

IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE UNION OF NORTHERN WORKERS

- and -

GOVERNMENT OF THE NORTHWEST TERRITORIES

Re: Policy Grievance – Use of Relief Employees (Appendix A1)

AWARD

BEFORE:

John Moreau, Q.C. - Arbitrator

IN ATTENDANCE FOR THE UNION:

Rebecca Thompson - Grievance & Adjudication Officer, PSAC
Anne Marie Thistle - Director, Membership Services, UNW
Caitlan Lacey - Observer
Todd Parsons - Witness

IN ATTENDANCE FOR THE EMPLOYER:

Karen Lajoie - Counsel, GNWT
Cheryl McKay - Adjudication Advisor, Labour Relations, GNWT
Shaleen Woodward - Witness

The Hearing was held in Yellowknife, NWT on May 24 & 25, 2017.

AWARD

INTRODUCTION

This grievance, as noted in the agreed facts below, involves the interpretation of Article A1.01 in Appendix "A" which reads:

The Employer shall hire relief employees into positions for which there are no established hours on a daily, weekly or monthly basis and may be required to report to work on an as-and-when required basis for facilities where services operate on a daily basis throughout the entire year.

The parties have joined issue on the interpretation of the last part of the provision "*...for facilities where services operate on a daily basis throughout the entire year.*" The Union interprets the provision to mean that Relief employees can only be hired in facilities where it can be demonstrated that the particular service being provided (i.e. inmate supervision in a correctional institution) operates on a daily basis throughout the year. If the service is not provided on a daily basis (i.e. an administrative office which is closed on weekends in a hospital), Relief employees should not be hired.

The Employer, on the other hand, interprets the provision to mean that a Relief employee can be hired into any job classification if the facility itself (i.e. a hospital) is operational on a daily basis throughout the year.

The Employer and the Union each called one witness to testify in the arbitration proceedings. The Union called UNW President Todd Parsons. The Employer responded

by calling Shaleen Woodward, currently Deputy Secretary of Aboriginal Affairs and Intergovernmental Relations, and formerly Director of Employee Relations.

AGREED STATEMENT OF FACTS

1. Prior to 2005, the Government of the Northwest Territories did not have "Relief" employees.
2. During bargaining for the 2005-2009 Collective Agreement with the Union of Northern Workers, the category of "relief employee" was created. Attached and marked as Exhibit 1 are excerpts from the ratified 2005-2009 Collective Agreement: definitions of the various categories of employee; the signature page; and the inaugural Appendix A1, which deals expressly with Relief Employees.
3. Attached as Exhibit 2 are excerpts from the ratified 2009-2012 Collective Agreement: definitions of the various categories of employee; the signature page; and a revised Appendix A1, which was expanded as a result of bargaining - the changes are bolded.
4. Attached as Exhibit 3 are excerpts from the ratified 2012-2016 Collective Agreement: definitions of the various categories of employee; the signature page; and Appendix A1, which is unchanged from the previous Collective Agreement.
5. This grievance is concerned with the interpretation of the last part of Article A1.01: "...for facilities where services operate on a daily basis throughout the entire year."
6. The terms "facilities", "services", and "daily basis" are not defined in any version of the Collective Agreement. Nor are they defined in the *Public Service Act* or

Regulations, the Interpretation Act, or the Union of Northern Workers Act, as contemplated by Article 2.02 of the Collective Agreement.

7. It is common ground between the Government and the Union that “daily basis” means seven days a week – not a standard five day work week.
8. The union’s interpretation of Article A1.01 is that the services must operate on a daily basis throughout the year; the government interprets this clause to mean the facility must operate on a daily basis throughout the year.
9. Subsequent to the 2005-2009 Collective Agreement being ratified, the Government of the Northwest Territories prepared a “Q & A” for employees about relief workers. A copy of this is attached as Exhibit 4.
10. The Union prepared a response to the “Q & A” for its members. This is attached as Exhibit 5.
11. On September 9, 2016 the Union filed grievance 16-P-01960 alleging misuse of relief workers. A copy of said grievance is attached as Exhibit 6.
12. The Government denied the grievance by letter dated December 16, 2016, a copy of which is Exhibit 7.
13. The Union referred the grievance to arbitration on February 3, 2017, by email, a copy of which is attached as Exhibit 8.
14. For the purposes of this grievance, the Union and the Government have agreed not to call evidence regarding individual relief positions.
15. The Government concedes that, regardless of which interpretation prevails, Sheriff’s Officers are not properly classed as relief employees, as the courts do not operate on a daily basis.

