IN THE MATTER OF AN INTEREST ARBITRATION PURSUANT TO THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT

BETWEEN

BRUYÈRE CONTINUING CARE
(Hereinafter referred to as the “Hospital”)

AND

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 4540
(Hereinafter referred to as the “Union”)

Board: Felicity D. Briggs, Chair
Kathryn Butler-Malette, Hospital Nominee
Joe Herbert, Union Nominee

Appearing for the Hospital: André Champagne, Legal Counsel Emond Harnden LLP
Paula Campbell, Director of Research Emond Harnden LLP
Rob Jones, Director Human Resources and Labour Relations
Mark Crichton, Manager, Labour Relations
Christopher Soucy, Labour Relations Consultant
Richard Lacasse, Director, Payroll and HRIS
Christine Carriere, Director, Emergency Preparedness and Environmental Services
Amanda Yorston, Manager, Scheduling Resource Office

Appearing for the Union: Jonah Gindin, CUPE National Research Representative
Tracey Pinder, CUPE Health Care Coordinator
Isabelle Dault, CUPE National Representative
Brian Grant, President
Dave Verch, Vice-President
Deanna Gostick, Secretary-Treasurer
Gilles Gauthier, Bargaining Committee Member
Barb Lavictoire, Bargaining Committee Member
Bob Syrenne, Bargaining Committee Member
Jacob Grant, Co-op Student

Hearing held on May 2, 2016 in Ottawa, Ontario.
The Board of Arbitration was invited to hear and determine the matters in dispute between Bruyère Continuing Care and the Canadian Union of Public Employees, Local 4540.

Bruyère Continuing Care is a large continuing care and academic health science facility comprised of two hospitals, St. Vincent Hospital and Elisabeth Bruyère Hospital. The Hospital provides complex continuing care, long-term care, palliative care and rehabilitation. The Hospital is also affiliated with the University of Ottawa and several colleges and teaches health care students in many disciplines. St. Vincent Hospital has 336 complex continuing care beds. Elisabeth Bruyère Hospital provides care to chronically ill and ambulatory patients with 71 rehabilitation beds and 31 palliative care beds. In addition, 71 long-term care beds are offered at Elisabeth Bruyère Residence which is housed on two floors within the Elisabeth Bruyère Hospital.

The Union represents employees in a combined full-time and part-time service bargaining unit. The bargaining unit is comprised of approximately 283 full-time, 264 part-time and 212 casual members.

The parties met in bargaining on five occasions between October 2014 and May 2015. During negotiations a number of issues were agreed to and we incorporate those agreed items by reference into this award.

The parties provided the Board with considerable information regarding the outstanding matters by way of their briefs and exhibits. We have reviewed those submissions and have taken those facts into account. In particular, we have considered the criteria set out in section 9(1.1) of the Hospital Labour Disputes Arbitration Act, including replication, total compensation and demonstrated need.

The previous collective agreement expired on March 31, 2014. The parties agreed at the hearing that the term of this renewal collective agreement is from April 1, 2014 to March 31, 2018.

Any issues not specifically addressed herein are deemed to be withdrawn. Unless specifically noted otherwise, the terms awarded herein are to be effective from the date of this Award. For greater clarity, retroactive paid hours for the general wage increases shall include the fourteen percent (14%) in lieu of benefits allowance paid to part-time and casual employees.

Accordingly, we award the following:
1. General Wage Increase

Effective April 1, 2014 – 0.7% across the board
Effective April 1, 2015 – 0.7% across the board
Effective April 1, 2016 – 0.7% across the board
Effective April 1, 2017 – 0.7% across the board

2. Lump Sum Payments

0.7% of the straight time hourly rate per hour paid for the period April 1, 2014-March 31, 2015
0.7% of the straight time hourly rate per hour paid for the period April 1, 2015-March 31, 2016
0.7% of the straight time hourly rate per hour paid for the period April 1, 2016-March 31, 2017
0.7% of the straight time hourly rate per hour paid for the period April 1, 2017-March 31, 2018

Add a Letter of Understanding as follows:

Lump Sum Payment

First Year of Agreement
A lump sum payment is payable to all employees on staff as at March 31, 2015 on the basis of 0.7% of their straight time hourly rate per hour paid for the period April 1, 2014 – March 31, 2015.

