



---

ONTARIO COUNCIL OF HOSPITAL UNIONS

**A GUIDE TO THE  
JOB SECURITY LANGUAGE  
IN THE  
CUPE HOSPITAL  
CENTRAL AGREEMENT**

---

**PREPARED BY THE  
ONTARIO COUNCIL OF HOSPITAL  
UNIONS**

**JANUARY 2009**

## **About this Guide...**

CUPE's hospital workers have made very real gains in job security as a result of our commitment in collective bargaining to gain the greatest degree possible of employment security for our members. This Guide is intended to assist local unions to use the job security provisions of the central agreement in a consistent way. The Guide has been reviewed by the officers, staff, and specialists who assist with the negotiation, arbitration and administration of the collective agreements.

The job security provisions operate in an integrated way. It is important to have an understanding of the entire network of provisions to see how each of them operates. This guide deals with layoff; notice of layoff; alternatives to layoff and employee options; contracting out, and contracting in.

The purpose of the whole of the job security language is two-fold from our point of view. On the one hand, it offers protection to employees who are about to be subject to layoffs, protection which will depend upon the length of the layoff and an individual employee's seniority. Second and just as important, it provides some protection to the integrity of the Local Union's bargaining unit.

We do not expect that we will be able to answer every question that may arise. Instead, we are hoping to provide Local Union officers with an overview of these collective agreement provisions so that they can continue to provide effective and informed representation of their members. We look forward to any comments which you may have as to how we can improve the Guide.

**9.08**

(a) In the event of a proposed layoff at the Hospital of a permanent or long-term nature or the elimination of a position within the bargaining unit, the Hospital shall:

- (i) provide the Union with no less than five (5) months' written notice of the proposed layoff or elimination of position; and
- (ii) provide to the affected employee(s), if any, who will be laid off with no less than five (5) months' written notice of layoff, or pay in lieu thereof.

**Note:** Where a proposed layoff results in the subsequent displacement of any member(s) of the bargaining unit, the original notice to the Union provided in (i) above shall be considered notice to the Union of any subsequent layoff.

---

**Long-term and permanent defined**

Article 9.08(a) requires the Hospital to give notice to the Union of a permanent or long-term layoff, or the elimination of a position. A 'permanent or long-term' layoff has been found to be one which is at least 13 weeks in length.<sup>1</sup> A reduction in regular hours of work of a full-time or regular part-time employee is considered a layoff under the central collective agreement.<sup>2</sup>

**Different notices required**

There are three different types of notice requirements. The Union is entitled to notice of a layoff of an employee, or else notice of the elimination of a position. Individual employees are entitled to notice of their layoff.

# NOTICE OF LAYOFF

## **Notice to be specific**

The notice must be provided five (5) months before the event, and it must be specific. When a hospital has given general or 'blanket' notice, of the elimination of positions or layoff of employees, the notice has been found to be deficient and has been disallowed. For example, when a hospital gave the Union notice that it would eliminate housekeeping positions as they became vacant, without identifying any particular positions and without identifying any dates, the notice was found to not meet the obligations under the collective agreement.<sup>3</sup>

## **Definition of Layoff: Includes Reduction of Hours**

A layoff generally is defined as the cessation of work, a reduction in the workforce, or the reduction in an employee's working hours. Where a permanent or long-term reduction of working hours is applied unevenly across the bargaining unit, that is where some, but not all, employees have their hours reduced, employees will be able to access the job security protections of article 9.<sup>4</sup>

## **Different meaning of 'layoff'**

It is important to note that there is more than one definition of a 'laid off' employee under our collective agreement.<sup>5</sup> For example, an employee who has been laid off 'to the street' and who is not actively at work in the hospital, may be considered to be 'laid off'. In other provisions, for example article 9.09, a 'laid off' employee may refer to an employee who has received notice of layoff but is still actively at work – either because they have displaced another employee or because they are serving their notice period. So the term 'layoff' under this collective agreement has more than one meaning.

## **First, early retirement options**

*Before* a notice of layoff or the elimination of a position occurs,

# NOTICE OF LAYOFF

article 18.03(b) must be complied with. Employees in the same classification(s) as those who may be affected by any layoff, must first be offered the option of taking early retirement, including receiving an early retirement allowance. This requirement is dealt with later in the Guide, but for now it is important to appreciate that these offers of early retirement allowance must be made *before* any layoff notices are served within that classification.

## **Hospital must maintain status quo through notice period**

The purpose of the notice period is to retain the *status quo* (i.e. the present circumstances) throughout the period of notice. In the case of an employee who has received notice of layoff, this means that the substantive position of the employee (i.e. their regular classification) is not to be altered during the notice period. For example, where a hospital requires an employee to begin working in another classification that they have bumped into *during* the notice period, the hospital will violate the collective agreement.<sup>6</sup>

## **Notice of Elimination of positions**

Also, where a hospital fails to give notice to the Union of the elimination of a position and simply fails to post a position that has been vacated, the hospital will be found to have breached the collective agreement.<sup>7</sup>

## **Payment in lieu of notice**

Finally, payment in lieu of notice is required for any missed portion of the notice period. Payment for late notice does not relieve a hospital of the obligation to follow the other required steps (for example, canvassing for early retirement).

