

IN THE MATTER OF AN ARBITRATION

BETWEEN

PEMBROKE REGIONAL HOSPITAL

AND

CANADIAN UNION OF PUBLIC EMPLOYEES

GRIEVANCES CONCERNING

TRANSFER OF LABORATORY SERVICES

Arbitrator: Richard Brown

For the Union: Mark Wright

For the Employer: Lynn Harnden
Vicki Satta

Hearing: July 10, 2009
Ottawa, Ontario

The union has referred to arbitration a group grievance and a policy grievance arising out of the impending transfer of laboratory services from sixteen hospitals to the Eastern Ontario Regional Laboratory Association (EORLA). Pembroke Regional Hospital, one of the sixteen, notified thirty-nine employees that their “employment would be transferred” to EORLA. Most of them are registered technologists; three perform office and clerical work. The union contends the transfer of services will result in a “layoff” and “elimination of position” within the meaning of the collective agreement. The employer argues no positions will be eliminated and no-one laid off. The basis of this argument is that EORLA will inherit the collective agreement in force at the hospital, by virtue of the *Public Sector Labour Relations Transition Act (PSLRTA)*, and will be obliged to offer jobs to the affected employees on the same terms and conditions they presently enjoy.

Counsel filed lengthy written argument which I have carefully reviewed and will not attempt to summarize here. In those submissions, the union claimed all thirty-nine employees would be laid off as a result of the transfer, whereas the employer submitted not a single person would face a layoff. At a hearing scheduled to address any questions that I might have after reviewing the written submissions, both parties maintained their original positions but they also adopted the same alternative argument: that laboratory employees who elected to remain in the employ of the hospital would be laid off, but those who elected to transfer to EORLA would not be.

I

The relevant provisions of the CUPE central collective agreement are set out below:

9.08 – NOTICE AND REDEPLOYMENT COMMITTEE

(a) Notice

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.

...

(d) Redeployment Committee

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 2.

9.09 – LAYOFF AND RECALL

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

- (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.

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.

...

18.03(B) RETIREMENT ALLOWANCE

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 in 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 (2) weeks' salary for each year of service, plus a prorated amount for any additional partial year of service, to a maximum ceiling of fifty-two (52) weeks' salary.

18.03(C) VOLUNTARY EXIT OPTION

If after making offers of early retirement, individual layoff notices are still required, prior to issuing those notices the Hospital will offer a voluntary early exit option in accordance with the following conditions:

- (i) The Hospital will first make offers in the classifications within department(s) where layoffs would otherwise occur. If more employees than are required are interested, the Hospital will make its decision based on seniority.
- (ii) If insufficient employees in the department affected accept the offer, the Hospital will then extend the offer to employees in the same classification in other departments. If more employees than are required are interested, the Hospital will make its decision based on seniority.
- iii) In no case will the Hospital approve an employee's request under (i) and (ii) above for a voluntary early exit option, if the employees remaining are not qualified to perform the available work.
- (iv) The number of voluntary early exit options the Hospital approves will not exceed the number of employees in that classification who would otherwise be laid off. The last day of employment for an employee who accepts a voluntary early exit option will be at the Hospital's discretion and will be no earlier than thirty (30) calendar days immediately following the employee's written acceptance of the offer.

An employee who elects a voluntary early exit option shall receive, following completion of the last day of work, a separation allowance of two (2) weeks' salary for each year of service, to a maximum of fifty-two (52) weeks' pay.

I was referred to the following sections of *PSLRTA* in the course of argument:

15.(1) The collective agreement, if any, that applies with respect to employees of a predecessor employer immediately before the changeover date continues to apply with respect to those employees who are employed by the successor employer on or after the changeover date and with respect to employees who are hired by the successor employer to replace such employees.

...

(3) The successor employer is bound by the collective agreement as if he, she or it had been a party to it. The successor employer shall be deemed to be the employer under the collective agreement.

16. Nothing in this Act requires the successor employer to hire any employees of the predecessor employer except to the extent the successor may be required to do so under a collective agreement that binds the successor.