16. Attached as Exhibit 9 are several printouts from Government websites noting the hours of operation of the Fort Smith Health and Social Services Centre; the Yellowknife Primary Care Clinic; the Frame Lake Community Clinic; and the Northwest Territories Court Registries.
17. Since 2006 (except for a period from September 2013 to April 2016), the employer has provided monthly relief reports to the union. Attached as Exhibit 10 is an early report dated December 15, 2006. Exhibit 11 is a report dated September 8, 2009; and Exhibit 12 is the March 31, 2017 report. These are included to demonstrate the types of positions which currently include relief employees.
18. Attached as Exhibit 13 is the Sheriff's Office schedule for May and June 2017, along with the Office's latest organizational chart indicating which positions are relief employee positions.

Agreed to on May 23, 2017 at the City of Yellowknife in the Northwest Territories:

Rebecca Thompson,
Grievance & Adjudication Officer, PSAC

Karen Lajoie
Legal Counsel, Government of the NWT

RELEVANT PROVISIONS OF THE COLLECTIVE AGREEMENT

ARTICLE 2

INTERPRETATION AND DEFINITIONS

2.01 For the purpose of this Agreement:

- (m) "Employee means a member of the Bargaining Unit and includes:
- (i) a "casual employee" who is a person employed by the Employer for work of a temporary nature pursuant to the provisions of Appendix A5;
 - (ii) an "indeterminate employee" who is a person employed for an indeterminate period;
 - (iii) a "part-time employee" who is an employee who has been appointed to a position for which the hours of work on a continuing basis are less than the standard work day, week or month;
 - (iv) a "professional employee" who is an employee appointed to a position in an area or work where there is a requirement for a highly developed or specialized body of knowledge acquired through University education or a member of a group governed or regulated by a professional body;
 - (v) a **"relief employee" is an employee appointed to a position for which there are no established hours on a daily, weekly or monthly basis and may be required to report to work on an as-and-when required basis for operations where services operate on a daily basis throughout the entire year;**
 - (vi) a "seasonal employee" who is an employee appointed to a position which is not continuous throughout the year but recurs in successive years;
 - (vii) a "term employee" who is a person other than a casual or indeterminate employee who is employed for a fixed period in excess of four (4) months and includes employees hired as a leave replacement, employees hired in relation to programs of a fixed duration or without ongoing funding, or employees hired in relation to or in support of training.

APPENDIX A1
RELIEF EMPLOYEES

- A1.01 **The Employer shall hire relief employees into positions for which there are no established hours on a daily, weekly or monthly basis and may be required to report to work on an as-and-when required basis for facilities where services operate on a daily basis throughout the entire year.**
- A1.02 (a) An employee may not be appointed as a relief employee to perform a job in the same facility (which includes a hospital, health centre, correctional facility, young offenders facility, or college residence) as the employee performs in the employee's other position.
- (b) An employee in a nursing position may be appointed as a relief employee in the same facility providing that the position is more than 2 pay ranges apart from the employee's other position.

SUMMARY OF THE EVIDENCE

Mr. Parsons was involved in the bargaining leading up to the 2005 collective agreement. He recalled that the Employer proposed language to create a new category of indeterminate Relief employees to replace Casual employees who, up until that time, were being called into work on an "as-and-when" basis. The Employer proposed that the indeterminate Relief employees would be called in to provide coverage in two situations: when an employee was required for a single shift (i.e. if an employee called in sick) or for up to 21 days (i.e. when an employee went on vacation). In the event the work requirements exceeded 21 days, term employment would be offered to the employee.