## **KEY CASES:**

Footnotes

1. *Whitby General Hospital and CUPE Local 3082*, unreported, September 10, 1996 (Springate)
2. *St. Vincent de Paul Hospital and CUPE Local 2491*, unreported, May 12, 2006 (Devlin)
3. *Hamilton Health Sciences Corp. and CUPE Local 839* (2001), 94 L.A.C. (4th) 156 (Adams)
4. *Scarborough Hospital and CUPE Local 1487*, unreported, January 17, 2006 (Burkett)
5. *Hamilton Health Sciences Corp. and CUPE Local 4800*, unreported, October 14, 2004 (Burkett)
6. *Toronto Hospital (Toronto Western Division) and CUPE Local 1744*, unreported, February 17, 1997 (Charney)
7. *Kingston General Hospital and CUPE Local 1974*, unreported, November 12, 2002 (Devlin)

**9.08**

(b) A layoff shall not include a reassignment of an employee from her or his classification or area of assignment who would otherwise be entitled to

notice of layoff provided:

- (I) the reassignment of the employee is to an appropriate permanent position with the employer having regard to the employees skills, abilities, qualifications and training or training requirements;
- (II) the reassignment of the employee does not result in a reduction of the employees wage rate or hours of work;
- (III) the job to which the employee is reassigned is located at the employee's original work site or at a nearby site in terms of relative accessibility for the employee;
- (IV) the job to which the employee is reassigned is on the same or substantially similar shift or shift rotation; and
- (V) where more than one employee is to be reassigned in accordance with this provision, the reassigned employees shall be entitled to select from the available appropriate vacancies to which they are being reassigned in order of seniority provided no such selection causes or would cause a layoff or bumping.

The Hospital bears the onus of demonstrating that the foregoing conditions have been met in the event of a dispute. The Hospital shall also reasonably accommodate any reassigned employee who may experience a personal hardship arising from being reassigned in

# REASSIGNMENT

accordance with this provision.

---

## **Reassignment can avoid notice requirements**

In the event a hospital reassigns an employee in accordance with article 9.08(b), the hospital does not need to serve notice of layoff and a layoff will not have occurred for the purposes of the collective agreement. In other words, if a reassignment is properly conducted which meets all the requirements of article 9.08(b), an arbitrator will find that no notice of layoff is necessary, and no layoff has occurred.<sup>1</sup>

## **Purpose of reassignment**

The purpose of article 9.08(b) is to give hospitals some relief from the obligations of the layoff language. It permits hospitals to avoid having to give notice of layoff, and thus avoid all of the consequences of serving notice of layoff, if the hospital is able to comply with the terms of 9.08(b). For example, if a hospital reassigns employees in a way which complies with this article it may contract out the work previously performed by those employees without a layoff being found to have occurred.

## **Requirements for reassignment**

In order for a hospital's actions to fall within article 9.08(b), the hospital must ensure that the employees are reassigned precisely within the requirements of the article. The new position to which the employee is assigned must:

1. be permanent,
2. be a position which accords with the employee's skills and training,
3. not have a lower wage rate than the employee's previous wage rate,



# REASSIGNMENT

4. not reduce the employee's hours of work,
5. be on the same or substantially similar shift or shift rotation as the employee's previous shift, and
6. be at the same work site or a nearby work site.

## **Onus on the hospital to prove strict compliance**

The onus is on the hospital to demonstrate that it has met these conditions – not on the Union to prove that it hasn't. Furthermore, in order to fit within this article, a hospital will need to strictly comply with its requirements. 'Substantial' or partial compliance is not good enough.<sup>2</sup> Where a Hospital 'red-circles' the wage rates of employees who are reassigned to a lesser-paid classification until the rate of the new position catches up to the rate of the employee's previous position, arbitration boards have found that this satisfies the obligation at 9.08(b)ii.<sup>3</sup>

## **Choosing by seniority**

Although a hospital will not be required to post the positions into which employees are reassigned, the employees concerned will be allowed to choose among the available positions on the basis of their seniority.

## **Posting requirements**

Although a hospital is not required to post the vacancies into which employees are reassigned, this article must be read in conjunction with article 9.05. Article 9.05 now requires hospitals to post vacancies within thirty days of their occurrence or else declare the positions eliminated pursuant to article 9.08(a). It states in part:

**The Hospital agrees that it shall post permanent vacant positions within 30 calendar days of the position becoming vacant, unless the Hospital provides the Union notice under Article 9.08 of its**

**intention to eliminate the position.**

We are of the view that after that thirty-day period, the vacancy cannot 'reappear' for the purposes of a reassignment. In other words, the vacancy must be used within the thirty-day 'window' for reassignment.

**KEY CASES:**

Footnotes

1. *Hamilton Health Sciences Corp. and CUPE Local 4800*, unreported, October 14, 2004 (Burkett)
2. *Scarborough Hospital and CUPE Local 1487*, unreported, January 17, 2006 (Burkett)
3. *Sudbury Regional Hospital and CUPE 1623 (Bosse Grievance)*, unreported, December 1, 2008 (Stewart)

## **9.08**

- -

(c) Any vacancy to which an employee is reassigned pursuant to paragraph (b) need not be posted.

**9.08  
(d)**

(d) At each Hospital a Redeployment Committee will be established not later than two (2) weeks after the notice referred to in 9.08 and will meet thereafter as frequently as is necessary.

