

**IN THE MATTER OF AN INTEREST ARBITRATION BEFORE ARBITRATOR KAPLAN
PURSUANT TO THE *HOSPITAL LABOUR DISPUTES ARBITRATION ACT, SO 1990***

BETWEEN:

**PARTICIPATING HOSPITALS
(REPRESENTED BY ONTARIO HOSPITAL ASSOCIATION)**

Employer

and

ONTARIO NURSES' ASSOCIATION

Union

**WRITTEN REPLY
PRESENTED IN TORONTO, ONTARIO ON MAY 2-3, 2023**

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UNION'S SUPPLEMENTARY SUBMISSIONS RE NEW AGENCY DATA

At page 21 of the Union's Brief, the Union identified several participating hospitals that had disclosed agency hours, but had not disclosed the spending associated with those hours. After the Union submitted its Brief to the Board, on April 27, 2023, additional disclosures were received from some of these hospitals regarding costs. Based on these new disclosures, the total spending on agencies summarized in the Union's Brief is amended as follows:

2020-21: ~~\$26,947,021~~ \$38,350,956
2021-22: ~~\$52,910,106~~ \$70,978,158
2022-23: ~~\$131,741,841~~ \$173,669,808

As noted in the Union's main Brief, the summarized cost for fiscal year 2022-23 is an undercount. Some hospitals only reported quarter one to quarter three spending, and four of hospitals reported hours but still failed to disclose spending. Baycrest, Lakeridge, South Bruce Grey, and St. Joseph's Care Group reported at least 131,599 agency hours but provided no cost information. Even with this incomplete picture of the spending data, spending on agencies in fiscal year 2022-23 was two and a half times (2.5x) the level of spending in 2021-22 and four and a half times (4.5x) the level of spending in 2020-21.

The hours of reported agency use, based on the additional disclosures, also require the following amendments:

2020-21: ~~224,556.5 hours~~ 449,608 hours
2021-22: ~~542,901.48 hours~~ 648,310 hours
2022-23: ~~1,085,547.8 hours~~ 1,183,358 hours

Based on the disclosures provided by the OHA, the Union tabulated a minimum of 1,183,358 hours of agency use in 2022-23. However, at page 75 of the Employer's Brief, it reports an ever higher amount of hours for 2022-23: 1,259,183 hours.

Finally, the total number of hospitals using agencies is amended as follows:

2020-21: 31
2021-22: 57
2022-23: 77

In its Brief, on page 76, the Employer claims that in fiscal year 2022-23, 47 of the participating hospitals did not use agencies. On page 4, the Employer noted that it was making submissions on behalf of 127 hospitals. That would put the Employer number of participating hospitals using agencies at 80. An additional three hospitals above the Union's count.

UNION'S REPLY SUBMISSIONS RE RETIREMENT HOMES AND MUNICIPAL HOMES

At page 102 of the Employer's Brief, the Employer directs this Board to interest arbitration results in the "broader health sector". The Employer included a chart that listed retirement homes and municipal homes. Leaving aside the fact that the "broader" public health sector is not the most relevant comparator when you have the ability to compare hospital nurses with other hospital nurses, the data they provide for this broader sector is inaccurate and incomplete.

The Employer claims in its table at page 102 that Golden Plough Lodge received an increase of 1.5% in 2002. Golden Plough is a municipal home, and [the award](#) was for 2.75% for 2022 (the term does not extend into 2023 and so there is no number yet for 2023).

Again, retirement homes are a odd choice of comparator. However, if the Board chooses to consider retirement homes, it should be aware of the following relevant authorities:

Award	Date	2023
<i>Carriage House and UFCW, 2023 CanLII 33972 (Jesin)</i>	April 27, 2023	3.5%
<i>Mayfield and CUPE, 2023 CanLII 33055 (Jesin)</i>	April 25, 2023	4%
<i>Barrington and UFCW, 2023 CanLII 29162 (Jesin)</i>	April 14, 2023	3.5%
<i>Riverview Terrace and SEIU, 2023 CanLII 12205 (Jesin)</i>	February 15, 2023	4%

While not in 2023, a more relevant private sector comparator for this Board is [Shouldice Hospital Limited v ONA](#), discussed at the bottom of page 67 of the Union's main Brief. In *Shouldice*, the Board's 2022 award resulted in approximately 10% in total compensation increases for some employees.

