



Members guide to the CUPE Central Hospital Agreement language

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ABOUT THIS GUIDE

The purpose of this Guide is not to answer every question which may arise in interpreting provisions of the Combined Full-time Part-time Collective Agreement. Such a task would be next to impossible to complete. Instead, the Guide is designed to give Local Union Officers and Stewards a description and an understanding of the numerous issues dealt with by the collective agreement, a 'foothold' on the interpretation of its provisions, and most importantly, an outline of some of the issues that will arise in the application of the agreement.

Second, this Guide is to be read in conjunction with other materials. In particular, the *CUPE Members' Guide to HOODIP*, the *CUPE/OCHU Guide to Insured Benefits*, the *OCHU/CUPE Pension Guide* and the *Job Security Guide* are all necessary materials to understand many of the benefits set out in the collective agreement. Their contents have not been repeated here, and they should be used as companion documents.

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ARTICLE 1—PREAMBLE

The Preamble to a collective agreement does not create any substantive rights. In other words, it does not confer any rights upon either the employer, the union or employees, that are not set out elsewhere in the collective agreement.

ARTICLE 2—DEFINITIONS

Article 2.01 sets out the conditions under which a hospital may hire temporary employees. Because the consequences to an employee who is designated as temporary are significant, in that the termination of their employment does not give rise to a layoff, nor a termination for cause, and they will thus have no access to the displacement (bumping) provisions of Article 9, it is essential that the strict conditions of Article 2.01 have been met.

Most importantly, the purpose of the temporary employment must fall within the purposes listed in the article.¹ These are:

- Replacing an employee on WSIB, LTD, sick leave
- Replacing an employee on an approved leave of absence (e.g. pregnancy/parental leave)
- To perform a special, non-recurring task.

A special, non-recurring task is not the usual, continuing work of the hospital. It is a unique, 'one-off' task.

An employee who does not fit this description is a regular employee, not a temporary one.

A temporary employee, as well as the union, is entitled to be advised by the hospital of the circumstances giving rise to the temporary employment, and a dispute about whether the conditions of temporary employment have been properly met may be the subject of a grievance.

A temporary employee is entitled to apply as an internal candidate for regular positions posted under the collective agreement, and is credited with seniority once in such a position, provided the temporary employee has completed the probation period. However, temporary employees will normally be released at the end of their period of temporary employment without recourse to the grievance procedure, and without the exercise of any seniority rights.

In the case of a temporary employee replacing an employee on leave whose leave extends beyond six months, the hospital can unilaterally extend the period of temporary employment to up to twelve months if the leave extends that far. The period of temporary employment can also be extended by mutual agreement of the employee, union and hospital for no more than an additional six months beyond the initial six-month period.

It is important to appreciate the distinction between temporary employees and temporary positions. It may well be that the job posting provision at a hospital will require the hospital to post temporary positions so employees can apply. A regular employee who obtains a temporary position does not become a temporary employee.

Article 2.02 provides a definition of Part Time Commitment. Where a casual or part-time employee wishes to make a commitment to work regular part-time hours, the hospital cannot use casual employees for the shifts covered by that commitment, solely for the purpose of using casual rather than regular part-time employees. The nature of the commitment (e.g. the shift rotation of a part-time position, number of weekends worked etc.) is typically dealt with in the Local Issues Appendix.

Articles 2.03 and 2.04 continue any pre-existing definitions of regular part-time and casual employees. These provisions are not standardized throughout the hospitals, and appear as 2.03 and 2.04 only where such provisions already existed in the hospital's expired collective agreement.

Where a hospital regularly schedules an employee to work more than the threshold for full-time employment, the position may be viewed as a full-time position.²

ARTICLE 3—NO DISCRIMINATION

At one point in time, there was a debate among arbitrators about whether they had jurisdiction to apply the *Human Rights Code*. That debate has ended in that now the *Labour Relations Act* specifically confers that ability on arbitrators.

Whether or not a collective agreement makes mention of the *Human Rights Code*, an arbitrator has jurisdiction to enforce that legislation, and to award damages for breaches of the *Code*.

Frequently issues will arise concerning a hospital's treatment of employees who may have a disability, for example, and a hospital is at all times required to conform to the requirements of the *Code*.

The final sentence of 3.01 requires the hospital to provide notice to the union in the event that a hospital imposes a sanction against an employee for innocent absenteeism. The purpose of the sentence is to require notice to the union so that the union may take action; it is *not* to imply that the hospital is entitled to take these various actions against an employee for innocent absenteeism.

Article 3.02 was first into the 2013-2017 collective agreement. Its main purpose is to govern attendance management programs at various hospitals, by excluding certain types of absences from an employee's initial placement progression in an attendance management plan. These include absences resulting from a "medically established, serious chronic condition." There is no brightline test for what constitutes a "serious chronic condition." Guidance may be found in the Ontario *Human Rights Code*, which adopts a broad definition of disability in its policy and guidelines on disability. It defines disability in the following way:

"because of disability" means for the reason that the person has or has had, or is believed to have or have had,

1. any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
2. a condition of mental impairment or a developmental disability,
3. a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
4. a mental disorder, or
5. an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*

The requirement that the chronic condition be "medically established" does not necessarily preclude the discovery and medical certification of a disability subsequently. Often disabilities are not uncovered until considerable time has passed. Both the collective agreement provision, and the caselaw allow for circumstances where a disability is later diagnosed.³

Also excluded are days of absence resulting from: ongoing medical treatment (an example would be dialysis); surgery; WSIA compensated injuries; a catastrophic event, and; communicable disease where the Hospital's public health protocol for communicable diseases is in effect. Further, days of absence are not counted where these arise from a leave pursuant to the ESA or Article 12.

ARTICLES 4, 5—UNION RESPONSIBILITIES AND SECURITY

Article 4 prohibits unlawful strikes and lockouts as these terms are defined in the Ontario *Labour Relations Act*. Put simply, a concerted effort to refuse work will be considered a strike—including for example, a concerted overtime refusal, or work to rule. Where the union has supported such action, it may be held liable to pay damages to the employer.

Article 5 requires that the hospital provide a list to the union monthly of hirings, layoffs, recalls and terminations within the bargaining unit, as well as vacated positions, unless the payroll system does not provide this information. It is unlikely that a modern payroll system would not support the provision of this information.

It further provides that an employee is to be given an opportunity for a 15-minute meeting with a union representative during the employee's initial orientation process, held either individually or in a group with other new hires.

Finally, the article prohibits a hospital from making any agreement with an employee which conflicts with the collective agreement.

ARTICLE 6—UNION REPRESENTATION AND COMMITTEES

Article 6.01 prohibits union activities (including holding union meetings) on hospital premises or on hospital time without prior hospital approval, which will not be unreasonably withheld. In other words, the union is entitled to request use of hospital premises to hold meetings (in advance), and the hospital must not unreasonably withhold such approval.

The Labour-Management Committee established at **Article 6.02** is intended to discuss matters other than grievances or collective bargaining. Its purpose is to provide a dialogue between the union and hospital on any matter that one or both parties consider is necessary to discuss, other than the two areas identified above. Either side may request such a meeting, and an agenda should accompany the request. A meeting held during a union representative's regular working hours will not result in loss of regular pay. The Labour-Management Committee is not intended substitute for the grievance procedure where a breach of the collective agreement has occurred. It does not replace the grievance procedure.

Articles 6.03 and 6.04 deal with negotiating committees, at the local and central level, respectively. The local issues negotiating committee is provided time off with regular straight-time pay for committee members, and the number of paid committee members is to be found in the Local Issues Appendix to the collective agreement. Pay for these members continues at any meeting up to, but not including, the Local Issues arbitration hearing, and includes conciliation and any later mediation meeting which may follow conciliation but precede arbitration.

Leave without pay can also be granted for any committee member's shift occurring within ten hours of a negotiation session with the hospital, whether the shift commences before or after the negotiating session. Such leave needs to be requested either by or on behalf of the employee, and is not deducted from the union leave 'cap', if any, found in the local issues portion of the collective agreement.

Article 6.04 provides that employees selected for the central bargaining committee will be paid for two days of preparation time, as well as the days for central bargaining meetings, at their regular straight time rate for lost hours. Eight employees from hospitals (but only one per hospital) are eligible to be compensated under this section, and these are *in addition* to employees whose compensation is set out elsewhere in the collective agreement (e.g. article 12.03). Again, payment ends at the point of any central interest arbitration hearings, at which unpaid time off must be granted.

Article 6.05 concerns stewards. An employee must have completed their probation period in order to be recognized as

a steward by the hospital. The number of stewards and their areas may be set out in the Local Issues appendix. Stewards do not suffer loss of pay during regular working hours for the time spent in the performance of their duties.

The grievance committee established at **article 6.06** includes the Chief Steward and employees to a maximum number set out in the Local Issues Appendix, and who have completed their probation. The committee is paid for time spent during regular working hours for meetings held with the hospital.

ARTICLE 7—GRIEVANCE AND ARBITRATION PROCEDURE

The grievance procedure exists to deal with complaints that the hospital has breached the collective agreement, or where there is a dispute about the administration or application of the collective agreement. In the latter case, it is not necessary for a breach to have occurred, only that the parties have different views as to how the collective agreement applies to a particular situation, or ought to be administered.

The procedure contains time-limits which are *mandatory*—meaning that a grievance can be dismissed, subject to the considerations below, when it is not filed or moved to the next stage of the grievance and arbitration procedure in accordance with the time limits set out in article 7. An arbitration board has jurisdiction arising from the *Labour Relations Act* (currently section 48.16) to extend time limits *in the grievance procedure* where a breach of the time limits set out in the collective agreement has occurred. The board will consider whether there are reasonable grounds for the extension and whether there is prejudice to the other side in doing so. Some of the factors to be considered are the nature of the grievance, the length of the delay and the reasons for the delay. The courts have held that an arbitrator does not have jurisdiction to extend time limits *in the arbitration procedure* (as opposed to the grievance procedure).⁴ Because under this collective agreement the referral to arbitration stage is in the same article as the grievance procedure, and the title to the article indicates that they constitute a single procedure. It used to be considered arguable that under this collective agreement, an arbitrator has jurisdiction to extend the time limit for referral to arbitration where the time limit has been breached.⁵ However, more recent caselaw decided under identical collec-

tive agreement language rejects this argument, finding that the referral to arbitration should not be viewed as a step in the grievance procedure.⁶ It is important that both the steps in the grievance procedure as well as the referral to arbitration be on time in order to avoid disputes at arbitration.

Article 7 does not set out the *content* of the grievance. While some collective agreements will require that the grievance identify the articles in the collective agreement that the union alleges to have been breached, this one does not, and thus identifying specific articles on the grievance form may be unnecessary, but is nonetheless advisable to avoid an objection that the basis for the grievance is unclear. It is also standard for a union to not only cite the specific articles that it believes to be engaged, but also “all other applicable provisions of the collective agreement, statutes, and regulations,” or something to that effect. The Management Rights clause of a collective agreement may be cited in the grievance, but is typically not the sole basis of a grievance. The grievance should also set out the event or circumstance that the union alleges constitutes a grievance—e.g. the termination of an employee, or an incorrect hospital interpretation concerning an issue covered by the agreement.

Article 7 allows for three different kind of grievances.

Article 7.03 provides for individual grievances. In an individual grievance, the employee, who is entitled to union representation throughout the process, must first discuss the complaint with their immediate supervisor within nine calendar days after the circumstances giving rise to it have occurred or ought reasonably have come to the employee’s attention. Failing settlement within nine calendar days, it shall then be taken up as a grievance as follows:

1. Step 1: the employee may submit a written grievance, following which the Union and the Hospital may meet to discuss the grievance. The Hospital must deliver its decision within nine calendar days following the day on which the grievance was presented to it.
2. Step 2: Within 9 calendar days following the decision in Step one, the grievance may be submitted in writing to the Hospital. A meeting will then be held between the Hospital and the Grievance Committee within nine calendar days of the submission of the grievance (unless extended by agreement

of the parties). The Hospital's decision shall be delivered within nine calendar days of the meeting.

Article 7.04 provides for policy grievances, which may be initiated at Step 2 within 14 days following the circumstances giving rise to the complaint. While a policy grievance may not be filed in order to avoid the time limits applicable to an individual grievance, a policy grievance may be filed along with an individual grievance where the policy grievance seeks relief for the bargaining unit as a whole.⁷ As well, individual relief is available in a policy grievance,⁸ and a policy grievance is not rendered moot just because the affected employee retired after the grievance was filed.⁹

Article 7.05 provides for group grievances, which arise where a number of employees have identical grievances and each employee would be entitled to grieve separately. These may be initiated at Step 2 within 14 calendar days after the circumstances giving rise to the grievance have occurred or ought reasonably have come to the attention of the employee(s).

Articles 7.02 and 7.06 make provisions in respect of discipline. Under **Article 7.02**, an employee has the right to the presence of a union representative on request, whenever formal discipline is imposed. Where the discipline is a suspension or discharge, the employee is notified of this right in advance.

The purpose of union representation at the stage of formal discipline is multifold, and include:

- to represent the employee to the hospital, with the possibility of causing the hospital to change its decision
- to provide advice to the employee (for example to tell the truth when interviewed)
- to witness what transpires.

Because there is a potential to affect the hospital's ultimate decision, arbitrators have frequently held that any discipline imposed where an employee has been denied the opportunity to arrange union representation will be declared null and void.¹⁰

Also, the union is to be notified in writing of all suspensions and discharges.

Under **Article 7.06**, the discharge (but not discipline) of a probationary employee is a matter excluded from the grievance procedure. In other words, although the hospital must still provide for union representation and notify the union in writing of such probationary discharge, the hospital need not defend its decision to discharge a probationary employee in the grievance and arbitration procedure. If however, the discharge of the probationary employee is in arbitrary, discriminatory or in bad faith, a grievance may be filed and the matter is arbitrable. This would include situations where the probationary employee is discharged on the basis of prohibited grounds (e.g. disability, sex, pregnancy, race, etc.)

ARTICLE 8—ACCESS TO FILES

Pursuant to **Article 8.01**, an employee is able to access their personnel file for the purpose of reviewing evaluations or formal disciplinary notations, and is entitled to request copies of evaluations. An arbitrator has jurisdiction to order a hospital to produce a copy of the entire file where it is arguably relevant to the merits of a grievance at arbitration. In order for the union to gain access to a personnel file without an arbitrator's order, a hospital may require that the employee's written consent be obtained.

Under **Article 8.02**, a disciplinary sanction is removed from the employee's record 18 months after the discipline has been imposed, provided any discipline-free 12-month period has elapsed during the 18-month period. The discipline-free period does not have to be the final 12-month period of the 18 months.¹¹ The hospital may rely on the employee's record as it existed on the date of the subsequent incident, not the date of the discipline for the subsequent incident (which is necessarily later).¹² A hospital cannot consider any discipline which has expired and been removed, when determining the penalty to be imposed in a later disciplinary action.

The 18-month period is extended by a leave of absence in excess of 10 days. At the time of writing there are no arbitral decisions on whether the 18-month period is extended by the entire period of the leave of absence, or more sensibly by the portion of the leave which is in excess of 10 days, and the union should take the position that it is only extended by that portion of the leave in excess of 10 days.

Moreover, a leave of absence for the purpose of this provision should not include a pregnancy or parental leave, or any leave related to a disability, in order to conform to the requirements of the *Human Rights Code*.