(i) **Committee Mandate**

The mandate of the Redeployment Committee is to:

- (1) Identify and propose possible alternatives to the proposed layoff(s) or elimination of position(s), including, but not limited to, identifying work which would otherwise be bargaining unit work and is currently work contracted-out by the Hospital which could be performed by bargaining-unit employees who are or would otherwise be laid off;
- (2) Identify vacant positions in the Hospital or positions which are currently filled but which will become vacant within a twelve (12) month period and which are either:
  - (a) within the bargaining unit; or
  - (b) within another CUPE bargaining unit; or
  - (c) not covered by a collective agreement.
- (3) Identify the retraining needs of workers and facilitate such training for workers who are, or would otherwise be, laid off.
- (4) Subject to article 9.11, the Hospital will award

vacant positions to employees who are, or would otherwise be laid off, in order of seniority if, with the benefit of up to six (6) months retraining, an employee has become able to meet the normal requirements of the job.

- (5) Any dispute relating to the foregoing procedures may be filed as a grievance commencing at Step 3.

(ii) Committee Composition

The Redeployment Committee shall be comprised of equal numbers of representatives of the Hospital and of the Union. The number of representatives will be determined locally. Where for the purposes of HTAP (the Ontario Hospital Training and Adjustment Panel) there is another hospital-wide staffing and redeployment committee created or in existence, Union members of the Redeployment Committee shall serve on any such hospital-wide staffing committee established with the same or similar terms of reference, and the number of Union members on such committee will be proportionate to the number of its bargaining unit members at the particular Hospital in relation to other staff groups.

Meetings of the Redeployment Committee shall be held during normal working hours. Time spent attending such meetings shall be deemed to be work time for which the representative(s) shall be paid by the Hospital at his or her regular or premium rate as may be applicable.

Each party shall appoint a co-chair for the Redeployment

**Committee. Co-chairs shall chair alternative meetings of the Committee and will be jointly responsible for establishing the agenda of the Committee meetings, preparing minutes and writing such correspondence as the Committee may direct.**

**(iii) Disclosure**

**The Hospital shall provide to the Redeployment Committee all pertinent staffing and financial information.**

**(iv) Alternatives**

**The Redeployment Committee, or where there is no consensus, the committee members shall propose alternatives to cutbacks in staffing to the Hospital's Chief Executive Officer and to the Board of Directors.**

**At the time of submitting any plan concerning rationalization of services and involving the elimination of any position(s) or any layoff(s) to the District Health Council or to the Ministry of Health, the Hospital shall provide a copy, together with accompanying documentation, to the Union.**

---

**Separate Committee**

**This committee's mandate is far greater than that of the Labour/Management Committee. It exists specifically to carry out its mandate provided under this article.**

**Setting up the Redeployment Committee**

**Upon receiving notice of a proposed layoff or elimination of position, the Union should immediately write to the Hospital requesting establishment of a Redeployment Committee with**

# REDEPLOYMENT CTTE.

its proposal for the Committee's size and Union members.

**Timeframe** The Committee must be set up within two weeks of the notice of the proposed layoff or elimination of position being given to the Union.

**Committee's mandate: Identifying alternatives** The Committee is mandated to search not only for existing vacant positions in the Hospital, but to identify work that would fall within the bargaining unit but is currently being contracted out. In combination with 10.02 "Contracting In", the intent here is clearly to make the Hospital responsible to provide work to employees who would otherwise be laid off and shifts the onus onto the Hospital to justify any refusal to do so, even when it means contracting-in work.

Bargaining unit employees capable of performing the work who are or who would otherwise be laid off have the right to be considered for this contracted-out work.

**Committee's mandate: Identify vacant or soon-to-be vacant positions** The Committee is to identify positions that are currently vacant or are to become vacant within six (6) months within the bargaining unit or in another CUPE bargaining unit or outside of any bargaining unit.

**Hospital required to hire** The Hospital is required to award vacant positions to workers who would otherwise be laid off if, with six months retraining, they become able to meet the normal requirements of the job.

**Mandate: Identify training needs and facilitate** This refers to the training needs of CUPE members to qualify them for the positions identified by the Redeployment Committee.

# REDEPLOYMENT CTTE.

## **Training extends to would-be layoffs**

Training needs are to be addressed not only for those who are laid off but for those who "would otherwise be" laid off.

## **Dispute resolution**

Any dispute relating to the Committee's procedures or mandate may and should be filed as a "step two" grievance to achieve quicker movement to arbitration.

## **Committee composition: equal union/management**

The Union has the right to participate as a full partner in the operation of the Committee. Whatever the actual number agreed to locally, there must be the same number of representatives for the Union and Hospital.

## **Committee composition: Co-Chairpersons**

The Union appoints a Co-Chair responsible for alternate meetings of the Committee. The Co-Chairs jointly determine Committee meeting agendas, prepare Committee minutes and conduct Committee correspondence.

## **Timing of Committee meetings**

The Committee functions during normal working hours and Committee time is deemed worked time to be paid at the appropriate (i.e. regular or premium) rate.

## **Right to information**

The Hospital is obliged to provide the Committee with "all pertinent staffing and financial information". It is recommended that the Union members of the Redeployment Committee ensure that this information is provided by the Hospital before looking at which employees are to be affected by the lay-off so that rational and practical alternatives can be proposed. Motions may have to be raised within the Committee itself to obtain additional information from the Hospital.



**Alternatives to layoffs**

The Committee is clearly empowered to propose alternatives to layoffs. Accessing complete information is crucial in building these alternatives. The powers given to the Committee shift the onus onto the Hospital to show why alternatives are impractical or not cost-effective, should it choose not to follow the Committee's proposals. The documentation and supporting rationale therefore are extremely important should a future dispute arise over the Hospital's right to ignore alternatives proposed by the Committee.