The lump sum payment is not to be taken into account for the calculation of any other entitlement under the terms of the collective agreement (including, but not limited to, pension, percentage in lieu, vacation, SUB, etc.). The payment is subject to statutory deductions and will be paid on a separate cheque/deposit. Payment is to be made within three (3) full pay periods of the effective date (i.e. March 31, 2015).

The premium portion of overtime/premium pay hours does not count towards the calculation of paid hours. For example, one hour at premium pay is equal to one hour paid for the purposes of this calculation.

Employees on pregnancy and/or parental leave and/or disability will be credited for hours worked in an amount equal to their accumulation of seniority during such leave.

Second Year of Agreement
A lump sum payment is payable to all employees on staff as at March 31, 2016 on the basis of 0.7% of their straight time hourly rate per hour paid for the period April 1, 2015 – March 31, 2016.

The lump sum payment is not to be taken into account for the calculation of any other entitlement under the terms of the collective agreement (including, but not limited to, pension, percentage in lieu, vacation, SUB, etc.). The payment is subject to statutory deductions and will be paid on a separate cheque/deposit. Payment is to be made within three (3) full pay periods of the effective date (i.e. March 31, 2016).
The premium portion of overtime/premium pay hours does not count towards the calculation of paid hours. For example, one hour at premium pay is equal to one hour paid for the purposes of this calculation.

Employees on pregnancy and/or parental leave and/or disability will be credited for hours worked in an amount equal to their accumulation of seniority during such leave.

**Third Year of Agreement**

A lump sum payment is payable to all employees on staff as at March 31, 2017 on the basis of 0.7% of their straight time hourly rate per hour paid for the period April 1, 2016 – March 31, 2017.

The lump sum payment is not to be taken into account for the calculation of any other entitlement under the terms of the collective agreement (including, but not limited to, pension, percentage in lieu, vacation, SUB, etc.). The payment is subject to statutory deductions and will be paid on a separate cheque/deposit. Payment is to be made within three (3) full pay periods of the effective date (i.e. March 31, 2017).

The premium portion of overtime/premium pay hours does not count towards the calculation of paid hours. For example, one hour at premium pay is equal to one hour paid for the purposes of this calculation.

Employees on pregnancy and/or parental leave and/or disability will be credited for hours worked in an amount equal to their accumulation of seniority during such leave.

**Fourth Year of Agreement**

A lump sum payment is payable to all employees on staff as at March 31, 2018 on the basis of 0.7% of their straight time hourly rate per hour paid for the period April 1, 2017 – March 31, 2018.

The lump sum payment is not to be taken into account for the calculation of any other entitlement under the terms of the collective agreement (including, but not limited to, pension, percentage in lieu, vacation, SUB, etc.). The payment is subject to statutory deductions and will be paid on a separate cheque/deposit. Payment is to be made within three (3) full pay periods of the effective date (i.e. March 31, 2018).

The premium portion of overtime/premium pay hours does not count towards the calculation of paid hours. For example, one hour at premium pay is equal to one hour paid for the purposes of this calculation.

Employees on pregnancy and/or parental leave and/or disability will be credited for hours worked in an amount equal to their accumulation of seniority during such leave.

**3. Food Service Attendant Wage Adjustment**

Effective April 1, 2017, adjust the Food Service Attendant maximum wage rate by sixty-eight cents ($0.68), such adjustment to be applied prior to the application of the April 1, 2017 general wage increase. All other steps on the grid are to be adjusted so as to maintain the previous percentage relationship between the steps on the grid.
4. **Sterilization Attendant Wage Adjustment**

Effective April 1, 2017, increase the maximum wage rate for Sterilization Attendant to $24.17, inclusive of the application of the general wage increase and rename to Sterilization Technician. All other steps on the grid are to be adjusted so as to maintain the previous percentage relationship between the steps on the grid.

Sterilization Technician to be added as a job category on the Salary Scales at Appendix A.

5. **Appendix A re Pay Equity Note**

Union’s proposal is granted.

6. **Article 3.02 – Attendance Management**

Union’s proposal is granted effective October 31, 2016.