The question has arisen of whether the actual physical document must be removed from the employee's file, or whether instead the document is allowed to remain but the employer is unable to rely upon it. The arbitrator ruled that the physical document did not need to be actually removed from the employee file, and that the purpose of the clause was satisfied if the employer could not rely upon the disciplinary sanction.¹³

ARTICLE 9—SENIORITY

Arbitrators regard seniority as the most important 'asset' that a collective agreement confers upon employees. Generally speaking, where a dispute exists in relation to the interpretation of the seniority provisions of a collective agreement, the provisions will be strictly interpreted and an ambiguity will be resolved in a fashion which enhances seniority rights.

This collective agreement contains two concepts related to an employee's length of employment at the hospital—*seniority* and *service*. Seniority is used to affect an employee's access to employment, for example to avoid layoff or to receive preference in a job posting. Service on the other hand, is used to affect elements of compensation—for example wage increments, HOODIP entitlement, and vacation.

Article 9.01 establishes the probationary period. A new employee is on probation for 45 working days, or 337.5 hours for employees working shifts of other than 7.5 hours. Seniority is credited at the end of the period. The 45 working day/337.5 hour requirement must be completed with a 12 calendar month period, meaning that a casual employee for example, who works infrequently, may have difficulty attaining the 45 day/337.5 hour requirement

Article 9.02 defines seniority. Seniority for full-time employees is measured by the length of time within the bargaining unit since the last date of hire, subject to articles 9.04 and 9.06.

For part-time and casual employees, seniority is measured on an hourly basis, with 1725 hours equating to a year of service.

In a twelve-month period (which is agreed to at the local level) a part-time or casual employee can only accumulate one year of service.

Article 9.03, “Loss of Seniority”, is an ‘administrative termination’ provision. It operates as an exception to the just cause provisions for discharge. Thus, an employee who is deemed terminated under Article 9.03 cannot be reinstated by an arbitrator on the basis of factors such as prior good service to the employer.

In the case of discharge for just cause, there is a reverse onus on the employer to establish the facts of the discharge. In an administrative termination, some arbitrators have held that the evidentiary onus is on the employee to demonstrate that the employer has violated the provision.

The reasons for which an employee can be ‘deemed terminated’ are set out in subclauses (a) to (f).

With respect to (a), i.e. the employee “resigns,” an employee who resigns in a burst of anger or without having made a subjective decision to resign may be found by an arbitrator to have not formed a sufficient intention to resign and may be reinstated.

In (d), it is important to note that it is not the employer in the final instance that decides whether a reason is satisfactory. The clause does not require that an employee have a ‘reason satisfactory to the Hospital’ but rather, a “satisfactory reason” which is to be provided to the Hospital. Still, it is likely that the reason must be more than subjectively satisfactory to the employee, but rather objectively satisfactory to an arbitrator.

Some arbitrators have found that where there is any uncertainty in interpreting an administrative termination clause, the provision will be interpreted against the employer because of the drastic consequences for an employee of such a provision.¹⁴

In (f), if there were to be a dispute about whether the seven (7) day period is measured from the date of a registered letter or its receipt by the employee, the latter would likely be the position supported by the arbitrator.

Article 9.04, “Effect of Absence”, has a general purpose of limiting the employer’s benefit liability when an employee is absent for more than 30 days on an unpaid leave of absence.

The provision notes in the introduction that it is subject to the other terms of the collective agreement. Thus, for example, an employee on pregnancy or parental leave, which is normally considered an unpaid leave of absence despite the top-up from the employer, will not be subject to the provisions of 9.04 as these matters are dealt with specifically in article 12.

Only full-time employees are affected by Articles (a), (b) and (c).

Under **Article 9.04 (a)**, a full-time employee who is absent on an unpaid leave of absence of 30 continuous days or less, or a full-time employee on a paid leave of absence of any duration, continues to accumulate both seniority and service.

At the same time, **Article 9.04(b)** operates to suspend the accumulation of service for the purpose of salary increment, vacation, sick leave or any other benefits when an employee is absent for more than 30 continuous calendar days.¹⁵ However, employees whose absence is caused by a disability for which WSIB benefits or LTD are payable, continue to accumulate service for a period of 15 weeks.

Payment of the premiums of health and welfare benefits become the employee’s responsibility under this provision after 30 days unpaid absence, except that the employer will continue to pay its share of the premiums for up to 30 months where the employee is absent on WSIB or sick leave (including LTD and EI).

In addition, the accrual of seniority is suspended after 30 days absence on an unpaid leave. However, where the absence is due to a disability which results in WSIB benefits, LTD benefits, or sick leave (paid or unpaid), seniority continues to accrue for the entirety of the period of that leave. If seniority were not to accrue, a breach of the *Human Rights Code* would occur.¹⁶

Similarly, part-time employees continue to accrue seniority for the duration of any absence due to a disability resulting in WSIB benefits. Although the collective agreement does not say this, any part-time employee whose absence was due to a disability, notwithstanding there is no sick leave payable to part-time em-

ployees, should also accrue seniority or a breach of the *Human Rights Code* would occur.¹⁷

ARTICLE 9.05—JOB POSTING

The job posting provision is one of the most important provisions in the collective agreement. Its purpose is to ensure a method of job assignment that permits employees to utilize their seniority in claiming positions covered by the collective agreement, while at the same time allowing the hospital to staff positions with qualified applicants able to perform the duties of positions that become available.

Subject to Article 9.05(g), which permits applicants from members of other CUPE bargaining units at the hospital, the job posting provision is intended to benefit, and is limited in its application to, members of the bargaining unit. It is not a procedure for soliciting or accepting applications for positions. Only members of the bargaining unit, subject to 9.05(g) are entitled to apply and be considered for positions under this article.

Thus, for example, an applicant under Article 9.05 from the bargaining unit who has no seniority, for example a probationary employee, has an absolute claim to any posted position for which the employee meets the requirements of 9.05(d), over any person who is not a member of the bargaining unit, and must be awarded the position in advance of a non-bargaining unit person.

Article 9.05(a) sets out the mandatory posting period of seven calendar days. Applications must be made within that period. Some arbitrators have permitted late applications from employees absent on vacation during the currency of the posting period.

Article 9.05(b) sets out the information to be contained on the posting, which includes qualifications, classifications, rate of pay, department and shift.

The provision is important in that it has been held by arbitrators to determine the ‘constituent elements’ of a position. It has been held that the Hospital’s obligation to stipulate the “shift” on the job posting requires the hospital to specify the actual shift to be worked, and thus it is a breach of Article 9.05 for a

hospital to identify the shift as “day/evening/night” or “days/evenings/weekends” if the actual is known.¹⁸

At the same time, Article 9.05 (b) does not require the hospital to stipulate a position’s location. Thus, arbitrators have found that a hospital has no obligation to consider the application of an employee within the same classification for a position which the employee believed had a desirable *location*, because the hospital need not post any location on the posting, and is free to assign work to the employees within that classification.¹⁹ A different result occurs, if the posting information required by a collective agreement includes the location of the position.²⁰

Put another way, employees under this collective agreement have a right to apply for a position within the same classification where this constitutes a *transfer*. However, where there is nothing in the collective agreement which distinguishes the position from the one which the employee already holds, then arbitrators have found that an employer is simply free to assign duties within that classification.

Article 9.05(c) creates a shorter posting periods for subsequent vacancies that arise from the positions of successful applicant becoming vacant. The applications for such subsequent vacancies must be in writing. Unlike the original posting period, the three-day period for posting subsequent vacancies does not include Saturdays, Sundays, or paid holidays listed in Article 16.

Article 9.05(d) creates what is referred to as a ‘sufficient ability’ threshold for an applicant to a posting. In order to claim a position on the basis of seniority, it is not necessary that an employee be the ‘best’ applicant in terms of qualifications, skill or ability. Instead the senior applicant ‘able to meet the normal requirements of the job’ is to be awarded the position.

The phrase ‘normal requirements of the job’ embraces two concepts. One is that the job has ‘normal requirements’. These may be in the form of educational or experiential requirements, or expressed as various capabilities. It also implies that there may be ‘abnormal requirements’ of the job which may perhaps be time-limited, ‘one-off’ requirements related to a specific project and are not considerations on which selection should be based.

The question of whether a qualification for a position is proper or inflated has been the subject of considerable arbitral juris-

prudence. Arbitrators have given hospitals considerable leeway in imposing experiential requirements on positions, but these requirements may not be applied in a manner that is arbitrary, discriminatory or in bad faith.²¹ Another qualification that hospitals often try to impose is a clean record of attendance or discipline. While not prohibited *per se*, it has been held that employers cannot treat a negative record of attendance or discipline as an automatic disqualifier in a job competition, but a factor to be considered along with the circumstances of the record, human rights legislation and collective agreement requirements such as the attendance management clause.²²

Finally, in terms of remedy, where a hospital fails to select a senior qualified applicant under a 'sufficient ability' provision such as this one, the proper remedy is to award the position to the senior qualified applicant, not to remit the issue back to the employer to reconsider the applicants.

Article 9.05(e) interacts with article 9.08(A)(b), the reassignment provision and article 5.02 which requires notification to the union. In order to prevent the accumulation of vacant positions over a period of time which would be used to reassign large numbers of employees at a single time, while avoiding posting obligations, the central parties negotiated a provision which requires vacancies to be posted within 30 calendar days of their occurrence. The only permitted exception is where the hospital gives notice to the union of elimination of the position pursuant to 9.08(A)(a).

Article 9.05(f) requires the hospital to post the name of the successful applicant on the bulletin board for seven days, in order that the union and any potential grievor will be aware of the outcome of the posting.

Article 9.05(g), referenced earlier, permits employees in a different CUPE bargaining unit at the hospital to apply for posted vacancies under the agreement within which the vacancy arose. Any such applicants must be considered *after* all applications for the position from the bargaining unit in which the position arose have been rejected, and must be considered *before* the hospital can consider any external applications.

Article 9.05(h) provides what is referred to as a 'trial' or 'familiarization' period. It is not a training period. An employee must be qualified for the posted position in order to be placed in the

trial period. The purpose of the period is to permit both the hospital and the employee to confirm that they were correct in their assessment—the hospital’s assessment that the employee was qualified and the employee’s assessment that the position is a desirable one.

The employee is entitled to determine unilaterally during the trial period that he or she does not wish to remain in the position. In such circumstance, the employee is permitted to return to their previous position. The employee need not give reasons for this decision.

The hospital may determine that an employee cannot satisfactorily perform the job anytime during the trial period. It need not wait until the conclusion of the 30-day period. Although each circumstance will depend upon the merits of that decision, the hospital must permit employees sufficient opportunity to familiarize themselves with the position. Normally, given that the employee has already been considered ‘qualified’ by the hospital, there will need to be some evidence emerging from job performance during the trial period which establishes that the employee was in fact not qualified. Such an employee is to be returned to their previous position.

The hospital is entitled to temporarily fill a position until the trial period is completed when it has been vacated by an employee either as a result of the employee’s or the hospital’s decision.

Article 9.05(i) obligates the hospital to provide to the union, and to post, a list of vacancies filled under article 9.05 in the preceding month, and to advise of the names of the successful applicants.

Finally, the preamble to article 9.05 allows certain types of pre-existing (i.e. pre-central bargaining) provisions to continue. These are:

- Provisions relating to the posting of temporary vacancies;
- Provisions relating to non-bargaining unit applications (subject to articles 9.05(d) or (g));
- Outside advertising, and;
- Criteria for selection (subject to selection criteria for promotions and transfers as covered by article 9.05(d)).

Article 9.06 sets out a series of seniority rules for employees who are transferred outside of the bargaining unit. These rules are summarized below:

1. An employee may be transferred outside the bargaining unit with the employee's consent.
2. Employees may be transferred outside the bargaining unit without their consent, provided that the period of transfer does not exceed six months. The employee and hospital may mutually agree to extend the period a further six months. While the employee is outside the bargaining unit, they remain a member of the bargaining unit.
3. Employees who return to the bargaining unit within 9 months of the date of transfer accumulate seniority for the period they are outside the bargaining unit.
4. Employees who return to the bargaining unit during the period from 12 months to 24 months from the date of transfer, are not credited with seniority for *any* of the period spent outside the bargaining unit.
5. Employees not returned to the bargaining unit within 24 months from the date of transfer forfeit all bargaining unit seniority, and are henceforth without any seniority rights with which to claim any position in the bargaining unit. Such person cannot be 'returned' to a vacancy in the bargaining unit except where the hospital is entitled to fill a position with an external applicant.

ARTICLE 9.07(A)—TRANSFER OF SENIORITY AND SERVICE

This provision sets out the conditions for transfer of service and seniority for full and part-time employees who experience a change in status, either as a result of layoff or job posting.

For the purpose of *service* as it affects vacation entitlement, HOODIP, insured benefits, and wage progression, part-time employees will be credited with service on the basis of 1725 hours equals one year on change of status to full-time. The same calculation is used for calculating the full-time *seniority* of such part-time employees.

Full-time employees whose status changes to part-time, are credited with all of their accumulated seniority and service when their status changes to part-time.

The provision also states that employees will be placed on a 30-day trial period, however this should be read restrictively and in conjunction with article 9.05. In other words, it should be read only in the event an employee's status change results for a job posting pursuant to article 9.05, and not, for example, in the event an employee's status change arises due to displacing another employee pursuant to article 9.09.

ARTICLE 9.07(B)—PORTABILITY OF SERVICE

This provision allows a newly hired employee to claim previous related service (indicated at the time of hiring), in order to receive credit for placement on the wage scale on the basis of one year's service for each full year of previous related experience. The employee is obligated at the time of hiring to provide evidence of the previous experience, and hospital must make a reasonable determination as to whether it is relevant. It has been held that time spent working at a different hospital after an employee's date of hire does not count as previous related experience for the purpose of Article 9.07(B).²³

ARTICLE 9.07(C)—TRANSFORMATION IN HEALTH CARE

The purpose of this provision is to provide additional rights to employees in the event of an integration of services pursuant to the *Public Sector Labour Relations Transition Act (PSLRTA)*, or the sale of a business which is covered by the sale provisions of the *Labour Relations Act (LRA)*. (Note that 2019 amendments to *PSLRTA* have effectively eliminated the legislation's applicability to integrations and partial integrations, significantly limiting the applicability of *PSLRTA* in the healthcare sector and rendering the reference to *PSLRTA* in Article 9.07(C) essentially obsolete).

It has been held that Article 9.07(C) does not apply unless the Ontario Labour Relations Board (OLRB) actually makes a declaration under *PSLRTA* or the *LRA*. A board of arbitration cannot assume the OLRB's jurisdiction and make this determination itself.²⁴

Employees who transfer as the result of a partial integration or the sale of part of a business, so that their original employer remains in existence, are granted an additional right to maintain their seniority and service with their original employer for a 48-month period. During that 48-month period, they are entitled to apply for posted vacancies that may arise with their original employer, and if successful in their application, return with the seniority and service that was previously accrued prior to the transfer.

Article 9.07(C) must be read together with other provisions of the collective agreement and viewed in light of the arbitral jurisprudence. Most importantly, in the event of a partial sale, or partial integration, a hospital has no initial right to ‘transfer’ employees to the employ of either a successor employer in the event of a sale, nor another employer in the event of a partial integration of services pursuant to the *PSLRTA*. Instead, in both situations, employees whose positions are eliminated are entitled to receive notice of layoff pursuant to article 9.08(A)(a), and should they wish, to exercise their rights flowing from that notice including displacing another bargaining unit employee and remaining in the hospital’s employ.²⁵ This is further discussed under articles 9.08(A)(a) and 10 below.

