

Award

IN THE MATTER OF A MEDIATION- ARBITRATION

BETWEEN:

Nova Scotia Health Authority & Izaak Walton Killam Health Centre

("the Employers")

and

The Nova Scotia Council of Health Administrative Professional Unions

("the Council")

Before: William Kaplan
Mediator/ Arbitrator

Appearances

For the Employers: Jack Graham, Q.C.
Michael Murphy
McInnes Cooper
Barristers & Solicitors
Gary Rankin and Siobhan Ryan
Health Association Nova Scotia

For the Council: Raymond Larkin, Q.C.
David Roberts
Pink Larkin
Barristers & Solicitors

The matters in dispute proceeded to mediation/arbitration in Halifax on September 18, 2018.

In May 2018, the employee members of the Constituent Unions of the Nova Scotia Council of Nursing Unions, the Nova Scotia Council of Healthcare Unions, the Nova

Scotia Council of Health Administrative Professional Unions, and the Nova Scotia Council of Health Support Unions (“the Council”) ratified an agreement earlier reached with the Nova Scotia Health Authority and the Izaak Walton Killam Health Centre (“the employers”) to refer all outstanding collective agreement issues in dispute to a binding mediation/arbitration process.

Phase two of that process, involving the resolution of the collective agreement between the employers and the Council of Health Administrative Professional Unions, proceeded to a mediation/arbitration in Halifax beginning on September 18, 2018.

The parties resolved most issues before mediation /arbitration, but some issues remained in dispute. In advance of mediation/arbitration, the parties filed detailed briefs setting out the issues in dispute and their positions with respect to them as well as outlining the important legislative context in which this mediation/arbitration took place.

Award

Having carefully considered the written submissions, together with those made at the mediation/arbitration, and paying attention to the application of appropriate criteria, I direct as follows on the outstanding issues only:

1. **Hours of Work**

14.01 Hours of Work

(a) Unless this Agreement provides otherwise, the hours of work shall be ~~seventy-five (75)~~ **seventy (70)** hours per bi-weekly period, normally consisting of ten (10) seven and one-half (7 ½) hour shifts, *or seventy-five (75) hours per bi-weekly period, normally consisting of ten (10) seven and a half (7½) hour shifts.*

(b) **Overtime Exception**

Where, during a regular scheduled shift rotation, an Employee may be required to work in excess of ~~seventy-five (75-70)~~ **or seventy-five (75)** hours in a two-week (2) period, additional hours shall not constitute overtime in that two (2) week period, provided the hours of work average ~~seventy-five (75-70)~~ **hours or seventy-five (75)** per two (2) weeks of each complete cycle of the shift rotation.

2. **Job Security**

The language for NSHA is attached as Appendix "A"

The language for IWK is attached as Appendix "B"

3. **Pay Provisions**

~~34.02 Retention Incentive~~

~~Upon completion of twenty five years of service with the Employer all permanent Employees will receive an additional salary increment of 3.5% greater than the highest rate in effect for the applicable classification.~~

34.14 Shift Premium

For all hours worked, including overtime hours worked, on shifts where half or more of the hours are regularly scheduled between 6:00 p.m. and 6:00 a.m., Employees shall continue to receive the hourly shift premium rate they received prior to the effective date of this Agreement, subject to the following increases:

- (a) Increase of fifteen (15) cents (\$0.15) effective the date of this Award;
- (b) Increase of fifteen (15) cents (\$0.15) effective August 1, 2019;
- (c) Increase of twenty (20) cents (\$0.20) effective October 31, 2020.

34.15 Week-end Premium

For all hours worked between the hours of 0001 Saturday and 0700 Monday, Employees shall continue to receive the hourly week-end premium rate they received prior to the effective date of this Agreement, subject to the following increases:

- (a) Increase of fifteen (15) cents (\$0.15) effective the date of this Award;
- (b) Increase of fifteen (15) cents (\$0.15) effective August 1, 2019;
- (c) Increase of twenty (20) cents (\$0.20) effective October 31, 2020.

4. MOA Re: Retention Incentive

The language for NSHA is attached as Appendix "C"

The language for IWK is attached as Appendix "D"

The financial components of the award shall be effective the date of this award. The rest of the collective agreement shall be effective sixty (60) days from the date of this award.

Conclusion

At the request of the parties, I continue to remain seized with respect to the implementation of my award.

DATED at Halifax this 18th day of September 2018.

"William Kaplan"

William Kaplan, Mediator/Arbitrator

APPENDIX "A"

ARTICLE 32 – JOB SECURITY(NSHA)

Definitions

- (a) **“worksite” means the actual building or other regular place of employment of the Employee; the Queen Elizabeth II Health Sciences Center is deemed to be a single worksite.**
- (b) **“geographic location” means the area within a driving distance of 60 km of the actual building or other regular place of employment of an Employee; except that, within the Halifax Regional Municipality, “geographic location” is that area within a driving distance of 50 km of the actual building or other regular place of employment of the Employee.**

32.01 Joint Committee on Technological Change

- (a) Within sixty (60) days of the signing of this Agreement, the parties are to establish a Joint Committee on Technological Change of equal representation of the Union and the Employer for the purpose of maintaining continuing cooperation and consultation on technological change and job security. The committee shall appoint additional representatives as required.
- (b) The Joint Committee on Technological Change shall consult as required to discuss matters of concern between the parties related to technological change and circumstances identified in Article 32.07, and 32.13. The parties may agree to consult by telephone.
- (c) The Joint Committee on Technological Change shall be responsible for:
 - (1) defining problems;
 - (2) developing viable solutions to such problems;
 - (3) recommending the proposed solution to the employer.
- (d) The Employer will provide the Joint Committee on Technological Change with as much notice as reasonably possible of expected redundancies, relocations, re-organizational plans, technological change and proposed contracting out of work.