**Access to CEO and Hospital Board**

If the Committee cannot agree on alternatives, the individuals members (including Union members) of the Committee have the right to present their suggested alternatives to layoffs to the Chief Executive Officer and Hospital Board.

**Right to rationalization plans**

The Union has a right to a copy of any rationalization plan involving layoffs or the elimination of positions that the Hospital may submit to either the District Health Council (now defunct) or Ministry of Health. The Union also has a right to a copy of any documentation accompanying such a submission. These provisions would appear to provide even more notice to the Union should such plans be submitted in advance of the six month notice requirement set out in 9.08(a).

**9.09**

An employee in receipt of notice of layoff pursuant to 9.08(a)(ii) may:

19.08 PTI

- (a) accept the layoff; or
- (b) opt to receive a separation allowance as outlined in Article 9.12; or
- (c) opt to retire, if eligible under the terms of the Hospitals of Ontario Pension Plan (HOOPP) as outlined in Article 18.03(b); or
- (d) displace another employee who has lesser bargaining unit seniority in the same or a lower or an identical-paying classification in the bargaining unit if the employee originally subject to layoff has the ability to meet the normal requirements of the job. An employee so displaced shall be deemed to have been laid off and shall be entitled to notice in accordance with Article 9.08.

An employee who chooses to exercise the right to displace another employee with lesser seniority shall advise the Hospital of his or her intention to do so and the position claimed within seven (7) days after receiving the notice of layoff.

**Note:** For purposes of the operation of clause (d), an identical-paying classification shall include any classification where the straight-time hourly wage rate at the level of service corresponding to that of the laid off employee is within 1% of the laid off employee's straight time hourly wage rate.

In the event that there are no employees with lesser seniority in the same or a lower or identical-paying classification, as defined in this article, a laid-off employee shall have the right to displace another

# LAYOFF AND RECALL

employee with lesser seniority who is the least senior employee in the classification and where the straight-time hourly rate at the level of service corresponding to that of the employee is within 15% of the laid-off employee's straight-time hourly rate.

An employee who is subject to layoff other than a layoff of a permanent or long-term nature including a full time employee whose hours of work are, subject to Article 14.01, reduced, shall have the right to accept the layoff or displace another employee in accordance with (a) and (d) above.

The Hospital agrees to post vacancies during the recall period, as per the job posting procedure, allowing employees on recall to participate in the posting procedure. Should the position not be filled via the job posting procedure, an employee shall have the opportunity of recall from a layoff to an available opening, in order of seniority, provided he or she has the ability to perform the work.

In determining the ability of an employee to perform the work for the purposes of the paragraphs above, the Hospital shall not act in an arbitrary or unfair manner.

An employee recalled to work in a different classification from which he or she was laid off shall have the privilege of returning to the position held prior to the layoff should it become vacant within six (6) months of being recalled.

No new employees shall be hired until all those laid off have been given an opportunity to return to work and have failed to do so, in accordance with the loss of seniority provision, or have been found unable to perform the work available.

# LAYOFF AND RECALL

The Hospital shall notify the employee of recall opportunity by registered mail, addressed to the last address on record with the Hospital (which notification shall be deemed to be received on the second day following the date of mailing). The notification shall state the job to which the employee is eligible to be recalled and the date and time at which the employee shall report for work. The employee is solely responsible for his or her proper address being on record with the Hospital.

No full-time employee within the bargaining unit shall be laid off by reason of his/her duties being assigned to one or more part-time employees.

In the event of a layoff of an employee, the Hospital shall pay its share of insured benefits premiums for the duration of the five-month notice period provided for in Article 9.08.

---

**Employee options**      Should the affected employee accept the layoff, they should refer to 9.11 Retraining. 9.12 Separation Allowances is another option as is retirement should they be eligible (see 18.01(e) and 18.03(b)). They may also opt to “bump” or displace another employee.

**“Bumping into another position; Applies to both short-term and long-term layoff**      The “bumping’ provisions apply both to short-term and long-term layoffs. The worker who chooses to exercise their right to “bump” another worker in the case of a long-term or permanent layoff, must advise the Hospital within seven days after receiving the actual notice of layoff.

# LAYOFF AND RECALL

The employee can pick the position in the same or lower-paying classification in which they are interested and “bump” the person holding that position providing that person has less bargaining unit seniority.

## “Identical” definition

An “identical paying classification” refers to one in which the straight time hourly rate for a corresponding level of service falls within one per cent (1%) of the laid off worker’s hourly rate.

## Requirements to bump

The worker who chooses to “bump” is required to have the ability to meet the normal requirements of the job. This is the same test as a job posting.

## Bumping “up”

Applies only where there are no employees with seniority in the same or lower classifications whom the laid-off worker could bump. The laid-off worker has the right to “bump” someone with less seniority who is the least senior in a classification where the straight time hourly rate with a corresponding level of service is within fifteen per cent (15%) of the laid-off worker’s hourly rate. Of course the laid off worker must meet the normal requirements of the position.

## Displaced (“bumped”) employees entitled to full layoff rights

Any worker who has been “bumped” or displaced is entitled to the full rights to notice and redeployment from the beginning of the process. That is, the Hospital must give them six months notice and follow all the procedures outline in the collective agreement to try to avoid their layoff from taking place.

# LAYOFF AND RECALL

## **Employee rights under short-term layoff**

Where the layoff is not of a long-term or permanent nature, workers have the right to accept the layoff or displace another worker in accordance with 9.09(a) and (d). (See 9.08, page 4 for long-term/short-term definition).