ARTICLE 9.08(A)—NOTICE AND REDEPLOYMENT COMMITTEE

The threshold critical question under 9.08(A) is whether a proposed “layoff” is being contemplated. The term “layoff” under Article 9.08(A) has a different and broader meaning than it does under other provisions of the collective agreement.²⁶ While a traditional ‘layoff to the street’ will trigger the notice requirements of Article 9.08(A), so will many other changes to an employee’s terms and conditions of employment which may involve reassignment, elimination or reduction in work. A “layoff” for the purposes of Article 9.08(A) has been held to include:

- A reassignment that is not in accordance with the “reassignment” restrictions in Article 9.08(A)(b).²⁷
- Any reduction in the pre-scheduled hours of full-time or part-time employees, regardless of how small.²⁸

- A layoff resulting from a change to the qualifications required to perform a position, e.g. new legislative registration requirements for “Pharmacy Technicians”.²⁹
- A transfer of the employee’s job to a successor employer (i.e. in a “sale of a business” under *Labour Relations Act* or a “health services integration” under *PSLRTA*) where the employee elects to remain in the employ of the Hospital.³⁰
- A layoff resulting from a contracting out that meets the requirements of Article 10.02 of the Collective Agreement, whether or not the displaced employee elects to follow their job to the subcontractor.³¹
- A reassignment resulting from the termination of an Article 10.02 subcontracting arrangement where the Hospital takes the work back.³²
- Being displaced by a laid off employee in the exercise of the latter’s bumping rights.³³

Before a notice of layoff or the elimination of a position occurs, the requirements of Article 9.08(B) (Retirement Allowance) and 9.08(C) (Voluntary Exit Options) must be complied with. These requirements are dealt with below, but for now it is important to appreciate that these offers of early retirement allowance must be made before any layoff notices are served within that classification.

Article 9.08(A)(a) requires the Hospital to give notice to the Union of a permanent or long-term layoff, or the elimination of a position. A “permanent or long-term” layoff has been found to include one which is at least 13 weeks in length.³⁴

There are three different types of notice requirements that may be required. Where an individual is laid off, notice of layoff must be provided to both the Union and the individual. In addition, where a position is eliminated, the Union is entitled to notice of the elimination of a position, regardless of whether or not individuals are laid off.³⁵

The notice of layoff or elimination of position must be provided five months before the event, and it must be specific. When a hospital has given general or ‘blanket’ notice of the elimination of positions or layoff of employees which does not adequately specify when the event will take place, the notice has been found to be deficient and has been disallowed. For example,

when a hospital gave the Union notice that it would eliminate housekeeping positions as they became vacant, without identifying any particular positions and without identifying any dates, the notice was found to be deficient for the purposes of Article 9.08(A).³⁶

The purpose of the notice period is to retain the *status quo* (i.e. the existing circumstances) throughout the period of notice. It has thus been held that the Hospital cannot require an employee to begin working in another classification that they have opted to bump into until the notice period is over.³⁷ Where a vacated full-time position is slated for elimination, the Hospital cannot fill it with one or more part-time employees during the notice period.³⁸ A hospital also cannot leave a vacated full-time position vacant during the notice period if it still needs the work of the vacant position performed. However, a hospital is not required to post a job where there is no work to do and no employees affected.³⁹

Payment in lieu of notice is required for any missed portion of the notice period. The Hospital will be required to pay damages equal to all payments owing to the Union or members of the bargaining unit during the notice period, including lost wages that would have been paid to members of the bargaining unit, as well as dues that would have been paid to the Union.⁴⁰ Payment for late notice does not relieve a hospital of the obligation to follow the other required steps (for example, canvassing for early retirement).

The purpose of the reassignment clause in **Article 9.08(A)(b)** is to give hospitals some relief from the obligations of the layoff language.⁴¹ If a hospital properly reassigns an employee in accordance with article 9.08(A)(b), a layoff will not have occurred under the Collective Agreement, the Hospital will not have to serve notice of layoff under Article 9.08(A)(a), and all the consequences of a layoff will be avoided. For example, if a hospital reassigns employees in compliance with this article, it may contract out the work previously performed by those employees without a layoff being found to have occurred.⁴² Conversely, if the reassignment fails to meet the requirements of Article 9.08(A)(b), then the reassignment will be considered a layoff, thus triggering all the layoff requirements under Article 9.08.⁴³

In order for a hospital's actions to fall within article 9.08(A)(b), the Hospital must ensure that the employees are reassigned in accordance with the requirements listed in the article. These requirements have been described as "bright line requirements that must be met if the seniority rights triggered by the giving of notice of layoff...are to be avoided."⁴⁴ The Hospital must fully comply with these requirements; 'substantial' or partial compliance is not good enough. The onus is on the hospital to demonstrate that it has met these conditions—not on the Union to prove that it hasn't.

Articles 9.08(A)(b)(I) and VI set out certain seniority requirements. Specifically, the reassignments must occur in reverse order of seniority (9.08(A)(b)(I)) and the Hospital must allow affected employees to select from available vacancies in order of seniority ((9.08(A)(b)(VI)). The Hospital was found to be in violation of these requirements where it targeted the most senior employees for reassignment (rather than proceeding in reverse order of seniority) and by placing affected employees into vacancies based on scheduling considerations (rather than allowing them to select from available vacancies in order of seniority).⁴⁵

Article 9.08(A)(b)(II) provides that the reassignment must be to an "appropriate permanent position." This requirement was found to have been met where employees were reassigned on a temporary basis to a "swing space" during renovations, as there was no question that the affected employees would be returned to their jobs within 18 months and thus the critical job interest of continuity of employment was protected.⁴⁶ A hospital was found to have not violated this requirement where an employee was redeployed to a newly-created 'float' position lacking a job description created precisely to avoid creating a layoff, as there were tasks associated with the position, the grievor performed work, and was compensated.⁴⁷

For a reassignment to be proper, the new position to which the employee is assigned must accord with the employee's skills, abilities, qualifications and training or training requirements.

Under **Article 9.08(A)(b)(III)**, a proper reassignment must not result in a reduction of the employee's wage rate. This requirement was found to have been met by 'red-circling' employees at their previous wage rate, even where the employee is deprived of future wage increases applicable to their prior position.⁴⁸

A proper reassignment must not result in a reduction of the employee's hours of work. This requirement was found to have been violated where the reassignment resulted in a reduction of just half an hour over a two-week period.⁴⁹

Article 9.08(A)(b)(IV) requires that the reassignment be to a same or nearby worksite in terms of relative accessibility for the employee. A reassignment to a different floor of the same building is likely to meet this requirement. A reassignment to a different building is at risk of running afoul of this requirement, depending on factors such as how far away the new worksite is, the employee's personal circumstances, transit options, etc.

Under **Article 9.08(A)(b)(V)**, a reassignment must be to "the same or a substantially similar shift or shift rotation." There is no "bright line" that can be used to determine whether or not two shift schedules are "substantially similar". Arbitrators will consider at least four different parameters, including the days of the week, the time of the day work, the length of the shift and the frequency or regularity of the rotation.⁵⁰ The "substantially similar" requirement was found to have been breached where employees were reassigned from day shifts to night shifts,⁵¹ from straight day shifts to rotating nights,⁵² or from a position with 12-hour shifts to one with 7 ½ hour shifts.⁵³ However, this requirement was found to have been satisfied even though the frequency of night shifts increased by 50%, because the shift times, lengths and days of the week remained the same.⁵⁴ In one case, even though an employee had been changed from a day to a night shift, the arbitrator found it relevant that the employee wanted to work that shift and had exercised his seniority to bid on it.⁵⁵

As per **Article 9.08(A)(c)**, the Hospital is not required to post the positions into which employees are reassigned. This article must be read however, in conjunction with article 9.05(e), which requires hospitals to post vacancies within thirty days of their occurrence or else eliminate the positions pursuant to Article 9.08(A)(a). It states in part:

The Hospital agrees that it shall post permanent vacant positions within 30 calendar days of the position becoming vacant, unless the Hospital provides the Union notice under Article 9.08(A)(a) of its intention to eliminate the position.

We are of the view that after that 30-day period has elapsed, the vacancy cannot ‘reappear’ for the purposes of a reassignment. In other words, where a vacancy is used for reassignment purposes, this must occur within the 30-day window provided for by Article 9.05(e).

Note however that a Hospital may be able to reserve more positions for reassignment purposes than there are people being reassigned, in order for the Hospital to provide choices for reassigned employees.⁵⁶

Article 9.08(A)(d) sets out the purposes and functioning of the Redeployment Committee.

The Committee must be set up within two weeks of the notice of the proposed layoff or elimination of position being given to the Union. This requirement holds even if no layoffs are taking place as a result of the position elimination (i.e. the position is eliminated after being vacated through attrition). Damages for lost opportunity to discuss alternatives may be awarded where a hospital fails to convene a Redeployment Committee.⁵⁷

It is recommended that upon receiving notice of a proposed layoff or elimination of position, the Union should immediately write to the Hospital requesting establishment of a Redeployment Committee with its proposal for the Committee’s size and Union members.

The mandate of the Redeployment Committee, set out in **Article 9.08(A)(d)(i)**, is to look for alternatives to the layoff or elimination. Note that this committee’s mandate is far greater than that of the Labour/Management Committee.

The Committee is mandated not only to search for existing vacant positions in the Hospital, but, in combination with Article 10.03—“Contracting In”, to identify work that would fall within the bargaining unit but is currently being contracted out. Bargaining unit employees capable of performing the work who are or who would otherwise be laid off have the right to be considered for contracted in work.

This article makes the Hospital responsible for locating work for employees who would otherwise be laid off, and shifts the onus onto the Hospital to justify any refusal to do so, even when it means contracting in work.

The Committee is to identify positions that are currently vacant or are to become vacant within six (6) months within the bargaining unit or in another CUPE bargaining unit or outside of any bargaining unit.

The Committee is to identify the training needs of workers who are or who would otherwise be laid off, and to facilitate such training.

The Hospital is required to award vacant positions to workers who would otherwise be laid off if, with six months retraining, they become able to meet the normal requirements of the job.

Any dispute relating to the Committee's procedures or mandate may and should be filed as a "step two" grievance to achieve quicker movement to arbitration.

Article 9.08(A)(d)(ii) sets out the composition of the Committee. The Union has the right to participate as a full partner in the operation of the Committee. Whatever the actual number of committee members agreed to locally, there must be the same number of representatives for the Union and Hospital.

The Union appoints a Co-Chair responsible for alternate meetings of the Committee. The Co-Chairs jointly determine Committee meeting agendas, prepare Committee minutes and conduct Committee correspondence.

The Committee functions during normal working hours and Committee time is deemed worked time to be paid at the appropriate (i.e. regular or premium) rate.

Article 9.08(A)(d)(iii) provides for disclosure. The Hospital is obliged to provide the Committee with "all pertinent staffing and financial information." This obligation was held to have been breached where a hospital refused to provide a copy of its contract with a subcontractor, insisting that it was sufficient to provide the union with its own summary of some of the data found in the documents. The arbitrator confirmed that documents related to contracted out services "are actually the very information the parties expressly agreed would be considered by the Committee," that the union was entitled to full copies of these documents, and that the union was not required to prove the relevance of these kinds of documents.⁵⁸ It is recommended that the Union members of the Redeployment Committee

ensure that this information is provided by the Hospital before looking at which employees are to be affected by the layoff so that rational and practical alternatives can be proposed. Motions may have to be raised within the Committee itself to obtain additional information from the Hospital.

Article 9.08(A)(d)(iv) empowers the Committee to propose alternatives to layoffs. Accessing complete information is crucial in building these alternatives. The powers given to the Committee shift the onus onto the Hospital to show why alternatives are impractical or not cost-effective, should it choose not to follow the Committee's proposals. The documentation and supporting rationale therefore are extremely important should a future dispute arise over the Hospital's right to ignore alternatives proposed by the Committee.

If the Committee cannot agree on alternatives, the individual members (including Union members) of the Committee have the right to present their suggested alternatives to layoffs to the Chief Executive Officer and Hospital Board.

The Union has a right to a copy of any rationalization plan involving layoffs or the elimination of positions that the Hospital may submit to either the District Health Council (now defunct) or Ministry of Health. The Union also has a right to a copy of any documentation accompanying such a submission. These provisions would appear to provide even more notice to the Union should such plans be submitted in advance of the five-month notice requirement set out in 9.08(A)(a).

ARTICLE 9.08 (B) AND (C)—RETIREMENT ALLOWANCE AND VOLUNTARY EXIT

The purpose of early retirement and voluntary exit options has been described as, "to avoid layoffs if possible by enabling eligible persons to retire [or exit], thereby creating sufficient vacancies for employees who might potentially be laid off to fill the vacancies and avoid being laid off."⁵⁹

It is significant that the retirement allowance article specifically requires the employer to offer the retirement allowance and voluntary exit packages "prior to issuing notice of layoff". Employees in the same classification(s) as those who may be

affected by any layoff must first be offered the option of taking early retirement.

If, after making offers of early retirement, layoffs are still required, the Hospital must offer voluntary early exit options to the affected classifications within the department. Offers are made within the classification in which the layoff is to occur, first within the same department as the potential layoff, and afterward in the same classification but in other departments. Offers are made in order of seniority. There is a condition that the remaining employees must be qualified to perform the available work.

An employee who accepts voluntary exit will cease employment at a date decided by the hospital, but not later than 30 days following the employee's written acceptance of the offer.

Both Article 9.08(B) and 9.08(C) provide that the offers of early retirement or voluntary exit are to be made within "the classification(s)", without any qualification for full or part-time status. In a recent groundbreaking case, the Divisional Court confirmed that this precludes a hospital from making offers of early retirement or voluntary exit to only full-timers or to only part-timers within a classification. All full-time and part-time employees within a classification should receive the offer, even if the layoffs are contemplated for part-time or full-time positions only.⁶⁰

The value of early retirement and voluntary exit packages is two weeks' salary for each year of service up to a maximum of 52 weeks' salary. For part-time employees, this calculation must be pro-rated. It has now been confirmed that despite earlier jurisprudence to the contrary,⁶¹ the term "two (2) weeks salary" refers to a part-time employee's actual salary, and the term "year[s] of service" refers to the employee's actual calendar years of service, without any adjustment for status.⁶²

Where an employee subject to a layoff elects to displace an employee in another classification, the displaced employee is "deemed to be laid off" within the meaning of Article 9.09(d) and offers of early retirement and voluntary exit must be made to employees in that classification.⁶³

Where there has been a transfer of the employee's job to a successor employer (i.e. in a "sale of a business" under *Labour Relations Act* or a "health services integration" under *PSLRTA*), employees may elect to remain with the Hospital and in those

circumstances, the Hospital is required to offer packages prior to issuing these employees notice of layoff.⁶⁴

In some cases, Hospitals seek to offer enhanced exit packages to entice employees to leave. It has been held that this may be within the scope of management rights, provided that (1) the offers are made in conjunction with the union; (2) employee acceptance is voluntary; and (3) the offers are not in contemplation of a layoff. If there is any intent of a permanent or long-term layoff, then the Hospital must proceed under Articles 9.08 and 9.09 which has been described as a “complete code” for layoffs.⁶⁵

In deciding whether to agree to enhanced packages, it is important that Local Unions make sure they are not enabling the hospital to contract out the work once the positions are vacated.

ARTICLE 9.09—LAYOFF AND RECALL

This article sets out the options presented to an employee in receipt of a layoff notice, and sets out the procedure for layoff and recall.

An employee in receipt of notice of layoff may (a) accept the layoff (and thus be placed on the recall list), (b) receive a separation allowance under Article 9.12, (c) retire as outlined in Article 9.08(B), or (d) bump another employee. Employees who accept a layoff should refer to Article 9.11 (“Retraining”).

Under **Article 9.09(d)**, the employee can pick a position in the same or lower or identical-paying classification and “bump” the person holding that position provided that person has less bargaining unit seniority. An employee who chooses to bump an employee with lesser seniority must advise the Hospital within seven days after receiving a notice of layoff. An “identical paying classification” refers to one in which the straight time hourly rate for a corresponding level of service falls within one per cent (1%) of the laid off worker’s hourly rate.

