

IN THE MATTER OF AN ARBITRATION

BETWEEN:

CAPITAL DISTRICT HEALTH AUTHORITY

("the Employer")

AND:

NOVA SCOTIA GOVERNMENT AND GENERAL EMPLOYEES UNION

("the Union")

IN THE MATTER OF:

RENEWAL COLLECTIVE AGREEMENT

BOARD OF ARBITRATION:

Kevin M. Burkett	- Chair
Brian Johnston	- Employer Nominee
Linda Power	- Union Nominee

APPEARANCES FOR EMPLOYER:

Eric Durnford	- Counsel
Krista Smith	- Counsel
Melda Brownell	- Sr. Advisor, Labour Relations
Kevin Hooper	- Sr. Manager, HR & LR
Heather Shields	- Legal Counsel, Labour Relations
Robert Dunn	- Director of Labour Relations and Salary Administration
Gordon MacLean	- Executive Director Public Service Commission
Rick Anderson	- Sr. Director, Health Sector Labour Relations, DHW
Karen MacRury-Sweet	- Director of Heart Health and Critical Care
Shawna Dunsworth	- Health Services Manager
Colin MacDonald	- Labour Relations Consultant, DHW
Dave Collins	- Manager, Labour Relations
Alexandra Smith	- Senior LR Consultant
Mary-Ellen Gurnham	- Chief Nursing Officer

APPEARANCES FOR UNION:

Raymond Larkin	- Counsel
David Roberts	- Counsel
Jillian Houlihan	- Counsel
Kelsey McLaren	- Counsel
Paolo Amati	
Robin MacLean	
Neil McNeil	
Rebecca Norris	
Sean Brenton	
Karin Harrison	
Karen Ferguson	
Andy Pedersen	

Hearing in this matter was held in Halifax, Nova Scotia on October 1, 2011.

We have been appointed by agreement of the parties to adjudicate the issues of term and salary as they exist between the parties in the negotiation of a renewal collective agreement to the collective agreement between them that expired October 31, 2009. There is no dispute with respect to our authority in this regard.

The Queen Elizabeth II Health Sciences Centre (QEII) was formed in 1996 through the merger of a number of then existing institutions and was expanded in 1998 with the opening of the Halifax Infirmary. It acts as a local hospital for the Halifax area and provides specialized, tertiary and quaternary care for patients drawn from across the Atlantic provinces. It is the largest teaching hospital east of Montreal, Quebec. The QEII plays a leading role in the delivery of specialized health care services in the Atlantic region, with a significant proportion (10%) of its patients transferred from other hospitals in the Atlantic region. It stands as the centrepiece of the Capital District Health Authority, the largest health authority in Nova Scotia. Arbitrator Kaplan, in an award between the Employer and the Union dated March 7, 2005, referred to the facility as "the largest, the leading and the most advanced health care institution in Atlantic Canada."

There are just over 2,500 nurses in the Union bargaining unit and about 90% of them work at the QEII. Bargaining unit nurses are assigned to all the specialized areas of the QEII with about 85% of the bargaining unit in the "staff nurse" classification. Eighty-three percent of the nurses in this bargaining unit are regular employees working on a full- or part-time basis. The remainder are casual employees.

The Capital District Health Authority (CDHA) was established by statute in 2001 as one of nine district health authorities (DHAs) in the province of Nova Scotia. It operates at 21 sites and runs eight acute care hospitals, including QEII. The Izaak Walton Killam Health Centre (IWK) is the only standalone acute care institution in Nova Scotia. The DHAs are funded by the Government of Nova Scotia and are accountable to the Department of Health and Wellness (DHW). The Employer has 11,369 unionized employees in five bargaining units, four of which are represented by this Union (NSGEU). The employees in three of these units provide direct care to patients: RNs represented by NSGEU; RNs represented by the Nova Scotia Nurses' Union (NSNU); and health care employees represented by NSGEU. This unit has 2,546 employees who are RNs working for the most part at one of the QEII's eight sites. The NSNU represents 730 employees of which 541 are RNs and 189 are licensed practical nurses (LPNs). These nurses work at six acute care community hospitals and one clinic run by the Employer. The NSGEU health care unit comprises 3,896 employees in 250 classifications, of which the largest is the LPN classification with 516 employees. The health care unit includes social workers, psychologists, pharmacists, nutritionists, occupational therapists, physiotherapists and laboratory technologists.