- (e) It is understood that the Joint Committee on Technological Change provided for herein shall be a single committee to cover all bargaining units represented by the Union.

32.02 Definition

For the purposes of this Article, "technological change" means the introduction of equipment or material by the Employer into its operations, which is likely to affect the job security of Employees.

32.03 Introduction

The Employer agrees that it will endeavour to introduce technological change in a manner which, as much as is practicable, will minimize the disruptive effects on Employees and services to the public.

32.04 Notice to Union

The Employer will give the Union written notice of technological change at least three (3) months prior to the date the change is to be effected. During this period the parties will meet to discuss the steps to be taken to assist Employees who could be affected.

32.05 Training and Retraining

- (a) Where retraining of Employees is necessary, it shall be provided during normal working hours where possible.
- (b) Where the Employer determines a need exists, and where operational requirements permit, the Employer shall continue to make available appropriate training programs to enable Employees to perform present and future duties more effectively.
- (c) The duration of the training/retraining under this Article shall be determined by the Employer and does not include courses or programs offered by a party other than the Employer.

32.06 Application

For the purposes of this Article "Employee" means a permanent Employee, or a casual Employee who, pursuant to Article 38.04 (m), has the rights of a permanent Employee.

32.07 Union Consultation

Where positions are to be declared redundant because of technological change, shortage of work or funds or because of discontinuance of work or the reorganization of work within a classification, the Employer will advise and consult with the Union as soon as reasonably possible after the change appears probable, with a view to minimizing the adverse effects of the decision to declare redundancies.

32.08 Transition Support Program

- (a) All references within this Article to the Transition Support Program relate to the Program outlined in Article 33. The availability of any payment or other entitlement under that document, and any obligation on the part of the Employer to provide such, pursuant to this Article or any other part of the collective agreement, shall only exist during the effective term of the Program, as expressly specified in that document. This limitation exists notwithstanding any other provision of this Article or any other part of the collective agreement.

- (b) The term of the Transition Support Program may be extended by mutual agreement between the parties.

32.09 Employee Placement Rights

- (a) Subject to consideration of ability, experience, qualifications, or where the Employer establishes that special skills or qualifications are required according to objective tests of standards reflecting the functions of the job concerned, an Employee whose position has become redundant, shall have the right to be placed in a vacancy in the following manner and sequence:
 - (1) A position in the Employee's same position classification / classification grouping **at the Employee's worksite;**

 - (2) If a vacancy is not available under (1) above, then any bargaining unit position for which the Employee is qualified;

At each of the foregoing steps, all applicable vacancies shall be identified and the Employees shall be assigned to the position of their choice, subject to consideration of the provisions herein. If there is more than one Employee affected, their order or preference shall be determined by their order of seniority.

- (b) An Employee whose position is redundant or who is in receipt of layoff notice and **who has refused** a payment pursuant to the Transition Support Program (“TSP payment”) must accept a placement **within the same position classification / classification grouping within his or her own geographic location in accordance with Article 32 provided that the placement is to a position that has the same designated percentage of full-time employment or resign without with severance in accordance with Article 32.24 (g)(ii), or be placed on the recall list.**
- (c) An Employee will have a maximum of two (2) full days to exercise her placement rights in this step of the placement process.
- (d) Where an Employee accepts a position in a classification, the maximum salary of which is less than the maximum salary of the Employee’s current classification, the Employee shall be granted salary protection in accordance with Item 1.5 of Article 33.
- (e) Where a vacancy exists which has a higher maximum salary than that of an Employee’s classification, the position shall be posted as agreed between the parties provided that the resulting vacancy shall then be dealt with in accordance with this agreement.

32.10 Volunteers

- (a) When the Employer determines after placement pursuant to Article 32.09, there are still redundancies, the Employer shall ask for volunteers from that classification/classification grouping within the geographic location of the remaining redundancies who wish to be offered a TSP payment according to Article 33.
- (b) If there are more volunteers than redundancies, then the most senior volunteers shall be offered the TSP payment.

32.11 Insufficient Volunteers

If there are insufficient volunteers pursuant to Article 32.10, the Employer shall identify remaining redundant Employees and these Employees shall have placement rights pursuant to Article 32.09 or, where available, they shall be entitled to receive a TSP payment.

32.12 Layoff Notice

- (a) If there are remaining redundant Employees after Article 32.10 and 32.11, the Employer shall give layoff notice to the most junior Employee(s) pursuant to Article 32.14 in the classification/classification grouping from which the Employer requested volunteers for the Transition Support Program.
- (b) The Employees in receipt of layoff notice shall have the rights of an Employee in receipt of layoff notice pursuant to this Article.