    Days of absence arising out of a medically-established serious chronic condition, an ongoing course of treatment, a catastrophic event, absence for which WSIB benefits are payable, medically necessary surgical interventions, or days where the employee is asymptomatic and is under a doctor's care from the commencement of symptoms for a confirmed communicable disease (and has provided medical substantiation of such symptoms) but is required to be absent under the Hospital or public health authority protocol, will not be counted for the purposes of being placed on, or progressing through, the steps of an attendance management program.

    Leaves covered under the Employment Standards Act, and leaves under Article 18 will not be counted for the purposes of being placed on, or progressing through, the steps of an attendance management program.

7. **Article 15.08 – Retirement Allowance**

Hospital’s proposal is granted effective March 31, 2018.

Prior to issuing notice of layoff pursuant to Article 15.0 in any classification(s), the Hospital will offer early-retirement allowance to a sufficient number of employees eligible for early retirement under HOOPP within the classification(s) in order of seniority, to the extent that the maximum number of employees within a classification who elect early retirement is equivalent to the number of employees within the classification(s) who would otherwise receive notice of layoff under Article 15.0.
a) A full-time employee who elects an early retirement allowance shall receive, following the completion of the last day of work, a retirement allowance of two (2) weeks’ salary for each year of employment plus a prorated amount for any additional partial year of employment, to a maximum of fifty-two (52) weeks salary or fifty percent of earnings to age 65, whichever is less. The option of salary continuance will be made available to those employees who indicate this preference.

A full-time employee who declines retirement benefits pursuant to Article 23.09 will also receive an amount of one hundred and twenty-five dollars ($125.00) per month in lieu of benefits for a period equivalent to the retirement allowance.

8. Article 18.02 – Personal Leave of Absence

Hospital’s proposal is granted.

b) Employees on a leave of absence without pay in excess of thirty (30) calendar days are not actively employed by the Hospital, and such time will not be counted in the calculation of length of service, annual vacation, sick leave, and statutory and floating holidays. During such absence, the employee will become responsible for full payment of any subsidized employee benefits in which he is entitled to participate during the period of absence.

9. Article 22.05 – Payment Pending Determination of WSIB Claims

Union’s proposal is granted.

An employee who is absent from work as a result of an illness or injury sustained at work and who has been awaiting approval of claim for WSIB benefits for a period longer than one complete pay-period shift may apply to the Hospital for payment equivalent to the lesser of the benefit she would receive from WSIB benefits if her claim was approved, or the benefit to which she would be entitled under the short term sick leave plan. Payment will be provided only if the employee provides evidence of disability satisfactory to the Hospital and a written undertaking satisfactory to the Hospital that any payments will be refunded to the Hospital following final determination of the claim by the Workplace Safety and Insurance Board. If the claim for WSIB benefits is not approved, the monies paid as an advance will be applied towards the benefits to which the employee would be entitled under the short-term sick leave plan. Any payment under this provision will continue for a maximum of fifteen (15) weeks.

10. Article 23.02 – Extended Health Care

Union’s proposal is granted effective one (1) month following the date of the Board’s award.
The Hospital agrees to contribute 75% of the billed premium towards coverage of eligible employees in the active employ of the Hospital, providing the balance of monthly premiums is paid by the employee through payroll deduction, under the existing Extended Health Care Plan including eye examinations once per 2 calendar years and providing for $22.50 (single) and $35.00 (family) deductible.

Services of a chiropractor will be covered up to an annual maximum of $350.00; and services of a physiotherapist will be covered up to an annual maximum of $500.00.

Hearing aide acquisition every 36 months.

11. Article 24.05 – Protective Footwear

Union’s proposed increase is granted.

The Hospital shall provide based on departmental safety requirements and upon the Immediate Supervisor’s approval, a protective footwear allowance of $120.00 yearly.

This payment shall be payable April 1st upon proof of payment. It is understood that the footwear is for work use only, and will be replaced, if damaged or worn, during its use.

The Hospital shall provide protective footwear to Food Services employees working in the dishroom.

12. Article 24.10 – Professional Responsibility – Workloads

Union’s proposal is granted.