Finally, in addition to the much higher numbers that are being awarded in the examples listed above, the most recent [Statistics Canada Labour Force Survey](#), released April 6, 2023, found that: "Average hourly wages rose 5.3% (+\$1.68 to \$33.12) on a year-over-year basis in March, compared with 5.4% in February (not seasonally adjusted)."

ARTICLE 10.08(a) and 10.14(b)

AMENDMENTS TO LAY-OFF AND RETIREMENT ALLOWANCE PROVISIONS

EMPLOYER PROPOSAL

10.08 Layoff – Definition and Notice

- (a) A "Layoff" shall include a reduction in a nurse's hours of work and cancellation of all or part of a nurse's scheduled shift.

Cancellation of single or partial shifts will be on the basis of seniority of the nurses on the unit on that shift unless agreed otherwise by the Hospital and the Union in local negotiations.

~~A partial or single shift reassignment of a nurse from her or his area of assignment will not be considered a layoff.~~

Where nurses are reassigned to meet patient care needs at the hospital, they will be reassigned to units or areas where they are qualified to perform the available work.

A reassignment of a nurse from their area of assignment is not a layoff.

The parties agree that the manner in which ~~such~~ reassignments **of 4 consecutive shifts or less** are made will be determined by local negotiations.

If a reassignment is for longer than 4 consecutive shifts, the hospital will provide the option to qualified nurses on the affected unit to be reassigned in order of seniority.

If no nurse voluntarily elects to be reassigned, reassignments will occur in reverse order of seniority in accordance with the following:

- (i) the reassignment of the nurse is to an appropriate position within the Hospital having regard to the nurse's skills, abilities, qualifications and training or training requirements;**
- (ii) the reassignment of the nurse does not result in a reduction of the nurse's wage rate or hours of work;**
- (iii) the position to which the nurse is reassigned is located at the nurse's original work site or at a nearby site in terms of relative accessibility for the nurse;**

- (iv) **the position to which the nurse is reassigned is on the same or substantially similar shift or shift rotation; and**
- (v) **where more than one nurse is to be reassigned in accordance with this provision, the reassigned nurses shall be entitled to select from available positions to which they are being reassigned in order of seniority.**

If there are no qualified nurses on the affected unit, the Hospital will provide the option to nurses on the affected unit to be reassigned with necessary training up to sixteen (16) weeks, in order of seniority, to enable them to become qualified to perform the available work.

Notwithstanding article 10.07, a position to which a nurse is reassigned need not be posted.

...

10.14 (b) **Where a nurse would otherwise be laid off as a result of a permanent reduction in her or his hours of work, B**before issuing notice of long-term layoff pursuant to Article 10.08(e)(ii), and following notice pursuant to Article 10.08(e)(i), the Hospital will make offers of retirement allowance in accordance with the following conditions:

- i) The Hospital will first make offers in order of seniority on the unit(s) and within the classification where layoffs would otherwise occur.
- ii) The Hospital will make offers to nurses eligible for retirement under the Hospital pension plan (including regular part-time, if applicable, whether or not they participate in the hospital pension plan).
- iii) The number of retirements the Hospital approves will not exceed the number of nurses who would otherwise be laid off.

A nurse who elects a retirement option shall receive, following completion of the last day of work, a retirement allowance of one (1) week's salary for each year of service, to a maximum ceiling of thirty-five (35) weeks' salary.

- iv) If a nurse(s) on the unit referred to in paragraph (i) does not accept the offer, the Hospital will then extend the offer, in order of seniority, to eligible nurses in the same classification in the unit where a nurse who has been notified of a long-term lay-off elects to displace in accordance with Article 10.09 (b) ii) (D) and one subsequent displacement. The Hospital is not required to offer retirement allowances in accordance with this provision on

any subsequent displacements i.e., the offer shall follow the displaced nurse, to a maximum of two displacements.