The parties agree section 15 makes the hospital's collective agreement binding on EORLA and, thereby, requires it to offer jobs to laboratory employees on the same terms and conditions they presently enjoy.

II

Counsel cited several cases dealing with the rights of employees affected by the sale of a business under a labour relations statute making the successor employer a party to the collective agreement negotiated by its predecessor. In all of these cases, the successor was obliged to offer jobs to the affected employees on the terms and conditions found in the agreement. The only dispute was about the predecessor's obligations. The union argued employees had been laid off or otherwise terminated and were entitled to some right or benefit normally available in the context of redundancy. The

claims asserted included bumping and recall rights as well as severance pay and early-retirement benefits. The predecessor employer contended the sale did not expose it to any liability under the collective agreement. In the eleven cases cited, arbitrators, labour boards and courts have differed in their approach to this type of dispute.

The predecessor employer prevailed in four cases: *Borden Co. and Retail, Wholesale and Department Store Union* (1980), 28 L.A.C. (2d) 39 (Kennedy); *Westbury Howard Johnson Plaza Hotel and Hotel Employees Restaurant Employees Union* (1992), 29 L.A.C. (4th) 89 (Charney); *Corporation of the City of Calgary and Canadian Union of Public Employees*, [2001] Alta. L.R.B.R. 131; and *Nortel Networks and Communications, Energy and Paperworkers Union*, [2002] C.L.A.D. No. 632 (Tacon). The first three decisions, two made by an arbitrator and one by the Alberta Labour Relations Board, treated the governing legislation as not only allowing the affected employees to enforce their collective agreement against the buyer but also as terminating their employment with the seller. Arbitrator Charney in *Westbury* characterized this result as a “*quid pro quo*.” In the fourth case, *Nortel Networks*, Arbitrator Tacon interpreted the collective agreement as imposing no obligation on the seller in the context of a statutory succession conferring rights enforceable against the buyer. The outcome was the same in all of these cases. The affected employees had contractual rights vis-à-vis the buyer but not the seller.

In the remaining seven cases, the sale of a business did not terminate employment relationships with the predecessor employer. This was the conclusion reached by five arbitrators: *Silverwood Dairies and Milk & Bread Drivers’ Union* (1976), 12 L.A.C. (2d) 225 (Weatherill); *Computing Devices Canada Ltd. and Employees Association of Computing Devices*

Canada, unreported decision dated December 19, 1995 (Keller); *Macdonald Consolidated Ltd. and Retail Wholesale Union* (1997), 61 L.A.C. (4th) 129 (McKee); *Canadian Broadcasting Corp. and Communications, Energy and Paperworkers Union*, [2001] C.L.A.C. No. 294 (Freedman); and *MTS Allstream Inc. and Communications Energy and Paperworkers Union* (2007), 158 L.A.C. (4th) 353 (Peltz). The British Columbia Labour Relations Board came to the same conclusion in *Crown Zellerbach Canada Ltd. and International Woodworkers of America*, [1982] B.C.L.R.B.D. No. 57. A similar approach was taken by the British Columbia Court of Appeal in *Government of British Columbia and British Columbia Government Employees Union* (1988), 33 B.C.L.R. (2d) 1.

These seven decisions treated sale-of-a-business legislation as giving employees rights against the successor employer but not extinguishing their employment with the predecessor. In *Government of British Columbia*, a majority of the British Columbia Court of Appeal quashed an arbitral award treating the grievor's employment with the predecessor as terminated. In support of the Court's ruling, Anderson J.A. offered a succinct rationale:

The statute may, in a sense, have provided for the assignment of the collective agreement from the government to the purchaser. It did not provide for the assignment of the employees from the Government to the purchaser. ...

The only way the interpretation placed by the arbitrator ... on s. 53 can be upheld is to assume that the arbitrator had the legislative power to amend s. 53 by adding the following words to the section: "and the employees of the former owner of the business shall become the employees of the purchaser."