The issues that remain outstanding between the parties are wages and term. The respective positions of the parties are set out below.

List of Outstanding Issues

Union

1. Economic increase: 4% effective November 1, 2009
4% effective November 1, 2010
4% effective November 1, 2011
2. Term of agreement: November 1, 2009 to October 31, 2012

Employer

1. Economic increase: 1% effective November 1, 2009
1% effective November 1, 2010
2. Term of agreement: November 1, 2009 to October 31, 2011

This dispute has its genesis in the request by the NDP provincial government, elected in June 2009, for wage restraint in the public sector for the two-year period ending October 31, 2011. Specifically, the provincial government called for restraint in the form of a maximum 1% across-the-board wage increase in each of the two years. This is the only significant health care sector unit whose wage adjustment in this round has not already been determined. All the other bargaining units in the health care sector have settled for 1% and 1% wage increases for the period November 1, 2009 to October 31, 2011 under contracts with either two- or three-year terms ending on or about October 31, 2011. As the Employer emphasizes, the 1% and

1% annual increases were recommended by the various bargaining agents (CUPE, NSNU, CAW, IUOE, SEIU, CUPW, UFCW and this bargaining agent in respect of its other health care units) and accepted by the affected bargaining unit employees. Of particular importance are the settlements involving this Employer and the NSNU and this Employer and this Union (NSGEU) involving its health care unit. The NSNU collective agreement covering 541 RNs and 189 LPNs provided for 1% and 1% wage increases over the November 1, 2009 to October 31, 2011 term. The NSGEU health care unit collective agreement covering 3,896 employees, including a range of professional classifications, also provided for 1% and 1% wage increases over the same November 1, 2009 to October 31, 2011 term.

It is important to also understand that in both the broader acute care subsector and the long-term care subsector the 1% and 1% pattern has been applied. Further, the 1% and 1% pattern has been accepted within the broader public service.

It cannot be disputed that there exists a compelling pattern of health care and public sector wage restraint in the form of annual across-the-board wage increases of 1% for each of the two years ending October 31, 2011. Nor can it be disputed that this pattern is the result of a voluntary response to the provincial government's call for wage restraint for the two-year period ending October 31, 2011.

It is not surprising, given the foregoing, that the Employer is proposing that the public sector pattern be applied here in the form of annual across-the-board wage increases of 1% and 1% for the two-year term expiring October 31, 2011. However,

there exists a countervailing pattern drawn from the history of collective bargaining in respect of this bargaining unit at the QEII. The first collective agreement for this bargaining unit took effect on November 1, 1997. It resulted from a freely bargained agreement, concluded in March 1998, that made the NSGEU nurses the highest paid in Atlantic Canada and number four in the country. The parties were unable to reach agreement with respect to a successor collective agreement nor were the other acute health care bargaining units. For our purposes, it is sufficient to note that it was agreed that the outstanding issues in dispute would be put before an arbitrator under a final offer selection process. Arbitrator Susan Ashley chose the Union's final wage offer and whereas the salaries of nurses in Nova Scotia had fallen to ninth in Canada, her award restored the RNs to the position they had been relative to nurses in the rest of Canada, i.e. fourth. The parties voluntarily agreed in the next round (2003-2006) to submit to arbitration. Arbitrator Innis Christie was selected to chair the arbitration board. For our purposes, it is sufficient to record that the board ordered annual increases of 5.2%, 2.9% and 2.9% over the three-year agreement and in doing so refused to eliminate the designated unit premiums enjoyed by the QEII nurses as had been requested by the Employer. In awarding as he did, arbitrator Christie observed that, "Historically NSGEU settlements on behalf of nurses have led NSNU settlements, not the reverse" and, in maintaining the unit premiums, acknowledged that "we are, in effect, accepting the union's submissions that the bargaining units are different." Finally, in support of his award, arbitrator Christie stated: "Furthermore,

the increases we have awarded position the Registered Nurses in this bargaining unit appropriately at the forefront of wages paid by equivalent classifications in Atlantic Canada and in the middle of the Canadian pack." (emphasis added) The Christie award moved the NSGEU nurses to fourth best paid in the country in the first year of the agreement and maintained them at the sixth ranked level for the last two years.