32.13 Layoff

An Employee(s) may be laid off because of technological change, shortage of work or funds, or because of the discontinuance of work or the reorganization of work.

32.14 Layoff Procedure

Where the layoff of a bargaining unit member is necessary, and provided ability, skill, and qualifications are sufficient to perform the job, Employees shall be laid off in reverse order of seniority.

32.15 Notice of Layoff

- (a) Forty (40) days notice of layoff shall be sent by the Employer to the Union and the Employee(s) who is/are to be laid off, except where a greater period of notice is provided for under (b) below.
- (b) When the Employer lays off ten (10) or more persons within any period of four (4) weeks or less, notice of layoff shall be sent by the Employer to the Union and Employees who are to be laid off, in accordance with the following:
 - (i) eight (8) weeks if ten (10) or more persons and fewer than one hundred (100) persons are to be laid off;
 - (ii) twelve (12) weeks if one hundred (100) or more persons and fewer than three hundred (300) are to be laid off;
 - (iii) sixteen (16) weeks if three hundred (300) or more persons are to be laid off;

- (c) Notices pursuant to this Section shall include the effective date of layoff and the reasons therefor.
- (d) An Employee in receipt of layoff notice shall be entitled to exercise any of the following options:
 - (i) to exercise placement/displacement rights in accordance with the procedure set out in this Article;
 - (ii) to accept layoff and be entitled to recall in accordance with Article 32.18;
 - (iii) to accept the Transition Support Program.

An Employee who intends to exercise placement/displacement rights pursuant to (d) (i) above will indicate such intent to the Employer within two (2) full days following receipt of the layoff notice. If the Employee does not indicate such intent within this period, she will be deemed to have opted to accept layoff in accordance with (d) (ii) above.

32.16 Pay in Lieu of Notice

Where the notice required by Article 32.15 is not given, the Employee shall receive pay, in lieu thereof, for the amount of notice to which the Employee is entitled.

32.17 Displacement Procedure

- (a) Subject to consideration of ability, experience, qualifications, or where the Employer establishes that special skills or qualification are required, according to objective tests or standards reflecting the functions of the job concerned, an Employee in receipt of layoff notice has the right to displace another Employee. The Employee to be displaced shall be an Employee with lesser seniority who:
 - (i) **Is the least senior Employee in the displacing Employee's classification / classification grouping who has the same designated percentage of full-time employment at the Employee's worksite or**
 - (ii) **Where no such junior Employee exists, the least senior Employee in the displacing Employee's classification / classification grouping who has the same designated percentage of full-time employment within the displacing Employee's geographic location; or**

- (a) Employees who are laid off shall be placed on a Recall List. Laid off Employees shall fill out the Laid Off Employee availability form in **Appendix 3**.
- (b) Subject to consideration of ability, experience, qualifications, or where the Employer establishes that special skills or qualifications are required, according to objective tests or standards reflecting the functions of the job concerned, Employees placed on the Recall List shall be recalled by order of seniority to any position for which the Employee is deemed to be qualified. Positions pursuant to this section shall include all positions in all bargaining units.
- (c) The Employer shall give notice of recall by registered mail to the Employee's last recorded address. Employees are responsible for keeping the Employer informed of their current address.
- (d) An Employee entitled to recall shall return to the service of the Employer within two (2) weeks of notice of recall, unless on reasonable grounds she is unable to do so. An Employee who has been given notice of recall may refuse to exercise such right without prejudicing the right of any future recall. ~~except in the case of recall to the Employee's same position classification title or position classification title series within the Employee's geographic location in which event she will be struck from the Recall List.~~ However, an Employee's refusal to accept recall to her same position classification title or position classification title series at the time of layoff will not result in loss of recall rights in the case of recall for occasional work or for employment of short duration of time during which she is employed elsewhere or for a recall to a position with a lower designated percentage of full-time employment.
- (e) Employees on the Recall List shall be given first option of filling vacancies normally filled by casual workers, providing they possess the necessary qualifications, skills, and abilities, as determined by the Employer, reflecting the functions of the job concerned. A permanent Employee who accepts such casual work retains her permanent status.
- (f) Where an Employee accepts a recall to a position that has a lower maximum salary or a lower designated percentage of full-time employment or is in a different geographic location than the Employee's position before their lay off, the Employee shall remain eligible for recall to a vacant position with the Employee's previous maximum salary or designated percentage of full-time employment or geographic location; the rights under this clause expire ~~fifteen (15) months~~ **twenty-four (24) months** after the date of layoff.

32.19 Termination of Recall Rights

The layoff shall be a termination of employment and recall rights shall lapse if the layoff lasts more than ~~fifteen (15) months~~ **twenty-four (24) months**.

32.20 Loss of Seniority

An Employee shall lose seniority and shall be deemed to have terminated her bargaining unit position in the event that:

- (a) the Employee is discharged for just cause and not reinstated;
- (b) the Employee resigns;
- (c) The Employee is laid off for more than ~~fifteen (15)~~ **twenty-four (24)** consecutive months without recall; or
- (d) the Employee has been employed in a position excluded from any bargaining unit for a period in excess of eighteen (18) months.