In other words, the Court held a clear statement of legislative intent was required to end an employment relationship.

If employment relationships with the predecessor employer survive the sale of a business, it follows that employees may elect to stay with that employer. They also have the option of transferring to the successor who is bound by the existing collective agreement. In other words, they are free to choose between the two employers. These observations lead to the question of what contractual entitlements employees have against the predecessor and whether these rights are affected by the decision they make about changing employer.

The predecessor employer's obligations to employees who wish to remain employed by it were squarely addressed in two of the seven cases. In *Silverwood Dairies* Arbitrator Weatherill concluded "employees who preferred to stay with their original employer" (page 227) retained bumping and recall rights. Likewise in *Mcdonalds Consolidated*, Arbitrator McKee decided employees who did not transfer to the buyer were entitled to collect severance pay under the collective agreement.

The extent of the predecessor's obligations was not a central issue in the remaining five of seven cases, but the reasoning in most of them suggests employees who elected not to switch employers could avail themselves of the safeguards normally available to redundant workers. In *Computing Devices, CBC* and *MTS Allstream*, the arbitrator was asked to decide only whether the sale terminated employment with the predecessor employer. In the event this question was answered in the union's favour, the arbitrator was not requested to determine precisely what rights employees had against that employer. All of these arbitrators concluded employment relationships survived the sale, based on the reasoning that the purpose of sale-of-a-business provisions in labour relations legislation was to protect employees by binding the buyer to their collective agreement, not to end

their relationship with the seller. Arbitrator Keller put it this way in *Computing Devices*: “A successorship creates obligations for the successor employer but it cannot of itself extinguish the obligations of the vendor employer towards its employees” (page 8). The same rationale was adopted by the British Columbia Labour Relations Board in *Crown Zellerbach* which also concluded the sale did not result in a transfer of employees. The reasoning in these four cases suggests employees electing not to transfer retained, not only their employment with the predecessor, but also the contractual rights normally available in the context of redundancy. It would make little sense for an adjudicator first to decide successor legislation did not terminate employment with the predecessor employer, because the sole legislative purpose was to give employees rights against the successor, and then to read the predecessor’s collective agreement to mean the benefits normally available to surplus employees did not apply in a sale-of- a-business scenario. The second ruling would rob the first of any practical significance.

The force of these observations is buttressed by the following comments made by Arbitrator Freedman in *CBC*:

Many of the employees who work in the transmitter service business have considerable seniority. That seniority is not with the transmitter service, but rather it is with the CBC. They are employed by the CBC, not by the transmitter service. There is no policy rationale which should lead to a result where, on the sale by the CBC of the transmitter service, those employees lose their ability to exercise their seniority rights as against their employer, among a large bargaining unit, and instead are force to move into a situation where in practical terms they have restricted rights. That is inconsistent with the underlying policy of the successorship provisions in the law, which is to protect employees ... (para. 86)

As this passage demonstrates, one of Mr. Freedman's reasons for concluding the sale did not terminate employment with the seller was that the contrary conclusion would have prevented employees from utilizing seniority rights to bump into another job in the selling enterprise. This reasoning leaves no doubt that employees who elect to remain with the seller would retain bumping rights.

What about employees who decide to take a job with the successor employer? Three of the seven cases address the question of whether an employee's decision to change employers affects the predecessor's contractual obligations. In *Mcdonalds Consolidated* Arbitrator McKee ruled employees who decided to transfer to the buyer were not entitled to collect severance pay from the seller, even though such pay was owing to those staying with the seller. The arbitrator noted transferring employees, if later terminated by the buyer, would then be entitled to severance pay based upon their combined length of service with both employers. In short, when it came to collecting severance pay at the time of the sale, employees were faced with a choice between being paid by the seller and exercising their right to a job with the buyer. They were not entitled to enforce contractual claims against both employers.

