013), subject to the following changes to the proposed grid: Year 3 rate will be $24.75 (not $25.21) and Year 4 rate will be $25.25 (not $26.07).

THUNDER BAY REGIONAL HEALTH SCIENCES CENTRE
LETTER OF UNDERSTANDING RE ABORIGINAL HIRING

The Board notes the importance of the issues underlying the Employer’s proposal for a letter of understanding dealing with employer hiring policies and aboriginal recruitment objectives. However, it believes that these issues can be best addressed by remitting the employer proposal back to the parties for further negotiation.
The Board remains seized to deal with any issues arising from the implementation of this award.

Done at Windsor, Ontario, this 1st day of December, 2013

Brian Etherington, Chair

Harold Caley, Union Nominee

Michael Riddell, Employer Nominee
Dissent of Employer Nominee

I have reviewed the Chair’s Award and I dissent on the following 2013 wage adjustments:

- the 3% adjustment to the RPN rate at all but four of the Participating Hospitals;
- the approximate 1.5% adjustment to the RPN rate at the other four Participating Hospitals;
- the 4.3% adjustment to the OTA/PTA rate at Baycrest Centre Geriatric Care;
- the 3% adjustment to the OTA/PTA rate at Runnymede Health Centre;
- the 4% adjustment to the Pharmacy Technician rate at Niagara Health System.

The Ontario Ministry of Labour reports on settlements of Collective Agreements covering 150 or more employees. Public Sector settlements averaged an increase of 1.6% in 2011 and 1.4% in 2012. The employees who are awarded the above adjustments already have had increases in 2011 and 2012 that were greater than the average Public Sector increases. The same Chair that awarded the above wage adjustments already awarded a 2% increase effective October 11, 2011 and a further 2% increase effective October 11, 2012. On this basis alone no further adjustments are warranted.

At Page 3 of this Award, the Chair asserts that:

... In arriving at its decision concerning the items described below the Board has given careful consideration to the oral and written submissions of the parties and the criteria that it is required to consider under S.9 of the HLDDA.

With respect to the awarded wage adjustments, little, if any, consideration was given to any of the statutory criteria under S.9 of the HLDDA. The affected Hospitals, are severely constrained by limited Government funding; the economic situation in Ontario and the affected communities does not support the awarded adjustments; and no Hospital has had difficulty in attracting and retaining qualified employees at existing wage rates. Moreover, the Chair has obviously ignored the Replication Principle applicable to Interest Arbitration even though it is universally accepted by Arbitrators and the Parties alike.

1. RPN Wage Rates

At page 6 of the Award the Chair orders an increase of the minimum job rate to $27.72 effective October 12, 2012. However, based on the information filed by the SEIU at the Arbitration Hearing and confirmed by Counsel for Participating Hospitals subsequent to the hearing, all Participating Hospitals were paying a minimum job rate of at least $27.72 per hour effective October
11, 2012. Hence, the Chair's award on this aspect of the RPN rate is redundant.

**Previous Arbitration Awards on the Issue of RPN Wage Rates for SEIU and CUPE**

All but one of the previous Arbitration Awards on this issue focused on reducing the spread between the lowest and highest rates in bargaining units represented by the same Union.

- **Kaplan SEIU Award**
  
  Spread before the Award - $4.16

  **Rationale**
  
  "... Therefore, we have made some adjustments at the lower end of the scale so as to eliminate the most unjustified of the disparities but in a manner mindful of the current economic reality of this sector ..."

- **Carrier CUPE Award**

  Sept. 29, 2001 – Sept. 28, 2004
  Spread before the Award - $5.31

  **Rationale**
  
  "... We agree with the sentiment expressed in the Kaplan Award that the current spread between the lowest and highest is excessive ..."

- **Kaplan SEIU Award**

  Spread before the Award - $1.37

  **Rationale**
  
  "... In our view, there is no justification, in this round of local bargaining, to make further RPN adjustments. In the previous round, the majority of the Board then determining the issue was of the view, as set out above, that the spread was so large as to unjustifiable. That large spread has been eliminated ..."