NOTE: For the purposes of this provision, Charge Nurse and Team Lead shall be considered as within the same classification as a "General Duty RN", or any other classification agreed by the parties.

UNION POSITION

Opposed.

RATIONALE FOR UNION OPPOSITION

In the current climate, this proposal is downright disrespectful. The present round of bargaining is about making up for what has transpired in recent years. This is categorically not a time to expect nurses to make concessions, much less a concession of a highly valued job security protection.

Awarding this proposal would exacerbate what is already the worst nursing staffing crisis in living memory. It is simply baffling that, in the face of that crisis, the Employer would seek to introduce more uncertainty and unpredictability in nurses' working lives.

The Union is vehemently and fundamentally opposed to this proposal and asks this Board to reject it.

In free collective bargaining, the Union would make zero concessions

Replication is the touchstone of this process. The Board must objectively assess the likely result in free collective bargaining. The Employer has made no case for this proposal based on replication.

The Employer cannot direct this Board to a single relevant comparator that has agreed to this kind of concession in bargaining.

When considering this proposal in the last round, Arbitrator Gedalof identified the same critical flaw in the Employer's proposal, noting that "the Hospitals have not put forward any comparators to suggest that parties have been bargaining such concessions." The Hospitals have not cured this flaw this time around. Thus, as Arbitrator Gedalof concluded, "The principle of replication therefore militates strongly against awarding the Hospitals' job security proposals."

The Union can say definitively that it would never agree to this concession at the bargaining table, even in the circumstances of a lockout. As Arbitrator Gedalof noted in the previous round, the existing language is "highly valued job security

language to the Association's benefit, that has been entrenched in the collective agreements over many rounds of bargaining." ONA's members would not stand for the Union agreeing to reverse these protections, particularly after all they have endured in the past three years.

To secure a concession of this magnitude, the Employer would need to hold a remarkably strong bargaining position. That is not the case in this round. The Hospitals are facing an unprecedented staffing crisis and need to offer significant enhancements to compensation and terms and conditions of employment just to stem the flow of nurses out of the sector and the profession.

This is simply not the time for concessions from the Union.

Non-nursing hospital employees are not relevant comparators

The only comparator the Hospitals have put forward are non-nursing hospital bargaining units, such as from CUPE, SEIU, and OPSEU. However, the unique nature of the practice of nursing renders these proposed comparators distinguishable and irrelevant.

Nursing is a profession and (hopefully) a lifelong career. Nurses make mindful choices to pursue specific educational opportunities and to develop and upgrade their skills to work in their desired specialty. Nurses often spend years developing a particular area of specialization, gaining experience through internal mobility and pursuing enhanced training opportunities. This specialization directly improves patient care.

Service and clerical jobs in the hospitals, while also important, typically require identical or similar skills and knowledge regardless of the particular work location or area of assignment. That context is crucial when considering the reassignment language contained in other hospital sector collective agreements. If clerical or service employees are reassigned to a new area of a hospital, that reassignment will not impact patient care.

In contrast, reassignment of nurses undermines quality of care and can jeopardize patients' well-being. A nurse who has spent years, or decades, specializing in one area will suddenly become a novice when reassigned to a new area. Reassigned nurses lose the benefit of their specialized knowledge specific to the type of patients treated in their unit, including how to deal with acute patients, use specialized equipment, and the unique treatment and procedures of the unit.

This reality is evidenced in arbitral decisions involving nurse job postings. Nurses are frequently denied a posting due to a lack of specialized skills or experience, and the Hospitals regularly emphasize the specialization needed in the context of job posting disputes, which is irreconcilable with the Employer's position regarding this proposal.

For example, in *Hamilton Health Sciences*, a more junior candidate was awarded a position because of her years of experience working in a very specific area (thrombosis disorders). Arbitrator Slotnick emphasized that the posting at issue was for a "specialized professional position", which informed how he assessed the employer's decision.