Mr. Parsons testified that it was understood at the time of the 2005 bargaining that Relief employees could be used in continuous operations that were staffed 7 days a week/365 days per year (i.e. airport firemen where service was provided 16hrs/day) in

addition to those that were staffed 24 hrs per day/7 days per week (i.e. hospital or corrections employees). He recalled there were discussions during bargaining about Relief employees who would be working in specific wards such as the intensive care unit in the Stanton hospital. That was an example of a “service” offered on a daily basis and was viewed by the Union as the type of work that could be performed by Relief employees under the new provision in Appendix A1. In contrast, the work being performed by diagnostic imaging interpreters working inside a hospital or medical clinic, for example, was not considered by the Union as relief-type work because it was not part of a “service” being offered 7 days per week/365 days per year. Mr. Parsons noted by way of a further example that the Fort Smith Health and Social Services Center only operated from Monday to Friday 08:00 to 17:00. The absence of services being provided on a daily basis meant that Relief employees could not be hired at the Fort Smith Health and Social Services Center. Similarly, primary care clinics located both inside and near the Stanton hospital in Yellowknife do not meet the requirements for relief employees set out in Appendix A1.

Mr. Parsons confirmed that the definition of Relief employee has not changed since it was first introduced in 2005. Nor has the wording, of Appendix A1 been substantially altered since that time.

Mr. Parsons further noted that the original proposal for the wording of Appendix A1 at article A1.01 was identical in 2005 to the current language set out in the definition section of the collective agreement at article 2.01(m)(v). It was only through the process of bargaining in 2005 that the words “for operations” in article 2.01(m)(v) were

substituted with the words "for facilities" in A1.01. Mr. Parsons explained in cross-examination that he was unable to recall any reason for the change in wording nor did he have any bargaining notes which provided an explanation for the change.

Mr. Parsons also added that the Union's interpretation of "facilities" was a physical space such as a building. The word "operations" set out in article 2.01(m)(v) referred to the actual services being offered within the site. The overall idea at the bargaining table was to place limits on the use of Relief employees to specific department areas where there were continuous operations and not to have them employed as broadly as Casual employees. Mr. Parsons confirmed there were no further discussions about Relief employees at the bargaining table during the 2012 and 2016 collective agreement negotiations.

Ms. Woodward was also involved in the bargaining leading up to the 2005 collective agreement on behalf of the Employer. She testified that the context of the bargaining with respect to the introduction of the new position of Relief employees arose as a result of a concern expressed by nurses, in particular, that they did not qualify for pension entitlements as Casual employees nor were they eligible for professional development training opportunities. The solution arrived at by the parties at the bargaining table during the 2005 round of negotiations was to create the Relief employee position, an indeterminate position with the rights and benefits set out in Appendix A1.

Ms. Woodward's view at the time of negotiations was that despite the use of the words "for operations" in article 2.01(m)(v) and "for facilities" in Article A1.01, the

intention of the Employer was that the two terms were always meant to be interchangeable. Both terms, from the Employer's perspective, refer to places like the Correctional Center, the Inuvik hospital or the Stanton hospital, which all functioned throughout the year on a daily basis. The insertion of the word "facilities" in article A1.01 provides a specific reference to these places. Ms. Woodward further explained that the words "for operations" in article 2.01(m)(v) or "for facilities" in A1.01 would not have been necessary if the provision was only intended to apply to the services being provided on a daily basis throughout the year. The point was to have a consistent approach throughout the facility.

Given the broad nature of the operating facilities, such as a hospital, the word "services" in A1.01, in Ms. Woodward's view, refers to a subsection of a facility or operation. For example, the Emergency unit at the Stanton hospital is a "service" provided in the Stanton Hospital facility. From her perspective, one has regard to whether the "facility" operates on a daily basis and not the "service" being provided within the facility.

Ms. Woodward added that the position of the Employer, similar to the point expressed by Mr. Parsons, is that a facility is often a building. But not always. At the Stanton hospital, for example, there are a number of physical structures that are part of the Stanton Hospital "facility", including the medical clinic located in a building outside the main hospital building.