The 2006-2009 collective agreement, the predecessor to the instant collective agreement, was freely negotiated. The parties agreed to increases totalling just under 11% over three years with a 2.1% increase effective April 1, 2009, breaking a public sector pattern for the term. The parties also agreed to a new step on the grid for nurses with 25 years' service worth 3.5%. In addition, the parties agreed on a 2% bonus for nurses who remained at work even though eligible to retire on an unreduced pension. This settlement maintained these nurses as the highest paid in Atlantic Canada and restored them to middle of the Canadian pack (fifth).

The Employer, in seeking to have the November 1, 2009 to October 31, 2011 Nova Scotia public sector 1% and 1% pattern applied, asks us to discount the "first in Atlantic Canada, middle of the Canadian pack" placement of these nurses as being more the result of happenstance than collective bargaining design. We reject this suggestion. These are sophisticated parties who, as they have done here, would have made extensive detailed submissions to both the Ashley and Christie boards of arbitration. The awards of these arbitrators did not result in placement of these nurses relative to those in other provinces by happenstance. Indeed, arbitrator Christie

described the resultant placement as "appropriate." Further, in voluntarily agreeing to the terms of the 2006-2009 collective agreement, these parties would have known full well that they were restoring the placement of these nurses as the salary leader in Atlantic Canada and in the "mid-pack" of the Canadian provinces. We are compelled to find that while there exists a Nova Scotia public sector pattern for the period November 1, 2009 to October 31, 2011, there also exists a pattern that has manifested itself in each and every collective agreement between these parties since the inception of QEII. This is the pattern that flows from the historical relationship between these nurses and their counterparts in the other provinces; a pattern designed to either respond to or avert recruitment or retention issues. These nurses have always been the highest paid in Atlantic Canada and in the middle of the Canadian pack.

In view of the foregoing, it is not surprising that the parties were unable to reach a two-party settlement. The Union focused upon the historical pattern while the Employer focused upon the recent Nova Scotia public sector pattern. Nor is it surprising that in advancing their respective positions, each party relied upon the application of the replication principle. The difficulty for this Board is that the replication principle can be as easily applied to the historical pattern as it can be to the Nova Scotia public sector pattern and yet each produces a markedly different result, both as to term and quantum. In the face of this dichotomy, we have decided that rather than fashion an award that replicates one of these competing patterns to the exclusion of the other, a better result would be achieved if we could fashion an award

that, to the extent reasonably possible, recognizes the validity of each of these patterns.

We start by accepting that for the two-year term November 1, 2009 to October 31, 2011 the die has been cast in the form of voluntary public sector wage restraint in the province of Nova Scotia. In effect, all other bargaining agents (including this bargaining agent in respect of other bargaining units and the NSNU in respect of other RNs) have voluntarily agreed to annual wage increases of 1% and 1%. In our view, these unions are to be commended for recognizing the need and accepting the Nova Scotia government's call for restraint. This award ought not cast into doubt the wisdom of all the other public sector bargaining agents in doing what they did. In the circumstances that prevail here, the historical pattern is trumped by the current Nova Scotia public sector pattern for the period November 1, 2009 to October 31, 2011 such that for this period, these nurses will be awarded the same 1% annual increases as have been accepted by all other public sector employees, including all other health care employees.

However, having said this, it must be remembered that these parties have always had three-year collective agreements and that the wage restraint pattern that constrains us in years one and two does not extend into what would be the third year of this agreement. It follows that over a three-year term recognition can be given to the historical placement of these nurses relative to their counterparts in Atlantic Canada and in the rest of Canada. While the Employer argues that we should not

award a three-year term because it would have the effect of allowing these nurses to lead the way in the next round, this argument must fail. Firstly, these parties have always had three-year collective agreements; secondly, the third year allows us to recognize the wage restraint pattern in years one and two while at the same time recognizing the historical pattern in year three – a pattern that for the third year trumps the Employer's two-year term proposal; thirdly, these nurses are part of a mobile profession whose wages have been and will continue to be influenced by national trends (as recognized in the historical pattern) and as such are easily distinguished from most other public sector employees; and fourthly, a grid restructure, as distinct from an across-the-board pay increase, can be utilized to address wage relativity in a way that is not generally applicable. It follows that we will be awarding a three-year term and that, within reasonable limits, we will recognize the historical pattern in the third year.

