

IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

ORNGE
(the “Employer”)

- and -

UNIFOR LOCAL 2002
(the “Union”)

ARBITRATOR: Tom Hodges

FOR THE EMPLOYER: Robert Giguere, Chief Operating Officer
Bruce Farr, Special Advisor to the CEO
Wade Durham, Director, Base Management
Foster Brown, Director, Employee and Labour Relations
Genevieve Fernandes, HR Officer

FOR THE UNION: Ron Smith, Unifor, Director of Transportation
Ashley Watkins, Executive Assistant, Unifor Local 2002
Charles Telky, Chair, Unifor Local 2002
Michael Chad, Vice Chair, Unifor Local 2002
Dan Lefebvre, Unifor Representative

Hearing: December 18 & 19, 2013

Award: February 21, 2014

INTRODUCTION

The collective agreement between the parties expired on October 31, 2012. The parties met in direct negotiations for over eighteen days of bargaining. While significant progress was made a number of key issues remained outstanding. By agreement dated December 18, 2013, the parties agreed to refer all outstanding issues to me through a mediation and arbitration process. If the parties were unable to reach a settlement in mediation, any remaining issues would be referred to me for determination pursuant to Section 40 of the Labour Relations Act.

Ornge submits that it is a Broader Public Sector (BPS) organization whose negotiations are governed by BPS guidelines. Ornge has a Performance Agreement mandated by the Ministry of Health and Long Term Care to assume responsibility for transferring ill and critically injured patients across the Province of Ontario. Ornge owns a fleet of aircraft, land ambulances and helicopters and employs Pilots, Paramedics, Dispatchers, Aircraft Maintenance Engineers, and support staff which provide the aforementioned services to Ontario residents. Unifor represents approximately 200 paramedics at Ornge that are deployed in eleven bases across Ontario.

Notwithstanding the restraints on negotiations, the parties engaged in bargaining and agreed to revisions covering over 20 Articles and Letters of the collective agreement. While these revisions were subject to an overall settlement they have been reviewed in this process and will form part of this decision. They are set out as appendix “A” of this award.

The Outstanding issues to be resolved are:

- Article 26 – Hours of Work and Overtime
- Article 32 – Training and Education
- Article 44 – Shift Premium
- Article 57 – Parking
- Article 62 – Shift Filling / On-Call
- Article 65 – Performance Bonus System
- Article 66 – Wage Adjustment

Facts and Submissions

The parties agreed that I could rely on information provided by them in the mediation process as well as the written submissions provided following the mediation, for the purposes of this award.

As well as considering the well-established principles of replication and comparability it is significant that Orange has finalized collective agreements with five other bargaining units representing pilots (Rotor and Fixed Wing), mechanics and dispatchers. These other agreements contain a basic pattern of give and take bargaining in provisions specific to their bargaining unit while establishing an overall pattern with respect to term of the agreements and monetary adjustments. Such patterns have generally received significant consideration as part of an interest arbitration process. Over the past two years the Employer has concluded agreements with five other bargaining units. Most of the settlements pertain to the same time period covered by this renewal collective agreement and are sufficiently comparable to be of significant value in the consideration of this settlement.

At the interest arbitration hearing, as well as outlining settlements with other bargaining units at Orange the Employer also referred to a forty page document summarizing settlements in the health service sector since 2011. The Employer submits that these settlements are consistent with its current wage proposal.

The Union argued that its members have not received a pay increase since Oct. 31st, 2011 and that its EMS counterparts within the GTA have surpassed the Orange pay grid. Unifor members also provide Advanced Care Flight Qualifications (ACPF) which has greater responsibility and knowledge than ACP land counterparts. The Union submits that the wage comparative for both Toronto and Durham Advanced Care Paramedics is approx. 6.5% greater than the current top level ACPF pay grid at Orange.

The Union submits that within Orange both Fixed and Rotor Wing Pilots are in the process of ratification. Fixed Wing Pilots will receive a 2% lump sum immediately upon ratification plus an additional 2% shortly thereafter ratification for a total of 4% lump sum, with an additional 2% lump sum in the 2015 year. They will also receive a 2% pay increase in 2015 and 2016. In addition all fixed wing pilots employed as of date of ratification were placed on a new step five of the grid of approximately 2% on ratification. Rotor Wing Pilots will receive immediately upon

ratification a 5% lump sum plus an 8% pay increase. They will then receive 2% pay increase per year until 2017.

DECISION

While considering the well-established principles of replication and comparability, it is highly relevant that over the past two years the Employer has obtained settlements with the vast majority of its other employees in four bargaining units. These four other bargaining units represent 250 union employees, over 50% of the Employer's total union workforce of 450 union employees.

The submissions of the parties in this process have been extensive and there has been no attempt herein to review them in their entirety. Balancing the positions of the parties is at the foundation of this decision as set out on the individual issues in dispute reviewed below.

