

IN THE MATTER OF AN ARBITRATION

BETWEEN

**WOODSTOCK HOSPITAL**

(“the Hospital” / “the Employer”)

- AND -

**UNIFOR, LOCAL 636**

(“the Union”)

CONCERNING AN INTEREST ARBITRATION UNDER THE *HOSPITAL LABOUR  
DISPUTES ARBITRATION ACT*, RSO 1990, c H-14 (HLDAA)

BOARD OF ARBITRATION

Christopher Albertyn – Sole Arbitrator

APPEARANCES

For the Union:

Scott Smith, Unifor National Representative

Brent Thompson, Unifor Local 636 President

For the Hospital:

Rusty McLay, Counsel

Kathy Lavelle, Chief Financial Officer

Adam Hahn, Director, Human Resources

Hearing held by videoconference on July 12, 2022.

Award issued on July 18, 2022.

**AWARD**

1. This is an interest arbitration under the *Hospital Labour Disputes Arbitration Act*, RSO 1990, c H-14 (“HLDAA” / “the Act”).
2. The Employer, Woodstock Hospital, is a full-service community hospital with 178 beds. The Hospital provides primary hospital services for the residents of Woodstock and Oxford County, Ontario, serving a catchment population of approximately 110,000.
3. The Union, Unifor Local 363, represents two bargaining units of service employees at the Hospital: one of full-time employees, the other of part-time employees. The Union also represents a clerical unit at the Hospital, which is not at issue here. There are approximately 328 employees in the two service units.
4. Both the full-time and the part-time collective agreements operated for the term April 1, 2017 to March 31, 2021.
5. The Union gave the Hospital notice to bargain for both collective agreements on January 18, 2021. Typically, the parties bargain both agreements together and they conclude a single Memorandum of Agreement that is applicable to both collective agreement renewals.
6. Bargaining took place on November 24, 2021, and on February 23 and April 11, 2022.
7. Bargaining concluded on April 11, 2022, with all items either agreed or withdrawn, when the parties executed a Memorandum of Agreement. The term of the renewal collective agreements was agreed at being from April 1, 2021 to March 31, 2024 (a 3-year agreement).
8. The bargaining of the renewal collective agreements was carried out under the constraints of Bill 124, the *Protecting a Sustainable Public Sector for Future Generations*

*Act, 2019*, SO 2019, c 12 (“Bill 124”). In other words, the term of the renewal agreements coincides with the required 3-year “moderation period” defined in Bill 124.

9. The Union required disclosure of relevant financial information, which the Hospital provided.

10. In reaching their Memorandum of Agreement the parties negotiated such changes to the collective agreements as to achieve the maximum compensation adjustments for the affected employees, as is stipulated in Bill 124. Among the adjustments made (that fell within the constraints of section 10 of Bill 124) were improvements to the extended health care benefits for massage and vision care coverage.

11. Furthermore, as part of the Memorandum of Agreement, the parties agreed that, if Bill 124 is repealed, amended, or rendered inoperative, or if it is declared to be unconstitutional in a court challenge, they will return to the bargaining table to renegotiate all issues impacted by Bill 124, including retroactive adjustments.

12. The Hospital ratified the Memorandum of Agreement on April 27, 2022.

13. The Union held its ratification vote on the Memorandum of Agreement on May 2, 2022. Typically, and in this case, both full-time and part-time bargaining unit members vote together. The outcome, of the 112 employees who voted was: 44 – in favour; 68 – opposed. This meant that the Memorandum of Agreement was not ratified.

14. The parties have appointed me to arbitrate and determine the terms and conditions of the renewal collective agreements, and they confirm that I have jurisdiction to do so, pursuant to HLDAA.

15. The parties accept that the test to be applied to a rejected Memorandum of Agreement is that described in the arbitral jurisprudence. They acknowledge that a Memorandum of Agreement cannot be ignored unless there is clear evidence of unreasonableness or some significant and unforeseeable change in circumstances.

16. Replication is the fundamental principle of interest arbitration. A Memorandum of Agreement concluded by the bargaining parties, as here, is a strong indication of how their

bargaining is to be replicated in an interest award. This presumption is subject to the qualifications described in *Lakeside Retirement At Innisfil v United Food and Commercial Workers Canada, Local 175 (Health, Office and Professional Employees Division)*, 2022 CanLII 887 (ON LA) (Albertyn) and in *Quinte Health Care Corporation v Unifor, Local 830*, 2014 CanLII 373 (ON LA) (Albertyn). Those qualifications include: where the bargained outcome has been overtaken by changing economic circumstances or other extraneous events that render the parties' agreement patently unreasonable; or where the union's negotiating committee was "misguided in agreeing to its terms or substantively departed from the prevailing levels of settlement in the industry" (paragraph 11 of *Quinte*). There is also an onus on the party wishing to set aside the negotiated agreement to show that a different outcome is clearly warranted.

17. None of these qualifications apply in the present case. The Memorandum of Agreement concluded between the parties therefore represents the outcome that should be replicated in this award. Also, the Union does not seek to set aside the negotiated agreement.

18. A Memorandum of Agreement is typically considered to be a clear indication of what could be accomplished in free collective bargaining. This is particularly true in the context of Bill 124. The parties both affirm that, on a careful analysis of the cost implications of any adjustments to the collective agreements during the moderation period, they have sought and accomplished the maximum increases to wages and other compensation items, as is permissible under Bill 124 during that period. There is, accordingly, no reasonable basis for improving upon the Memorandum of Agreement that was negotiated by the parties.

19. In the circumstances, I uphold the Memorandum of Agreement concluded by the parties.

20. The renewal collective agreements will consist of the unchanged items from the collective agreements which expired on March 31, 2021, the items agreed by the parties themselves (Appendix "A" to their Memorandum of Agreement of April 11, 2022), which are incorporated into this award, and the content of the Memorandum of Agreement.

21. Pursuant to s.9(2) of HLDAA, I remain seized of the implementation of this award until the two collective agreements are in effect between the parties.

22. The parties agreed on the following in the Memorandum of Agreement:

In the event that *Protecting a Sustainable Public Sector for Future Generations Act, 2019* (Bill 124) is declared unconstitutional, in whole or in part, or is otherwise repealed, amended or rendered inoperative, the parties agree to return to the bargaining table to renegotiate all additional issues affected by Bill 124, including any retroactive adjustments.

23. I do not remain seized with respect to the outcome described in paragraph 22 above.

DATED at TORONTO on July 18, 2022.



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Christopher J. Albertyn  
Sole Arbitrator