Under **Article 9.09(e)**, a laid off employee may “bump up”, i.e. bump someone with lesser seniority in a higher-paying classification, where there are no employees with seniority in the same or lower or identical-paying classifications whom the laid off employee could bump.

Article 9.09(f) additionally provides that in combined full-time/part-time collective agreements, a full-time employee may displace another full-time employee in a higher-paying classification prior to being required to displace a part-time employee, provided that: they are able to meet the normal requirements of the job with orientation but without additional training, and there are no other full-time employees in the same or a lower or a similar-paying classification with lesser seniority.

Article 9.09(g) essentially distinguishes between “permanent or long-term” layoffs and layoffs which are temporary. A “permanent or long-term” layoff has been found to include a layoff of at least 13 weeks in length.⁶⁶ An employees who is subject to a temporary layoff, i.e. a layoff for a period that is shorter than 13 weeks, does not have the right to receive a separation allowance or to retire, but they do have the right to accept the layoff or bump. Thus, where a Hospital closed surgical units on a short-term basis around holiday weekends, it was found that employees were on layoff and were entitled to bump.⁶⁷

Any employee who has been displaced by bumping is entitled to notice of layoff and all the rights that come with that, from the beginning of the redeployment process. This includes offers of early retirement or voluntary exit, the establishing of a redeployment committee, and all the rights and options outlined in Article 9.09.⁶⁸

Article 9.09(h) provides that no full-time employee within the bargaining unit shall be laid off by reason of his/her duties being assigned to one or more part-time employees. This clause has been interpreted very narrowly by arbitrators, who tend to find that the reassignment of the full-timer’s duties to one or more part-timer is due to a legitimate operational need, and not “by reason of his/her duties being assigned to one or more part-time employees.”⁶⁹

Under **Article 9.09(i)**, the Hospital must pay its share of insured benefit premiums during the five-month notice period (even if the Hospital chooses to provide payment in lieu of notice).

Article 9.09(j) entitles employees on recall to participate in the job posting procedure, and should the position not be filled that way, the employee has the opportunity of recall to an available opening in order of seniority provided that they have the ability

to perform the work, which under **Article 9.09(k)**, the Hospital shall not determine in an arbitrary or unfair manner.

Under **Article 9.09(l)**, an employee recalled to work in a different classification from which they were laid off has a six-month 'grace period' during which they may return to their position of origin should it become vacant.

Article 9.09(m) provides that no new employees shall be hired until all those laid off have been given an opportunity to return to work and have failed to do so.

Note, however, that positions are to be posted before recalls occur. Any position must first be posted before it can be filled by recall. This allows more senior employees not on layoff to bid on the position.

Further, under **Article 9.08(A)(d)(4)**, the Redeployment Committee shall identify the retraining needs of workers who are on the recall list (as well as those who would otherwise be laid off), and award vacant positions to such employees in order of seniority if, with the benefit of up to six months retraining, the employee is able to meet the normal requirements of the job.

Articles 9.09(m) and 9.03(f) together provide that a laid off employee is obliged to accept a recall within seven calendar days of being notified by registered mail, or be deemed terminated with all loss of seniority and service and no right to be recalled to any future positions. It is therefore crucial that laid off workers keep an up-to-date address on file with the Hospital. When a laid off worker is not going to be available for a seven-day period, it may even be appropriate to have the Union designated as the employee's agent to ensure that the recall is acknowledged within the time limits.

ARTICLE 9.10—BENEFITS ON LAYOFF

This Article provides for continuation of benefits for laid off employees once the layoff occurs. The hospital must continue to pay its share of premiums until the earlier of three months from the end of the month in which the employee stopped employment, or until an employee finds alternate employment with a different employer.

ARTICLE 9.11—RETRAINING

As a result of a combination of Articles 9.08(A)(d) and 9.11, an employee who has been given notice of layoff is eligible for retraining if they have accepted the layoff, or there are no vacancies available for which they qualify, or no work can be found through contracting in, or they are unable to displace another worker.

Note that employees affected by a technological change may also be eligible for retraining under Article 9.13, even if they have not been given notice of layoff.

Under **Article 9.11(a)(i)**, retraining opportunities are to be offered in order of seniority, and vacancies outside of the bargaining unit may be offered at the discretion of the Hospital.

Article 9.11(a)(ii) provides that the Hospital is required to cooperate in adjusting the schedules of retrainees so that they can participate in retraining program. Scheduling and seniority requirements may be waived by mutual consent for the same reason.

Under Article 9.11(a)(iii), an unpaid leave of absence of up to six (6) months is available for those needing it in order to retrain, and under 9.11(v), laid-off employees approved for retraining within the Hospital have a right to continue to receive insured benefits during that training.

Article 9.11(b) provides that upon completion of the training, the employee will be placed in the job, despite any restrictions that would otherwise apply. Further, unlike a refusal to accept recall, an employee may refuse a retraining offer or fails to complete the training will remain subject to a layoff without losing their recall rights.

ARTICLE 9.12—SEPARATION ALLOWANCES

When an employee resigns after receiving Notice of Layoff, they are eligible for a Separation Allowance. The amount differs significantly depending on the time of resignation. If they resign within 30 days of receiving their Notice, they are to receive 2 weeks pay per year's service to a maximum of 16 weeks, and may also be reimbursed for up to \$3000 in tuition fees. If, however, they resign after the 30 days, they will receive only four

weeks' salary and be eligible for only \$1250 in tuition reimbursement.

Article 9.12(a), which provides a payment based upon years of continuous service, has been found to offset any severance payments owed to the employee under the *Employment Standards Act*.⁷⁰ On the other hand, Article 9.12(b) is not based upon years of continuous service, so arguably there would be no offset against an employee's severance payment.

ARTICLE 9.13—TECHNOLOGICAL CHANGE

The purpose of this article is to afford employees a measure of protection against technological changes that could protect their status. It does not minimize the protections afforded in other provisions, such as the restrictions on contracting out in Article 10, but supplements them. In particular, where a hospital laid off its medical transcriptionists, having contracted out its transcription services to a company which employed new transcription software, the arrangement was held to be an impermissible contracting out, even though the new transcription methods amounted to a technological change. The arbitrator confirmed that "the fact that the Hospital's decision to move to the Nuance eScription software may be a technological change does not justify or allow the Hospital to assign the actual work of the Hospital's medical transcriptionists to transcriptions employed by Nuance."⁷¹

The Hospital is required to notify the Union of any technological advances which it has decided to introduce which will significantly change the status of employees within the bargaining unit. It is also required to notify individual employees with one or more years of continuous service who are subject to a layoff arising from technological changes of the impending change in employment status "at the earliest reasonable time." These notice requirements are separate from, and in addition to, the obligation to provide notice of layoff or notice of elimination under Article 9.08(A)(a).

The Hospital must discuss the technological change with the Union and must consider practical ways of minimizing their adverse effects on employees concerned.

Where the technological change demands new or greater skills than those already possessed by employees under present modes of operations, affected employees must be provided with paid training opportunities of up to six months at the Hospital's expense and, wherever possible, during the employee's hours of work. These training requirements are separate from, and exist in addition to, the retraining requirements for laid off workers addressed under Article 9.11.

ARTICLE 9.14—RPN PROFESSIONAL DEVELOPMENT/ SCOPE OF PRACTICE

This article deals with the scope of practice and professional development of RPNs. It is a provision which commits both the hospital and RPNs to commit to professional development for RPNs, as that applies to various learning activities set out in the article. The hospital is committed to encourage and assist in these learning activities.

ARTICLE 9.15—WORKLOADS

This Article has been recently amended. While it used to apply to RPNs only, it now applies to all Regulated Health Professionals (RHPs), and sets out a more process for addressing situations where an RFP has cause to believe that they are being asked to perform more work than is consistent with proper patient care. The RHP shall discuss the issue with the unit/program, then seek assistance from the individual(s) with responsibility for timely resolution of workplace issues, then raise the issue with their manager, then submit a workload complaint form to the Chief Nursing Order or equivalent in the case of other RHPs, then may request a meeting with the CEO.

ARTICLE 10—CONTRACTING OUT

These articles offer a high level of protection against job security erosion resulting from contracting out. Contracting out is prohibited if it leads to layoffs, unless the contractor employs employees displaced from the Hospital and stands in the Hospital's shoes for the purpose of the collective agreement with the Union.

Under **Article 10.01**, for an arrangement to qualify as a "contracting out", it must involve "work usually performed by mem-

bers of the bargaining unit.” The term “work” in this context is a broad and general term that refers to the end product, e.g. “preparation and cooking of food.” It is to be contrasted with “tasks” or “duties” which are the means or methods through which work is accomplished. Thus, where the Hospital entered into an arrangement for the preparation and cooking of food which resulted in the layoff of its food services employees, the arbitrator found the arrangement to be a contracting out, even though the contractor’s employees used different technologies, and hence were assigned different tasks and duties, to prepare and cook the food.⁷²

Critically, a contracting out is prohibited if layoffs result from the contracting out. The definition of “layoff” for this purpose is very broad, and may include:

- A layoff “to the street”.
- A reassignment that is not in accordance with the “reassignment” restrictions in Article 9.08(A)(b).⁷³
- A reduction in the regular hours of work of a full-time or part-time employee.⁷⁴

The prohibition against contracting out in Article 10.01 does not apply if no layoffs result from the contracting out. If no layoffs are established, then a legitimate contracting out will be upheld as permissible.⁷⁵

In the event a hospital breaches article 10.01, the proper remedy is to cancel the contracting out and return the work to the bargaining unit. It is not enough for the Hospital to try to ‘repair’ the layoff by providing monetary compensation to the affected employees.⁷⁶

If no layoffs result from what appears to be a contracting out, then it is worth investigating whether the arrangement is actually a legitimate contracting out before concluding that no remedies are available to the Union. If the arrangement is found to be a ‘contracting in’ rather than a legitimate ‘contracting out’, then the employees concerned will be considered members of the bargaining unit covered by the Hospital’s collective agreement with the union.⁷⁷

The distinction between a ‘contracting in’ and a ‘contracting out’ lies in who exercises actual direction and control over the employees’ working conditions: the contractor or the Hospital. In an arms-length relationship where the contractor directs and controls its own workforce, the subcontractor will be viewed as the ‘true employer’ and a legitimate contracting out will be found to have occurred. However, where the Hospital is directing and controlling the contractor’s workforce—even if the contractor functions as the nominal employer and signs the employees’ paycheques—then the Hospital will be considered the “true employer” for labour relations purposes, making the arrangement a ‘contracting in’ rather than a ‘contracting out’.⁷⁸

Under **Article 10.02**, a hospital may contract work if the contractor employs employees displaced from the Hospital and stands in the Hospital's shoes for the purpose of the collective agreement with the Union. It requires that the Hospital and the contractor have as part of their commercial agreement, an agreement by the contractor to employ the employees displaced from the Hospital, to recognize the Union as the bargaining agent and to enter into a collective agreement with the Union, which must be identical to the collective agreement between the Union and the Hospital.⁷⁹ If a contractor does not fulfill this requirement, the Hospital is obligated to take the work back in-house.

Note that even where a contracting out is permissible under Article 10.02, the employees displaced from the Hospital as a result of the contracting out are entitled to notice of layoff under Article 9.08(A)(a).⁸⁰

Article 10.03 applies in conjunction with Article 9.08(A)(d)(i)(1). It requires the Redeployment Committee to review the practicality and feasibility of contracting in work that has been contracted out.

ARTICLE 11—WORK OF THE BARGAINING UNIT

The purpose of **Article 11.01** is to maintain both the type and volume of work within the bargaining unit. A violation of this article is not dependent upon whether a layoff has occurred.

A violation of Article 11.01 is established where: 1. the duties in question were normally assigned to members of the bargaining unit; 2. the duties in question have been reassigned to employees outside of the bargaining unit; and 3. the assignment was not for the purposes of instruction, experimentation, or an emergency when regular employees are not readily available.

It has recently been confirmed that Article 11.01 protects both the type and volume of duties "normally assigned" to members of the bargaining unit. To establish a violation of Article 11.01, it is not necessary for the union to demonstrate a causal connection between a significant transfer of work out of the bargaining unit and a real erosion of the bargaining unit, as one employer unsuccessfully argued.⁸¹ Nor is it necessary to show, as it once was, that the duties in question were assigned exclusively to

members of the bargaining unit. In other words, an overlap in duties between members of the bargaining unit and employees outside of the bargaining does not negate an Article 11.01 violation. A reduction in the amount of work assigned to employees within the classification may trigger the operation of the clause if there is a corresponding increase in work assigned outside of the bargaining unit.⁸²

Article 11.02 is intended to restrict the hospital in assigning bargaining unit work to volunteers. The restriction is based upon the extent of existing practice at June 1, 1986. In other words, the hospital may not expand the use of volunteers performing bargaining unit duties, beyond the June 1, 1986 threshold.

Article 11.02 protects both the quality (type) and quantity (amount) of bargaining unit work. Thus a hospital can breach article 11.02 either when it assigns bargaining unit work to volunteers for the first time, or when it increases volunteers' share of bargaining unit beyond the 1986 levels.⁸³

ARTICLE 12—LEAVES OF ABSENCE

Article 12.01 provides for personal leave without pay, which an employee may request for any reason. The hospital is unable to unreasonably deny such requests, that is, there must be a real operational reason for doing so. As one arbitrator put it, an employer is required to 'substantially exert itself' to accommodate an employee's reasonable request for leave, and cannot deny a request because of minor inconvenience.

This leave can also be utilized when an employee requires greater leave than is provided elsewhere. For example, should an employee request personal leave in addition to bereavement leave, a hospital cannot deny the leave simply because it is for the same purpose as bereavement leave.

Article 12.02 provides for leave without pay for union business. The leave can be used for a broad range of union activities and cannot be denied unreasonably.

All employees, including part-time and casual, are credited with service and seniority for the leave for any regularly scheduled hours missed. In addition, where part-time and casual employees are on union leave on days not regularly scheduled, they

are credited with *seniority* up to 37.5 hours per week, and such time is not deducted for the union leave 'cap'.

The union reimburses the hospital for the cost of salary and benefits for the period of the leave, and the hospital maintains the employee's salary and benefits.

Unless it is not reasonably possible to do so, the union must provide the hospital with 14 days notice in advance of the leave.

The Local Issue Appendix contains any provisions relating to 'caps' on leave, including any maximum number of employees who may be absent at one time or the total amount of leave available in a year. These 'caps' do not apply to the leave taken by OCHU Executive Board Members or alternates.

Articles 12.03(a) and (b) provide leave of up to one year per request, for any full-time and part-time employees, respectively, who are elected to full-time positions with the union. Such employees, to the maximum number set out in the article, continue to accumulate seniority and service on such leave however the hospital is not responsible for benefit payments.

Part-time employees on such leave accumulate seniority and service on the basis of 37.5 hours per week of leave.

Employees are entitled to return to their former duties at the end of the leave, except for changes which would otherwise have occurred.

Article 12.03(c) sets out the leave conditions for the OCHU President and Secretary-Treasurer. They are largely similar to the preceding provisions other than the period of each leave request is two years.

Article 12.04, the bereavement leave provision, applies to all employees.

The Article provides for four consecutive working days off without loss of regular pay in conjunction with the death of a spouse, child, or parent, and three consecutive working days off without loss of regular pay in conjunction with the death of a sister, brother, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, grandchild, brother-in-law, sister-in-law or grandparent of spouse. The term "consecutive working days" means that the working days need be consecutive, but they

are not necessarily four consecutive calendar days. In other words, an employee not scheduled to work on a particular day such as a weekend day or paid holiday, is entitled to the four consecutive working days that the employee would have otherwise worked. It is not necessary that the period of these types of bereavement leave, i.e. the three and four day leaves, include the funeral.