Ms. Woodward further testified that the reference to the enumerated facilities found in the parenthesis in article A1.02 of Appendix (i.e. a hospital, a health centre,

correctional facility...) was not intended to be an exhaustive list but rather only examples of a "facility". In that regard, Ms. Woodward reiterated that it was the "facility" that needed to operate on a daily basis and not the "service" within the facility.

Ms. Woodward then addressed the Union's allegation set out in the grievance that there were six examples where the Employer was violating the collective agreement by utilizing Relief employees in facilities which do not provide services on a daily basis: Sheriff Offices, Custodians, Park Officers, Health Records Clerks, Clinic Nurses and Reprocessing Technicians. Ms. Woodward agreed, as noted in paragraph 15 of the Agreed Facts, that Relief Sheriff Officers are being improperly utilized as the courts do not operate on a daily basis throughout the year. The assignment of Relief custodians in a correctional facility is appropriate because it operates on a daily basis, but relief assignments would not be appropriate in a school because a school only operates Monday through Friday. Park officers who supervise activities but do not carry out their duties in a facility that operates on a daily basis do not meet the Relief employee requirements. Health Record Clerks working at Stanton Hospital or Inuvik hospital would also meet the requirements for Relief employee assignments, even though they do not work every day of the week, because both of those health care facilities operate on a daily basis. Clinic nurses working in the Primary Care Clinics (Yellowknife Primary Care clinic and Frame Lake clinic) located in Yellowknife do not meet the Relief employee criteria as they do not operate on a daily basis. Reprocessing Technicians working at Stanton Hospital would qualify to perform relief duties because of the continuous daily operation of the hospital facility while the Primary Care clinics would not qualify because they do not operate every day of the week.

Ms. Woodward also testified that there were no further discussions surrounding the meaning of “facilities”, “operations” and “services” during the 2009 round of bargaining.

SUBMISSIONS OF THE UNION

The Union noted at the outset that article 2.01(m)(v) and Appendix A1, despite the slight difference in wording (“operations” vs “facilities”), both consistently focus on places where the “services”-not the “facilities”- are being provided. The Union submits in that regard the words “services” “operations” and “facilities” should not be construed as interchangeable.

The dictionary meaning of “services” includes a reference to *“a public department or organization run by the state, ‘the probation service’*; “operations” includes the *action of functioning or the fact of being active or in effect, such as business organization*; and, a “facility” is *a place, amenity or piece of equipment provided for a particular purpose...a manufacturing facility*. Although a “service” and an “operation” may coincide significantly, an “operation” and a “facility” are very distinct.

The Union then pointed out that the original purpose of creating the new category of Relief employees was to replace the “as-and-when” category of Casual employees who were limited to working for four months or less and were not considered to be indeterminate employees and able to receive collective agreement benefits. The new category of indeterminate “Relief employee”, it was agreed, would receive benefits as

as indeterminate employees but would be limited to working in facilities which operated seven days per week, such as correction or health care facilities.

The Union emphasized that the new category of Relief employee was also created to meet minimum staff requirements and to provide assistance to the public, or to a certain clientele, in areas where services were offered on a daily basis. The Union, by contrast, did not envision Relief employees being used to fill key positions that require a qualified person in place every day. The fact that the Stanton hospital, for example, is open every day of the week offering services to the public is no basis for the Employer to staff the Stanton Medical Clinic, located within the hospital itself but which is closed on weekends, with Relief nurses. The Union further notes in that regard that the Stanton Medical Centre although linked administratively and located close to the hospital (at 419 Byrne Rd.) does not offer services seven days per week. Similar to the Yellowknife Primary Care Centre and the Frame Lake Community Health Clinic located in the downtown area, the Stanton Medical Centre is closed on weekends. Simply because they are located in a building that also provides some services every day, but not their particular service, should not automatically make the entire facility eligible to employ Relief employees.

