

In the Matter of an Interest Arbitration

BETWEEN:

ONTARIO TEACHING HOSPITALS

("OTH")

AND

THE PROFESSIONAL ASSOCIATION OF RESIDENTS OF ONTARIO

("PARO")

BEFORE: Eli A. Gedalof, Sole Arbitrator

APPEARANCES

For the OTH

Bob Bass, Bass Associates

For PARO

Steven Barrett, Goldblatt Partners LLP

Nadine Blum, Goldblatt Partners LLP

AWARD

1. This is an interest arbitration to settle the terms of the renewal of the collective agreement between the Professional Association of Residents of Ontario ("PARO" and the Ontario Teaching Hospitals ("OTH), which expired on June 30, 2023. PARO represents resident physicians in Ontario's teaching hospitals. The OTH represents those teaching hospitals that are affiliated with a medical school and employ residents.

2. The parties have a longstanding bargaining relationship and a history of both freely negotiated and arbitrated outcomes. Article 4 of the parties'

collective agreement sets out the Terms of Agreement and Negotiation, including the terms under which the parties will engage in interest arbitration. An Article 4 interest arbitration is conducted under the *Arbitration Act* and is distinct from a typical health care sector interest arbitration under the *Hospital Labour Disputes Arbitration Act* in several regards. Of note, while a board of interest arbitration under Article 4 has broad jurisdiction to determine terms and conditions of employment, “hours of work including any penalties or bonuses arising from hours of work or training” are excluded.

3. Neither does Article 4 stipulate a list of factors for consideration in determining an outcome. There is no dispute, however, that the usual principles of interest arbitration apply, including first and foremost replication and the closely associated principle of comparability, together with the principles of total compensation and demonstrated need. Finally, unlike interest arbitrations under *HLDA*, Article 4 does not provide for a default outcome where the parties are unable to agree on term for the renewal agreement. In this case, the OTH seeks a two-year term while PARO argues that the term should be three years.

4. Before beginning mediation/arbitration the parties met in negotiation and were able to agree to a small number of items. They then engaged in three days of mediation/arbitration and were able to reach agreement on additional proposals. They could not, however, reach an agreement on term, wages and stipends, insured benefits, or a Lieu and Vacation Days proposal. In determining these issues, I have carefully considered the parties’ representations, and the material submitted before me, and have applied the guiding principles of interest arbitration as identified above. In awarding a three-year term, I have considered the specific circumstances of this round of bargaining, including the substance of the proposals already agreed to by the parties in combination with the terms of this award. In my view, when considered together, a three-year term best replicates the outcome that these parties would have reached in free collective bargaining. I have also considered the parties’ mutual acknowledgement that in this round of bargaining, at least some larger proportion of the overall compensation increase should be directed at continuing to improve call stipends, as well as at certain targeted benefit improvements, so that the third-year total compensation increase awarded is incrementally above the general wage increase for that same year.

5. The renewal agreement shall therefore consist of the expired terms as amended by those items previously agreed to by the parties, which are appended to this award as Appendix A), and the following additional terms:

i. Term

July 1, 2023-June 30, 2026

ii. ATB Increases

July 1, 2023: 3.5%

July 1, 2024: 3.0%

July 1, 2025: 2.65%

Percentage equivalent of across-the-board salary increases to apply to chief and senior resident stipends.

iii. Call Stipends (Art 23)

Effective July 1, 2023:

Weekday stipends and equivalent increase by 5.85%

Weekend stipends and equivalent increase by 11.7%

Effective July 1, 2024:

Weekday stipends and equivalent increase by 3.3%

Weekend stipends and equivalent increase by 6.6%

Effective July 1, 2025:

Weekday stipends and equivalent increase by 2.25%

Weekend stipends and equivalent increase by 4.5%

iv. Insured Employee Benefits

Effective July 1, 2024: Increase mental health maximum to \$3000.00

Effective July 1, 2025, introduce \$250 health spending account, with one year carry over.

v. Lieu and Vacation Days where unable to take, and for final year residents:

13.3 If a resident is scheduled to work on a recognized holiday, they shall be entitled to a paid day off in lieu of the holiday to be taken at a time mutually convenient within ninety (90) days of the holiday worked. A final year resident working call on any part of a recognized holiday that fell on their last day of their training is entitled to take an earlier lieu day prior to the end of their training.

6. I remain seized with the implementation of this award (including with respect to any dispute over the calculation of the increases awarded to the Pool C resident call stipend or life insurance amounts).

Dated at Toronto, Ontario, this 24th day of September, 2024.

"Eli Gedalof"

Eli A. Gedalof
Sole Arbitrator

Appendix A
Items in Agreement between OTH and PARO
September 9, 2024

Article 16.4:

16.4 ...

- (b) For services other than anaesthesia, obstetrics/gynaecology, ICU or CCU the following applies:
- ~~i. Where a service provides PARO with advance notice that the service cannot relieve residents of their responsibilities within the time set out in Article 16.4(b)(ii) below, residents working on that service shall be relieved of their responsibilities by no later than 1200 hours on the day following their in-hospital call, and Article 16.4(b)(ii) does not apply. A service's decision that Article 16.4(b)(ii) does not apply cannot be the subject of a grievance or arbitration, but will be addressed through the committee process set out in Article 16.4(b)(iii) below.~~
 - ii. After being available for in-hospital call for twenty-four consecutive hours, residents shall be relieved of their duties after ensuring adequate handover of patient care responsibilities, ~~and no new patient responsibilities will be assigned, except for responsibilities which are reasonably necessary to ensure appropriate clinical handover (including completion of sign-out notes, follow up on ordered investigations, and/or review/rounding with incoming team members to ensure appropriate transfer of care).~~ The handover period will not exceed two hours following the end of the 24 hour in hospital call period. ~~This provision does not apply, however, where at any time a service has provided notice under Article 16.4(b)(i) above.~~
 - ~~iii. The parties will establish a joint committee with the objective of jointly working on the issue of home after call for those programs which provide notice under 16.4(b)(i), and attempting to identify solutions which are mutually satisfactory, taking into account the respective interests of relieving residents of responsibilities after being on call for a 24 hour period, optimal patient care, and excellence in education. This committee will begin meeting within 30 days following ratification. The parties agree to use William Kaplan as a facilitator to the committee, in order to assist them in their desire for a satisfactory solution.~~