32.21 No New Employees

No new Employees shall be hired unless all Employees on the Recall List who are able to perform the work required have had an opportunity to be recalled, subject to consideration of ability, experience, qualifications, or where the Employer establishes that special skills or qualifications are required, as determined by the Employer, according to objective tests and standards reflecting the functions of the job concerned.

32.22 Transition Support Program

Notwithstanding anything in this Agreement, the Employer is only required to make a TSP payment to the same number of Employees as the Employer has reduced its complement.

32.23 Layoff Exception

Notwithstanding 32.24 (Contracting Out), an Employee who has eight (8) years' seniority shall not be laid off except where the reason for layoff is beyond the control of the Employer including, but not limited to, complete or partial destruction of plant, destruction or breakdown of machinery or equipment, unavailability of supplies and materials, fire, explosion, accident, labour disputes, etc., if the Employer has exercised due diligence to foresee and avoid the cause of layoff.

32.24 Contracting Out

(a) **Notice**

The Employer shall provide the Union with sixteen (16) weeks notice of the implementation of the decision to contract out work normally performed by members of the bargaining unit. At the time that the Employer gives notice to the Union of its intention to contract out, the Employer shall make a conditional TSP payment offer in Article 33 to those Employees directly affected by the contracting out. Final acceptance by the Employer of Employees wishing to take advantage of the TSP payment offer will be conditional on the Employer reaching an agreement with a Contractor.

(b) **Employer Disclosure**

The Employer shall disclose its reasons for contracting out when notice is provided pursuant to Article 32.24(a).

(c) **Union Response**

The Union shall be entitled to make proposals, including proposals on ways to avoid contracting out, within four (4) weeks of receiving notice pursuant to Article 32.24(a). The Union's suggestions should specifically address the reasons for the contracting out.

(d) **Employer Response**

After receipt of proposals or suggestions from the Union pursuant to Article 32.24(c), the Employer shall consider these proposals. The Employer shall either accept or reject, in whole or in part, such proposals. At this time, the Employer shall either make the TSP payment offer unconditional or retract the TSP payment offer.

(e) **Hiring Preference**

The Employer will make every reasonable effort, where work normally performed by members of the bargaining unit is contracted out, to obtain jobs for Employees who have not exercised their rights under Article 32.24(d) and who are directly affected by the contracting out with the Contractor. The Employer will have made reasonable efforts when the Employer has:

- (i) required bidders to give Employees a preference in hiring for job opportunities that will arise if they are successful in their bid;
- (ii) met with the Union to give the Union an opportunity to put forward its views on how the Employer can try to obtain employment with the Contractor; and,
- (iii) met with the successful bidder and sought to make it a term of the contract with the Contractor that the Contractor must:
 - (1) interview Employees for job opportunities available with the Contractor to perform the contracted out work;
 - (2) where the hiring to perform the contracted out work is subject to appropriate skills testing, offer to test Employees;
 - (3) extend job offers to Employees who are qualified for available job opportunities with the Contractor to perform contracted out work; and
 - (4) where there are more qualified Employees than the Contractor has opportunities due to the contracted out work, to extend job offers on the basis of seniority.

(f) **TSP Payment Offers**

- (i) Where the Employer determines that there will be redundant positions as a result of a contracting out, the classification(s) / classification groupings to which TSP payment offers will be made will be mutually agreed between the Employer and the Union.
- (ii) The Employer will offer a TSP payment to the agreed upon classification(s) / classification groupings. In any event, the classification grouping shall include, as a minimum, the classification(s) of the Employees affected in the work area by the contracting out of services.

(g) **Placement Procedure**

- (i) If a sufficient number of Employees accept the TSP payment offer, the Employer will place the remaining Employees whose positions were declared redundant in the vacancies created by the Employees accepting the TSP payment offer or other appropriate vacancies. This placement will be by seniority, subject to consideration of ability, experience, qualifications, or the Employer establishing that special skills or qualifications are required according to objective tests or standards reflecting the functions of the job concerned.
- (ii) Where the Employee refuse a placement, the salary of which is at least ~~seventy-five~~ **ninety** percent (~~75~~**90**%) of the present salary of the Employee's current position, the Employee is deemed laid off. The Employee will be entitled to severance as follows:
 - (1) **One** ~~half (1/2)~~ month's pay if she has been employed for three (3) years, but less than ten (10) years;
 - ~~One (1)~~ **Two** month's pay if she has been employed for ten (10) years, but less than fifteen (15) years;
 - ~~Two~~ **Three** months' pay if she has been employed for fifteen (15) years, but less than twenty (20) years.

~~Three~~ (3) **Four (4)** months' pay if she has been employed for twenty (20) years, but less than twenty-five (25) years;

Five ~~Four~~ months' pay if she has been employed for twenty-five (25) years, but less than thirty (30) years;

Six ~~Five~~ months' pay if she has been employed for thirty (30) or more years.

- (2) The amount of severance pay provided herein shall be calculated by the formula:

$$\frac{\text{Bi-weekly rate} \times 26}{12} = \text{one (1) month}$$

12

- (3) The entitlement of an Employee to severance pay shall be based upon the Employee's total service as defined in this Agreement.

- (iii) An Employee may decline to accept a vacant position in a different geographic location.