In *CBC.*, Mr. Freedman described the decision in *Mcdonalds Consolidated* as "compelling" and went on to say:

On the sale of a business an employee has an "absolute right" to choose his employer. If he decides to stay (here) with the CBC, the CBC is obliged to continue the employment. There will, however, be no work for the employee such as he had been doing, so the employee may choose to exercise his seniority rights, wherever that may lead. *Instead*, the employee may decide to start work with the successor company which the cases make clear is his right. (emphasis added; para. 91)

By using the word “instead”, the arbitrator suggested employees could either assert seniority rights against the seller or claim work with the buyer, but they could not do both.

Likewise, in *MTS Allstream* Mr. Peltz made the following comments suggesting employees do not have contractual rights in relation two employers when a business is sold:

In principle, if employees have a right of election and do elect their employment upon sale, there should be no double benefits. Strictly speaking it is erroneous to refer to a dual set of rights when an employee has the option to elect. Arbitrators can be expected to frown upon any unfair or punitive result flowing from an employee right of election. (para. 104)

This passage indicates that an employee electing to transfer to the successor may forfeit claims against the predecessor.

The arbitrators in these three cases—*Mcdonalds Consolidated*, *CBC* and *MTS Allstream*—embraced a *quid pro quo* of sorts. By electing to work for the buyer, employees forego entitlements otherwise owed by the seller. On this understanding of statutory succession, employees have contractual rights against only a single employer, the buyer or the seller, but they are free to choose which employer. To be legitimate, this approach to succession must be founded on an interpretation of either the collective agreement or the governing legislation. None of these arbitrators indicated whether the foundation for their analysis was contractual or statutory. It is important to note their version of a *quid pro quo* is based upon an employee’s choice of employer. This is very different than the *quid pro quo* envisaged by Arbitrator Charney in *Westbury*, whereby employees lose

rights against the vendor because a statute gives them rights against the purchaser.

III

As well as making submissions about the cases reviewed above, counsel advanced other arguments. The union relies upon cases holding even a reduction in hours is sufficient to constitute a layoff under the CUPE central agreement:

Moreover, in *Scarborough Hospital v C.U.P.E. Local 1487*, January 17, 2006 (unreported), a majority of a board of arbitration chaired by Kevin *Health Sciences Corp., supra*, to find that a reassignment of some five part-time employees to positions that had reduced hours (a reduction of one-half hour per two week pay period) breached article 9.08(b) dealing with reassignment, and hence required that notice of layoff issue ...

In a subsequent decision, *St. Vincent de Paul Hospital, Brockville and C.U.P.E. Local 2491*, May 12, 2006 (unreported) (Union's Authorities, Tab 3), a majority of a board of arbitration chaired by Jane Devlin relied, amongst other things, on the reassignment language of article 9.08(b) to find that a uniform reduction in the hours of three part-time employees was a layoff, even though they had not be reassigned ...

It is clear from the foregoing that "layoff" under the CUPE central hospital agreement does not require that the employee be "laid off to the street" and notice of layoff may be required where a reassignment does not comply with the provisions of 9.08(b), or where there is a reduction in the hours of work of a full-time or a part-time employee. The Union submits that it would be extraordinary to find that an employee whose employment with the Hospital was soon to be severed and whose seniority rights in the CUPE bargaining unit were about to be extinguished was not entitled to notice of layoff, while an employee whose hours of work had been reduced but who otherwise continued as a hospital employee in the bargaining unit was entitled to notice of layoff.

The employer cited two cases dealing with employers who were transferred between jobs in the same bargaining unit and suffered no reduction in pay or hours: *Ontario Produce Co. and Teamsters Union* (1991), 22 L.A.C. (4th) 274 (Haefling); *York-Finch General Hospital and Ontario Nurses' Association* (1993), 32 L.A.C. (4th) 326 (H.D. Brown). In each case the arbitrator ruled the reassignment did not amount to a layoff. Noting the employees in question remained with the same employer, counsel for the union contends these cases have no relevance to the facts at hand.