In a decision arising in a different context, Arbitrator Slotnick again emphasized the specialization of nurses, noting that the fact that all Registered Nurses occupy the same classification

does not mean that nurses are interchangeable. Clearly they are not: the evidence indicates that nurses within this single classification work in a variety of areas such as obstetrics, operating rooms, the intensive care unit, etc., where they have specialized knowledge and may require specific certifications; a nurse from one area of the hospital would not necessarily be capable of performing the job of a nurse in another area of the hospital.

These comments reflect the undeniable fact that distinguishes this bargaining unit from all other bargaining units in the hospital sector. In virtually every other instance, employees in a given classification would be qualified and capable of performing the duties of that classification in another work location or area of assignment. Nurses, on the other hand, occupy specialized professional positions that are not interchangeable.

No "overwhelming and largely uncontradicted evidence" of a demonstrated need

It is trite that a breakthrough proposal will not be awarded without evidence of a demonstrated need. When rejecting one of the Union's proposals in 2018, Arbitrator Kaplan explained that a party seeking a breakthrough must present "overwhelming and largely uncontradicted evidence" in support of it. The Employer has fallen far short of that standard in relation to this proposal.

The Employer has largely repeated its rationales from previous rounds, asserting the need for greater flexibility in reorganizing the work force and assigning nurses. In support of that assertion, the Employer has presented a handful of anecdotes about early retirement packages paid out at some of the Participating Hospitals. The Union makes the following observations about these anecdotes:

- With two exceptions, they are undated. The two containing references to a specific year or years occurred in 2016, and 2017-2019.

- With one exception (the Stevenson Memorial Hospital anecdote), the anecdotes are all recycled from previous Employer Briefs. Most of them have appeared in the Employer's previous three Briefs.
- In multiple cases, the Employer does not identify a precise number of early retirement packages that were paid or does not allege that any early retirement packages were actually paid out.

Ultimately, the evidence presented by the Employer in support of its breakthrough proposal is 11 anecdotes (from 11 of the 131 Participating Hospitals) that have faced obstacles to reorganization due to the existing language at some point in the 27 years the parties have had this language. The Employer cites a total of 19 early retirement packages being paid out during this entire period. The Employer must meet a higher standard of proof to justify such a major concession.

Justifying this proposal with reference to the current nursing shortage is offensive

It is nothing short of galling for the Employer to point to the current nursing shortage as a justification for this change, as the Employer is effectively asking this Board to reward its poor behaviour. The Employer apparently wishes to persist with a staffing model that is an admitted failure. The Employer's references to efficiency and flexibility poorly conceal its true motives, which are to maintain precariously low staffing levels.

The OHA has acknowledged that the razor's edge short-staffing model of the past decade has collapsed. A new model is needed, which will not be achieved by granting the Employer another means to operate without adequate staff.

The true solution to many of the underlying problems the Employer identifies are to raise overall staffing levels, which will become easier with a more competitive compensation package. Contrary to what the Employer would have this Board believe, the nurses are out there in the work force—they are simply unprepared to work for this Employer without more attractive working conditions.

The Employer has also failed thus far to work collaboratively with the Union in advance of making early retirement offers to explore alternate solutions, including:

- Posting vacant positions prior to commencing the layoff procedure, which has worked well for many hospitals. (It is unclear, in the Children's Hospital of Eastern Ontario anecdote, why that approach was not taken.)
- Offering internships in harder to fill areas, in accordance with Article 9.09 of the Collective Agreement, which is specifically "for the purpose of meeting future projected nursing shortages and/or providing career opportunities where there are no internal qualified candidates for job postings". The Employer has offered no evidence or explanation for why this avenue has not been pursued.

Before rolling back a highly valued protection, the Employer should prove that these alternatives are not viable.

The only demonstrated need is for more nurses and more stable working conditions

While the Employer lacks any concrete evidence to support its proposal, there is "overwhelming and largely uncontradicted evidence" of a need for more nurses in hospitals. The Union cannot emphasize enough the detrimental impact this proposal would have on retention, particularly the retention of much-needed experienced nurses.