(h) **Second TSP Payment Offer**

If, after the first offer of TSP Payment, there are Employees remaining in positions which have been declared redundant, a second offer of a TSP payment will be made to broader classification(s)/classification groupings. The Employer will place the remaining redundant Employees in the vacancies created by the Employees accepting the TSP payment offer, or other appropriate vacancies, in the same manner as stated in Article 32.24(g).

(i) **Further TSP Payment Offers**

The process of expanding the offer of TSP payment to other classification(s)/classification groupings and areas will be repeated until all those Employees whose positions have been declared redundant as a direct effect of the contracting out are placed.

32.25 Relocation of Positions:

Where an Employee's position is relocated outside of their geographic location:

- (i) The Employee shall be offered the position in the new location;**

- (i) The Employee may decline the offer, in which case the Employee shall have the rights of an Employee whose position has become redundant.**

- (ii) An Employee who has accepted a transfer outside of their geographic location because their position has been relocated or has become redundant shall be reimbursed for the reasonable relocation costs incurred by the Employee to a maximum of \$4,000.**

Appendix B

ARTICLE 32 – JOB SECURITY (IWK)

32.01 Joint Committee on Technological Change

- (a) Within sixty (60) days of the signing of this Agreement, the parties are to establish a Joint Committee on Technological Change of equal representation of the Union and the Employer for the purpose of maintaining continuing cooperation and consultation on technological change and job security. The committee shall appoint additional representatives as required.

- (b) The Joint Committee on Technological Change shall consult as required to discuss matters of concern between the parties related to technological change and circumstances identified in Article 32.07, and 32.13. The parties may agree to consult by telephone.

- (c) The Joint Committee on Technological Change shall be responsible for:
 - (1) defining problems;
 - (2) developing viable solutions to such problems;
 - (3) recommending the proposed solution to the employer.

- (d) The Employer will provide the Joint Committee on Technological Change with as much notice as reasonably possible of expected redundancies, relocations, re-organizational plans, technological change and proposed contracting out of work.

- (e) It is understood that the Joint Committee on Technological Change provided for herein shall be a single committee to cover all bargaining units represented by the Union.

32.02 Definition

For the purposes of this Article, "technological change" means the introduction of equipment or material by the Employer into its operations, which is likely to affect the job security of employees.

32.03 Introduction

The Employer agrees that it will endeavour to introduce technological change in a manner which, as much as is practicable, will minimize the disruptive effects on employees and services to the public.

32.04 Notice to Union

The Employer will give the Union written notice of technological change at least three (3) months prior to the date the change is to be effected. During this period the parties will meet to discuss the steps to be taken to assist employees who could be affected.

32.05 Training and Retraining

- (a) Where retraining of employees is necessary, it shall be provided during normal working hours where possible.
- (b) Where the Employer determines a need exists, and where operational requirements permit, the Employer shall continue to make available appropriate training programs to enable employees to perform present and future duties more effectively.
- (c) The duration of the training/retraining under this Article shall be determined by the Employer and does not include courses or programs offered by a party other than the Employer.

32.06 Application

For the purposes of this Article "Employee" means a permanent Employee, or a casual Employee who, pursuant to Article 38.05 (m), has the rights of a permanent Employee.

32.07 Union Consultation

Where positions are to be declared redundant because of technological change, shortage of work or funds or because of discontinuance of work or the reorganization of work within a classification, the Employer will advise and consult with the Union as soon as reasonably possible after the change appears probable, with a view to minimizing the adverse effects of the decision to declare redundancies.

32.08 Transition Support Program

- (a) All references within this Article to the Transition Support Program relate to the Program outlined in Article 33. The availability of any payment or other entitlement under that document, and any obligation on the part of the Employer to provide such, pursuant to this Article or any other part of the collective agreement, shall only exist during the effective term of the Program, as expressly specified in that document. This limitation exists notwithstanding any other provision of this Article or any other part of the collective agreement.

- (b) The term of the Transition Support Program may be extended by mutual agreement between the parties.

32.09 Employee Placement Rights

- (a) Subject to consideration of ability, experience, qualifications, or where the Employer establishes that special skills or qualifications are required according to objective tests or standards reflecting the functions of the job concerned, an Employee whose position has become redundant, shall have the right to be placed in a vacancy in the following manner and sequence:
 - (1) a position in the Employee's same position classification / classification grouping;

 - (2) if a vacancy is not available under (1) above, then any bargaining unit position for which the Employee is qualified.

At each of the foregoing steps, all applicable vacancies shall be identified and the Employee shall be assigned to the position of her choice, subject to consideration of the provisions herein. If there is more than one Employee affected, their order of preference shall be determined by their order of seniority.

- (b) An Employee whose position is redundant or who is in receipt of layoff notice and who has not received a payment pursuant to the Transition Support Program (“TSP payment”) must accept a placement **within the same position classification/classification grouping** in accordance with Article 32 **provided that the placement is to a position that has the same designated percentage of full time employment** or resign without severance.
- (c) An Employee will have a maximum of two (2) full days to exercise her placement rights in this step of the placement process.
- (d) Where an Employee accepts a position in a classification, the maximum salary of which is less than the maximum salary of the Employee’s current classification, the Employee shall be granted salary protection in accordance with Item 1.5 of Article 33.