## **Paying benefit premiums after notice**

When there is a layoff to the street, the Hospital is obliged to pay its share of insured benefit premiums during the six-month notice period – so is the employee. Employees are entitled to this even if the hospital chooses to pay them in lieu of the six-month notice period.

## **Recall time limits**

As previously, a laid-off employee is obliged to accept a recall within seven (7) calendar days of being notified by registered mail or forfeit their seniority and ability to be recalled to any future positions. It is crucial that laid-off workers keep an up-to-date address on file with the Hospital. When a laid-off worker is not going to be available for a seven day period, it may even be appropriate to have the Union designated as their agent so that the recall could be acknowledged within the time limits.

## **Posting before Recall**

Positions are to be posted before recalls occur. Any position must first be posted before it can be filled by recall. This allows more senior employees not on layoff to bid on the position and frees later positions for recall.

## **Other Recall provisions**

Laid off employees keep their layoff status with seniority for 24 months (9.03); a refusal to accept a recall to their position results in termination; they have preference for temporary positions lasting more than 10 days but are not obliged to accept; full-time positions cannot be converted to part-time;

# LAYOFF AND RECALL

and new employees cannot be hired until laid off workers have been given the chance to return.

**9.10** (The following clause is applicable to full-time employees only)

In the event of a lay-off of an employee, the Hospital shall pay its share of insured benefits premiums up to the end of the month in which the lay-off occurs.

The employee may, if possible under the terms and conditions of the insurance benefits programs, continue to pay the full premium cost of a benefit or benefits for up to three (3) months following the end of the month in which the lay-off occurs. Such payment can be made through the payroll office of the Hospital provided that the employee informs the Hospital of his or her intent to do so at the time of the lay-off, and arranges with the Hospital the appropriate payment schedule.



**9.11**

19.10 PT1

**(a) Retraining for Positions within the Hospital**

Where, with the benefit of retraining of up to six (6) months, an employee who has either accepted the layoff or who is unable to displace any other employee could be redeployed to a hospital position identified by the Redeployment Committee in accordance with Article 9.08(d)(i):

- (i) Opportunities to fill vacant positions identified by the Hospital Redeployment Committee through retraining shall be offered to employees who apply and would qualify for the position with the available retraining in order of their seniority until the list of any such opportunities is exhausted. Opportunities to fill vacancies outside of CUPE bargaining units may be offered by the Hospital in its discretion.**
- (ii) The Hospital and the Union will cooperate so that employees who have received notice of permanent layoff and been approved for retraining in order to prevent a layoff will have their work schedules adjusted in order to enable them to participate in the retraining, and scheduling and seniority requirements may by mutual agreement be waived. The Redeployment Committee will seek the assistance of the Hospital Training and Adjustment Panel (HTAP) to cover the cost of tuition, books and any travel.**
- (iii) Apart from any on-the-job training offered by the Hospital, any employee subject to layoff who may require a leave of absence to undertake retraining in accordance with the foregoing shall be granted an**

# RETRAINING

unpaid leave of absence which shall not exceed six (6) months.

(iv) Laid-off employees who are approved for retraining in order to qualify for a vacant position within the Hospital will continue to receive insured benefits.

(b) **Placement**

Upon successful completion of his or her training period, the Hospital and the Union undertake to waive any restrictions which might otherwise apply, and the employee will be placed in the job identified in 9.11(a)(i).

An employee subject to layoff who applies but later declines to accept a retraining offer or fails to complete the training will remain subject to layoff.

(c) **Regional Redeployment Committee**

A joint committee of the participating hospitals and local unions identified in Appendix "A" shall meet prior to June 30, 1993, and will establish Regional Redeployment Committees to identify employment opportunities and to facilitate and arrange for the redeployment of laid off employees.

Each Hospital will provide such Regional Redeployment Committee with the name, address, telephone number, and years of service and seniority of all employees who have been laid off.

In filling vacancies not filled by bargaining unit members, the Hospitals will be encouraged to give first consideration to

# RETRAINING

laid-off employees who are on the list and who are qualified to perform the work. For benefit-entitlement purposes, it is recognized that Hospitals shall be free to grant to any employees hired through this process full credit for service earned with another hospital.

---

|                                                         |                                                                                                                                                                                                            |
|---------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Retraining eligibility</b>                           | You are eligible for retraining if: there are no vacancies available for which you can qualify; no work can be found for contracting-in; you are unable to displace another worker.                        |
| <b>Employees must apply</b>                             | The opportunities are identified by the Redeployment Committee, but employees still <u>have to apply</u> .                                                                                                 |
| <b>Retraining and seniority</b>                         | Retraining is to be offered <u>in order of seniority</u> .                                                                                                                                                 |
| <b>Employer obliged to adjust schedule for training</b> | The Hospital is to cooperate in changing schedules of retrainees so they can participate in retraining program. Scheduling and seniority requirements may be waived by mutual consent for the same reason. |
| <b>Leave of absence must be granted</b>                 | An unpaid leave of absence of up to six (6) months is available for those needing it in order to retrain.                                                                                                  |
| <b>Insured benefits continue</b>                        | Employees approved for retraining within the Hospital have a right to continue to receive insured benefits during that training.                                                                           |
| <b>Retraining can be refused without penalty</b>        | Unlike a refusal to accept recall, an employee <u>may refuse a retraining offer without losing their rights</u> under the layoff and recall provisions.                                                    |

# SEPARATION ALLOWANCE

## 9.12

19.11 PTI

- (a) Where an employee resigns within 30 days after receiving notice of layoff pursuant to article 9.08(a)(ii) that his or her position will be eliminated, he or she shall be entitled to a separation allowance of two (2) weeks' salary for each year of continuous service to a maximum of twelve (12) weeks' pay, and, on production of receipts from an approved educational program, within twelve (12) months of resignation, may be reimbursed for tuition fees up to a maximum of three thousand (\$3,000) dollars.
- (b) Where an employee resigns later than 30 days after receiving notice pursuant to Article 9.08(a)(ii) that his or her position will be eliminated, he or she shall be entitled to a separation allowance of four (4) weeks' salary, and, on production of receipts from an approved educational program, within twelve (12) months of resignation, may be reimbursed for tuition fees up to a maximum of one thousand two hundred and fifty (\$1,250) dollars.

