

PARTIAL DISSENT

With the greatest respect, I dissent in part from the Award.

I agree with the Chair that in light of the compelling pattern of public sector wage restraint in Nova Scotia, "the die has been cast" and that wage increases should be limited to 1% in each year of the two year period November 1, 2009 until October 31, 2011.

My dissent relates to the award of a three year term (i.e. the period of November 1, 2011 to October 31, 2012) and the Chair's willingness to continue with some limitation, the "historical pattern" ("first in Atlantic Canada and middle of the Canadian pack") to award a grid adjustment effective November 1, 2011 and an across-the-board increase effective May 1, 2012.

I appreciate that the Chair wanted to deal with both "patterns", namely the "public sector pattern" and the "historical pattern" and wanted to do something to address the latter after having accepted the former. However, I consider that applying any form of the historical pattern is not appropriate in this round because there are not at present any general recruitment and retention issues ("R&R issues"); the foundation for that pattern. In short, I believe that the circumstances in this round, notably the lack of R&R issues and the economic circumstances of the Province (where Nova Scotia is not in the middle of the Canadian pack), suggest a made-in-Nova Scotia approach.

Historical Pattern – R&R Issues

It is significant that the Ashley and Christie Awards were made in the context of R&R issues.

Ashley Award

The "first in Atlantic Canada and middle of Canadian pack" became a catchphrase after being born in Arbitrator Susan Ashley's 2001 Award to establish wage rates for various groups, including NSGEU and NSNU nurses, for the period November 1, 2000 to October 31, 2003.

Arbitrator Ashley's discussion of comparability recognized that comparability will extend from local to regional to national depending on the circumstances. She concluded her discussion of comparability with the following:

The above discussion indicates that there are a number of ways that comparability can be measured – among other public sector workers in the province, among similar workers in the region, or among similar workers in other provinces generally. The standard of comparison to be used will depend on the particular concerns of the positions being considered. For example, it may be more appropriate to use a broader standard of wage comparison where recruitment and retention of the particular workers are a concern.

[underlining added]

In discussing R&R issues in regard to nurses, she stated:

Comparability is particularly important where a position is suffering from supply problems. In order to prevent our Registered Nurses and other professionals from leaving the province, we must ensure that the wages they are paid in Nova Scotia are at least competitive with those in similar jurisdictions, as an incentive to keep them at home. On the other hand, where these supply and demand factors are not in play, there is less reason to be concerned about comparators beyond the region.

[underlining added]

In selecting between the competing offers for the nurses, she commented that both parties agreed that recruitment and retention of nurses was a serious problem and went on to refer to "first in Atlantic Canada and middle of the Canadian pack" – all in the context of R&R issues:

The Final Offer of the Unions would place the wages of Nova Scotia Registered Nurses at first place in Atlantic Canada and in the middle of the Canadian pack. Because recruitment and retention are important issues across Canada and even beyond, there are valid reasons to look further afield than this region to ensure that the wages offered in Nova Scotia are sufficient so that we can keep our own employees, and so that they will not be easily lured away by provinces or countries that can offer more competitive salaries.

[underlining added]

I also note that in selecting an offer for the LPNs, another group involved in the final selection process, Arbitrator Ashley stated:

There is no evidence that there are any recruitment and retention problems with LPN's at this time. While it has been suggested in the hearings that there may be a supply problem in a few years, the Union's supporting documents ...

indicate that there was, at the date of that document ... an oversupply of LPN's in the province. Because there are no current recruitment and retention concerns for LPN's in Nova Scotia, it is more difficult to argue that comparability, especially on a national scale, should be a significant factor.

[underlining added]

Christie Award

Arbitrator Innis Christie's 2005 Award established wage rates for Q.E. II nurses for the period November 1, 2003 to October 31, 2006. At the time, the supply of nurses remained a matter of "utmost concern" to both parties. However, the focus of the wage increase in the Award was not wage rates of Q.E. II nurses relative to regional or national comparators, but was on ensuring that the NSGEU - Q.E. II nurses received the same wage increases as the NSNU nurses employed at Capital Health. As Arbitrator Christie stated at pages 15 and 16 of his Award:

Although...we have declined to eliminate designated unit premiums, we think that the general increase in the pay of nurses employed by the Employer should not fall behind that of a majority of the nurses in the Province represented by the NSNU by 2.34% and have therefore ordered an increase by 2.3% of the NSGEU nurses' pay, beyond the basic 2.9%. The importance of increasing the pay of nurses in this bargaining unit by more than 2.9% in the first year of the new Collective Agreement is highlighted by two unusual features of collective bargaining for nurses in Nova Scotia. First, this Employer itself employs nurses represented by the NSNU, many of whom will have received the additional 2.34%. Secondly, LPN's employed by this Employer and represented by this Union in the Healthcare bargaining unit received 2.1% catch-ups under the Kaplan Award.