The Union further submits that if the service is not offered on a 7-day per week basis, it is inequitable to allow an employee in the same job classification to fill a Relief employee position just because of where they happen to work. By placing the emphasis on the "facility" over the "service" component of article A1.01, the definition of Relief employee in the Union's view is rendered meaningless. Certainly it was Mr. Parsons'

view in that regard that the focus of the Union has always been on the type of “service” being offered and that the “facilities” term was designed to identify where relief employees could physically work.

The core of the grievance, in the Union’s view, is to identify who can be a Relief employee and where they can work. If it is a “service” that is not offered on a seven day per week basis throughout the year, it is inequitable, as noted, to allow an employee in the same job classification to work relief hours simply because of where they happen to work. Just because an employee happens to work in a building that provides some services each and every day does not automatically make that employee eligible to perform relief work in that building.

SUBMISSIONS OF THE EMPLOYER

Counsel for the Employer first traced the background leading up to the 2005 negotiations over the Relief employees’ position. She noted that the use of Casual employees for “as-and-when” staffing for the hospital and correctional centre became an issue for the Union because of the four-month time constraint on hiring Casual employees, coupled with the Union’s request for indeterminate employee status for “as-and-when” employees. Ms. Woodward’s understanding was that the words “operations” and “facilities” were interchangeable. Ms. Woodward, unlike Mr. Parsons, further understood that “operations” or “facilities” did not always refer to work being performed in a single building.

The Employer submits that what is not in contention, if one looks to the relevant documents, is the reference to what constitutes a "facility". There is a reference in the Employer's Q and A (#26), for example, to both the North Slave Correctional Centre and the North Slave Young Offenders Centre as examples of individual facilities. Indeed, the Union's own documents (exhibit 5) define "facility" as a building. The Employer's view, however, is that the facility might include more than one building. It depends on the nature of the operations.

The Employer noted that there were no discussions at the bargaining table between 2005 and 2009 concerning the application of the Relief employee positions. Nor were there discussions at the 2012 round of bargaining. Despite receiving Monthly Relief Worker Hours reports on a regular basis since 2006 (as noted a paragraph 17 of the agreed facts), the Union did not initiate any complaints about the placement of Relief employees for some seven years from the time the provisions were first introduced.

In terms of the specific examples of alleged breaches cited in the grievance, counsel noted in particular that the parties joined issue on the Stanton Medical Centre located a short distance from the Stanton Hospital and opened only Monday through Friday. From the Employer's perspective, a Relief diagnostic imaging interpreter, for example, could be scheduled in to work at the Stanton Medical Centre during weekday hours because the Stanton Medical Centre is an integral part of the Stanton Hospital operations. Ms. Woodward provided her views on the other alleged position violations. (It is worth noting the Sheriff's office is no longer in dispute).

In summary, under A1.01, the Employer maintains that it can hire Relief employees on an “as-and-when” basis for facilities such as a correctional centre or a hospital. It is the “facility” which offers the various services on a daily basis under article A1.01. If the focus was simply on the “service” being offered on a continuous 24/7 basis, there would be no need to have included the word “for operations” in article 2.01(m)(v) or “for facilities” in article A1.01. Those words, as the authors Brown and Beatty note, must be interpreted according to their plain and ordinary meaning. If the Union’s interpretation is adopted, the Stanton Hospital could not, for example, ask Relief employees to fill in key support positions essential to the proper functioning of a continuous service operation. From the Employer’s perspective, it would be absurd to differentiate between employees in the same job classification simply on the basis of where they work i.e. a nurse working in clinic such as the Stanton Medical Centre and a nurse working in the Emergency room of the Stanton Hospital.

Should the Employer’s interpretation not be accepted, counsel requests the Union be estopped from taking any steps to enforce their rights until the next round of bargaining.

REPLY

The Union pointed out there was a three year gap between September 2013 to April 2016 when it did not receive any monthly Relief Worker Hours reports, which in turn left the Union with no ongoing way of knowing when and where Relief employees were being hired. The Union also submits that a call-back list of technicians and other staff required on an urgent basis could also fill in if required.