As the Union highlights throughout its Brief, there is a nursing staffing crisis largely driven by exhaustion and burnout. As the OHA has reported, "exhaustion and ongoing workloads have led to burnout of experienced, late career nurses who have decided to leave frontline clinical practice or the profession entirely."

To reverse the mass exodus of senior nurses, it is critical to understand why these nurses are leaving. In the CFNU nationwide survey of nurses, those who expressed an intention to leave the profession rated "unpredictable staffing & scheduling" high on the list of factors that contributed to that decision.

The CFNU national survey also revealed a veritable epidemic of mental health problems among nurses. A direct contributor to that problem is the high levels of displacement and reassignment. Nearly half of nurses who had been reassigned or displaced did not feel confident in their training and experience for their new role. In a recently published study of redeployment of nurses during the COVID-19 pandemic, the authors found high levels of burnout, noting: "Redeployed nurses reported stress related to skill acquisition, comfort with role, role transitions and available supports."

In the face of this data, the Union is dumbfounded as to why the Hospitals would seek to introduce more uncertainty and unpredictability in nurses' working lives. It is deeply ironic that the Employer argues in favour of eliminating early retirement packages because it desperately needs to keep nurses, when, in reality, this change will drive them out of hospitals in droves.

In particular, this change will further add to the motivations for nurses in the bargaining unit to seek agency work, in which the nurses would maintain greater control over their area of speciality, shifts, and work location. Accordingly, awarding this proposal will only worsen the overreliance on agency nurses.

The proposed new language would also spawn years of litigation between the parties, thereby harming labour relations. The parties will likely spend the next several years arguing about what constitutes "an appropriate position within the Hospital having regard to the nurse's skills, abilities, qualifications and training or training requirements", "a nearby site in terms of relative accessibility for the nurse", and a "substantially similar shift or shift rotation".

Depending on how narrowly or broadly these terms are interpreted, this language could allow for dramatic changes to a nurse's job without triggering any layoff protections. Not only could a nurse be forced to work in a different area of specialty, but she may also be required to accept a change in shift or shift rotation, as well as a change in work location. These changes may entail additional commuting time and different hours of work, which will impact the nurse's family responsibilities including childcare and eldercare arrangements. Again, this is perhaps the worst time imaginable to introduce more stress and disruption to nurses' working lives.

Conclusion—this change would do nurses and patients a disservice

If awarded, the Hospitals' proposal will undo any positive effects of an improved compensation package for nurses in this round of collective bargaining. The end result will be continued poor job satisfaction, high levels of burnout, and departures of experienced and qualified nurses. This in turn will contribute to more fragmented care and worse health outcomes for patients.

It should not be so easily forgotten what nurses have done, and what they have been put through, in the past three years. Nurses endured the profound cognitive dissonance of being publicly hailed as 'healthcare heroes', while their wages were frozen and their working conditions were at an all-time low. More was asked of nurses than ever before, while they received less than ever before in return. The Employer's proposal does a disservice to their nurses and the sacrifices they have made during the pandemic.

For all these reasons, the Employer's proposal should be rejected.

LOU RE: SUPERNUMERARY POSITIONS

AMENDMENTS TO LETTERS OF UNDERSTANDING RE: SUPERNUMERARY POSITIONS (NURSING GRADUATE GUARANTEE) AND INTERNATIONALL EDUCATED NURSES

EMPLOYER PROPOSAL

LETTER OF UNDERSTANDING

RE: SUPERNUMERARY POSITIONS

The Hospital may introduce supernumerary positions to be offered to newly graduated nurses. Where such positions are introduced, the following will apply:

1. Only so many positions will be created as are covered by government funding for supernumerary positions;
2. Newly graduated nurses are defined as those nurses who have graduated from a nursing program or refresher program within the last year;
3. ~~Positions will be created first on medical or surgical units except as the parties otherwise agree. Such agreement will not be unreasonably withheld;~~
- 34.** No appointment will be made to a supernumerary position without prior discussion with the local Association as to where the supernumerary nurses will be assigned, what will be expected of them, and what mentoring arrangement will apply (see **7 6** below);
- 45.** Such positions will not be subject to internal postings or request for transfer processes outlined in Article 10.07;
- 56.** Such nurses will be full-time and covered by the full-time collective agreement;
- 67.** Such nurses will be in formal mentorship arrangements in accordance with Article 9.08 (c) and the Letter of Understanding on Mentoring;
- 78.** The duration of such supernumerary appointments will be for the period of funding or such other period as the local parties may agree, provided such period is not less than twelve (12) weeks;
- 89.** Such nurses can apply for posted positions **during the supernumerary appointment but may not transfer to a permanent position before the end of the supernumerary appointment;** ~~after the probationary period is completed;~~
- 910.** If the nurse has not successfully posted into a permanent position by the end of the supernumerary appointment, she/he will be ~~reclassified as casual part-time and this will not be considered a lay-off and the nurse will not be reassigned;~~

placed into a vacant permanent position. Such permanent position need not be posted.

~~1011.~~ The Hospital bears the onus of demonstrating that such positions are supernumerary;

~~1112.~~ The Association will be provided with such written information as it may reasonably require regarding each supernumerary position;

~~1213.~~ In the event of a layoff in the area of assignment of the supernumerary nurse, either the Hospital or the Local Association may require that the supernumerary nurse shall be first laid off.

LETTER OF UNDERSTANDING

RE: SUPERNUMERARY POSITIONS-NURSING CAREER ORIENTATION (NCO) INITIATIVE FOR INTERNATIONALLY EDUCATED NURSES (IENS)

The Hospital may introduce supernumerary positions that may be offered to Internationally Educated Nurses (IENs). Where such positions are introduced, the following will apply:

1. Only so many positions will be created as are covered by government funding for supernumerary positions;

Nursing Career OrIENTATION (NCO) Initiative nurses are defined as those nurses who have initially (never before) registered with the College of Nurses (CNO) whose location of initial nursing education is outside of Canada. NCO nurses will be recognized as such from the date of inception to a period of time that the MOHLTC continues to implement the NCO. NCO nurses must be hired as supernumerary within six (6) months of initial registration with the CNO;

~~2. Positions will be created first on medical or surgical units except as the parties otherwise agree. Such agreement will not be unreasonably withheld;~~

~~23.~~ No appointment will be made to a supernumerary position without prior discussion with the local Association as to where the supernumerary nurses will be assigned, what will be expected of them, and what mentoring arrangement will apply (see ~~6~~ **5** below);

~~34.~~ Such positions will not be subject to internal postings or request for transfer processes outlined in Article 10.07;

~~45.~~ Such nurses will be full-time and covered by the full-time provisions of the collective agreement;

56. Such nurses will be in formal mentorship arrangements in accordance with Article 9.08 (c) and the Letter of Understanding on Mentoring;

67. The duration of such supernumerary appointments will be for the period of funding or such other period as the local parties may agree, provided such period is not less than twelve (12) weeks;

78. Such nurses can apply for posted positions **during the supernumerary appointment but may not transfer to a permanent position before the end of the supernumerary appointment;** ~~after the probationary period is completed;~~

89. If the nurse has not successfully posted into a permanent position by the end of the supernumerary appointment, she/he will be ~~reclassified as casual part-time and this will not be considered a lay-off and the nurse will not be reassigned;~~ **placed into a vacant permanent position. Such permanent position need not be posted.**

~~910.~~ The Hospital bears the onus of demonstrating that such positions are supernumerary;

~~1011.~~ The Association will be provided with such written information as it may reasonably require regarding each supernumerary position;

~~1112.~~ ~~In the event of a layoff in the area of assignment of the supernumerary nurse, either the Hospital or the Local Association may require that the supernumerary nurse shall be first laid off.~~

UNION POSITION

Opposed.

RATIONALE FOR UNION OPPOSITION

The Employer is proposing mirrored amendments to two Letters of Understanding regarding supernumerary positions at the hospitals. One Letter of Understanding relates to supernumerary positions for new nursing graduates ("New Graduate LOU"), and the other relates to supernumerary positions for internationally educated nurses ("IEN LOU").

