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’ central collective for the period October 11, 2011 to October 10, 2013

DATE AND LOCATION OF HEARING: January 24, 2013, Toronto, Ontario.

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

Employer
Robert Little, Legal Counsel
Chrissy Mathers, Barg. Committee
Paul Clarry, Barg. Committee - Chair
Lesma Bartley, Barg. Committee
Manson Locke, Barg. Committee
Philip Kotanidis, Barg. Committee
Robert Alldred-Hughes, Barg. Committee
Teresa Roberts, Barg. Committee
David McCoy, OHA
Stephen Green, OHA
Sadia Bekri, 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 renewal collective agreement dealing with central issues between the parties effective from October 11, 2011 to October 10, 2013. The employer is a group 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. The employer is represented by the Ontario Hospital Association which currently represents 155 public hospital corporations at over 225 sites throughout Ontario. The OHA currently has central collective agreements with SEIU, PAIRO, OPSEU, ONA and CUPE.

2. The parties met for negotiations for a total of eight days in September of 2011 and February of 2012. Following those negotiation dates the parties worked with mediator Kevin Burkett for several days of mediation in February of 2012. The parties were able to settle a significant number of nonmonetary issues. However they were not able to reach agreement on monetary items as the Participating Hospital’s mandate for bargaining was consistent with the government of Ontario’s 2010 policy directive statement, which called for 0% increases in compensation for a two-year period.
3. The outstanding issues in dispute are as follows:

*Union Issues* - (1) Wages; (2) Shift/Weekend Premiums (17.06 & 17.10); (3) Transportation Allowance (18.03); (4) Vacation Entitlement (21); (5) Insured Benefits (Paramed Services and Vision Care increases (22.01)); (6) Job Posting language (11.03); (7) Interview for Job Selection (new 11.xx); (8) RPN Professional Responsibility language (28);

*Employer Issues* - (9) Staff Planning Committee (10.01(b)); (10) Notice of Layoff (10.02(b)); (11) Severance and Retirement Options - Pay (10.03); (12) RN/RPN Ratio; (13) Insured Benefits, (New Drug Dispensing Fee Cap of $9.00 (22.01)); (14) Early Retirement - Benefits (increase in employee contributions (22.01)); and (15) Sick Leave Pay (24).

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 which it is required to consider under s. 9 of the HLDAA.

5. The Board orders that the renewal agreement will consist of the unchanged items from the collective agreement which expired on October 10, 2011, the items agreed by the parties themselves (included at Exhibit 2 of the Union’s Brief), 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 listed in paragraph 3 above which are not referred to in the award below reflect issues on which the board has decided to decline to order any change to the collective agreement.

ISSUE 1 – WAGES

UNION PROPOSAL

The union proposes a general across-the-board wage increase of 2% effective on October 11, 2011 and a further 2% increase effective on October 11, 2012. The union’s main arguments in support of its request for these two annual wage increases are the factors of replication and comparability with other comparable bargaining units in the hospital and health services sector. In particular it points to a long-standing pattern of at least 35 years of pattern bargaining between SEIU and CUPE bargaining units involved in central bargaining with the Participating Hospitals. It noted that the CUPE central agreement covers over 20,000 employees in 54 participating hospitals and CUPE and SEIU together have bargaining rights at 104 of the 155 hospital corporations in Ontario. It notes that all it seeks to do is achieve parity with the wage increases found in the CUPE central agreement which was negotiated in 2009 for a four-year period and provided for 2% annual increases in each of the four years of that agreement. It also argued that those increases were warranted when looking at the comparability and replication factors in
reference to several negotiated and awarded collective agreements for the same two year period between CUPE and OPSEU and individual stand-alone hospitals which don't bargain centrally. It's basic argument is that if one looks at all of these comparators for similar service and clerical units in the hospital sector there is almost total uniformity in terms of annual 2% wage increases for the 2011 and 2012 years that are at issue herein.

The one exception would be the group of approximately 16 hospitals that bargain centrally with the CAW represented bargaining units of service and clerical workers. The CAW represented units have very recently, in the weeks following the hearing in this matter, been the subject of two interest arbitration awards in which arbitrators have ordered 0% increases for both years of a two year agreement, one of which coincides roughly with the second year of the agreement that is at issue herein. (See Participating Western Group Hospitals and CAW (interest arbitration award dated January 24, 2013), and Participating Northern Group Hospitals and CAW (interest arbitration award dated February 1, 2013), both decisions of sole Arbitrator Peter Chauvin).