ANALYSIS

There are benchmark principles of interpretation that have been referred to in these proceedings which bear repeating. They are set out in Brown and Beatty, Canadian Labour Arbitration (3rd) at 4:2110:

'In searching for the parties' intention with respect to a particular provision in the agreement, arbitrators have generally assumed that the language before them should be viewed in its ordinary sense unless to do so would lead to some absurdity or inconsistency with the rest of the collective agreement, or unless context reveals that the words were used in some other sense.

And at 4:2120

Another related general guide to interpretation is that in construing a collective agreement, it should be presumed that all of the words used were intended to have some meaning. As well, it is presumed that they were not intended to be in conflict...

And, in the case of conflict between an earlier and later clause, there is authority to the effect that "the part of the contract which is written first overrides that which is written later, and it is only otherwise when the later clause clearly spells out the overriding effect intended", *although the better view would seem to be that effect should be given to that part which best carries out the real intention of the party.* (emphasis added in italics)

Dealing first with the issue of potential conflicts in wording, there is the one-word difference between the definition of a "relief employee" set out at article 2.01(m)(v) where "operations" is used and A1.01, Appendix A1, where "facilities" is used. For ease of reference the two provisions read:

2 (m)(v) a "relief employee" is an employee appointed to a position for which there are no established hours on a daily, weekly or monthly basis and may be required to report to work on an as-and-when required basis for **operations** where services operate on a daily basis throughout the entire year;

A1.01 The Employer shall hire relief employees into positions for which there are no established hours on a daily, weekly or monthly basis and may be required to report to

work on an as-and-when required basis for **facilities** where services operate on a daily basis throughout the entire year.

A reading of article 2(m)(v) and the word “operation”, to paraphrase the Oxford dictionary meaning, speaks to an organized functioning activity, such as a business organization. Certainly a hospital could be generally considered as an “operation”. A correctional facility also could be referred to in general as well as an “operation”. A “facility”, paraphrasing again the dictionary definition, is more specific and refers to a place used for a particular purpose. The word “operation” is broader in scope than “facility”, with the former identifying a particular type of activity or undertaking and the latter being more focussed on the actual structure or site where the activity is taking place.

One explanation for using the term “facilities” in Article A1.01, after the parties settled on a definition of “relief employee” in article 2.01(m)(v), is set out in a decision of Arbitrator Jolliffe¹ which was entered into evidence in these proceedings. He quotes the verbatim testimony of UNW negotiator Roxanna Baisi at p. 25 of his award:

By her description, the Union simply “wanted boundaries around relief employee use, wanted a box around language of ‘facility’ tied to the actual work site.”

The above reference to “facility” by Ms. Baisi is also cited in the Employer’s Reply to the current grievance dated December 16, 2016. It is also consistent to a degree with the comments found in the Union’s April 2016 written response to the Q and A sent out by the Employer in December 2015 on the new Relief Worker positions.

¹ See: GNWT v. UNW (Relief Workers) (November 26, 2008).

In their April 2016 response, the Union states that it took the position at the bargaining table that "...facility was defined as a building". Mr. Parsons, who was part of the bargaining team when the Relief Worker position was first negotiated in 2005, testified that he was also of the view that the word 'facility', for all intents and purposes, meant a 'building'. That view was not shared by Ms. Woodward who testified that a building could be a facility, but that a facility could also consist of more than just one building.

As one arbitrator pointed out, "*uniformity of expression has to be treated with great circumspection in [the] field of collective agreements*". In other words, one has to be careful not to be swayed in reviewing the language of a collective agreement by a slight variation in the wording between one clause and another when the gist of the meaning derived from the two clauses remains the same. It bears repeating that the proper overall approach is to give effect to that part of the collective agreement "*...which best carries the real intentions of the parties...*"

One of the similarities between the language in article 2.01(m)(v) and A1.01, Appendix A1, is the important reference to the phrase "*...where services operate on a daily basis throughout the year.*" The reference to the term "services" in both provisions is of significant importance, particularly if one focuses on the kind of "services" provided by Relief employees i.e. as nurses in a hospital; or, prison officers in a corrections institution.