The Union is opposed to the proposed changes to both Letters of Understanding. There is no demonstrated need for these changes, which would seriously undermine the seniority rights of nurses in the bargaining unit. The proposal should therefore be rejected.

No demonstrated need to expand units for supernumerary positions

The Employer's first proposed change is to expand its ability to create supernumerary positions beyond medical and surgical units (see proposed elimination of paragraph 3 of the New Graduate LOU and paragraph 2 of the IEN LOU). This change is unnecessary.

Under the current language, the Employer may establish supernumerary positions in other units if the parties agree, and such agreement will not be unreasonably withheld. The Employer claims that most local unions reject its proposals to create supernumerary positions in other units. However, the Employer has provided no evidence, data, or examples to support this vague assertion. Moreover, if the local unions had unreasonably withheld agreement to those proposals, the Employer could present a grievance—there is no evidence it has done so.

There are good reasons why local unions may have rejected previous proposals to create supernumerary positions outside of the medical and surgical units. For example, during the pandemic, clinical placements were significantly reduced and many new nurses were entering the hospital system with very little hands-on training. The Employer's assertion that new graduates are better trained and more ready than ever to simply be placed anywhere in the hospital is unfounded. There is no evidence that training for nurses is any different now than it was prior to the pandemic and, as noted, the pandemic significantly hampered clinical training. Throwing new graduates anywhere in the hospital, without medical/surgical training does not advance the best interests of patient care or nurse training. In the absence of any evidence, or even an allegation, that the local unions have unreasonably withheld agreement, there is simply no demonstrated need for this change.

This proposal is either unnecessary or unacceptable

The key element in the Employer's proposal is the addition of an ability to directly appoint supernumerary nurses to permanent positions without the need to post the vacancy. (See new proposed paragraph 9 of the New Graduate LOU and new proposed paragraph 8 of the IEN LOU.)

In support of this proposal, the Employer has advanced two irreconcilable propositions. The Employer argues that the current LOU language is a barrier to placing supernumerary nurses in permanent positions, but simultaneously claims that this proposed change would not impact senior nurses because the number of vacant positions exceeds the supply of nurses to fill them. Both propositions cannot be true.

If, as the Employer contends in its Brief, "placing NGG participants into vacancies would not disadvantage senior nurses applying to vacancies as the demand for nursing personnel currently exceeds the available workforce", then this proposed change is unnecessary. The Employer will be able to place supernumerary nurses into permanent positions without eliminating the need to post vacancies.

If that proposition is not true, then this proposal is an infringement of basic seniority rights. The need to place new graduates or internationally educated nurses cannot trump the seniority rights of existing bargaining unit members. This proposal, if awarded, would allow the Employer to place supernumerary nurses in highly-valued positions without first posting the vacancy and allowing senior nurses to exercise their seniority rights to apply for them. This is unacceptable.

No justification for eliminating requirement to lay off supernumerary nurses first

There is no imaginable justification for eliminating the requirement to first lay off supernumerary nurses in the event of a layoff in the area of assignment of the supernumerary nurse (see proposed elimination of paragraph 13 of the New Graduate LOU and paragraph 12 of the IEN LOU).

Of course, the parties are not currently in a time of layoffs. There is therefore no demonstrated need for this change. If the parties do enter a period of layoffs, there is no basis to retain supernumerary nurses before nurses already holding permanent positions in the bargaining unit.

The Employer should seek greater flexibility in the Ministry programs

The Employer's primary (if not sole) justification for this proposal is a Ministry-imposed change to the NGG program, whereby employers must offer full-time employment to the participants in order to benefit from the additional funding.

Respectfully, if the current program structure is not working for the Participating Hospitals (which surely form the largest employer accessing this program in the province), then the Employer should take that up with the Ontario government. If the requirement to offer full-time employment is a barrier to accessing the program, the Participating Hospitals should lobby the Ministry to eliminate that requirement or introduce greater flexibility that will address the Employer's underlying concern.

It is unreasonable to rely on this program change to interfere with basic seniority rights.

For all these reasons, the Employer's proposal should be rejected.