

# CENTRAL GRIEVANCE ARBITRATION UPDATE

## Pharmacy Technicians

The North Bay Hospital required its Pharmacy Assistants to upgrade to the new regulated classification of Pharmacy Technician. Some of the affected employees were unable to meet the regulatory requirements. As a result, the Hospital fired them. It was the Union's position that the Hospital was required to provide these employees with notice of layoff under Article 9.08(A). The Hospital took the position that the employees in question had been terminated for (non-disciplinary) cause, not laid off. The Board of Arbitration, chaired by Russell Goodfellow found that when a Hospital chooses to fundamentally alter the requirements of a position, for regulatory reasons or otherwise, it must provide notices of layoff if those positions are occupied. An excellent outcome for L. 139 and all of our membership!



## Big win on part-time exit packages at Ross Memorial

In a recent decision, Arbitrator Eli A. Gedalof ruled in favour of CUPE Local 1909 at Ross Memorial with respect to the calculation of the retirement allowance and voluntary exit option under Articles 9.08(B) and (C).

Arbitrator Gedalof found no basis for departing from the plain meaning of the Articles in question, and thus declared that while the reference to "two (2) weeks salary" is a reference to the individual part-time employee's actual salary, the reference to "year of service" for part-time employees is to the part time employee's actual years of service without distinction between full and part-time status.

This decision departs from previous decisions, including a 2013 award by arbitrator Steinberg involving CUPE Local 1974 and Kingston General Hospital, which found it appropriate to pro-rate the years of service of part-time employees. This had resulted in a "double discount" of the benefit for part-time employees, where both the salary and the years of service variable were approached in a manner that accounted for their part-time status.

Congratulations to L. 1909! All part-time members across the province will benefit from this great arbitration decision.

### ***“Reasonable, customary practice “as it applies to your benefit plans***

The issue in this case was whether an insurer, Sun Life, is entitled to make benefit entitlements subject to a “reasonable and customary limit” for the benefit in question. The benefit in question in this case was a hearing aid. The grievor’s claim for \$5,630 hearing aid had been capped at a reasonable and customary limit at \$4,200 by the insurer although the agreement provides for full reimbursement.. This case confirms that although reasonable and customary caps may be imposed, they must actually reflect reasonable and customary rates for the product in question. Arbitrator Parmar held that the power to impose reasonable, customary limits mean that insurers must provide benefits at a reasonable and customary limit as supported by data. Neither Sun Life nor the hospital could explain how the decision was made to arbitrarily cut off the hearing aid benefit. Great job CUPE 5180!

### ***Disclosure in contracting-out strengthens in decision at St. Jo’s Hamilton CUPE Local 786***

The Hospital contracted out its in-house transportation services to a company called Lifeline Delivery Services (LDS). In the course of the resulting redeployment process, the Union asked the Hospital to provide it with copies of its contract documents with LDS. The Hospital refused, claiming that it was sufficient for it to provide the “Union with its own summary of some of the data contained in the contract documents.

The Union ultimately obtained redacted versions of the contractual documents through a Freedom of Information request granted several months after redeployment had concluded.

It was the Union's position that in failing to disclose the contract documents to the Union, the Hospital had breached Article 9.08(d)(iii) (Disclosure), which provides that:

*“The Hospital shall provide to the Redeployment Committee all pertinent staffing and financial information.”*

The Board of Arbitration, chaired by Arbitrator Jasbir Parmar, agreed with the Union. The Arbitrator confirmed that the entire purpose of the Redeployment Committee "is to enable the Union to be able to make an informed appeal to the Hospital's key decision-makers to consider something other than what the Hospital is already proposing to do."

In the decision the Arbitrator declared that the Hospital breached the collective agreement when it failed to disclose the contracting out documents to the Union.

This case confirms the scope of the Hospital’s disclosure obligations during redeployment. Its practical approach to the matter of disclosure is also likely to be of assistance under Article 21 (Fiscal Advisory Committee), where similar disclosure issues routinely arise. Great job, Local 786.