The union relied quite heavily on the decision of Arbitrator Burkett in his interest arbitration award to resolve the compensation issues between the same two parties for the years 2009 - 2010. In his November 4, 2010 decision, Arbitrator Burkett noted that since 1989 the employees represented by the SEIU and the employees represented by CUPE in central bargaining, who performed virtually identical functions in the hospital sector, had received identical compensation increases whether those were bargained by the parties or awarded by an arbitration board. At that time he rejected arguments from the employer that they should depart from the pattern of identical wage increases for the two major service and clerical unions in the
hospital sector on the basis of government pronouncements calling for 0% increases. Mr. Burkett found that failure to follow the CUPE pattern for wage increases would lead to quite an inequitable result that could undermine employee morale and complicate future bargaining between these parties. In short, Burkett refused to disrupt the pattern of lockstep compensation increases for employees represented by both CUPE and SEIU in bargaining with Participating Hospitals. Mr. Burkett made similar arguments in the same award for making an order restoring the historical relationship of parity between RPN rates for nurses represented by both CUPE and SEIU in central bargaining.

**EMPLOYER POSITION**

The employer was adamantly opposed to maintaining the pattern between CUPE and SEIU units involved in central bargaining with the Participating Hospitals. The arguments against maintaining the pattern were as follows. (1) The SEIU broke the pattern in 2009 when it refused to accept the same four-year deal for annual 2% increases as had been agreed to by CUPE. The same agreement in terms of compensation increases was offered by the employer to SEIU in 2009 and it was rejected. It was that rejection that led to the necessity to have interest arbitration between the two parties for a two-year agreement covering 2009 and 2010 (the Burkett award). (2) The economic climate has changed dramatically in the almost 30 months that have followed the Burkett award of 2010. The employer argued that the economy of Ontario has been in a persistent and long-term recession which has led to a worsening of the government's financial situation and the need for the entire government to hold the line in terms of compensation increases for employees in the public and quasi-public sectors. (3) There have been
numerous collective agreements, both negotiated and arbitrated, in the last two years in which compensation increases of 0% for a two year period have been agreed to or awarded in the public and quasi-public sector. In this respect the employer pointed to recent agreements and legislation involving teachers and service workers in the education sector, doctors represented by the Ontario Medical Association, central awards in 2011 rendered by boards of interest arbitration involving Participating Hospitals and ONA and OPSEU covering registered nurses and technical and professional employees, agreements between the Ontario government and employees in the Ontario Public Service represented either by AMAPCEO (Sept. 2012) or OPSEU (January 2013), and a two year agreement ending June 30, 2012, covering members of PAIRO (the Professional Association of Interns and Residents of Ontario – Sept, 2012). (4) There have been several awards and settlements involving SEIU bargaining units with single employers in the University or nursing home sector in which there has been 0% increases for either one or both of the years that are at issue herein. (5) Finally, the employer also pointed to the CAW bargaining unit awards, decided by Peter Chauvin, sitting as a sole arbitrator, that are referred to above and were released shortly after the hearing in this matter.

BOARD ORDER

The Board orders a general across-the-board wage increase of 2% effective on October 11, 2011 and a further 2% increase effective on October 11, 2012, as proposed by the union.

In awarding these increases the Board notes that these increases are supported by the factors of comparability and replication. In this regard it notes that these increases are normative for the occupational groups and time period covered by this agreement in the hospital sector.
The normative nature of these increases is reflected not only by the central CUPE agreement but also several individual hospital interest awards for service and clerical worker units covering the same time period. The recent CAW awards, which provide for 0% increases for the period covered by the second year of the agreement herein, would appear to be the outliers on this issue when one focusses on bargaining units with the same occupational groups as are covered by this award within the hospital sector. I would also note that the occupational groups covered by this award are among the lowest paid and most vulnerable of occupational groups working in the hospital sector.

The concerns expressed in the 2010 Burkett SEIU award about fairness and disruption of a long standing pattern of lockstep compensation increases between CUPE and SEIU central agreements for these groups of employees are also a significant factor supporting these general wage increases. The employees represented by CUPE in central bargaining at 54 hospitals is by far the largest comparator group in this occupational group. However those factors are somewhat lessened in their impact at this time due to two developments: (1) the decision by the SEIU to reject the pattern increases for four years offered by the employer in 2010; and (2) the changing economic climate, and recent interest arbitration awards and negotiated and legislated agreements in the broader public sector, affecting many professional employees subject to collective bargaining in the health and education sectors. The impact of these two developments is recognized in the denial of other union proposals for compensation increases in the areas of vacation, transportation allowance, and shift and weekend premiums. It is also recognized in the Board’s acceptance below of two of the employer’s proposals for cost containment.
ISSUE 5 - INSURED BENEFITS (Paramed Services and Vision Care Increases (22.01))

UNION PROPOSAL

The union proposed the following increases to paramedical services currently provided for under article 22.01 (b) of the collective agreement. It proposed that the annual maximums for the services of both a chiropractor and a physiotherapist should be increased from $300 to $350. In addition, the proposed that the current provision providing for a maximum of $250 every 24 months for vision care should be increased to $300 every 24 months.