Article 26 – Hours of Work and Overtime

The employer has proposed significant changes designed to align the medical crew with the aviation flight crew rest periods across the operation. The consequential effect of crew rest alignment is intended to reduce late starts.

Unifor argues that they do not have a hard stop at 15 hours as the pilots. Further, the employer continues to dispatch our Paramedic members on calls that will clearly go beyond the end of their 12 hour shift and in some cases beyond 14 hours total time and on rare cases beyond 17hours. The union relies on the “Shift Overrun Report (January 2013 – September 2013)” to demonstrate its concerns in this area.

The Union is not willing to address a greater portion of the Employer’s proposals related to obtaining greater flexibility in hours of work. There does appear to be merit with the Union’s concern for potential abuse based on evidence of past dispatching practices which have resulted in significant examples of excessive hours of work. Many of the examples provided appear to have been avoidable. Paramedics at Ornge do not have a hard cap on daily hours of work at 15 hours like the pilots they fly with daily and this fact prevents any attempt at replication based on

the pilots' hours of work language. Guarding against abuse of hours on duty is a legitimate health and safety responsibility of the Union.

Decision

The union's concerns with respect to dispatching of paramedics are longstanding and have been the subject of numerous grievances during the term of the current agreement. The changes proposed by the employer are extensive and are proposed without evidence of the consideration of potential adverse effects. Aligning flight crew and paramedic hours of work provisions, while at first glance are appealing cannot be considered without recognition for the reality that paramedics have transported with patients to hospitals only to have their work day extended while pilots are returned to base within their hard capped hours. As a result, the changes proposed by the employer cannot be supported in their entirety at this time. Alignment of paramedic and flight crew hours of work and rest are a legitimate long term goal. However, at this time, the following incremental change is most appropriate. The provisions of Article 26.01(d), V and VI are removed from the current agreement language. The remaining provisions of Article 26 are to remain unchanged. Any changes beyond those to 26.01(d) V and VI are best addressed between the parties and will be referred to later in this award.

Article 62 – Shift Filling / On-Call

Considerable effort was made in an attempt to resolve this issue. Various proposals were exchanged during the mediation process without resolution. The parties agreed that I would review the proposals and consider the positions of the parties in finalizing this matter.

Decision

Article 62 is resolved in accordance with the following:

62.01 The Company will fill shifts according to the following procedure:

- a) First, floats/swings will be utilized to fill open shifts or may be assigned on-call in accordance with Article 26.01 (a).

- b) Then, the call out is for part-time employees at that base based on seniority to a max of two (2) shifts per employee per call out. This will be done based on seniority. Part-time employee(s) will be required to give availability thirty (30) days preceding the month. Employees are responsible for updating the scheduling/sign-up list when changes occur. Note: If a part timer indicates availability for a 24 hour period they may be assigned on-call.
- c) Once all part time staff have been called, overtime shifts will be offered to all full-time members from that base in accordance with the following:
- I. Overtime will be allotted to full-time members based on least accumulated overtime hours worked
 - II. The twelve (12) week averaging period will be used to calculate the amount of accumulated overtime hours as per Article 26.01. At the expiration of the averaging period, all accumulated overtime hours will revert back to zero (0) for the commencement of the subsequent(s) averaging period(s).
 - III. If two or more employee(s) have equal amount of accumulated overtime hours, the most senior of the members will be offered the overtime hours.
 - IV. All full-time employee(s) are required to provide their availability to scheduling thirty (30) days preceding the month. Employees are responsible for updating the scheduling/sign-up list when changes occur.
 - V. Members' who have indicated their availability and are offered the assignment and subsequently decline, will be credited the hours for that shift to their total accumulated overtime hours worked for the twelve (12) week averaging period.
 - VI. The Company will provide the Union with a daily updated list for all members' overtime hours.
- d) Once all full-time employees have been called for overtime the part-time employees will be called to fill the remaining shifts at the base, based on seniority providing overtime is not scheduled.
- e) If the shift(s) are still not filled then the sister base members may be called in the same sequence as above.
- f) If the callout results in the level of care of the vehicle to the level of Primary Care Paramedic (PCP), then the next available employee(s) on the callout list with the appropriate certification level will be called. The employee(s) who were bypassed in the callout due to the level of care will not be penalized for the bypass.