---

### 30 day mark key to payment level

When an employee resigns after receiving Notice of Layoff, they are eligible for a Separation Allowance. The amount differs significantly depending on the time of resignation. If they resign within 30 days of receiving their Notice, they are to receive 2 weeks pay per year's service to a maximum of 12 weeks. They may also be reimbursed for up to \$3000 in tuition fees. If, however, they resign after the 30 days, they will receive only 4 weeks' salary and be eligible for only \$1250 in tuition reimbursement.

### Integration with severance

Article 9.12(a), which provides a payment based upon years of continuous service, has been found to offset any severance

payment owed to the employee.<sup>1</sup> On the other hand, Article 9.12(b) is not based upon years of continuous service and there would be no offset against a employee's severance payment.

## KEY CASES:

### Footnotes

1. *Northeast Mental Health Centre and OPSEU*, unreported, May 21, 2004 (Kaplan)

**10.01**

The Hospital shall not contract out any work usually performed by members of the bargaining unit if, as a result of such contracting out, a layoff of any employees other than casual part-time employees results from such contracting out.

---

Article 10 provides an extensive set of protections against contracting out. But first, in order for article 10 to apply, contracting out must occur.

**Contracting  
Out or  
Contract In?  
Who is the  
'true  
employer'?**

A number of arbitration cases have distinguished between 'contracting out' and 'contracting in'. Often hospitals will bring contractors, for example Aramark or Marriott, to operate entire departments. Housekeeping and dietary departments are frequent examples. Arbitrators will enquire as to who is the 'true employer' of the employees concerned for labour relations purposes. In other words, it is not enough that the contractor signs the employees' pay cheques. An arbitrator will be interested in whether the employees fit into the hospital's organization or the contractor's, and whether it is the hospital or the contractor that controls the employees' working conditions. In a circumstance where the employees are considered part of the hospital's organization and not the contractor's and/or the hospital and not the contractor controls the working conditions, then the hospital and not the contractor will be considered the 'true employer' of the employees concerned.<sup>1</sup> In that case the employees concerned will be covered by the hospital's own collective agreement rather than the terms established by the contractor.

# CONTRACTING OUT

At present (February 2006), there are at least two arbitration cases proceeding where the Union claims that the hospital, and not a contractor, is the true employer. Both cases involve housekeeping.

Where a true contracting out does occur, article 10.01 requires that no layoff occurs as a result. In the event employees are reassigned by the hospital in a way which complies with the requirements of article 9.08 (b), no layoff will be found to have occurred.

Where a hospital reassigns employees in a manner which does not comply with article 9.08(b) so that layoff notices should have been issued, then a contracting out will be considered invalid even if no employees have been laid off to the street.

## Remedy for improper contracting out

In the event a hospital breaches article 10.01, the proper remedy is to cancel the contracting out. It is not enough for the hospital to try to 'repair' the layoff.<sup>2</sup>

## KEY CASES:

### Footnotes

1. *IKO Industries and U.S.W.A.* (2002), 118 L.A.C. (4th) 1 (P.Picher)
2. *Scarborough Hospital and CUPE Local 1487*, unreported, January 17, 2006 (Burkett); and see *William Osler Health Centre and CUPE Local 145*, unreported, March 20, 2006 (Springate), and *William Osler Health Centre and CUPE Local 145*, unreported, February 10, 2007 (Springate)

**10.02**

Notwithstanding the foregoing, the hospital may contract out work usually performed by members of the bargaining unit without such contracting-out constituting a breach of this provision if the hospital provides in its commercial arrangement contracting out the work that the contractor to whom the work is being contracted, and any subsequent such contractor, agrees:

- (1) to employ the employees thus displaced from the hospital; and
- (2) in doing so to stand, with respect to that work, in the place of the hospital for the purposes of the hospital's collective agreement with the Union, and to execute into an agreement with the Union to that effect.

In order to ensure compliance with this provision, the hospital agrees that it will withdraw the work from any contractor who has failed to meet the aforesaid terms of the contracting-out arrangement.

---

**Requirement for identical collective agreement**

Article 10.02 governs the content of the commercial agreement between the hospital and contractor, and the agreement between the contractor and the union. It requires that a hospital and the contractor have as part of their commercial agreement, an obligation on the contractor to enter to recognize the CUPE Local at the hospital as bargaining agent for its employees, to employ all the employees displaced from the hospital, and to enter into a collective agreement that is identical to the collective agreement between the hospital and the union.<sup>1</sup> Moreover, the contractor is bound to continue to provide the identical



collective agreement as the hospital's, as is any subsequent contractor. If a contractor does not fulfill this requirement, the hospital is obligated to return the work in-house.