24.10 Professional Responsibility – Workloads

a) The parties agree that patient care is enhanced if concerns relating to professional practice, patient acuity, fluctuating workloads and fluctuating staffing are resolved in a timely and effective manner.

b) Employees are encouraged to raise their concerns with their immediate supervisor. In the event that the workload concern is not resolved to the employee’s satisfaction, the employee, or group of employees, may submit their concerns in writing (with a copy to their immediate supervisor) to either the Joint Health and Safety Committee (as constituted under Article 21) or the Labour-Management Committee (as constituted under Article 7.04) through their union representative, in a format to be determined by the committee.
In the event that an employee or group of employees, covered under the Regulated Health Professions Act (RHPA), are assigned a workload which is inconsistent with proper patient care, they shall express their concerns to their supervisor. The employee shall complete a “Workload Review Form” which shall be provided to the supervisor and to the Union. The Workload Review Form will be attached as Appendix B to the collective agreement.

13. Article 24.11 – Professional Responsibility, Patient Care, Workloads & Staffing

Union’s proposal is granted.

24.11 Professional Responsibility, Patient Care, Workloads & Staffing

(The following clause is applicable to Registered Practical Nurses only)

(a) The parties agree that optimal patient care is, and safe working conditions are, enhanced if concerns relating to professional responsibility, patient care, workloads and staffing issues are resolved in a timely and effective manner with communications between the parties being:

i) professional;

ii) courteous;

iii) collegial;

iv) respectful; and

v) focused on resolving the issue, not on the individuals.

(b) Employees are encouraged to raise their concerns with their immediate supervisor within forty-eight (48) hours.

(c) Upon receipt of a response from the supervisor within five (5) working days, if the employee or group of employees in (b) above are not satisfied, the employee or group of employees may, within forty-eight (48) hours, submit their concerns in writing to the Chief Nursing Officer. A meeting shall be held within thirty (30) days of a request from the employee or group of employees, who may be accompanied to this meeting by a Union representative. The Chief Nursing Officer will respond in writing to the employee, or group of employees, with a copy to the Union if applicable, within fifteen (15) days.

(d) Upon receipt of a written response from the Chief Nursing Officer, if the employee or group of employees in (c) above are not satisfied, the employee or group of employees, who may be accompanied by their Union
Representative, may, within forty-eight (48) hours, request a meeting with the Chief Executive Officer (or her/his designate) and such meeting shall be held within thirty (30) days. The Chief Executive Officer (or her/his designate) will respond in writing to the employee, or group of employees, within fifteen (15) days of the meeting, with a copy to the Union if applicable.

(e) It is agreed and understood that an employee or group of employees may in exceptional and urgent cases request an immediate meeting with the Chief Nursing Officer who will make every reasonable effort to accommodate the request. The timelines provided for in (d) above will apply failing resolution at this meeting.

(f) Only the timelines set out above are subject to Article 7 – Grievance and Arbitration Process.

14. Article 24.11 – Fiscal Advisory Committee

Union’s proposal is granted.

Recognizing the value of Union input on behalf of employees, the parties agree to the following:

a) The Union’s representative(s) will be included in the consultation and planning process from the early phases of the budget planning process, through representation on the Fiscal Advisory Committee or equivalent committee, to its final stages of completion, to assist the Hospital in minimizing layoffs or job loss, and in developing labour adjustment strategies where necessary, and in otherwise minimizing adverse effects on CUPE-represented employees through program or service restructuring.

b) Where the Hospital experiences major unforeseen circumstances such that will necessitate changes to its budgetary plans which have been approved by the Ministry of Health, or the Local Health Integration Network, the Hospital agrees that revisions to the budget will be carried out in consultation with the Union.

c) In furtherance of the foregoing, and, where possible, in advance of any scheduled FAC or equivalent committee meeting, the Hospital agrees to provide to the Union in a timely way any financial and staffing information pertinent to its budget, or to any other restructuring plan that would affect the Union's members.

d) It is understood that employee time spent at FAC or equivalent committee meetings with the employer in pursuance of the above shall be deemed to be work time for which the employee shall be paid by the Hospital at his or her regular or premium rate as may be applicable.
15. Article 27.01 – Retroactivity

Hospital's proposal is granted.

The Unionized employees of CUPE Local 4540 will receive retroactivity pay from April 1, 2014.

The employees who have left their employment at the Hospital, from the renewal date of the collective agreement will be eligible for reimbursement of the general wage increase.