EMPLOYER POSITION

The employer opposes the union’s proposal on the basis of the economic situation faced by the province and the funding constraints faced by the employer.

BOARD ORDER

The Board orders the increase from $250.00 every 24 months to $300.00 every 24 months for vision care as proposed by the union. This order is to take effect 30 days after the date of this award.

However, the Board orders no change to the current language concerning annual maximum amounts provided for chiropractors or physiotherapists.
ISSUE 8 - RPN Professional Responsibility language (Art. 28)

UNION PROPOSAL

The union proposed extensive and comprehensive new language to deal with RPN professional responsibility, professional development, student supervision, mentorship, registration renewal, education leave, whistle-blowing and ambulance escort issues. The union felt that such language was necessary to address the gap between the legislative framework that RPMs are governed by and the contents of the collective agreement and it proposed similar provisions in 2009. In his 2010 award, Arbitrator Burkett ordered the parties to engage in meaningful bargaining to attempt to address these issues and order them to form a joint committee to do so. The union asserted that much of the language found in this proposal was jointly developed by the joint committee but the parties were unable to agree on the final language because of some monetary issues that could be affected by the proposal. The union continues to maintain that there is a demonstrated need for such language because of the evolution of the nature of the work of RPNs and the increase in the scope of practice of RPNs over the course of the last 40 years.

EMPLOYER POSITION

The employer opposes the union’s proposal and in addition it proposes the deletion of the current language found in article 13.04 concerning measures which must be taken by the employer before it can attempt to make any change to the ratio of RNs to RPNs.
BOARD ORDER

*The Board orders* the parties to continue to address the issues of professional responsibility raised by the union's proposal through the mechanism of the joint committee as proposed by Arbitrator Burkett and his 2010 award. Specifically:

The parties should appoint a joint committee with three representatives from each side to review and make recommendations with respect to the collective agreement provisions that apply to or ought to apply to the RPN classification. The committee should commence meeting within 60 days of the date of this award and should report by October 1, 2013 to the bargaining teams constituted to conduct bargaining for the successor collective agreement. Where committee meetings are held during working hours, the union members of the committee shall not incur any loss of pay.

**ISSUE 13 - Insured Benefits, (New Drug Dispensing Fee Cap of $9.00 (22.01(b)))**

**EMPLOYER PROPOSAL**

The employer proposes the addition of a new paragraph to be added to article 22.01 (b) dealing with insured benefits as follows:

*The Extended Health Care Plan shall be amended to provide for a prescription drug dispensing fee cap of $9.00 per prescription.*

The employer submits that this is a cost containment measure that would save them approximately $250,000.00 per year.

**UNION POSITION**

The union is opposed to the addition of a cap on prescription drug dispensing fees, noting the employer’s own dispensing fees chart (Tab 16. P. 4) shows that many, if not most drug stores have a dispensing fee that is greater than $9.00.
BOARD ORDER

The Board orders the addition of the dispensing fee cap clause to Article 22.01 (b) as proposed by the employer. The cap will take effect 30 days after the date of this award.

ISSUE 15 - Sick Leave Pay (Art. 24.05).

EMPLOYER PROPOSAL

The employer proposes the deletion of the current article 24.05 and its replacement with the following:

No sick pay benefit is payable under HOODIP for the first two (2) days of absence for the sixth (6th) and subsequent period(s) of absence in the same fiscal year (April 1st through March 31st).

The employer submits that this is a cost containment measure that would save them approximately 1.1 million dollars. It notes that this amendment to sick leave pay obligations has been awarded by boards of interest arbitration in the central ONA and OPSEU awards in the last round and was also recently awarded by boards of interest arbitration for both a service unit (London Health Sciences Centre and CAW, Local 27 (McNamee) July 24/12) and a clerical unit (London Health Sciences Centre and COPE, Local 468 (Jesin) Aug. 27/12) at London Health Sciences Centre.