Further, the phrase “in conjunction with the death” requires that the leave must relate to a death, but not necessarily temporally. Thus, where an hospital attempted to impose a 7-day window from the time of death within which bereavement leave must be taken, this was found to run afoul of Article 12.04. there is no requirement The “7-day window” approach to Article 12.04 has already been rejected by an arbitrator.⁸⁴

The Article also provides for one paid day off to attend the funeral of an aunt, uncle, niece or nephew, and additionally gives the hospital discretion to extend such leave with or without pay.

The Article itself provides that family relationships include those established through common law and same-sex spousal relationships. As well, an arbitrator has interpreted the category of “mother” to include a step-mother considering the *Family Law Act*, the *Human Rights Code*, and societal norms.⁸⁵ By the same token, the term “aunt” was held not to include the grievor’s spouse’s aunt, because, among other reasons, the aunts of spouses are not viewed as aunts “under the rules of consanguinity or through current societal norms.”⁸⁶

However, it has been held that step-sibling relationships are not covered for bereavement leave, because under this collective agreement, where step-siblings are covered, it says so expressly (i.e. under Article 12.10 - compassionate leave).⁸⁷

Article 12.05 provides for leave with pay to all employees in the following circumstances:

1. An employee called for jury selection or jury duty
2. An employee required to attend at any court proceeding where the Crown is a party;
3. An employee subpoenaed to a court or coroner’s inquest concerning a case arising from the employee’s duties at

the hospital (not necessarily the employee's performance of those duties). Full-time employees in this specific circumstance subpoenaed on a day off can rearrange their day off or shift, and if not possible the full-time employee shall be paid the time spent at the proceeding.

The article contains conditions regarding notice to the hospital, proof that an employee has been subpoenaed, and reimbursement to the hospital of any non-travel or meal compensation received for the service (conduct money to an employee subpoenaed is typically considered reimbursement for travel and meals).

Where jury duty exceeds one week the employee will not be expected to attend at work for the period of the duty.

Articles 12.06(A) and (B) and 12.07(A) and (B) provide for pregnancy and parental leaves.

A full-time employee who takes both pregnancy and parental leave, is entitled to the following:

1. 17 weeks of pregnancy leave and up to 61 weeks parental leave, during which seniority and service continue to accrue, and during which the hospital will continue to pay its share of benefit premiums.
2. A 'top-up' of Employment Insurance premiums to the level of 93% of regular earnings for a period of 27 weeks, inclusive of the Employment Insurance waiting period when the employee does not receive any EI benefit. The 'top-up' is calculated to include any wage increase or wage increment that occurs during that period.

Parental leave may be taken by either biological parent or by either non-biological parent. A full-time employee who is *not* the parent taking pregnancy leave, is entitled to:

1. Up to 63 weeks of parental leave, during which seniority and service accrue and the hospital continues to pay its share of benefit premiums.
2. A 'top' up of Employment Insurance premiums to the level of 93% of regular earnings for a period of 12 weeks, inclusive of the Employment Insurance waiting period when the employee does not receive any EI benefit. The 'top-up' is

calculated to include any wage increase or wage increment that occurs during that period.

Note that where an employee elects to receive extended parental leave benefits under section 12(3)(b)(ii) of the *Employment Insurance Act*, the amount of 'top up' will be equal to what have been payable had the employee elected to receive regular parental leave benefits under section 12(3)(b)(i) of the *Employment Insurance Act*.

A part-time employee is entitled to the same pregnancy and parental leave and pay entitlements as a full-time employee *except* that a part-time employee receives the percentage in lieu of benefits rather than insured benefits, for the period of the leave.

The qualifying period for either leave is 13 weeks of service. In addition, there are certain procedural provisions, which include:

1. Two weeks' notice in advance of the leave (except adoptive parents) and the expected date of return. Expectant mothers must also furnish a medical certificate identifying the anticipated due date.
2. Reconfirmation of the return date at least two weeks in advance.
3. Adoptive parents must advise the hospital as far in advance as possible as having qualified to adopt a child, and then make the request for leave upon receipt of confirmation of the adoption. If written notice is not possible, verbal notice is to be given and subsequently verified in writing.

Parental leave is also available to an employee who is in a relationship of some permanence with the child's parent and who intends to treat the child as their own.

Employees returning from pregnancy or parental leave are entitled to return to their former duties, in the same department subject to any changes that otherwise would have occurred had the employee not been on such leave.

A pregnant employee is not disqualified from sick benefits by virtue of her pregnancy. An employee with a pregnancy-related illness or disability is not required to commence pregnancy leave, and forego sick benefits earlier than intended.

Article 12.08 provides for education leave for various types of courses or seminars and training. The entitlement depends upon the nature of the request.

Where an employee is required by a hospital to take courses to improve their qualifications, the hospital will grant leave with pay and with service and seniority credit, as well as pay the full cost of the courses (including presumably any examination cost).

The term “required by the Hospital” has been the subject of numerous arbitration cases, with results that might be viewed as either being dependent upon slightly different facts, or else viewed as inconsistent. For example, in 2010 amendments to the *Pharmacy Act* required that any employee designated as a ‘Pharmacy Technician’ be registered with the College of Pharmacists, and complete and evaluative examination after a bridging program of educational courses. In some hospitals, employees were required to become designated as Pharmacy Technicians to keep their current jobs, and in that factual circumstance an arbitrator found that the Hospital was “requiring” the employee to take the courses and thus was responsible for payment of lost wages for the courses as well as the course tuition costs.⁸⁸

However, in a case where the hospital had not advised employees that they would need to take the Pharmacy Technician course to maintain their current positions, or at least not yet so advised employees, an arbitrator found that the hospital was not obligated to pay for lost wages and the course tuition. In this ruling, the arbitrator found that employees were not ‘required by the hospital’ to take the course.⁸⁹

Where the employee makes a request for such leave without having been required by the hospital, and where the courses are related to the employee’s employment with the hospital, the hospital must make every reasonable effort to accommodate a leave request for a period of up to one (1) year without loss of seniority. It is not necessary that the courses be directed at the employee’s current occupation, only at their continued employment at the hospital.

Finally, where an employee requests leave to take upgrading courses or seminars relating to employment (as opposed to being restricted to the employee’s duties) at the hospital, the

hospital must make every reasonable effort to effect changes to the employee's schedule.

Recent amendments to Article 12.08 provide that the Hospital will endeavour to schedule mandatory in-service programs during an employee's regular working hours, and clarify that where an employee will suffer no loss of pay for they are on duty and authorized to attend the program during their regularly scheduled hours. However, where an employee is required by the Hospital to engage in learning opportunities outside of their regular working hours, the employee shall be paid for all time spent at their regular straight time rate of pay. A similar principle applies to e-learning: the Hospital must make reasonable efforts to enable required e-learning during regular working hours, but where an employee is required to complete hospital e-learning outside of their regular working hours, the hospital will identify in advance the time that will be paid their regular straight time hourly rate of pay. The new language further clarifies that part-time employees will be credited with seniority and service for hours paid for engaging in learning opportunities.

Article 12.09 creates a deferred salary plan, which permits an employee to defer 20% of the employee's salary for a four-year period, and receive a leave with pay for the fifth year. The full deferred salary, plus interest if any, is paid to the employee at the commencement of the leave, and the employee is responsible for paying both the employer and employee contributions to insured benefits, which must be maintained during the leave. Seniority is accrued during the leave but service is maintained at the pre-leave level for the period of the leave. No sick pay benefits are payable during the leave. The employee is entitled to return to their previous position unless it has been discontinued, in which case the employee is to be given a comparable position.

Applications must be received six months in advance of commencing participation in the plan, and the number of employees who can be absent at one time is to be negotiated locally, with seniority determining eligibility for participation should there be more applicants than can be accepted.

The leave may be postponed by the hospital if a temporary replacement cannot be found.

The remainder of the conditions for the leave are set out in the article.

Article 12.10 provides for medical care and emergency leave without pay. It is leave which can be taken on short notice, including situations where no advance notice is possible. Employees are expected to advise the hospital when taking the leave, or as soon as possible after beginning it.

Emergency and medical leave is to deal with ‘urgent matters’, which may include but are not limited to illness, injury, death or a medical emergency in the employee’s family. Family is broadly defined in the listed relationships.

Leave can be taken for any period up to 10 days in a year. If periods of less than one day are taken, the hospital is able to deduct one day for the partial day taken. Because of article 9.04 (d), seniority and service accrue for full-time employees only.

The hospital is entitled to ask for reasonable evidence of the basis for the leave, although the availability or type of such evidence will of course depend on the circumstances.

Article 12.11 allows an employee to take a period of leave with pay of up to eight weeks, in the event a family member is at risk of dying within a 26-week period. Seniority and service accrue during the leave notwithstanding article 9.04, and the hospital continues to pay its share of insured benefit premiums.

ARTICLE 13—SICK LEAVE, INJURY AND DISABILITY PAY

Article 13 has been standardized at most hospitals, meaning that the collective agreement provides for HOODIP, which contains an LTD and an STD component. Still, there are a small number of hospitals at which CUPE members remain uncovered by HOODIP and without an LTD Plan. These hospitals are not subject to the HOODIP provisions discussed below, but are subject instead to Article 13.01—Sick Leave, as well as Articles 13.02 and 13.04 (discussed below), as well as non-standardized provisions which are not described in this summary.

ARTICLE 13.01—HOODIP

Under **Article 13.01(a)**, the hospital pays 100% of the cost, and is responsible for providing, a STD plan equivalent to the plan described in Part A of the 1992 HOODIP booklet. The Hospital must also pay 75% of the billed premium toward coverage under a LTD plan equivalent to the plan described in part B of the 1992 HOODIP booklet, i.e. employees pay 25% of the premium for the LTD plan. The Divisional Court recently upheld an arbitration award confirming that eligibility for LTD coverage is determined by the 1992 HOODIP booklet, not by the HOODIP Plan text.⁹⁰ This means that hospital will be found to have breached Article 13.01 when benefits are provided on a basis that is inferior to the terms of the 1992 HOODIP plan. Thus, for example, since the 1992 HOODIP plan does not provide for the termination of LTD benefits at the age of 65, then any LTD plan with an age 65 cut-off will violate Article 13.01.⁹¹

Since coverage is determined by the 1992 HOODIP booklets, the booklets are relevant to the scope of STD and LTD entitlements under the collective agreement. The specific plan details of HOODIP are far too numerous to list in this *Guide*. Reference is to be had to the *CUPE Member's Guide to HOODIP*, published and updated by CUPE Research, for a more complete depiction. However the following general HOODIP requirements, and their interpretation through the caselaw, are worth noting here.

Under **part A of the HOODIP booklet**, the STD plan is a 15-week (75 day) illness protection scheme for non-occupational illnesses. An employee is entitled to 15 weeks of coverage if the employee becomes disabled. The percentage of salary paid depends upon the employee's length of service. At the conclusion of the 15-week period the employee does not become eligible for long-term benefits until the Employment Insurance period is exhausted. Under **part B of the HOODIP booklet**, the employee then becomes eligible for LTD benefits if they are disabled from performing the regular duties of their own occupation for the first two years, and thereafter of any occupation for which she is or may become fitted through education, training or experience.

Although the STD plan is expressed in 'weeks,' coverage is in fact provided in days. Recently, an arbitrator confirmed that the plan does not function as a straight, continuous entitlement or even one that must be taken in days. Rather, employees may

take STD leave in days or hours for up to a total of 15 weeks, which may be accounted for as 75 days or 562.5 hours.⁹² If an employee returns to work from an illness lasting less than 15 weeks, then they stop drawing from their 15-week STD entitlement, and may access the remainder of their STD entitlement should they go off work again with the same illness.⁹³

The 15-week coverage period is for *the same or a related disability*. Thus, an employee may use up a portion of their 15-weeks, return to work for any length of time and then be entitled to a further 15 weeks of STD benefits if they go off work again due to another, unrelated disability. However, if, if that employee were to have a recurrence of the same disability, then only the remainder of the 15-week period would be available to the employee, unless they had served three weeks of “active duty”. In other words, a return to ‘active duty’ for three weeks reinstates 15 weeks of coverage for a particular disability.

The “active duty” requirement has given rise to some litigation. While the strict wording of the HOODIP booklet provides that the three-week return could not include a period when the employee was doing modified work or working modified hours, the elimination of modified work and modified hours from the three-week period has now been found by arbitrators to be discriminatory in the event the employee has a disability. Thus, an employee with a disability, who is performing modified duties because of her disability, should no longer be precluded from having their STD benefits reinstated after three weeks.⁹⁴

Article 13(b) provides for the termination of existing sick leave plans upon a hospital’s transfer to HOODIP. **Article 13.01(c)** credits the transferring employees with one year of service for HOODIP purposes on the date of transfer; allow for supplementation of any days at less than full wages; and continues any cash-out provisions that existed in the previous collective agreement, including service eligibility and percentage cash-out in *current* dollars (i.e. at the time the days are cashed out on termination).

Article 13.01(d) provides that there shall be no pay deduction from an employee’s regular scheduled shift when an employee has completed any portion of the shift prior to going on sick leave or WSIB.

Under **Article 13.01(e)**, the hospital is required to reimburse employees for any loss of benefits for the first two days of the fourth and subsequent period of absence in any calendar year.

Article 13.01(f) provides that entitlement to benefits under the STD or LTD plans may be the subject of a grievance (and thus arbitration if necessary). In other words, even if the hospital only pays premiums in a ‘true insurance’ fashion (see article 18.01), nevertheless claims can be pursued at arbitration, rather than requiring the employee to pursue claims directly from the insurance carrier. This makes benefits adjudication more accessible to employees, and also incentivizes hospitals to find accommodations for employees rather than face liability under the grievance process.

Under **Article 13(g)**, the hospital must provide the union, and the union should request, a copy of the HOODIP plan text to ensure that the plan provided matches the 1992 brochures.

Under **Article 13.01(h)**, the hospital shall pay for any medical certificate that is requested of an employee. The provision does not stipulate that it must be the hospital requesting such certificate. For example, in the event an LTD carrier requests a certificate of the employee and does not pay, the hospital is required to pay for the certificate.

ARTICLE 13—NOT SPECIFIC TO HOODIP

Article 13.01—Sick Leave applies to non-HOODIP hospitals only. It requires all collective agreements to include clauses requiring the hospital to pay the full cost of any medical certificate required of an employee, and allowing an employee to utilize any accumulated sick leave credits obtained under a cumulative sick leave plan, to ‘top-up’ WSIB benefits to 100% of salary. This top-up is at the request of the employee, and may not occur at the election of the hospital against the employee’s wishes.

Article 13.02 applies to both HOODIP and non-HOODIP hospitals. It provides for injury pay where an employee is injured during a shift. If the employee is excused from working the remainder of the shift there is no loss of pay for the balance of the shift, and no deduction from any sick leave credits.

Article 13.03 also applies to HOODIP and non-HOODIP hospitals. It requires a hospital to provide a sick leave advance to an

employee who has been injured at work, and who has applied for WSIB benefits and has been awaiting approval for a period longer than one pay period (e.g. if the pay period is 14 days, then an employee is able to request such payment after 15 days). The advance to the employee is the lesser of what would be received under WSIB or under the short-term sick leave plan (which could be less than 100% for employees with short service). Employees must satisfy the hospital of the disability, and provide a written undertaking to refund the money to the hospital if the claim is approved. If not approved by WSIB, the advanced monies will be considered payment under the sick leave plan. The maximum period of this advance is 15 weeks.