- **Albertyn CUPE Award**

  Sept. 29, 2004 – Sept. 28, 2006
  Spread before the Award - $2.81

  **Rationale**
  
  "... We do not see our way clear to granting an adjustment to the RPN rate in this round. We do not think it necessary, given that the gap has increased only slightly since the last round, when there was a substantial correction ..."
- Raymond SEIU Award  
  Spread before the Award - $1.45  

  Rationale  
  “... we adjust all hospitals with a rate below $23.00 as of October 11, 2006 to the rate of $23.01 prior to the adjustment of 2.75% ...”  
  [This adjustment affected only seven Hospitals as detailed on Pages 6 and 7 of that Award]

- Briggs CUPE Award  
  Sept. 29, 2006 – Sept. 28, 2009  
  Spread before the Award - $2.97  

  Rationale  
  “... A review of the Raymond award involving Participating Hospitals and SEIU reveals ... the hourly rates range from $22.47 to $23.92. This represent approximately a six and a half percentage spread. After considering a number of factors the Board awarded 2.5% to the lowest minimum rate effective the first day of the new collective agreement. The matter before this Board is considerably different. The spread in hourly range for RPN, involving these hospitals is 13.2%. We find this to be too great a spread ...”

- Petryshen CUPE Award  
  Sept. 29, 2009 – Sept. 28, 2013  
  Spread before the Award - $3.12  

  Rationale  
  “... Although arbitrator Briggs awarded a significant adjustment during difficult economic environment, we are satisfied that the spread in RPN rates remains too great. The CUPE differential remains twice the SEIU differential ...” and “... The end result of our adjustment will not narrow the gap to the same extent arbitrator Raymond narrowed the gap in SEIU rates, but it will narrow the spread along the lines of Arbitrator Kaplan’s SEIU award in the 2001 round ...”

- Burkett SEIU Award  
  Spread Before the Award - $1.07  

Burkett is the only Arbitrator who’s Award did not concentrate on the issue of the spread for a particular bargaining unit. However,
unlike the Chair for this Award, Burkett did not award an adjustment that affected every RPN rate.

- Etherington Award  
  Spread before the Award - $0.44

With the exception of the Thunder Bay Regional Health Sciences Centre the $28.55 rate effective September 1, 2013 would becomes the standard rate for all the rest of SEIU Participating Hospitals. None of the previous Arbitrators on this issue endorsed the concept of a standard rate nor is it logical that a local issues Arbitration Board would award a standard rate for all Participating Hospitals. As noted above, all but one Arbitrator focused on reducing but not eliminating the spread between the lowest and highest rate. Kaplan declined to reduce a $1.37 spread for SEIU and Albertyn declined to reduce a $2.81 spread for CUPE. Based on the number of full time equivalent RPNs employed by the Participating Hospitals the awarded rate would add a total of approximately 4.4 million dollars to the wage costs on an ongoing basis. In addition, wage related costs would substantially add to the total. Based on the mandatory HLDAA criteria, the current economic climate, the small spread among rates, and the Principle of Replication, there is no justification for adjusting the awarded rate.

2. OTA/PTA Wage Rate Adjustment

(a) Baycrest Centre For Geriatric Care

The proposed award for this classification would increase the maximum rate by 4.3% in addition to the already generous wage increases of 2% effective October 11, 2011 and 2% effective October 11, 2012. There is absolutely no justification for this outrageous increase. Even the misguided approach to RPN rates by numerous Arbitrators increased RPN rates incrementally over the past thirteen years.

(b) Runnymede Health Centre

The proposed award for this classification would increase the maximum rate by 3%. My objection is as per (a) above.

3. Pharmacy Technician Wage Adjustment for Niagara Health System

The proposed Award for this classification would increase the maximum job rate by 4%. The detailed Submission made by Mr. Michael Kyne, General
Counsel for the Employer conclusively proves that no adjustment is warranted based on the facts that “... there has been no substantial change in either job duties or qualifications, the NHS has had no difficulty in attracting and keeping competent employees and the current rates are competitive with comparators ...”. The chart attached to Mr. Kyne’s Submission underscores the point that the Pharmacy Technician wage rate for Niagara Health System is competitive with other Hospitals represented by a variety of Unions in the sector including CUPE, CAW, UFCW, and IUOE. Moreover, the October 11, 2012 rate of $26.34 rate paid at another Hospital – Hotel Dieu Shaver – represented by SEIU, and is the same rate as NHS was paying prior to the adjustment in this Award.

Conclusion

The wage adjustments awarded by the Chair are completely out of line with the current economic realities, and both freely bargained settlements and arbitrated awards. Based on consideration of all the facts, it is inconceivable that these Parties would have negotiated a result with the substantial adjustments set out in this Award. With respect, this Award is entirely lacking in any acknowledgement of the overriding Principle of Replication. Such an Award potentially encourages Parties to avoid resolving their own difficult disputes. Hopefully, the readers of this Dissent will draw the same conclusions based on the facts, and therefore not rely on this Award as a precedent.

Dated at Toronto, Ontario, this 1st day of December, 2013

“Michael Riddell”
Employer Nominee