## KEY CASES:

### Footnotes

1. *St. John's Rehabilitation Hospital and CUPE Local 790 and Brookfield LePage Johnson Controls*, unreported, January 15, 2002 (Abramsky)

**10.03**

Further to Article 9.08(d)(i)(1) the parties agree that the Redeployment Committee will immediately undertake a review of any existing sub-contract work which would otherwise be bargaining unit work and which may be subject to expiry and open for renegotiation within six (6) months with a view to assessing the practicality and cost-effectiveness of having such work performed within the Hospital by members of the bargaining unit.

---

**Applies  
whether there  
is a layoff or  
not**

This provision applies whether a notice of layoff has been sent to an employee or not. Refer also to 9.08(d).

**11.0** Employees not covered by the terms of this Agreement will not perform duties normally assigned to those employees who are covered by this Agreement, except for the purposes of instruction, experimentation, or in emergencies when regular employees are not readily available.

---

**Exceptions limited**

The purpose of article 11.01 is to prevent duties normally assigned to bargaining unit members from being assigned to employees of the hospital who are not members of the bargaining unit.

A violation of this article is not dependent upon whether a layoff has occurred. Also, the exceptions to the article's protection are limited – instruction, experimentation, or when regular employees are not readily available.

**Protects type and volume of duties**

Often disputes will arise when the duties normally assigned to bargaining unit members are also often assigned to members of other bargaining units, or to supervisory personnel. In these cases, an 'overlap' is said to exist in that the duties are assigned to bargaining unit members and non-bargaining unit members on a regular basis. In those circumstances, the earlier arbitration awards appeared to give the hospitals an unfettered right to change the amount of work assigned to bargaining unit members when an 'overlap' existed. However, the more recent cases hold that the purpose of 11.01 is to protect not only the 'type' of duties that members of the bargaining unit perform from being assigned to other employees, but also the 'volume'.<sup>1</sup> In other words, more recent

cases have found that even when there is an overlap between bargaining units, a hospital must maintain the amount of work performed within the bargaining unit rather than assign it to other employees.

**KEY CASES:**

Footnotes

1. *Northumberland Health Care Corp. and CUPE Local 2628*, unreported, November 27, 2003 (Verrity)

**11.02** The use of volunteers to perform bargaining unit work, as covered by this agreement, shall not be expanded beyond the extent of existing practice as of June 1, 1986.

Effective October 1, 1990, the Hospital shall submit to the Union figures indicating the number of volunteers as of September 20, 1990. Thereafter, the Hospital shall submit to the Union, at three (3) month intervals, the number of volunteers for the current month, and the number of hours worked and the duties performed.

---

Article 11.02 is intended to restrict the hospital in assigning bargaining unit work to volunteers. The restriction is based upon the extent of existing practice at June 1, 1986.

In other words, the hospital may not expand the use of volunteers performing bargaining unit duties, beyond the June 1, 1986 threshold.

**Qualitative and quantitative aspects of limitations**

Arbitral authority holds that there are both qualitative and quantitative protections provided by article 11.02. The 'qualitative' protection addresses the 'type' of bargaining unit work involved.<sup>1</sup> The 'quantitative' protection addresses the 'amount' of bargaining unit work involved. Thus a hospital can breach article 11.02 either when it assigns bargaining unit work not previously performed by volunteers to them, A hospital may also breach article 11.02 when it increases the share of bargaining unit work which volunteers perform if they were already performing that type of duty.

## KEY CASES:

### Footnotes

1. *Oshawa General Hospital and CUPE Local 45*, unreported, August 26, 1997 (Swan)

**18.03**

(b) Prior to issuing notice of layoff pursuant to article 9.08(a)(ii) in any classification(s), the Hospital will offer early-retirement allowance to a sufficient number of employees eligible for early retirement under HOOPP within the classification(s) in order of seniority, to the extent that the maximum number of employees within a classification who elect early retirement is equivalent to the number of employees within the classification(s) who would otherwise receive notice of layoff under article 9.08(a)(ii).

An employee who elects an early retirement option shall receive, following completion of the last day of work, a retirement allowance of two weeks' salary for each year of service, plus a prorated amount for any additional partial year of service, to a maximum ceiling of 26 weeks' salary, and, in addition, full-time employees shall receive a single lump-sum payment equivalent to \$1,000 for each year less than age 65 to a maximum of \$5,000 upon retirement.

---

**Before layoff notices** It is significant that this article specifically requires the employer to offer early retirement "prior to issuing notice to layoff".

**Must repeat process** The Hospital must repeat this same early retirement offer to employees in classifications where subsequent layoffs are proposed before those notices of layoff are sent.

**Positions need not be filled by laid off employee** It does not matter whether an employee occupies a position into which a laid off employee could be redeployed. If the employee is within the classification in which early retirement allowances are to be offered, then the employee is entitled to

be offered the allowance.<sup>1</sup> If a hospital declines to offer the allowance because it does not intend to fill that employees job, or because the employee to whom the layoff notice is to be given does not meet the requirements of the job, then the hospital breaches article 18.03(b).

**Enhanced packages**

Finally, in a number of cases hospitals have offered enhanced exit packages to entice employees to leave. Union agreement in these circumstances is required, and it is important that Local Unions make sure they are not enabling the hospital to contract out the work once the positions are vacated.