THE RELATIONSHIP OF HOODIP LTD TO HOOPP

An employee on the LTD under HOODIP, who is totally and permanently disabled, can apply to HOOPP for a disability pension. The employee must retire from employment to receive the pension. Alternatively, the employee can reject that option, and elect instead not to retire, and to receive “free accrual” of pensionable service, where the employee’s pensionable service continues to accrue. It is now settled that where an employee elects “free accrual,” their HOOPP pension is not “receivable” within the meaning of the HOOPP brochure, and therefore a hospital cannot reduce that employee’s LTD benefits by the amount of HOOPP pension that they would be eligible for had they opted to retire.⁹⁵

ARTICLE 13—SICK LEAVE, INJURY AND DISABILITY PAY

Article 13 has been standardized at most hospitals, meaning that the collective agreement provides for HOODIP, which contains an LTD and an STD component. Still, there are a small number of hospitals at which CUPE members remain uncovered by HOODIP and without an LTD Plan. These hospitals are not subject to the HOODIP provisions discussed below, but are subject instead to Article 13.01—Sick Leave, as well as Articles 13.02 and 13.04 (discussed below), as well as non-standardized provisions which are not described in this summary.

ARTICLES 14—HOURS OF WORK

The central agreement does not standardize hours of work. Subject to the articles described below, the hours of work provisions

found in Article 14 are non-standardized and are thus not dealt with in this guide, except to point out that for full-time employees, 7.5 hours of daily work is uniform, unless extended tour agreements permit longer shifts.

Article 14.02 provides for rest periods, and mandates two-15 minute breaks for full-time employees, and one for part-time employees for each 3.75 hours worked. Under Article 14.03, an additional rest period of 15 minutes is required when an employee performs authorized overtime work of at least three hours duration.

Article 14.04 permits the local parties to negotiate extended tour provisions. Job sharing arrangements are governed by **Article 14.05**.

ARTICLE 15—PREMIUM PAYMENT

Article 15.01 expressly leaves the regular straight time rate of pay to be determined locally in the wage schedule to the collective agreement, and **Article 15.02** continues local definitions of overtime. However, these are normally defined as 1.5 times the regular straight time hourly rate for either: (a) hours worked in excess of the normal daily hours, or; (b) hours worked in excess of the normal weekly hours.

Article 15.03 actually contains three clauses. First, it provides that the overtime rate shall be time and a half the employee's straight-time rate, subject to any superior conditions.

Second, Article 15.03 provides that where an employee is required to work additional overtime contiguous to an overtime shift within a 24-hour period, then the employee is entitled to double time for all additional contiguous hours worked. It is not necessary that the second overtime period be *continuous* with the first overtime period, i.e. that it be 'touching' on the end of the first overtime shift, nor is it necessary that the second overtime period constitute a full shift. In order for double time to be payable however, the hours claimed must be within twenty-four hours of the commencement of the first overtime shift.⁹⁶

Here is an example:

An employee works an overtime shift from 07:30 to 15:30 on Saturday, the employee's normal day off. At 23:30 on the

same day, the employee commences a further period of 6 hours of overtime. All of these hours would be paid at double time, as they fall within 24 hours of the *commencement* of the first overtime period even though the second period does not ‘touch’ on the first period. Had the second overtime period commenced on or after 07:30 Sunday, however, it would be paid as normal overtime at 1.5 times the hourly rate.⁹⁷

As well, a “shift” for the purposes of Article 15.03 need not be 7.5 hours or more. Thus, where an employee worked additional overtime contiguous to a 4-hour period of overtime, that 4-hour period of overtime was considered an “overtime shift” for the purpose of Article 15.03.⁹⁸

Finally, Article 15.03 contains a prohibition against ‘duplication’ or ‘pyramiding’. There is caselaw suggesting that where a collective agreement contains this kind of express prohibition on duplication and pyramiding, then employees may not claim two premiums for the same hours worked, even if the two premiums serve two different purposes.⁹⁹ This principle is currently being tested through OCHU’s central process.

Article 15.04 deals with time off in lieu of overtime. It both permits an employee to take time off in lieu of overtime (at a rate of 1.5 hours per hour worked), on a mutually agreeable basis between the employee and the Hospital, and protects employees from being required to take lieu time. It also requires lieu time to be taken within 90 calendar days of the week in which the overtime was worked, or, within 12 months of that work week if the employee agrees, failing which the overtime will be paid out.

Article 15.05 provides for reporting pay, i.e. a guarantee of pay, when an employee reports to work and there is no work for reasons beyond the Hospital’s control.

Note that this is not a payment which compensates for short-term layoff of one day or more, and that the term “beyond the Hospital’s control” should be interpreted strictly. In other words, a flood or power outage is beyond the Hospital’s control. An inaccurate assessment of how many beds will be occupied, resulting in the Hospital cancelling someone’s shift, should not be regarded as being beyond the Hospital’s control. The latter circumstance would likely constitute a short-term layoff, and an

employee should be entitled to exercise their seniority, if able, to claim different work that day.

Article 15.06 provides for call-back pay. It guarantees a minimum payment of four hours pay to any employee required to work between shifts, i.e. who is called back to work after having completed a regular shift but prior to the commencement of their next regular shift. It is not necessary that the employee attend at the Hospital to perform the work. For example, an employee who is able to complete the after-hours work online will still be entitled to the minimum payment.¹⁰⁰

Article 15.07 provides for standby pay, which applies where an employee is required to remain available for duty outside their normal working hours. Standby pay is in an amount of \$3.30 per hour, or \$4.90 per hour where the standby duty falls on a paid holiday. Standby payment ceases where an employee is called in to work under Article 15.06.

Article 15.08 provides differing payments for employees transferred to higher paying positions on a temporary basis, depending on whether the higher paying position is inside or outside of the bargaining unit. There is no minimum period of assignment necessary to qualify for the premium, unlike in many other collective agreements. Recent amendments have increased the allowance to \$1 per hour worked.

Article 15.09 provides for a shift and weekend premium of \$1.20 per hour for all hours worked where the majority, i.e. more than 50%, of the employee's scheduled hours fall between 1500 and 0700 hours, or for all hours worked between 2400 hours on Friday and 2400 hours on Sunday (unless the parties agree to a different 48-hour period). This has been found at arbitration to provide for a *single* shift and weekend premium, that is, it does not provide for two different premiums which can be added together when an employee works an evening or night shift on the weekend.¹⁰¹ Recent amendments to this Article provide for an increase in evening/night shift premiums by 6 cents per hour and an increase in the weekend shift premium by 7 cents per hour.

Article 15.10 is a new clause providing for a charge nurse premium of \$2.00/hour and entitling the nurse to receive orientation to the role of charge nurse on that unit.

ARTICLE 16—HOLIDAYS

Article 16 provides for two different sorts of payments. The first, pay for time not worked on a public holiday, applies only to full-time employees. Full-time employees may receive this payment for 12 holidays, while that payment for part-time employees is included in the percentage in lieu.

The second payment is for time worked on a paid holiday, which is applicable to both full and part-time employees. The specific paid holidays are agreed to at the local level, and any ‘floating’ or ‘employee-dependent’ holidays (e.g. a full-time employee’s birthday) reduces the number of holidays for which there is a premium payment for time worked (see Article 18.04).

(Note that some collective agreements specifically set out Family Day as a paid holiday. Otherwise, it is not. The legislation enacting Family Day amended the *Employment Standards Act* to provide for a ninth paid holiday, and only applies where an employee does not already receive this number of holidays. Thus, the family day provisions of the ESA do not apply to this collective agreement, which already provides for 12 paid holidays.

Article 16.02 sets out the computation and qualifiers for holiday pay for full-time employees. Payment is at the employee’s regular straight time rate times the number of daily hours normally worked.

The provision also sets out a ‘day before/day after’ qualifier, the purpose of which is to disqualify an employee who is absent without a satisfactory reason on either the day before or day after, from receiving holiday pay. If an employee has a satisfactory reason for absence on either or both of the days missed prior to or following the holiday, the employee is entitled to the holiday pay.

An employee who receives sick pay for the holiday is not entitled to receive holiday pay, or lieu time, in addition to the sick pay for that day. This does not mean however, that an employee who is absent due to illness on a paid holiday loses the paid holiday. Instead, where a statutory holiday falls over the course of an employee’s sick leave, the employee is entitled to receive statutory holiday pay for that day, and should not have time or benefits drawn from their sick bank.¹⁰²

Articles 16.03 (A) and (B) set out the payments received by full and part-time employees who *work* on a paid holiday. Briefly, both full and part-time employees receive 1.5 times their regular hourly rate for time worked on the day, with full-time employees receiving an additional lieu day.

Article 16.04 provides payment for daily overtime worked on a paid holiday of double time.

ARTICLE 17—VACATIONS

Article 17.01 provides for two different vacation schemes for full- and part-time employees. The differences are important.

Full-time employees are entitled to service-based vacations with pay. The qualifying years are set out in Article 17.01(a). The vacation entitlement is service-based in its entirety. The scheme of 17.01(a) is *not* an accrual system, that is, an employee does not earn vacation on a monthly, weekly or hourly basis. Instead, an employee is entitled each year to the amount of vacation which corresponds to the employee's service. For the purpose of moving up the vacation grid, entitlement is measured on the employee's anniversary date. An employee becomes entitled to that amount of vacation, not to accrue vacation at a higher rate. Some hospitals have mistakenly applied an accrual system whereby an employee becomes eligible to accrue vacation at a higher rate once the employee has completed the years of service set out in 17.01(a). At present, for example, an employee is entitled to five-weeks vacation with pay after 12 years of service. Some hospitals have implemented a system under which such an employee would begin to accrue vacation at a higher rate starting with the employee's 12th anniversary date, so that the employee is not actually eligible for 5 weeks vacation until the completion of 13 years. This is a breach of the collective agreement.¹⁰³ The vacation package is a hard-fought part of employee compensation and permitting schemes such as the one set out in the example, sets back the entitlement by one year at each of its steps.

Vacation pay is calculated on the basis of the employee's regular weekly straight time pay.

By contrast, article 17.01(B) provides a vacation pay scheme for part-time and casual employees, based upon an increasing percentage of pay. An employee does not begin to receive a

higher rate of vacation pay until the next service threshold on the grid is achieved. The payment is set out as a percentage of annual pay, unlike full-time employees and part-time employees are entitled to time off without pay equivalent to the number of weeks full-time employees receive. Progression on the vacation grid is based on hours of service, and thus should include any hours for which a part-time/casual employee is granted service, whether paid or not. Hours of service granted while on WSIB, or pregnancy or parental leave, for example, are counted toward progression on the vacation grid.

In addition to the percentage of pay, part-time and casual employees also receive “equivalent time off.” An arbitrator recently confirm that this refers to time off from regularly scheduled assignments, but they do not receive scheduled time off from hours worked on a casual basis. Rather, casual employees may take the equivalent time off from casual hours worked by choosing not to make themselves available for work. To the extent that a casual employee does this, they may not be held in breach their availability requirement, and would retain their place on the casual list.¹⁰⁴

Article 17.02 provides two benefits to an employee who has commenced vacation and agrees with a hospital request to work during that period. First, time worked is paid at time and one-half. Second, an employee receives a full day off for any day on which the employee was required to work. For example, an employee requested to work one-half shift would be paid time and one-half the hours worked, and receive another day of vacation with pay.

Articles 17.03/17.04 protect employee vacation from periods when an employee would be eligible for sick leave (for a serious illness) and bereavement leave, respectively.

Article 17.03 applies when the employee’s vacation is interrupted due to “serious illness”, which has been interpreted as that which requires an employee to receive on-going medical care or treatments, and which results in either hospitalization or three days confinement or bed rest.¹⁰⁵

Article 17.04 replaces any period of vacation for which an employee is eligible for bereavement leave.

ARTICLE 18—HEALTH & WELFARE

Article 18.01 contains various health and welfare benefits which are discussed below. At the outset, a few observations are necessary. First, the union is entitled to the master policies of all of these benefits and if your local has not already obtained these, it should now.

Second, for the purpose of enforcement of the rights set out in article 18.01 it is necessary to be aware of what sort of benefit arrangement is in existence at your hospital. There are essentially two different types of arrangements.

ASO (Administrative Service only Plans) are ones where the insurer merely administers the plan, and charges back to the hospital the costs of the benefits used plus an administrative fee. Plans of this sort are arbitrable, that is, if there is a dispute about whether the benefit is properly provided to an employee by the insurer, the dispute may be the subject of the grievance and arbitration procedure.

Insured plans which are not ASOs are not normally subject to the grievance and arbitration procedure, unless there is a dispute about whether the Hospital has arranged for a plan which conforms to the requirements of the collective agreement. For example, if there is a 'true insurance plan' in effect where a Hospital pays premiums which are calculated on something other than an ASO basis, then an employee cannot pursue a claim against an insurer under the grievance and arbitration procedure. If on the other hand, the Hospital has arranged for an insured benefit plan which is different from what is required by the collective agreement, that may properly be the subject of a grievance. It is thus important not only to have a copy of employee benefit booklets but also a copy of the master policy.

Third, article 18.01 allows for various types of superior conditions. In each case, a greater employer premium contribution is allowed, and in certain cases a greater benefit is allowed.

Fourth, article 18.01 refers at a number of points to the Blue Cross plan that was in effect on September 28, 1993. The purpose of that requirement is to prevent an erosion of benefits by using the Blue Cross standard that was in effect on that date as an ongoing baseline against which plans are measured. Note that unlike Article 13.01, which makes the HOODIP 1992 book-

let the standard, Article 18.01 establishes the 1993 Blue Cross plan as the standard, not the Blue Cross brochure.¹⁰⁶

Article 18.01 is applicable to full-time employees only and requires the hospital to contribute towards a number of types of coverage, including semi private, extended health, life insurance, and dental. The nature and level of these benefits is not described in the article, except that in each case the coverage must be “comparable” to the relevant Blue Cross plan in effect as of September 28, 1993. This means that any benefit plan must be at least as beneficial as the comparator plan. Thus, where a hospital imposed a requirement that compression stockings be purchased only at its own pharmacy in a bona fide attempt to control costs, it was found to have breached Article 18.01 because the Blue Cross plan in effect as of September 28, 1993 provided coverage for compression stockings without any restrictions on place of purchase.¹⁰⁷ Similarly, a hospital was found to have failed to provide the required level of coverage where it created an “Approved Provider Network” limiting where employees could obtain certain types of medical supplies¹⁰⁸

The extended health plan addressed by **Article 18.01(b)** contains a number of different sections, the most commonly utilized of which is probably prescription drugs. Drug insurance plans will typically be based upon a ‘formulary’, a list of drugs based upon a definition of insured medications. The formulary attached to Blue Cross extended health care plans in effect on September 28, 1993 included a broad range of drugs medications, and coverage for those drugs is available provided that the drug or treatment in question be prescribed and legal. It need not be a drug for which a prescription is necessary. If for example, a physician believes that aspirin is medically necessary for treatment of an employee, it is insured under the plan. However, coverage for drugs that were not included in Blue Cross’s formulary as of September 28, 1993 may not be covered. Thus, claims for Viagra and medical marijuana have been denied under similar types of benefits provisions on the basis that these drugs were not included in older formularies.¹⁰⁹

Article 18.01 (b) also allows for a cap on chiropractor or physiotherapist services up to an annual maximum of \$375 for each service. These paramedic benefits are described in terms of an annual maximum. There is no other limitation or reimbursement cap. In other words, there is no ‘per visit’ cap contained in the

collective agreement, although the Blue Cross Plan in effect on September 28, 1993 contains certain per-visit caps that may or may not appear in the text of your local hospital's plan.