The employer argues s. 15(3) of PSLRTA terminates employment relationships with the predecessor employer. The first sentence of this section, saying the successor is bound by the predecessor's collective agreement, is similar to the legislation at play in *Government of British Columbia* and the other cases reviewed above. Employer counsel relies upon the second sentence stating: "The successor employer shall be deemed to be the employer under the collective agreement." Counsel reads this provision to mean employees are not free to choose between the two employers.

Noting section 15(3) does not mention employees, the union contends this section does not negate employee choice. In support of this argument, counsel reminded me that employees are addressed in section 16, which deals with the successor employer's obligation to hire them, but says nothing about their relationship with the predecessor being terminated.

The employer contends transfers of services between public employers should be treated differently than business transactions in the private sector:

In cases where a portion of a large, successful employer is sold to a small, potentially risky start-up business, it is difficult not to feel some sympathy for the affected employees. The circumstances of the present case are not so sympathetic, however. The employees affected by the transfer to EORLA are moving from one large, public sector health care employer to another. Before and after the transfer, their salary will ultimately be paid by the Ministry of Health and Long Term Care. There is no risk to the employees from this transfer.

Nor is there cause for concern that EORLA's operations will be shut down and the employees' positions eliminated shortly after the transfer. Laboratory services are an essential part of the operation of Eastern Ontario's hospitals. The worst possible outcome for employees is the abandonment of the EORLA project after the transfer, necessitating the transfer of the affected employees back to their original employers, the hospitals. The worst that might be required in such a case is the negotiation of a protocol for the reintegration of the seniority lists.

Most of the cases discussed above arose in the private sector, but *Government of British Columbia* involved the transfer of laundry service from the provincial government to a society controlled by a group of hospitals on Vancouver Island. Notwithstanding the public-sector context, the Court of Appeal upheld the grievor's claim to remain in the employ of the provincial government.

The employer argues the transfer of services poses no threat to employees:

Contrary to the Union's submissions, this is not the sort of situation to which the protections in Article 9 are directed. These employees do not need protection from the circumstances of the present case. In fact, through all of the Union's arguments, it has failed to point to any specific concrete harm which the employees will suffer as a result of the transfer. The Union suggests that the employees will have their employment relationship with the Hospital severed, but at the same time, their employment will continue uninterrupted, on the same terms as before the transfer. The Union suggests that the employees will lose

their seniority in the bargaining unit, but in fact their seniority will be preserved by statute throughout the transfer.

The union's response is that a clerical employee who remains with the hospital is likely to have greater job security than one who transfers to EORLA, because there are many more clerical jobs at the hospital than there will be at EORLA. This is the sort of concern that led Mr. Freedman in *CBC* to conclude employment with the seller had had not been terminated by the sale of a business.

IV

I begin my analysis with the second sentence of section 15(3) of PSLRTA saying the successor is deemed to be the employer under the collective agreement. I do not read this sentence as terminating employment with the predecessor. This provision does not specifically mention employees, unlike section 16 which addresses their relationship with the successor but not with the predecessor. Moreover, there are at least two other linguistically plausible interpretations of the contested sentence viewed in isolation. One is that the successor is the employer under the collective agreement in the sense of being bound by the agreement as employer. The problem with this understanding of the second sentence is that it is entirely superfluous, adding nothing to the first. A less problematic reading is that the successor is the employer of employees who elect to transfer. On this interpretation, the second sentence would negate any claims transferring employees otherwise would have against the predecessor. Faced with these competing understandings, I conclude the second sentence of section 15(3) is ambiguous with respect to the continuation of employment with the predecessor.

Like the Court of Appeal in *Government of British Columbia*, I accept the premise that clear statutory language is required to terminate an employment relationship. In the absence of a transparent expression of legislative intent, I conclude section 15(3) binds the successor employer to the predecessor's collective agreement but does not extinguish employee rights against the latter employer. This conclusion is consistent with the outcome in seven of the eleven cases reviewed in the second part of this award.