UNION POSITION

The union is opposed to this concession on the basis of it being inconsistent with the pattern established by the central CUPE agreement.
BOARD ORDER

The Board orders the amendment of article 24.05 in the manner proposed by the employer. This amendment shall only have prospective application from the date of this award, such that only absences which occur following the date of this award shall be counted in determining when a sixth or subsequent period of absence occurs for the current fiscal year.

The Board remains seized to deal with any issues arising from the implementation of this award.

Done at Windsor, Ontario, this 7th day of May, 2013

[Signature]
Brian Etherington, Chair

[Signature]
Harold Caley, Union Nominee

[Signature]
Michael Riddell, Employer Nominee
DISSENT OF UNION NOMINEE

With respect, I must provide the comments in this dissent of the Award of the Arbitrator.

The Board is mandated to take into account a number of criteria, including “the employer’s ability to pay in light of its fiscal situation”; “the economic situation in Ontario and in the municipality where the hospital is located” and “a comparison, as between the employees and other comparable employees”.

In this case, the Hospitals have not asserted an inability to pay the compensation package requested by the Union and offered no evidence of their fiscal situation. In light of this, the presumption must be that the Hospitals have the ability to pay and simply do not want to pay these employees who perform the work for the Hospitals.

Nor does this Award give appropriate weight to comparability.

The service employees in Hospitals perform a valuable service to society, a service that many persons in Ontario would not be anxious to perform; working in a Hospital is a call to public service and is more than just a job.

It is employees who are predominately female that perform the services in a Hospital and most earn hourly wages in the twenty dollar an hour range. We should not take these workers for granted nor should we take advantage of workers who do not have the same political clout as male employees in other areas of the public service.

Current interest arbitrations are driven by an alleged lack of government funding and we are all too aware of the current examples of waste and mismanagement by the Government and agencies of the Government.

For instance, the recent power plant cancellations come to mind where the government spent $275 million dollars to scrap the Mississauga Gas Plant based upon a “politically motivated” decision to assist in the re election of a candidate in the riding. The cost of the second plant cancellation, again for purely political purposes, is still to be determined and is expected to exceed $275 million dollars. The premier has admitted that moving the power plants was “politically motivated” to save seats for her party.

The above monies would go a long way to providing these Hospital service employees with decent terms and conditions of employment.
A recent article in the Toronto Star reports that an expense of ORNGE included a $275 dollar bottle of wine to entertain guests; Ontario residents do not pay taxes to satisfy the expensive tastes of ‘guests’; tax monies are sent to the Government in trust and every tax dollar should be treated as trust fund monies.

Residents of Ontario do not normally go to a Hospital out of choice; rather it is out of necessity. The service workers who provide care to the patients should be adequately compensated for their service to these patients; this Award falls short of the mark in this respect.
Dissent of Nominee For Participating Hospitals

I have reviewed the Award of the Chair, and while I agree with the decision to award a 2% wage increase effective October 11, 2011, I dissent from the decision to award a 2% wage increase effective October 11, 2012.

In the November 5, 2010 Interest Arbitration Award involving Participating Hospitals and SEIU, Arbitrator Burkett at page 3 of the Award indicated that:

... Prior to proceeding to conciliation both CUPE (August 28, 2009) and CAW (September 1, 2009) reached two-party settlements in their central negotiations covering identical classifications. Notwithstanding these settlements, which must reasonably be described as pattern setting, these parties were unable to reach an agreement ...

In two recent Interest Arbitration Awards involving sixteen Participating Hospitals and twenty-eight bargaining units represented by CAW, Arbitrator Chauvin awarded no wage increases for 2012 and for 2013. In his Award Arbitrator Chauvin applied the legislative criteria set out in HLDA and commented on the "... general economic realities of the time covered by the term of the collective agreement ...". Incredibly, the Chair at page 8 of the award in the instant case concludes that:
The recent CAW awards, which provide 0% increases for the period covered by the second year of the agreement herein and would appear to be the outliers on this issue when one focusses (sic) on bargaining units with the same occupational groups as are covered by this award within the hospital sector.

Arbitrator Burkett has recognized both CUPE and CAW as pattern setters. If the Chair in the instant case had properly applied the principle of replication, he should have concluded that the CAW Awards are more reflective of the current economic realities than a CUPE Agreement negotiated in August of 2009 and an Interest Arbitration Award with SEIU dated November 5, 2010. Accordingly the Chair should not have awarded a 2% wage increase effective October 11, 2012.

Dated at Toronto, Ontario this 13th day of March, 2013

“Michael Riddell”

Employer Nominee