There is a maximum of \$300 for vision care every 24 months, which can be used for laser surgery. This is *in addition to* coverage for biannual eye examinations.

As well, hearing aids are fully insured every 36 months. The plan insures the full cost of the hearing aid.

While it is not a violation of Article 18.01 for an insurer to impose "reasonable and customary limits" on benefits, such limits must be demonstrably justified in the sense that they actually reflect reasonable and customary rates for the type of product in question. Thus, arbitrators have allowed grievances where an insurer set a limit on hearing aids at the 85th percentile of claims, because the insurer had failed to explain how it was determined that charges falling above the 85th percentile did not reflect reasonable and usual rates for this type of product.¹¹⁰

Finally, superior benefits which may exist at a hospital are protected in the following areas—greater employer premium percentage contribution; chiropractor services maximum annual reimbursement; physiotherapist services maximum annual reimbursement.

There are other insured services contained in the Plan. Please refer to the Members' Guide to Insured Benefits.

Recent amendments to Article 18.01(b) provide coverage for mental health services by a psychologist, registered psychotherapist or social worker (MSW) up to a maximum of \$800.00 annually.

Article 18.01(c) provides for life insurance. This is provided at no cost to the employee and provides life insurance of twice annual salary. Please refer to the Members' Guide to Insured Benefit Plans.

The dental plan set out in **Article 18.01(d)** has 3 components: a general plan identified as Blue Cross #9, which covers various elements of dental care described fully in the Members' Guide to Insured Benefits; and two 'Riders' (#'s 2 and 4) covering, respectively, complete and partial dentures, and, crowns,

bridgework and repairs to these. These riders are 'co-insured' to the level of the current ODA fee schedule, meaning that the plan pays 50% of the cost to the level set out in the fee schedule, and; there is a maximum per insured (i.e. each insured family member has a separate annual maximum if the employee has family coverage) annual payment for each rider.

Article 18.01(e) requires that hospitals maintain their share of premium contributions for semi-private, extended health and dental coverage, for *any* full-time employee who takes early retirement, who is in receipt of HOOPP (or the hospital's equivalent plan if not HOOPP), and who has not yet reached age 65. The same percentage contribution must be maintained by the hospital for these benefits.

Article 18.01(f) requires the Hospital to provide to the union a copy of all of the benefit plan master policies that are referred to above. These should be requested at least once during the course of every collective agreement and reviewed by the Local Union to ensure there has been no substantive change to benefits, and that the benefits accord with what is required by the collective agreement. It has recently been confirmed that a hospital breaches Article 18.01(f) by failing to provide the Union with a copy of a new master policy within a reasonable period of time.¹¹¹

BENEFITS FOR EMPLOYEES AGE 65 AND OLDER

Some insurance plans terminate benefits at the age of 65. This will violate Article 18.01 if the Blue Cross plan in effect of September 28, 1993 included employees over the age of 65, or did not expressly exclude employees over the age of 65.¹¹² Further, since 2006, the Ontario *Human Rights Code* has prohibited discrimination on the basis of age 65+ (the scope of protection was formerly restricted to those aged 18-64). Thus, an age 65 benefits cut-off may violate the Ontario *Human Rights Code*, unless the restriction is upheld as a *bona fide* occupational requirement in the circumstances of the case.¹¹³

Article 18.02 applies in the case of a change of carrier. It allows the hospital to substitute another carrier at any time, provided that the benefits under the new carrier are not in total decreased. This appears to allow for changes in certain areas as long as they are balanced by changes in other areas, subject to

the standards established by the Blue Cross plan in effect as of September 28, 1993. It also requires the hospital to provide the union with notice in advance of any change of carrier, as well as particulars about the specific contents of the benefit plan. It was recently confirmed that not only does a hospital have to provide 60 days notice of the change, it must also provide information to the Union about proposed alterations to the plan arising out of the change of carrier, such that the Union is able to explain these changes to its members and to ascertain their views.¹¹⁴

Article 18.03 is about employee pension. It provides for HOOPP to all full-time employees and qualifying part-time employees. Part-time and casual employees who work 700 hours or who earn 35% of the Yearly Maximum Pensionable Earnings are eligible to participate on a voluntary basis. Full-time employees are required to participate. HOOPP is extensively described in the OCHU/CUPE Pension Guide.

Article 18.04 governs benefits for part-time employees. It provides that part-time employees receive a payment in lieu of “fringe benefits”, equivalent to 14% of their regular straight time hourly rate for all straight time hours paid (and while on pregnancy or parental leave to the extent required under those provisions). Fringe benefits are broadly defined to include all benefits paid by the hospital as part of direct compensation or otherwise, and includes holiday pay. Excluded from the definition of fringe benefits are salary, vacation pay, standby pay, call back pay, reporting pay, responsibility allowance, jury and witness duty, bereavement pay, and maternity supplemental unemployment benefits. In other words, part-time employees are entitled to receive those benefits in addition to the 14% payment in lieu.

Article 18.05 requires the hospital to deduct assessments for union education on direction from the union, provided these are in accordance with the union’s by-laws and constitution.

ARTICLE 19—HEALTH AND SAFETY

Article 19.01 sets out the amount of a protective footwear allowance that is paid annually to full and part-time employees. The classifications covered by the allowance are negotiated locally and set out in the Local Issues Appendix.

Article 19.02 is a new clause which addresses infectious diseases.

This Article reflects some of the lessons learned from the Covid-19 pandemic and settlements reached as a result of litigation pursued by OCHU. It expressly makes the precautionary principle a collective agreement obligation, requires hospitals to ensure adequate stocks of N95s or equivalent or better to be made available to bargaining unit members on short notice in the event that there are reasonable indications of the emergence of a pandemic, epidemic or infectious disease outbreak, provides for training with respect to required protective clothing, equipment or devices, requires hospitals to cooperate in providing necessary information and support to the Joint Health and Safety Committee, and allows pregnant employees to be temporarily transferred from their current duties if a risk to the pregnancy and/or unborn child is identified.

Article 19.03 addresses workplace violence. It expresses a shared goal on the part of hospitals and unions of workplaces free of violence, and requires local parties to determine appropriate solutions to promote health and safety in the workplace which include the adoption of the following mandatory provisions, summarized as follows:

1. Employees must be properly advised in advance if they are required to interact with patients posing a danger of violent behaviour;
2. The hospital shall give due consideration to whether it is appropriate for an employee to interact with a known violent patient alone, and the
3. The Hospital must advise the Union without undue delay of any incident of an employee being subjected to violence at the workplace. In addition, the local parties will consider addressing additional remedies which include electronic and visual flagging, properly trained security, personal alarms, organization risk assessments, training in de-escalation

Article 19.04 (newly numbered) addresses flu vaccines. It provides a code of protections that apply in the event the Medical Officer of Health declares a flu outbreak.

In particular, under **Article 19.04(a)**, employees have the right to decline a vaccination. **Articles 19.04(b)** and **19.04(c)** provide that an employee who declines a vaccine will be reassigned during the outbreak period, unless reassignment is not possible, in which case they will be placed on a leave for the outbreak period. For employees who decline the vaccine because it is medically contra-indicated and supported by a medical certificate, such leave will be paid; for those without a medical reason, the leave will be unpaid (but the employee may use banked lieu time or vacation credits to keep their pay whole).

There has been some dispute where a hospital may interpret the word 'reassignment' in an identical fashion to its use in article 9.08. In particular, at least one hospital has contended that a reassignment under 19.02 can only be made where all of the conditions set out in article 9.08(A)(b) are met. The outcome of such an interpretation would likely be that few if any employees could ever be reassigned under 19.02. Moreover, Article 9.08(A)(b) sets out the terms of permanent reassignments in order to avoid notice of layoff. Article 19.02 obviously deals with temporary reassignments.

Article 19.04(d) precludes hospitals from challenging WSIB claims of employees who are ill as a result of the vaccination, which of course requires that the employee demonstrate first the illness and second that it arose from the vaccination.

Under **Article 19.04(e)**, hospitals must pay the cost of the vaccine if not covered by some other source, and endeavour to offer vaccines during an employee's working hours. In addition, employees must be provided with information regarding the vaccine, e.g. risks and side-effects.

Article 19.04(f) requires that the Article be interpreted consistently with the *Human Rights Code*.

ARTICLE 20—COMPENSATION

Article 20.01(A) deals with new classifications and establishes a procedure for establishing a wage rate for those new classifications.

A new classification is created when the hospital gives notice of a 'new occupational classification', which is accompanied by the proposed wage rate and the job description.

The union has the right to challenge the wage rate, and within 10 days can request a meeting to negotiate the wage rate. Such challenge should be put in writing, as it will set the date from which retroactivity, should a higher rate be awarded, is to be paid. If no agreement is reached, the union has 15 days from the meeting to refer the dispute to arbitration. It is important that this timeline be carefully adhered to, in that this may not be a time limit which an arbitrator can extend.

A new classification is created not only when a hospital advises that it has created one, or when an arbitrator gives notice to that effect, but also where a hospital makes “a substantial change in the job content of an existing classification which in reality causes such classification to become a new classification.” A new classification will be considered to be created when “the change involves a substantial, qualitative change in the functions of the position. Added duties or qualifications will not on their own create a new classification.

Article 20.01(B) requires the hospital to provide job descriptions on request, and in the event of the creation of a new classification. It does not however, mandate the creation of job descriptions if none exist.

Article 20.02 deals with circumstances where an existing position is revised, with the addition of new duties, but the function of the position remains the same. In these circumstances, under **Article 20.02(a)**, an employee presently in the position who is physically incapable of performing the new duties, will be permitted to remain in the position provided the medical incapacity is documented to the hospital by the employee’s physician. In addition, under **Article 20.02(b)**, should an employee require additional training to perform the duties, such training will be provided (during working hours where possible) for a period of up to six months. The hospital must give due regard to the employee’s educational background in age in determining the amount of training necessary. Any tuition or travel costs are borne by the hospital.

Article 20.02 thus may apply where article 20.01(A) does not. If the hospital revises an existing position to the extent that a new classification is created, article 20.01(a) applies, and not article 20.02. Because article 20.02 does not envisage the creation of a new classification, there is no posting required.

Article 20.03 determines the step an employee is placed on the wage grid when the employee is promoted to a higher paying classification. The new rate is the lesser of:

- a. the rate on the new grid that provides an increase of one step on the employee's previous grid, or;
- b. the maximum rate of the new classification.

In measuring the step on the employee's previous wage grid, the parties should use either the next step from the employee's previous wage rate, or the last step on the grid if the employee was at the maximum rate on the previous wage grid.

Article 20.04 continues any provisions under this heading in the hospital's previous collective agreement.

Article 20.05 establishes the rate at which part-time and casual employees progress on the wage schedule. Progression is based upon 1725 hours worked, or hours that are otherwise credited (e.g. WSIB absence, pregnancy and parental leave).

ARTICLE 21—FISCAL ADVISORY COMMITTEE

Article 21 obligates the Hospital to involve the Union in the budgetary process to the extent that staffing is affected. The Union is to be involved from the outset of the budgetary process and is also to be involved in any subsequent budgetary revisions.¹¹⁶

The Hospital's Article 21 obligations are separate from those arising under Article 9.08(A). Article 21 obligations are triggered independently of, and prior to, the contemplation of layoffs. In other words, by the time employees receive notice of layoff or reassignment, the union should have already had the opportunity to participate in the labour adjustment strategy.

In addition to allowing the union participation in the development and amendment of hospital budget plans, Article 21 imposes an obligation on the hospital to provide financial and staffing information which is pertinent to the operating plan, or to any other re-structuring plan which impacts upon the members of the bargaining unit.

ARTICLE 22—APPRENTICESHIP COMMITTEE

This article creates a joint committee at each hospital to discuss the feasibility of an apprenticeship program at that hospital. If deemed feasible, the parameters of such a program are determined locally. The local parties are further required to seek the availability of any provincial or federal funds that may be available to assist.

ARTICLE 23—DURATION

Article 23.01 requires that notice to bargain be served in writing within 90 days prior to the expiry of the collective agreement. Otherwise, the collective agreement will be renewed on a year-by-year basis until such notice is served.

Article 23.02 exists notwithstanding article 23.01 and sets out a different process should the parties participate in central bargaining. Should the parties agree to participate in central bargaining, then Local Issues bargaining is to take place during the period commencing 120 days prior to the expiry of the collective agreement and conclude 60 days prior to the expiry of the agreement. Negotiations on Central Issues are to be conducted during the final 45-day period of the collective agreement.

In March of the final year of the collective agreement (where the collective agreement expires in September) the central negotiation teams are to meet in order to establish the participants and the memorandum of conditions for the next round of central bargaining.

Endnotes

- 1 *Ottawa (City) v CUPE, Local 503*, (1993), 34 LAC (4th) 127 (Keller)
- 2 *Perth and Smiths Fall District Hospital v CUPE, Local 2119*, unreported, September 14, 2015 (Roland)
- 3 See *Ottawa (City) v Ottawa Carleton Public Employees Union, CUPE Local 503*, 2008 CanLII 87815 (ON LA) (P. Picher)
- 4 *SIEU, Local 204 v Leisureworld Nursing Homes Ltd*, 1997 OJ No 1469, affirmed 1997 OJ No. 4815
- 5 *James Bay General Hospital and PSAC*, (2003), 126 LAC (4th) 1, (Devlin), upheld on judicial review 2004 CanLII 76758 (ON SCDC)
- 6 *Bridgepoint Health v. CUPE Local 79*, 2015 CanLII 19729 (Stout)
- 7 *CUPE Local 942 v. Royal Ottawa Mental Health Centre*, October 27, 2022 (Schmidt)
- 8 *Providence Healthcare v CUPE, Local 1590*, 2013 CanLII 72316 (ON LA) (Goodfellow)
- 9 *CUPE Local 1999 v Markham Stouffville Hospital (Uxbridge Site)*, 2017 CanLII 39688 (ON LA) (Trachuk)
- 10 see for example, *Toronto Western Hospital and CUPE 1744*, (1985), 19 LAC (3rd)191 (M. Picher)
- 11 *Parkwood Hospital v ONA*, (1989), 7 LAC (4th) 141 (Mitchnick)
- 12 *St. Joseph's Health Centre v Part-Time Service Bargaining Unit CUPE, Local 1144*, 2012 CanLII 26104 (ON LA) (Stout)
- 13 *Carillion Services v CUPE, Local 942*, 2011 CanLII 10605 (ON LA) (Goodfellow)
- 14 *CUPE Local 5001 v University Health Network*, 2018 CanLII 110056 (ON LA) (Fishbein)
- 15 *William Osler Health System and Teamsters Local 419*, 2020 CanLII 33067 (ON LA) (Johnston)
- 16 *Ontario Nurses' Association v Orillia Soldiers Memorial Hospital*, 1999 CanLII 3687 (ON CA)
- 17 *Peterborough Hospital v CUPE*, 2013 CanLII 43787 (ON LA) (Kaplan)
- 18 *Perth and Smiths Falls District Hospital v CUPE, Local 2119*, 2017 CanLII 5849 (Albertyn)
- 19 *Kingston General Hospital v CUPE, Local 1974*, 2002 OLAA No 23 (Davie)
- 20 *Ottawa Hospital and CUPE, Local 4000, Re*, (2007), 89 CLAS 245 (Keller)
- 21 *CUPE Local 3651 v Markham-Stouffville Hospital*, 2021 CanLII 4704 (ON LA) (Jesin)