32.10 Volunteers

- (a) When the Employer determines after placement pursuant to Article 32.09, there are still redundancies, the Employer shall ask for volunteers from that classification/classification grouping who wish to be offered a TSP payment according to Article 33.
- (b) If there are more volunteers than redundancies, then the most senior volunteers shall be offered the TSP payment.

32.11 Insufficient Volunteers

If there are insufficient volunteers pursuant to Article 32.10, the Employer shall identify remaining redundant employees and these employees shall have placement rights pursuant to Article 32.09 or, where available, they shall be entitled to receive a TSP payment.

32.12 Layoff Notice

- (a) If there are remaining redundant employees after Article 32.10 and 32.11, the Employer shall give layoff notice to the most junior Employee(s) pursuant to Article 32.14 in the classification/classification grouping from which the Employer requested volunteers for the Transition Support Program.
- (b) The employees in receipt of layoff notice shall have the rights of an Employee in receipt of layoff notice pursuant to this Article.

32.13 Layoff

An Employee(s) may be laid off because of technological change, shortage of work or funds, or because of the discontinuance of work or the reorganization of work.

32.14 Layoff Procedure

Where the layoff of a Bargaining Unit member is necessary, and provided ability, skill, and qualifications are sufficient to perform the job, employees shall be laid off in reverse order of seniority.

32.15 Notice of Layoff

- (a) Forty (40) days notice of layoff shall be sent by the Employer to the Union and the Employee(s) who is/are to be laid off, except where a greater period of notice is provided for under (b) below.
- (b) When the Employer lays off ten (10) or more persons within any period of four (4) weeks or less, notice of layoff shall be sent by the Employer to the Union and employees who are to be laid off, in accordance with the following:
 - (i) eight (8) weeks if ten (10) or more persons and fewer than one hundred (100) persons are to be laid off;
 - (ii) twelve (12) weeks if one hundred (100) or more persons and fewer than three hundred (300) are to be laid off;

- (iii) sixteen (16) weeks if three hundred (300) or more persons are to be laid off;
- (c) Notices pursuant to this Section shall include the effective date of layoff and the reasons therefor.
- (d) An Employee in receipt of layoff notice shall be entitled to exercise any of the following options:
 - (i) to exercise placement/displacement rights in accordance with the procedure set out in this Article;
 - (ii) to accept layoff and be entitled to recall in accordance with Article 32.18;
 - (iii) to accept the Transition Support Program.

An Employee who intends to exercise placement/displacement rights pursuant to (d) (i) above will indicate such intent to the Employer within two (2) full days following receipt of the layoff notice. If the Employee does not indicate such intent within this period, she will be deemed to have opted to accept layoff in accordance with (d) (ii) above.

32.16 Pay in Lieu of Notice

Where the notice required by Article 32.15 is not given, the Employee shall receive pay, in lieu thereof, for the amount of notice to which the Employee is entitled.

32.17 Displacement Procedure

- (a) Subject to consideration of ability, experience, qualifications, or where the Employer establishes that special skills or qualification are required, according to objective tests or standards reflecting the functions of the job concerned, an Employee in receipt of layoff notice has, the right to displace another Employee. The Employee to be displaced shall be an Employee with lesser seniority who:

- (i) Is the least senior Employee in the displacing Employee's classification / classification grouping who has the same designated percentage of full-time employment; or
 - (ii) Where no such junior Employee exists, the least senior Employee in any classification / classification grouping who has the same designated percentage of full-time employment in the Bargaining Unit.
 - (iii) At each of the above steps, the displacing Employee may elect to displace the least senior Employee with a lower designation of full-time employment.
- (b) An Employee who chooses to exercise rights in accordance with Article 32.17 may elect at any step, beginning with Article 32.15, to accept layoff and be placed on the recall list or to resign with severance pay in accordance with Article 32.24(g)(ii).
- (c) An Employee who is displaced pursuant to Article 32 shall be entitled to:
 - (i) take the Transition Support Program, or,
 - (ii) go on the Recall List, or
 - (iii) subject to consideration of ability, experience, qualifications, or where the Employer establishes that special skills or qualifications are required, according to objective tests or standards reflecting the functions of the job concerned be placed in any vacancy in any bargaining unit.
- (d) An Employee will have a maximum of two (2) full days to exercise her rights at any of the foregoing steps of the displacement procedures provided for herein.
- (e) Where an Employee accepts a position in a classification, the maximum salary of which is less than the maximum salary of the Employee's current classification, the

Employee shall be paid the salary of the classification of the Employee's new position.