Home Base	Sister Base #1	Sister Base #2
Toronto Air 7799	GTA 1 CCLT	Peterborough CCLT
GTA 1 CCLT	Toronto Air 7799	Peterborough CCLT
Peterborough CCLT	GTA 1 CCLT	Toronto Air 7799
London 7792	Toronto Air 7799	
Ottawa 7791	Ottawa CCLT	
Ottawa CCLT	Ottawa 7791	
Timmins 7796	Sudbury 7798	
Thunder-Bay 7790/7797	Sioux Lookout 7795	
Sioux Lookout 7795	Thunder Bay 7790/7797	Kenora 7794

62.02 On Call

- a) All swing and float employees may be assigned an on-call period of 24 hours for the purpose of filling the two (2) shifts on that day in their assigned base(s).
- b) Each on-call period will be considered and compensated as a twelve (12) hour shift.
- c) The on-call period will start one and one half (1.5) hours prior to the earliest normal day shift at the base.
- d) There will two (2) call-in windows during the call-in period, starting one and one half (1.5) hours prior to the normal shift start time and ending half (.5) hours after the normal shift start time.
- e) Paramedics working on-call will be expected to be near a phone and able to be reached to be informed of a shift during the on-call period. The paramedic will be expected to arrive at their base to start the shift at the normal start time or normally within one (1) hour of being called-in, whichever is later.
- f) Each on-call period will end twenty-four (24) hours after it starts.

Note: The parties agree to meet in the presence of Tom Hodges one year after implementation of the on-call process, to consider the requirement for any recommended changes that may be mutually agreed upon.

Article 65 – Performance Bonus System Decision

After review of the positions of the parties and the pattern established with other bargaining units at Ornge, this issue is resolved based on the following:

Remove entire Article in conjunction with the monetary provisions contained in the Wage Adjustment provisions.

Article 66 – Wage Adjustment and Article 44 – Shift Premium Decision

The current economic conditions demand that a prudent exercise of fiscal restraint be considered as part of the broader public sector collective bargaining process and this interest arbitration. After review of the positions of the parties and the pattern established with other bargaining units at Ornge, Wage Adjustment and Shift Premium issues are resolved based on the following:

Year 1 – 2% lump sum / based on their hourly rate for all hours worked in 2013

Year 2 – Effective November 1, 2013 - A general increase of \$0.65 per hour (in lieu of Article 44 Shift Premium) and then a general 2% increase

Year 3 - 2% lump sum / 2014 earnings T4 Box 14 (December 31, 2014)

Note:

This is in conjunction with the elimination of the Performance Bonus (Article 65). To clarify the payout, of what will be referred to as, the Performance Bonus on the 1st pay in February 2014 will satisfy Year One Lump Sum above.

Summary

The revisions to Article 26, Hours of Work and Overtime proposed by the Employer are significant and complex. Such changes may have unintended consequences and are therefore best addressed between the parties. The Underwater Escape Training (UET) proposed by the Union in Article 32 has clear value in ensuring safety for all paramedics and in my opinion should be required. However, this training is not easily delivered at Ornge bases across Ontario and is not required by regulation or current contract provisions. The extent, cost effective considerations and frequency for delivery of this training, like Article 26, are matters best

addressed by the parties or regulators. Without changes to Article 57, Parking; employees based at Toronto Island and Peterborough may be negatively impacted by taxable benefit changes by CRA. Accordingly, the revisions to Article 26, Hours of Work and Overtime provided above may be reviewed after 90 days upon notice from either party in conjunction with a review of Article 32, Training and Education, and Article 57, Parking.

Any other issues in dispute not addressed by this award are resolved based on the language contained in the current agreement. Unless specified otherwise in this award the changes to the collective agreement are effective February 28, 2014. Accordingly, I order the parties to prepare the renewal collective agreement with the terms of their collective agreement that expired on October 31, 2012, except as modified by this award and incorporating all of the agreed-upon items contained in the attached Appendix "A".

I reserve jurisdiction in the event of any dispute between the parties concerning the interpretation, implementation and review provisions of this Award for a period of 120 days: either party may invoke that jurisdiction by letter and on notice to the other party.

All of which is respectfully submitted this 21st, day of February, 2014.

A handwritten signature in black ink, appearing to read "Tom Hodges", with a stylized flourish at the end.

Tom Hodges
Arbitrator

APPENDIX “A”

Agreed to Items

- Article 8 – Work of the Bargaining Unit
- Article 13 – Non Discrimination/Harassment
- Article 36 – Personal Days
- Article 42 – Equipment List
- Article 43 – Premiums & Allowances
- Article 47 – Other Leave With or Without Pay
- Article 49 – Travel
- Article 52 – Isolated Base Issues
- Article 55 – Vacation Leave with Pay
- Article 58 – Staffing
- Article 64 – Duration of Agreement
- LOU1 – List of Arbitrators
- LOU 20 – Vacation Scheduling
- LOU21 – 2009 Vacation Allotment (Carryover)
- LOU22 – Advances Alternate Dispute Resolution (ADR) Process
- LOU24 – Standing Agreement (SA) Carriers
- LOU25 – Driving Hours
- LOU 27 – Temporary Staffing
- LOU XX – CCP(f) and ACP(f) Required Level of Care
- LOUXX – Initial Education (IE) Qualifying Pre-Test
- LOUXX – Standing Preferential Bid Program
- LOUXX – Existing Staff Priority
- LOUXX – Field Educator Duties