- 22 *CUPE Local 1779 v Health Prince Edward Island*, 2014 CanLII 75167 (PE LA) (McEvoy)
- 23 *Northumberland Hills Hospital v CUPE Local 2628*, 2020 CanLII 108767 (ON LA) (Sheehan)
- 24 *Trillium Health Partners v CUPE, Local 5180*, 2015 CanLII 56994 (ON LA) (Goodfellow)
- 25 *Ottawa Hospital v CUPE, Local 4000*, 2009 OLAA No 476, (Allen) and see also, *Pembroke Regional Hospital and CUPE, Re*, (2009), 187 LAC (4th) 105 (Brown)
- 26 *Hamilton Health Sciences Corp v CUPE Local 4800*, 2005 OLAA No. 305 (Burkett)
- 27 See for example *Scarborough Hospital v. CUPE, Local 1487*, 2006 OLAA No. 42 (Burkett) and “Reassignment” topic below.
- 28 *Ross Memorial Hospital v CUPE, Local 1909*, 2019 CanLII 22849 (ON LA) (Schmidt); *St. Vincent de Paul Hospital, Brockville v CUPE, Local 2491*, 2006 OLAA No 615 (Devlin); *CUPE, Local 4000 v Ottawa Hospital*, (2012), 215 LAC (4th) 309 (Schmidt)
- 29 *North Bay Regional Health Centre v CUPE, Local 139*, 2017 CanLII 21416 (ON LA) (Goodfellow)
- 30 *Pembroke Regional Hospital v CUPE, Local 1502 (Grievances Concerning Transfer of Laboratory Services)*, unreported, July 10, 2009 (Burkett)
- 31 *Credit Valley Hospital v CUPE, Local 3252*, 2012 ONSC 7266 (CanLII), upholding *Credit Valley Hospital v CUPE, Local 3252*, (2011), 108 CLAS 177 (Shime) and *Trillium Health Centre v CUPE*, 2012 CanLII 12407 (ON LA) (Kaplan)
- 32 *Steripro Canada Lp v CUPE, Local 5180.1*, 2017 CanLII 33309 (ON LA) (Goodfellow)
- 33 *Sudbury Regional Hospital v CUPE, Local 1623*, 2007 CanLII 37013 (ON LA) (Albertyn); *St. Joseph’s Healthcare (Hamilton) v CUPE Local 786*, 2014 CanLII 42574 (ON LA) (Kaplan); *St. Joseph’s Healthcare (Hamilton) v CUPE, Local 786 (13-principal-00797), Re*, (2017), 131 CLAS 96 (Schmidt); *Ross Memorial Hospital v CUPE, Local 1909*, 2017 CanLII 20431 (ON LA) (Gedalof)
- 34 *Whitby General Hospital v CUPE, Local 3082*, (1996), 45 CLAS 340 (Springate)
- 35 *Chedoke-McMaster Hospitals v CUPE, Local 839*, 1998 OLAA No 106 (Burkett)
- 36 *Hamilton Health Sciences Corp v CUPE, Local 839*, (2001), 94 LAC (4th) 156 (Adams); *CUPE Local 7811 v Cornwall Community Hospital*, unreported, October 23, 2018 (Petryshen)
- 37 *Toronto Hospital v CUPE, Local 1744*, (1997), 48 CLAS 244 (Charney)
- 38 *Kingston General Hospital v CUPE, Local 1974*, (2002), 112 LAC (4th) 104 (Devlin)

- 39 *Winchester District Hospital v CUPE, Local 3000*, 2020 CanLII 98764 (ON LA) (Kaplan); *Sudbury Regional Hospital v CUPE Local 1623 (CS 2004-161)*, Re, 2007 OLAA No 183 (Burkett)
- 40 *CUPE, Local 786 v St. Joseph's Healthcare*, (2011), 107 CLAS 134 (Howe)
- 41 *Hamilton Health Sciences Corp v CUPE, Local 4800*, 2005 OLAA No 305 (Burkett)
- 42 *Ibid.*
- 43 *Scarborough Hospital v CUPE, Local 1487*, 2006 OLAA No 42 (Burkett)
- 44 *Ibid.*
- 45 *CUPE Local 942 v Royal Ottawa Health Care Group (Reassignment)*, unreported, January 16, 2017 (Flaherty)
- 46 *Scarborough General Hospital v CUPE, Local 1487*, 2004 OLAA No 132 (Mitchnick)
- 47 *Cornwall Community Hospital v CUPE, Local 7811*, 2018 CanLII 12100 (ON LA) (Flaherty)
- 48 *Sudbury Regional Hospital v CUPE, Local 1623 (Bossé)*, Re, (2008), 96 CLAS 195 (Stewart)
- 49 *Scarborough Hospital v CUPE, Local 1487*, 2006 OLAA No 42 (Burkett)
- 50 *Niagara Health Systems and SEIU, Local 1on*, Re, 2005 OLAA No 110 (Whitaker); *St. Joseph's Healthcare Hamilton v CUPE, Local 786*, 2015 CanLII 18978 (ON LA) (Slotnick)
- 51 *Scarborough General Hospital v CUPE, Local 1487*, 2004 OLAA No 132 (Mitchnick)
- 52 *Scarborough Hospital v CUPE, Local 1487*, 2006 OLAA No 42 (Burkett)
- 53 *CUPE, Local 1623 v Health Sciences North*, 2013 CanLII 67386 (ON LA) (Kanee)
- 54 *St. Joseph's Healthcare Hamilton and CUPE, Local 786*, 2015 CanLII 18978 (ON LA) (Slotnick)
- 55 *Cornwall Community Hospital v CUPE, Local 7811*, 2019 CanLII 1685 (Albertyn)
- 56 *Kingston Health Sciences Centre v Canadian Union of Public Employees, Local 1974*, 2021 CanLII 5447 (Bernhardt)
- 57 *Winchester District Hospital v CUPE, Local 3000*, 2020 CanLII 98764 (Kaplan), *Oak Valley Health Markham Stouffville Hospital v Canadian Union of Public Employees, Local 3651*, 2021 CanLII 88145 (Sheri Price)
- 58 *St. Joseph's Healthcare Hamilton v CUPE, Local 786*, 2017 CanLII 55589 (ON LA) (Parmar)
- 59 *Credit Valley Hospital v CUPE, Local 3252*, (2011), 108 CLAS 177 (Shime), upheld on judicial review in *Credit Valley Hospital v. CUPE Local 3252*, 2012 ONSC 7266 (CanLII)
- 60 *Hamilton Health Sciences v CUPE, Local 7800*, 2021 ONSC 1337

- 61 *CUPE, Local 1974 v Kingston General Hospital*, 2013 CanLII 33 (ON LA) (Steinberg)
- 62 *Ross Memorial Hospital v CUPE, Local 1909*, 2018 CanLII 4622 (Gedalof)
- 63 *Sudbury Regional Hospital v CUPE, Local 1623*, 2007 CanLII 37013 (ON LA) (Albertyn); *St. Joseph's Healthcare v CUPE, Local 786*, 2014 CanLII 42574 (ON LA) (Kaplan); *Ross Memorial Hospital v CUPE, Local 1909*, 2017 CanLII 20431 (ON LA) (Gedalof); *St. Joseph's Healthcare (Hamilton) v CUPE, Local 786 (13-principal-00797), Re*, (2017), 131 CLAS 96 (Schmidt)
- 64 *Pembroke Regional Hospital v. CUPE Local 1502 (Grievances Concerning Transfer of Laboratory Services)*, unreported, July 10, 2009 (Burkett)
- 65 *Credit Valley Hospital v CUPE, Local 3252*, (2011), 108 CLAS 177 (Shime), upheld on judicial review in *Credit Valley Hospital v. CUPE Local 3252*, 2012 ONSC 7266 (CanLII)
- 66 *Whitby General Hospital v CUPE, Local 3082*, (1996), 45 CLAS 340 (Springate)
- 67 *Lakeridge Health Corporation v CUPE, Local 1999*, 2011 CanLII 52248 (ON LA) (Slotnick)
- 68 *Sudbury Regional Hospital v CUPE, Local 1623*, 2007 CanLII 37013 (ON LA) (Albertyn); *St. Joseph's Healthcare (Hamilton) v CUPE, Local 786*, 2014 CanLII 42574 (ON LA) (Kaplan); *Ross Memorial Hospital v CUPE, Local 1909*, 2017 CanLII 20431 (ON LA) (Gedalof)
- 69 See for example *Rouge Valley Health System v CUPE, Local 4365, Re*, 2007 OLAA No 275 (M.R. Newman); *Re Hamilton Civic Hospitals and CUPE, Local 794*, 1994 OLAA No 651 (Samuels)
- 70 *Northeast Mental Health Centre and OPSEU (Bedard) Re*, (2004), 77 CLAS 195 (Kaplan)
- 71 *CUPE Local 2119 v. Perth and Smith Falls District*, unreported, May 6, 2020 (Schmidt). See also *Sunnybrook Hospital Employees' Union, Local 777 v Sunnybrook Health Science Centre*, 1997 CanLII 22679 (ON LA) (Goodfellow)
- 72 *Sunnybrook Hospital Employees' Union, Local 777 v Sunnybrook Health Science Centre*, 1997 CanLII 22679 (ON LA) (Goodfellow)
- 73 See for example *Scarborough Hospital v CUPE, Local 1487*, 2006 OLAA No 42 (Burkett)
- 74 *St. Vincent de Paul Hospital, Brockville v CUPE, Local 2491*, 2006 OLAA No 615 (Devlin); *CUPE, Local 4000 v Ottawa Hospital*, (2012), 215 LAC (4th) 309 (Schmidt)
- 75 *Chedoke-McMaster Hospitals v CUPE, Local 839*, 1998 OLAA No 106 (Burkett); *Hamilton Health Sciences Corp v CUPE, Local 4800*, 2005 OLAA No 305 (Burkett)
- 76 *Scarborough Hospital v CUPE, Local 1487*, 2006 OLAA No 42 (Burkett); *William Osler Health Centre v CUPE, Local 145, Re*, 2007 OLAA No 59 (Springate)

- 77 See for example *Hydro Ottawa Limited v. IEBW, Local 636*, 2007 ONCA 292; *IKO Industries v USWA*, 2002 OLAA No 1043 (2002), 118 L.A.C. (4th) (Picher)
- 78 See for example *Hydro Ottawa Limited v. International Brotherhood of Electrical Workers (Local 636)*, 2007 ONCA 292; *IKO Industries Ltd v USWA*, 2002 OLAA No 1043 (Picher)
- 79 *St. John's Rehabilitation Hospital and CUPE, Local 790 and Brookfield LePage Johnson Controls*, unreported, January 15, 2002 (Abramsky)
- 80 *Credit Valley Hospital v. CUPE Local 3252*, 2012 ONSC 7266 (CanLII), upholding *Credit Valley Hospital v CUPE, Local 3252*, (2011), 108 CLAS 177 (Shime) and *Trillium Health Centre v CUPE*, 2012 CanLII 12407 (ON LA) (Kaplan)
- 81 *Health Sciences North v CUPE Local 1623*, 2018 CanLII 93856 (ON LA) (Schmidt)
- 82 *ONA v Extendicare (Laurier Manor)*, 1997 OLAA No 575 (Mitchnick); *The Credit Valley Hospital and CUPE Local 3252*, unreported, June 9, 2007 (McLean)
- 83 *Oshawa General Hospital v CUPE, Local 45*, 1997 CanLII 22699 (ON LA) (Swan)
- 84 *Huron Perth Health Care Alliance and CUPE Local 4727*, unreported, June 16, 2013 (Mikus)
- 85 *Renfrew County and District Health Unit v ONA*, 2016 CanLII 107711 (ON LA) (O'Neill)
- 86 *Almonte General Hospital v CUPE, Local 3022*, 2011 CanLII 70444 (Allen)
- 87 *CUPE Local 1909 v Ross Memorial Hospital*, 2022 CanLII 60342 (Trachuk)
- 88 *Timmins and District Hospital v OPSEU Local 643*, 2014 CanLII 50315 (ON LA) (Stout)
- 89 *Joseph Brant Memorial v CUPE, Local 1065*, 2012 CanLII 51316 (ON LA) (Kaplan)
- 90 *Markham Stouffville Hospital (Uxbridge Site) v CUPE Local 1999*, 2019 ONSC 5373 (Div. Ct.)
- 91 *Ibid.* See also *Pembroke Regional Hospital v CUPE*, 2022 CanLII 22899 (Kaplan)
- 92 *St. Joseph's Healthcare Hamilton v CUPE, Local 786*, 2020 CanLII 97979 (ON LA) (Misra)
- 93 *Ottawa Hospital and CUPE (HOODIP), Re*, 2010 OLAA No 647 (Keller)
- 94 *Ottawa Hospital v. OPSEU, Local 464*, 2008 OLAA No. 266 (Keller), upheld on judicial review in 2009 CanLII 9389 (Div Ct.); *Rouge Valley Health System v. ONA*, 2014 OLAA No 136, (Trachuk); *Perth and Smiths Falls District Hospital and CUPE, Local 2119 (Short Term Sick Leave Benefits), Re*, (2017), 130 CLAS 239 (Petryshen); *North Bay Regional Health Centre v CUPE Local 139*, 2022 CanLii 2809

- 95 *North Bay Regional Hospital v OPSEU Local 662*, 2014 CanLII 37462 (ON LA) (Parmar)
- 96 *CUPE Local 3074 v Geraldton District Hospital*, unreported, February 26, 2010 (Chapman)
- 97 *Ibid.*
- 98 *Campbellford Memorial Hospital v Canadian Union of Public Employees, Local 2247*, 2022 CanLII 10352 (Parmar)
- 99 *Sunnybrook and Women's College Health Sciences Centre*, (2001), 95 LAC (4th) 34 (Weatherhill); *Mohawk Shared Services Inc. v CUPE, Local 1605*, 2009 CanLII 41180 (Knopf)
- 100 *Markham Stouffville Hospital v Canadian Union of Public Employees Local 3651*, 2007 CanLII 52968 (ON LA)
- 101 *Peterborough (County) v CUPE, Local 1306.5*, (2002), 68 CLAS 29 (Knopf)
- 102 *St. Joseph's Healthcare Hamilton v CUPE Local 786*, 2020 CanLII 97979 (Misra)
- 103 *Canadian Union of Public Employees Local 942 v Royal Ottawa Health Care Group*, 2017 CanLII 34457 (ON LA)
- 104 *CUPE Local 2119 v. Perth and Smith Falls District*, unreported, May 6, 2020 (Schmidt)
- 105 *E.g. Trillium Health Partners v CUPE, Local 5180*, 2017 CanLII 52412 (ON LA) (Parmar)
- 106 *Peterborough Regional Health Centre v CUPE, Local 1943*, 2012 CanLII 63036 (ON LA) (Goodfellow)
- 107 *CUPE Local 7800 v Hamilton Health Sciences Corporation*, 2019 CanLII 19269 (ON LA) (Schmidt)
- 108 *Unity Health Toronto v. CUPE Local 5441*, 2022 CanLII 74294 (Parmar)
- 109 *Hamilton (City) v Hamilton Professional Fire Fighters' Association*, 2016 CanLII 16885 (ON LA) (Sheehan); *Peterborough Regional Health Centre v CUPE, Local 1943*, 2012 CanLII 63036 (ON LA) (Goodfellow)
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- 112 *The Scarborough Hospital v CUPE Local 1487*, 2014 CanLII 66059 (ON LA) (Goodfellow)
- 113 *Talos v Grand Erie District School Board*, 2018 HRT0 680 (CanLII)
- 114 *Unity Health Toronto v. CUPE Local 5441*, 2022 CanLII 74294 (Parmar)
- 115 *Arnprior Regional Health v CUPE, Local 2198*, 2016 CanLII 72403 (ON LA) (Goodfellow)
- 116 *Arnprior Regional Health v CUPE, Local 2198*, 2016 CanLII 72403 (ON LA) (Goodfellow)