There is no dispute that the "services" being performed, for example, by corrections officers working at the North Slave Correctional Institution are required on a daily basis throughout the year. Corrections officers who do not otherwise hold an

indeterminate position may be called in on an as-and-when basis as Relief employees to provide correctional officer services. The key to hiring the correctional service relief employee is the continuous nature of the "services"; that is the "services" operate on a daily basis throughout the year. Similarly, a cook who otherwise does not occupy an indeterminate position may be hired as a cook Relief employee at the North Slave Correctional Centre because of the continuous nature of the "services" being offered i.e. cooking meals for inmates is a "service" which operates on a daily basis throughout the year (assuming food preparation is required every day).

By contrast, a clerk working in the administrative offices of the Stanton Hospital, which is open only Monday through Friday, does not meet the requirements of the Relief employee provisions because it does not provide a service which operates on a daily basis throughout the year. It would inequitable in my view to fill positions on an as-and-when basis with Relief employees in an area of the hospital that does not meet the fundamental 24/7 daily service requirement set out in the collective agreement on the basis that another area of the hospital, such as the emergency ward, is open 24/7 every day of the year.

The Employer's case for supporting its interpretation of the provision rests on the fact that it has met the threshold requirement of the collective agreement through use of the word "facilities". Even without the earlier reference in the definition section to the broader term "operations" in lieu of "facilities", there is still the consistent reference in both provisions to the words "*where services operate on a daily basis throughout the year*". Bearing in mind the fluid nature of negotiations of the language in a collective

agreement coupled with the important principle of giving effect to the real intention of the parties, I do not find the word “facilities” to be determinative of what the parties intended with respect to the provisions governing Relief employees. The overriding intention of the parties is to provide the opportunity to use as-and-when indeterminate relief employees where the “services” themselves operate on a daily basis throughout the year. That means, for example, that the Employer cannot staff the administrative offices at the Stanton Hospital, which is only open Monday through Friday, with Relief employees.

CONCLUSION

In answer to the issue before me, as articulated in paragraph 8 of the Agreed Facts, I find and declare that the proper interpretation of article A1.01 is that it is the “service” and not the “facility” that must operate on a daily basis throughout the year. I would urge the parties in light of this declaration to attempt to work out an appropriate resolution during the current round of collective bargaining negotiations. I will reserve jurisdiction should any issue arise or remedial directions be required in the implementation of this award.



JOHN M. MOREAU, Q.C.

August 21, 2017

AX.04 Where annual leave or the use of lieu time has been denied due to operational requirements, Term Employees will be allowed to use any unused annual leave and lieu time to extend their employment. Where employment is extended at the request of the Employee, if the new term exceeds 48 months consultation with the Union is not required.

AX.05 Term Employees shall be entitled to Maternity and Parental Leave allowances provided the Employee's current term of employment provides sufficient time to completely fulfill the return of service commitment required after the return from maternity or parental leave.

A letter will be provided to the UNW from the Deputy Minister of Human Resources stating employment advertisements will be changed effective the date of ratification to include:

"Eligibility lists may be created from this/these competition(s) to fill future term or indeterminate positions."

**APPENDIX B
PAY SCHEDULES**

AMEND TO READ

Effective April 1, 2009 all employees, except relief employees, shall take five days Mandatory Leave with Pay per fiscal year. Part time employees will have their entitlement pro-rated.

Non-Continuous Positions

- **Mandatory Leave with Pay will be taken between December 19th and January 5th on days set by the Employer.**
- **Employees on leave without pay on the working day immediately preceding and following the days set by the Employer are not eligible for the Mandatory Leave with Pay days except where leave has been granted under Article 12.**
- **Employees in non-continuous positions will be provided with the five days of Mandatory Leave with Pay no matter what their start date in that fiscal year.**
- **Mandatory Leave with Pay days will not be paid out if an employee terminates his/her employment prior to the days set by the Employer.**