**KEY CASES:**

Footnotes

1. *Temiskaming Hospital and CUPE Local 904*, unreported, November 28, 1995 (Charney)



(a) **21** The Union's representative(s) will be included in the consultation and planning process from the early phases of, including representation on the Fiscal Advisory Committee or equivalent committee, to its final stages of completion, to assist the Hospital in minimizing layoffs or job loss, and in developing labour adjustment strategies where necessary.

(b) Where the Hospital experiences unforeseen circumstances such that will necessitate changes to an operating plan which has been approved by the Ministry of Health, the Hospital agrees that revisions to the operating plan will be carried out in consultation with the Union.

(c) In furtherance of the foregoing, the Hospital agrees to provide to the Union in a timely way any financial and staffing information pertinent its budget, or to any other re-structuring plan that would affect the Union's members.

(d) It is understood that employee time spent at meetings with the employer in pursuance of the above shall be deemed to be work time for which the employee shall be paid by the Hospital at his or her regular or premium rate as may be applicable.

---

**Development  
and revision  
of budget**

Article 21 obligates the hospital to involve the union in both the financial decisions that impact on staffing, and also any revisions to the budget that may impact on staffing. The Union is to be involved from the outset of the budgetary process and is also to be involved in any subsequent revisions to staffing levels arising from budgetary revision. This obligation is before the Redeployment Committee, in that it precedes any decision

of the hospital to issue notices of layoff or the elimination of positions.

Where employees are to be reassigned in accordance with article 9.08 and their positions eliminated, the union should have been first consulted in accordance with article 21 in order to allow it to participate in the development of the labour adjustment strategy.

**Provision of information**

In addition to allowing the union participation in the development and amendment of hospital operating plans, article 21 imposes an onerous obligation on the hospital to provide financial and staffing information which is pertinent to the operating plan, or to any other re-structuring plan which impacts upon the members of the bargaining unit.

## APPENDIX A EMPLOYMENT INSURANCE BENEFITS

### **General:**

If you have worked long enough during the year leading up to your layoff, you are entitled to **55%** of your average weekly insurable earnings in Employment Insurance (“EI”) benefits to a maximum of **\$447** per week. A Family Supplement is available to low-income families who receive the Canada Child Tax Benefit. You must serve a **2-week unpaid waiting period** before your EI benefits begin to be paid.

To qualify for EI benefits, you must have worked a minimum number of insurable hours in the last 52-week period (the “qualifying period”). The number hours required varies from region to region depending on the unemployment rate. Most people will need between **420 and 700 insurable hours** of working their qualifying period to qualify. Your local **Service Canada Centre** can give you the qualifying requirements for your region.

In Ottawa, for example, with an unemployment rate of 4.7% (February, 2006), the amount of insurable hours required in the previous 52 weeks would have been 700 hours, while in Sudbury with a 7.7% unemployment rate (February, 2006), you would have only had to have accumulated 630 insurable hours in order to qualify. There is an exception to this rule, which tends to discriminate against women, youth and new immigrants. **New entrants** (individuals entering the workforce for the first time) and **re-entrants** (individuals re-entering the workforce after an absence of two or more years) are required to accumulate **910** hours of insurable employment during the previous 52 weeks to qualify for EI benefits

The length of time you can receive benefits also varies by region and can extend from **14** to a maximum of **45** weeks. The number of weeks depends upon the unemployment rate in your region and the amount of insurable hours you have accumulated in the qualifying period.

### **On Separation**

Upon separation, you must request your **Record of Employment** (“ROE”) from your employer. Any earnings made or allocated during the two-week waiting period, including vacation pay, pay in lieu of notice and severance pay can delay the start of an EI claim. All earnings that an employer has paid by reason of layoff or separation, delay the required 2-week waiting period, because they are allocated from the week of the layoff or separation, based on the normal weekly earnings for that employment, no matter the period for which the earnings are supposed to be paid or payable.

An example from the Human Resources and Skills Development Canada (“HRSDC”) government website ([www.hrsdc.gc.ca](http://www.hrsdc.gc.ca)) illustrates how this might work:

Your employment ended on August 26, 2004 due to a plant closure and you are not expected to return. In the week of August 30, 2004, you apply for regular benefits. Your normal salary was \$500.00 per week. Following your lay-off, your employer paid you the following:

- Your salary for the week of 23 to 26 August 2004: \$400.00  
Vacation pay: \$600.00  
Severance pay: \$1,500.00

The wages, vacation pay and severance pay are earnings and are consequently deductible from your benefits. The vacation pay and severance pay are earnings allocated as follows, based on the normal weekly earnings for that employment.

- August 22 to 28, 2004 — Salary of \$400 + Vacation pay of \$100
- August 29 to September 4, 2004 — Vacation pay of \$500
- September 5 to 11, 2004 — Severance pay of \$500

- September 12 to 18, 2004 — Severance pay of \$500
- September 19 to 25, 2004 — Severance pay of \$500
- September 26 to October 2, 2004 — 1<sup>st</sup> week of waiting period to serve
- October 3 to 9, 2004 — 2<sup>nd</sup> week of waiting period to serve
- October 10 to 16, 2004 — EI benefits paid

**In this example**, the allocations of these earnings have the following effects:

- Delays the required 2-week waiting period to serve
- Delays the date on which you begin receiving benefits
- Allows a 4-week extension of your benefit period

Pension income constitutes earnings for benefit purposes unless an individual requalifies for EI benefits **after** the date on which payment of the pension begins, i.e. if, after the date on which the pension became payable, and while receiving your pension, you worked and accumulated the necessary number of insurable hours to establish a claim, **and** that claim is calculated using the insurable hours accumulated after the start of the retirement pension.