Within thirty (30) days following the effective date of the collective agreement, the Hospital will communicate with the employees who have left their employment, in writing, at their last known address, with copy of said letter to the Union. The concerned employees have thirty (30) days from the date of the letter to claim, in writing, their retroactivity.

16. Letter of Understanding re Decentralization of Casual RPNs

Hospital's proposal is granted with implementation no earlier than September 1, 2016 and amended as follows:

2015-02
LETTER OF UNDERSTANDING
Between
BRUYERE CONTINUING CARE
(hereinafter called the "Hospital")
And
CUPE, Local 4540
(hereinafter called the "Union")

Re: Decentralization of Casual Registered Practical Nurses (RPNs)

1. All casual RPNs hired on or after the date of implementation will be assigned to one of the following: a specific floor at Saint-Vincent Hospital, a specific program at Élisabeth-Bruyère Hospital (i.e. Palliative or Rehabilitation), or Residence Élisabeth-Bruyère ("REB"). The assignment of each casual RPN hired on or after the date of implementation to a specific floor/program/REB will be determined by the Hospital.

2. Casual RPNs hired prior to the date of implementation will be provided the opportunity to select their assigned floor/program/REB based on seniority subject to the Hospital's established limit per floor/program/REB. The implementation of the assignment of each nurse to a specific floor/program/REB shall be on a date determined by the Hospital.

3. The casual RPN’s assignment to a specific floor/program/REB will be relevant for Collective Agreement purposes, including but not necessarily limited to, scheduling as contemplated in article 10.04, partial or single shift mobilization
as contemplated in article 10.07, and temporary positions as contemplated in article 14.01 c).

4. Amendments to articles 10.04, 10.07 and 14.01 c) set out below will take effect on a date to be determined by the Hospital and will be changed in the collective agreement for casual RPNs:

10.04 Distribution of Working Shifts

To ensure a fair distribution of working shifts, the Hospital will endeavour to offer the pre-established working shifts by seniority within a category on the posted schedules, up to the employee's commitment to work.

a) Providing that employees meet the requirements of the job, bargaining unit employees shall also be offered the opportunity to work additional working shifts by seniority within their category up to a maximum of ten (10) working shifts. Based on their expressed availability, meal helpers may work or more than ten (10) shifts provided the number of hours does not exceed seventy-five (75) hours per pay period.

i) Permanent part-time employees and casual employees working in a temporary part-time position in a designated area or respective sector or unit will be called first followed by;

ii) Permanent part-time employees and casual employees working in a temporary part-time position anywhere else in the Hospital;

iii) Casual employees working in a designated area or respective sector;

iv) Casual employees working anywhere else in the Hospital;

v) Employees from the on-call list who normally work in other categories.

b) A representative of CUPE, Local 4540 reserves the right to verify the efficacy of the booking protocol in a mutually agreeable manner.

c) It is understood that the Hospital may book in advance working shifts, each time a new rotation schedule occurs.

d) Where the seniority/availability list has been exhausted, extra shifts or possible overtime hours will be offered according to this protocol.

10.07 Mobilization Protocol

Mobilization of staff from her or his unit shall be done in the following order:
a) casual employees from a different floor/program/REB
b) employees in a designated mobile position
c) casual employees from the home floor/program/REB
d) the least senior part-time employee from another unit
e) e) employees in a replacement position
f) e) the least senior part-time from the unit
g) f) the least senior full-time employee

14.01 Posting process

c) The Hospital may temporarily fill the position until the successful candidate has been chosen. In filling such vacancies consideration shall be given to regular part-time employees from the unit on the basis of seniority who are qualified to perform the work in question. If the temporary vacancy is not filled by a regular part-time employee from the unit, consideration will be given to casual employees from the unit. If the temporary vacancy is not filled by a regular part-time or casual employee from the unit, consideration will be given to casual employees working anywhere else in the Hospital.

The Board remains seized in the event that there are difficulties implementing our award.

DATED IN TORONTO THIS 13th DAY OF JUNE, 2016

Felicity D. Briggs, Chair

“Kathryn Butler-Malette”
Kathryn Butler-Malette, Employer Nominee, “I concur”

“Joe Herbert”
Joe Herbert, Union Nominee, “I concur”