- (c) For clarity, the right to be relieved of duties after handover under 16.4 b applies to a resident on out-of-hospital call in either of the following two circumstances:
 - i) a resident who commences work in the hospital after midnight but before 6 a.m.; and,
 - ii) a resident who works for at least four (4) consecutive hours at least one hour of which extends beyond midnight.
- (d) If Home call is converted to in Hospital Call pursuant to 16.4(c)(i) or (ii) above, the call will be deemed to be In Hospital Call for the purposes of 16.4(b)(i) and (ii).

...

- (f) **Where the phrase “handover of patient care responsibilities” is used in this Article, this is restricted to responsibilities which are reasonably necessary to ensure appropriate clinical handover (including completion of sign-out notes, follow up on ordered investigations, and/or review/rounding with incoming team members to ensure appropriate transfer of care), but the Resident performing the handover shall not be required to complete tasks that can reasonably be performed by the incoming resident (consistent with CPSO requirements), and no new patient responsibilities will be assigned.**

NOTE: amendments to 16.4(b)(i) and (iii), as well as the last sentence of 16.4(b)(ii), are to be phased in and implemented no later than October 1, 2025

Article 16.8:

- 16.8: (a) A resident shall not be required to be on call at home two (2) consecutive weekends.
- (b) **In addition, a resident shall normally not be required to be on call in-hospital for two consecutive weekends within the same block or within consecutive blocks within the same service, except where required to meet patient care responsibilities.**

Article 18:

18.2 Each hospital will provide appropriately located on call facilities. On call facilities will include secure and private rooms, each equipped with a functional bed, chair, desk, **access to internet (through wifi or hard-wired) and computer equipment connected to the Hospital's electronic medical record and information systems**, lighting and telephone. These facilities will include washrooms/showers and adequate lounge facilities, and daily linen service including weekends and holidays. Daily linen service will include clean sheets, blankets and towels, as well as bed-changing and room cleaning services. The hospital will endeavour to provide secure access between hospital and call room facilities where necessary. ~~The hospital will also endeavour to provide access to wifi and access to the hospital's electronic medical record and information system.~~ The on call facilities shall be off limits except for housestaff and other individuals authorized by the hospital.

Each hospital will provide reasonable access to the hospital's information systems as dictated by the hospital's network deployment strategy, which shall incorporate the clinical and educational needs of the resident.

...

APPENDIX 1, ATTACHMENT 16

LETTER OF UNDERSTANDING RE APPLICATION OF COLLECTIVE AGREEMENT TO NON- OTH SITES

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1. Article 18 – Facilities

Unless a site requires residents to work call, Articles 18.2 and 18.3 will not apply.

Notwithstanding 18.2, Non-OTH sites **will endeavour to provide access to the internet (through wifi or hard-wired) and access to the hospital's electronic medical record and information system.**

With respect to 18.9, if a locker is not available, a resident will be provided with a secure location for storage of personal items.

...

(NEW) Attachment #31:

Attachment #31

Joint Committee - Alternative Scheduling Models for Trauma Service

The OTH and PARO recognize that the conventional model for scheduling of residents contained in this agreement might not be suitable for academic trauma centres where there is significant misalignment between clinical activity and resident assignment. The conventional scheduling model, with its heavy presence of learners during weekdays, may not provide the optimal experience for residents rotating through a trauma service where trauma admissions are significantly over-represented on weekends and nights during which the majority of trauma admissions, resuscitations and operative procedures occur.

Mandate/Purpose:

Utilizing the principles and process outlined in Attachment 19: Non-Traditional Work Hours, the OTH and PARO agree to establish parameters at a provincial level for alternative scheduling models that can be adopted by individual trauma programs that will apply during a trauma rotation that meet the objective of load balancing to mitigate any misalignment between trauma activity and the presence of learners.

Scope:

These alternative scheduling models may include, but are not limited to any combination of the following:

- 1) Night float model, an overnight rotation where the night float attends to the incoming traumas but has no responsibilities during the day**
- 2) A shift model, where residents have a defined 12-hour shift (either day or night)**
- 3) A model where weekend load balancing is the priority, such that trainees are assigned additional weekend shifts but have days off during the week**

Housekeeping:

Renew/update all attachments/letters with any necessary or consequential temporal or other amendments, including revised timelines for Hours of Work Committee and Third Party Dispute Resolution (Attachment 26), and Job Assessment (Attachment 14).

Extend and revise any other dates in collective agreement and confirm Bill Kaplan as grievance arbitrator;

Amend pronouns in Article 8.6, as per the following:

- 8.6 Subject to Article 8.12 if no satisfactory solution is found within sixteen (16) days of the presentation of the said written grievance, then within a further thirty (30) days, or such additional period of time as is mutually agreed to by both parties in writing, the PARO representative may give the hospital Chief Executive Officer or **their** designate representative written notice of intent to take the matter to arbitration.