On this interpretation of PSLRTA, laboratory employees may elect either to remain in the employ of the hospital or to transfer to EORLA. Those who decide to stay will be laid off within the meaning of the collective agreement because the transfer of laboratory services will render them redundant at the hospital. The work they have been doing will no longer be done by their original employer. In order to continue doing that work, they would have to change employers which they have elected not to do. The hospital has not offered them any other work. In short, their employment with the hospital will be terminated because they are surplus to its needs. Those facts constitute a layoff within the generally accepted meaning of that term.

In my view, none of the cases cited support the contrary conclusion that the termination of an employment relationship because of redundancy is not a layoff. The situation at hand is significantly different than the scenario in both *Ontario Produce* and *York-Finch General Hospital* where employees were reassigned to different jobs in the same bargaining unit. Their employment with the original employer was not terminated. In *Nortel Networks*, the union did not contend the sale resulted in a layoff, relying instead upon other language in the collective agreement.

Employees who elect to transfer to EORLA are in a different position than those opting to stay at the hospital. Employees who decide to change employers will not be laid off. I base this conclusion on a purposive interpretation of the term “layoff.” The layoff provisions in the collective agreement are intended to protect employees from the losses and vagaries individuals typically face when the work they have done is no longer available to the employer’s workforce. That purpose is accomplished by affording such protection to employees who elect to remain with the predecessor employer. The collective agreement was not designed to allow employees to claim the benefit of these safeguards while also following their work to a successor bound by the same agreement. In particular, an employee who takes a job with EORLA will have no right to moonlight by bumping into a second job at the hospital. Having elected to transfer to the successor, an employee will not be entitled to remain on the predecessor’s recall list. A transferring employee will carry service credits to the new employer, which can be cashed out in the form of severance pay if that person is later terminated, but will not be eligible for severance pay from the original employer at the point of transfer.

The ruling that transferring employees will not be laid off has significance for both them and others. Before issuing notice of layoff to laboratory employees, the hospital is required by articles 18(B) and (C) to offer an early-retirement incentive to specified members of the bargaining unit, even if they are not slated for layoff. If all thirty-nine laboratory employees were treated as laid off, the employer could be required to make this incentive payment to same number of people, even if many employees in the laboratory were to take a job with EORLA. Under my reading of the collective agreement, employees who go to EORLA will not be laid off.

This interpretation means the maximum number of employees receiving incentive payments will be reduced to reflect the number of laboratory employees who elect to transfer.

The rulings set out above are based upon my view of the most reasonable interpretation of the collective agreement and PSLRTA. These rulings coincide with the alternative position adopted by both parties, but that coincidence is not the basis for my conclusions.

V

I now turn to the union's claim that it is entitled to notice of "elimination of position" under article 9.08(a)(i). This contention rests upon the premise that a position may be eliminated within the meaning of this article even if no-one is laid off as a result of the elimination. Arbitrator Burkett accepted this premise in *Chedoke-McMaster Hospitals and Canadian Union of Public Employees* [1988] O.L.A.A. No. 106. I agree with his conclusion.

In the instant case, thirty-nine positions will be eliminated at the hospital. This will be true even if all of the employees currently holding these positions elect to transfer to EORLA so that none of them are laid off. It follows that the union is entitled to notice of elimination of position.

VI

The rulings set out above can be briefly summarized:

1. Of the thirty-nine laboratory employees affected by the impending transfer, those who elect not to take a job with EORLA will be laid off. They are entitled to notice of layoff under article 9.08(a)(ii) and to the benefit of article 9.09.
2. Those who elect to transfer to EORLA will not be laid off.

3. The extent of the hospital's obligation to offer early-retirement incentives under articles 18.03(B) and (C) will depend upon how many employees elect to transfer, as described in greater detail above.
4. The union is entitled to notice of elimination of position under article 9.08(a)(i).

The grievances are allowed in part. I remained seized to address any issues arising in the implementation of this award.

A handwritten signature in black ink, appearing to read "R. M. Brown". The signature is fluid and cursive, with a large initial "R" and "M".

Richard M. Brown

Ottawa, Ontario

August 10, 2009