Before proceeding, some comment is warranted with respect to the historical salary pattern relative to other provinces. While these nurses have always been first in Atlantic Canada and mid-range of the Canadian pack, the placement of the other provinces has not been static. For example, in 1997, Alberta nurses were ranked seventh in hourly wage but in 2010 were ranked first; in 1999, Saskatchewan nurses ranked seventh in hourly wage but in 2010 were ranked second; from 1997 through 2006, Ontario nurses were ranked first in hourly wage but in 2010 were ranked third; in 1997, Quebec nurses were ranked third in hourly wage but in 2010 were ranked

tenth; and in 1997, Newfoundland nurses were ranked tenth in hourly wage but were ranked fifth in 2010. This movement demonstrates that, over time and within limits, the hourly wage paid to a nurse in one province relative to the hourly wage paid to the nurses in other provinces is reflective of the state of the various provincial economies at given points in time. In particular, these movements appear to reflect significant increases in natural resource revenue (Alberta, Saskatchewan and Newfoundland) or declines in manufacturing (Quebec, Ontario) or some combination. For our purposes, it is important to recognize that at this point in time the state of the Nova Scotia economy (a "have-not" province) stands in stark contrast to the state of the Newfoundland economy (a "have" province buoyed by oil revenue that contributes to transfer payments). A comparison of GDP growth from 2002 as between Newfoundland and Nova Scotia underscores the dichotomy between these two provincial economies.

The hourly wage paid to a Newfoundland nurse was increased by about 12.5% effective from November 1, 2009 such that the hourly rate will rise from \$33.87/hour (October 31, 2009 – seventh in Canada) to \$38.10/hour (November 1, 2011). Given that the provincial restraint pattern of 1% annual increases must apply for the period November 1, 2009 to October 31, 2011, we would have to award a further increase of almost 10% for the period November 1, 2011 to October 31, 2012 to restore these nurses to their first place ranking within Atlantic Canada. While we are prepared to restore these nurses to the middle of the Canadian pack, we are not prepared at this

time, when the Nova Scotia economy is uncertain at best, to make a third year award of the magnitude necessary to surpass the November 2011 Newfoundland hourly rate – a rate that is reflective of a flourishing provincial economy. At this point in time, the hourly wage paid to a nurse in Newfoundland must be considered to be anomalous with the longer-term relativity between the hourly wage paid to a nurse in Newfoundland and that paid to a nurse in Nova Scotia left to be determined in future rounds of bargaining.

Having regard to all of the foregoing, we hereby award as follows.

A W A R D

The parties are hereby directed to enter into a renewal collective agreement for the term November 1, 2009 to October 31, 2012 that contains all the terms and conditions of the predecessor collective agreement save and except that it is amended to incorporate:

1. All matters agreed between the parties prior to the date hereof.

2. Across-the-board hourly wage increases as follows:

Effective November 1, 2009 1%

Effective November 1, 2010 1%

3. A grid adjustment effective November 1, 2011 as follows: The bottom step of each pay grid is to be removed and a new step inserted at the top of each pay grid with a differential of 3.5% between the top two steps of each pay grid exclusive of the 25 year rate. The 25 year rate is to be maintained at 3.5% above the top step of each pay grid. For purposes of clarity the differential between step 5 and step 6 of the adjusted grid for the staff nurse is to be 3.5% and the differential between step 6 and the 25 year rate is to be maintained at 3.5%.

Each nurse is to be placed at the same step on the adjusted grid as she/he was on the prior grid.

4. A further across-the-board increase as follows:

Effective May 1, 2012 1.6%

We remain seized until such time as the parties enter into a formal collective agreement.

Dated this 31st day of October, 2011 in the City of Toronto, Ontario.

Kevin Burkett

Kevin Burkett (Chair)

Partial Dissent Attached

“Brian Johnston”

Brian Johnston (Employer Nominee)

I Concur

“Linda Power”

Linda Power (Union Nominee)