32.18 Recall Procedures

- (a) employees who are laid off shall be placed on a Recall List. Laid off employees shall fill out the Laid Off Employee availability form in Appendix 2.
- (b) Subject to consideration of ability, experience, qualifications, or where the Employer establishes that special skills or qualifications are required, according to objective tests or standards reflecting the functions of the job concerned, employees placed on the Recall List shall be recalled by order of seniority to any position for which the Employee is deemed to be qualified. Positions pursuant to this section shall include all positions in all bargaining units.
- (c) The Employer shall give notice of recall by registered mail to the Employee's last recorded address. employees are responsible for keeping the Employer informed of their current address.
- (d) An Employee entitled to recall shall return to the services of the Employer within two (2) weeks of notice of recall, unless on reasonable grounds she is unable to do so. An Employee who has been given notice of recall may refuse to exercise such right without prejudicing the right of any future recall. ~~except in the case of recall to the Employee's same position classification title or position classification title series in which event she will be struck from the Recall List.~~ However, an Employee's refusal to accept recall to her same position classification title or position classification title series at the time of layoff will not result in loss of recall rights in the case of recall for occasional work or for employment of short duration of time during which she is employed elsewhere.
- (e) employees on the Recall List shall be given first option of filling vacancies normally filled by casual workers, providing they possess the necessary qualifications, skills, and abilities, as determined by the Employer, reflecting the functions of the job concerned. A permanent Employee who accepts such casual work retains her permanent status.

32.19 Termination of Recall Rights

The layoff shall be a termination of employment and recall rights shall lapse if the layoff lasts for more than **twenty-four** ~~twelve (12)~~ consecutive months without recall.

32.20 Loss of Seniority

An Employee shall lose seniority and shall be deemed to have terminated her Bargaining Unit position in the event that:

- (a) the Employee is discharged for just cause and not reinstated;
- (b) the Employee resigns;
- (c) the Employee is laid off for more than **twenty-four** ~~twelve (12)~~ consecutive months without recall; or
- (d) the Employee has been employed in a position excluded from any bargaining unit for a period in excess of eighteen (18) months.

32.21 No New employees

No new employees shall be hired unless all employees on the Recall List who are able to perform the work required have had an opportunity to be recalled, subject to consideration of ability, experience, qualifications, or where the Employer establishes that special skills or qualifications are required, as determined by the Employer, according to objective tests and standards reflecting the functions of the job concerned.

32.22 Transition Support Program

Notwithstanding anything in this Agreement, the Employer is only required to make a TSP payment to the same number of employees as the Employer has reduced its complement.

32.23 Layoff Exception

Notwithstanding 32.24 (Contracting Out), an Employee who has eight (8) years' seniority shall not be laid off except where the reason for layoff is beyond the control of the

Employer including, but not limited to, complete or partial destruction of plant, destruction or breakdown of machinery or equipment, unavailability of supplies and materials, fire, explosion, accident, labour disputes, etc., if the Employer has exercised due diligence to foresee and avoid the cause of layoff.

32.24 Contracting Out

(a) **Notice**

The Employer shall provide the Union with sixteen (16) weeks notice of the implementation of the decision to contract out work normally performed by members of the Bargaining Unit. At the time that the Employer gives notice to the Union of its intention to contract out, the Employer shall make a conditional TSP payment offer in Article 33 to those employees directly affected by the contracting out. Final acceptance by the Employer of employees wishing to take advantage of the TSP payment offer will be conditional on the Employer reaching an agreement with a Contractor.

(b) **Employer Disclosure**

The Employer shall disclose its reasons for contracting out when notice is provided pursuant to Article 32.24(a).

(c) **Union Response**

The Union shall be entitled to make proposals, including proposals on ways to avoid contracting out, within four (4) weeks of receiving notice pursuant to Article 32.24(a). The Union's suggestions should specifically address the reasons for the contracting out.

(d) **Employer Response**

After receipt of proposals or suggestions from the Union pursuant to Article 32.24(c), the Employer shall consider these proposals. The Employer shall either

accept or reject, in whole or in part, such proposals. At this time, the Employer shall either make the TSP payment offer unconditional or retract the TSP payment offer.

(e) **Hiring Preference**

The Employer will make every reasonable effort, where work normally performed by members of the Bargaining Unit is contracted out, to obtain jobs for employees who have not exercised their rights under Article 32.24(d) and who are directly affected by the contracting out with the Contractor. The Employer will have made reasonable efforts when the Employer has:

- (i) required bidders to give employees a preference in hiring for job opportunities that will arise if they are successful in their bid;
- (ii) met with the Union to give the Union an opportunity to put forward its views on how the Employee can try to obtain employment with the Contractor; and,
- (iii) met with the successful bidder and sought to make it a term of the contract with the Contractor that the Contractor must:
 - (1) interview employees for job opportunities available with the Contractor to perform the contracted out work;
 - (2) where the hiring to perform the contracted out work is subject to appropriate skills testing, offer to test employees;
 - (3) extend job offers to employees who are qualified for available job opportunities with the Contractor to perform contracted out work; and

- (4) where there are more qualified employees than the Contractor has opportunities due to the contracted out work, to extend job offers on the basis of seniority.

(f) **TSP Payment Offers**

- (i) Where the Employer determines that there will be redundant positions as a result of a contracting out, the classification(s) / classification groupings to which TSP payment offers will be made will be mutually agreed between the Employer and the Union.
- (ii) The Employer will offer a TSP payment to the agreed upon classification(s) / classification groupings. In any event, the classification grouping shall include, as a minimum, the classification(s) of the employees affected in the work area by the contracting out of services.

