Ontario Council of Hospital Unions/CUPE

April 8, 2019

STEWARDS’ NEWS

Lindsay: PT Hours reductions win/Layoffs coming/Violence Poll, Study

Violence at work, study and poll

Kingston 2nd VP Jason Matheson and RPN Sue Moore released a poll and study of violence against long term care staff in Kingston on April 1. Report and study are on our website: www.ochu.on.ca

Transfer the work without the workers?

Bill 74 is steaming ahead and the government tells CUPE they are being lobbied to change laws to allow our work to transfer without the workers moving with it. Full details: on our website: www.ochu.on.ca

Legal Conference June 18 & 19

The OCHU Legal Conference is in Toronto. Lawyers from Goldblatt Partners will review a wide range of legal issues, arbitration and court decisions. The 2019 Legal Conference was rated “Excellent” by participants. And it was fun!

Major win on reductions of hours for part-time in Lindsay

In this precedent-setting case, arbitrator Christine Shmidt ruled that any reduction in the hours of pre-scheduled part-timers, regardless of how small, can amount to a layoff, triggering the layoff protections in Article 9.08.

This case arose from a reorganization in which three classifications of part time employees had their hours reduced in relatively small proportions: Operating Room Assistants were reduced by 2.5 hours per week (a 10.5% decrease); Environmental Services employees by 0.4 hours per week (or 2%); and Patient Access Clerks by 1.9 hours per week (or 7.2%). The Union grieved, arguing that these reductions in the hours of pre-scheduled part-timers, however small, amounted to layoffs which triggered the protections in Article 9.08.

Stewards are the backbone of our union
Lindsay: any reductions in scheduled hours of part-time is a layoff

The Union relied on jurisprudence that included St. Vincent De Paul Hospital and CUPE Local 2491, [2006] OLAA No. 615 (Devlin), which first established that a reduction in the hours of part-timers could amount to a layoff.

The Hospital disagreed, claiming that these reductions in hours failed to meet what it argued was a necessary threshold of significance. The arbitrator agreed with the Union and allowed the grievance.

The arbitrator reasoned that the ‘threshold of significance’ being put forward by the Hospital found no support in the collective agreement.

On April 23 all members will be asked to wear this sticker

Ford government is no longer promising ‘no layoffs’. Now they are promising “no layoffs of front line staff”

Premier Ford and Finance Minister Fedeli are no longer promising no layoffs of public sector workers, as they did during the 2018 provincial election.

Mr. Ford and Mr. Fedeli are now promising ‘no layoffs of front line staff’. Unfortunately for many of our members, those working in clerical, maintenance, cleaning, food service and many other occupations are not seen by the government as front line.

We need you to:

• Ask our members to get on the bus for the April 30 rally against privatization and restructuring
• Wear the sticker April 23
• Ask our members to message their MPP: www.ochu.on.ca

Stewards are the backbone of our union
Lindsay Reductions in Part-time Hours of Work, continued

To the contrary, Article 9.08(A)(b)(iii), which sets out preconditions for a reassignment to not be considered a layoff, requires that there be no “reduction in the employees wage rates or hours of work.”

The board accepted the view, expressed in Scarborough Hospital and CUPE Local 1487 (January 17, 2006) (Burkett), that Article 9.08(A)(b)(iii) contains a “bright line requirement” that leaves no room for judgement of the reduction of an employee’s hours of work (or wage rate).

Further, the panel did not find that a ‘threshold of significance’ in the jurisprudence. While the reduction of hours St. Vincent De Paul Hospital did happen to be more significant than the reductions here, this was incidental to the rationale of the case.

Further, the panel distinguished the case of Kingston General Hospital and CUPE, Local 1974, 2014 Carswell Ont 8534 (Goodfellow) on the basis that in that case, the union had not demonstrated or even attempted to demonstrate that any particular individual had suffered a reduction in hours. In contrast, in this case, there was no dispute that a number of identified individuals had suffered a reduction in hours.

The panel also noted that in a collective agreement where seniority for part-time employees accrues on an hourly basis, any reduction in their hours compromises their seniority rights and is therefore significant.

This case is of fundamental precedential importance. It addresses an increasingly common practice of Hospitals playing a layoff ‘shell game’, where the impact of job loss is distributed among many part-timers in the form of small reductions in hours, and thus purportedly hidden and shielded from the job security protections in the collective agreement.

This case stands for the proposition that as long as these hours reductions are borne by identifiable individuals, they will be considered layoffs, regardless of how insignificant the reduction in hours appears. This case is also useful in a broader sense because it supports the expansion of the definition of layoff in accordance with the preconditions in Article 9.08(A)(b) (reassignment). The panel in this case appears to accept that if a reassignment must meet the 9.08(A)(b) preconditions in order to not be considered a layoff, then so must a direct change to a person’s job.

Thus, this case could be used to support an argument that a relocation to a job site that is not “nearby” within the meaning of Article 9.08(A)(iv) or a shift change that is not “substantially similar” within the meaning of Article 9.08(A)(v) qualifies as a layoff.

OCHU is proud to have advanced this case on behalf of Local 1909, and would especially like to thank its lawyers at Goldblatt Partners LLP.