(g) **Placement Procedure**

- (i) If a sufficient number of employees accept the TSP payment offer, the Employer will place the remaining employees whose positions were declared redundant in the vacancies created by the employees accepting the TSP payment offer or other appropriate vacancies. This placement will be by seniority, subject to consideration of ability, experience, qualifications, or the Employer establishing that special skills or qualifications are required according to objective tests or standards reflecting the functions of the job concerned.
- (ii) Where the Employee refuses a placement, the salary of which is at least ~~seventy-five~~ **ninety** percent (**90**%) of the present salary of the Employee's current position, the Employee is deemed laid off. The Employee will be entitled to severance as follows:
 - (1) ~~one-half (1/2)~~ **one (1)** month's pay if she has been employed for three (3) years, but less than ten (10) years;

~~one (1)~~ **two (2)** month's pay if she has been employed for ten (10) years, but less than fifteen (15) years;

~~two (2)~~ **three (3)** months' pay if she has been employed for fifteen (15) years, but less than twenty (20) years;

~~three (3)~~ **four (4)** months' pay if she has been employed for twenty (20) years, but less than twenty-five (25) years;

~~four (4)~~ **five (5)** months' pay if she has been employed for twenty-five (25) years, but less than thirty (30) years;

~~five (5)~~ **six (6)** months' pay if she has been employed for thirty (30) or more years.

- (2) The amount of severance pay provided herein shall be calculated by the formula:

$$\frac{\text{bi-weekly rate} \times 26}{12} = \text{one (1) month}$$

12

- (3) The entitlement of an Employee to severance pay shall be based upon the Employee's total service as defined in this Agreement.

(h) **Second TSP Payment Offer**

If, after the first offer of TSP Payment, there are employees remaining in positions which have been declared redundant, a second offer of a TSP payment will be made to broader classification(s)/classification groupings. The Employer will place

the remaining redundant employees in the vacancies created by the employees accepting the TSP payment offer, or other appropriate vacancies, in the same manner as stated in Article 32.24(g).

(i) **Further TSP Payment Offers**

The process of expanding the offer of TSP payment to other classification(s)/classification groupings and areas will be repeated until all those employees whose positions have been declared redundant as a direct effect of the contracting out are placed.

APPENDIX "C"

MEMORANDUM OF AGREEMENT #XX (NSHA)

RETENTION INCENTIVE

BETWEEN:

NOVA SCOTIA HEALTH AUTHORITY

(The Employer)

AND:

THE NOVA SCOTIA COUNCIL OF

HEALTH ADMINISTRATIVE PROFESSIONAL UNIONS

(The Unions)

WHEREAS certain classifications were transferred into the bargaining unit as a result of the award of Arbitrator James Dorsey dated February 19, 2015;

AND WHEREAS some of these transferred classifications were entitled to receive a retention incentive pursuant to the terms of previously applicable collective agreements;

NOW THEREFORE it is ordered:

1. The classifications listed in Schedule "A" were transferred into the Nova Scotia Council of Health Administrative Professional bargaining unit through Arbitrator James Dorsey decision dated February 19, 2015:
2. All present incumbents in any of the above noted classifications as of the date of this Award shall be entitled to receive a salary increment of 3.5% greater than the highest rate in effect for the applicable classification upon completion of twenty-five years of service with the Employer, provided they continue in the same classification, or move to another classification as a result of a reorganization or amalgamation of classifications.

3. For greater clarity, the entitlement to a retention incentive shall not be extended to any persons not occupying a classification transferred to the Health Administrative Professional bargaining unit through the Dorsey Arbitration decision.
4. Should an employee occupying a classification that was transferred to the Health Administrative Professional bargaining unit through the Dorsey Arbitration decision voluntarily move to another classification that was not part of the Dorsey transfer decision, they shall not be entitled to the retention incentive.

APPENDIX "D"
RETENTION INCENTIVE
MEMORANDUM OF AGREEMENT #XX (IWK)

BETWEEN:

IZAAK WALTON KILLAM HEALTH CENTRE (The Employer)

AND:

**THE NOVA SCOTIA COUNCIL OF
HEALTH ADMINISTRATIVE PROFESSIONALS UNIONS**
(The Unions)

WHEREAS certain classifications were transferred into the bargaining unit as a result of the award of Arbitrator James Dorsey dated February 19, 2015;

AND WHEREAS some of these transferred classifications were entitled to receive a retention incentive pursuant to the terms of previously applicable collective agreements;

NOW THEREFORE it is ordered:

1. The classifications listed in Schedule "A" were transferred into the Nova Scotia Council of Health Administrative Professional bargaining unit through Arbitrator James Dorsey decision dated February 19, 2015:
2. All present incumbents in any of the above noted classifications as of the date of this Award shall be entitled to receive a salary increment of 3.5% greater than the highest rate in effect for the applicable classification upon completion of twenty-five years of service with the Employer, provided they continue in the same classification, or move to another classification as a result of a reorganization or amalgamation of classifications.
3. For greater clarity, the entitlement to a retention incentive shall not be extended to any persons not occupying a classification transferred to the Health Administrative Professional bargaining unit through the Dorsey Arbitration decision.

4. Should an employee occupying a classification that was transferred to the Health Administrative Professional bargaining unit through the Dorsey Arbitration decision voluntarily move to another classification that was not part of the Dorsey transfer decision, they shall not be entitled to the retention incentive.