Arbitrator Christie then went on to refer to the concept of "first in Atlantic Canada and middle of the Canadian pack"; more in explaining the result than its driving force:

Furthermore, the increases we have awarded position the Registered Nurses in this bargaining unit appropriately 'at the forefront of wages paid for equivalent classifications in Atlantic Canada and in the middle of the Canadian 'pack'.'

Arbitrator Christie's comments on regional or national comparators must be considered in their context, firstly that his focus was on local comparators rather than regional or national comparators and secondly that they were made against a background of R&R issues.

Three Year Term

Since at present there are generally no R&R issues for Q.E. II nurses, there is no need to apply the historical pattern and therefore no need to create a window in year three for any such application. The collective agreement could have been limited to the two year period ending October 31, 2011.

I am concerned that the across-the-board increase, in particular, awarded in year three in the unique circumstances of this case will challenge the upcoming round of public sector bargaining. I respect that the Chair established the 1.6% increase so that by the last six months of the three year term, the Q.E. II nurses will surpass (at least by a few pennies) the 2011 hourly rate for Manitoba nurses. The increase risks becoming a target for other public sector bargaining units at a time when the Nova Scotia economy is in flux and the Government is struggling to maintain financial viability. With the greatest respect, any "catch-up" could be more appropriately left to the parties through future collective bargaining.

Although I do not agree that the historical pattern merits consideration in this round, I wish to deal with the Chair's Award for changes in year three.

Relative Wage Rates Move Because of Provincial Economies

The Chair has recognized that the relative rankings of nurses' wage rates have changed over time and have not been static. He notes that some movements appear to reflect a significant increase in natural resource revenue: Alberta (7th in 1997, but 1st in 2010), Saskatchewan (7th in 1999, but 2nd in 2010) and Newfoundland and Labrador (10th in 1997, but 5th in 2010). Conversely, he refers to declines in manufacturing affecting the lower ranking of Quebec (from 3rd in 1997 to 10th in 2010) and Ontario (from 1st in 1997 to 3rd in 2010). His assessment is that: "Over time and within limits, the hourly wage paid to a nurse in one province relative to the

hourly wage paid to the nurses in the other provinces is reflective of the state of the various provincial economies at given points in time." I agree.

The Chair was not prepared to award an increase in year three which would result in the Q.E. II rates surpassing the 2011 Newfoundland and Labrador hourly wage with the Nova Scotia economy being uncertain at best and the Newfoundland and Labrador hourly rate being reflective of a flourishing provincial economy. I agree.

However, the Chair did award an increase that results in Q.E. II rates, in the last six months of year three, surpassing, although only marginally, the 2011 Manitoba rates. With the state of provincial economies dramatically driving up the relative placement of Alberta, Saskatchewan and Newfoundland and Labrador and driving down the relative placement of Quebec, I do not consider that there is a basis in Nova Scotia, with its economic state, catching up to the "middle of the Canadian pack" and surpassing, matching or coming close to Manitoba.

Present Nova Scotia Economy

The Chair describes the Nova Scotia economy as "uncertain at best". I agree.

The following financial information appears in the Fiscal Brief prepared in August 2011 by the Province's Department of Finance or in the Province's latest Forecast Update of September 13, 2011:

- Net debt:
 - \$12.8 Billion with a population of almost 940,000;
 - second highest Net Debt to GDP ratio in Canada (38.1% in 2009-2010) with only Quebec having a higher ratio;
 - the fourth highest provincial Net Debt per capita in Canada in 2009-2010 with only Quebec, Newfoundland and Labrador and Ontario being higher.

- Economic growth:
 - decline in the Province's real GDP in 2009;
 - real GDP per capita: second lowest in Canada, ahead only of PEI; the four lowest provinces are the three Maritime Provinces and Quebec;
 - slowest economic growth of any province in Canada over the period 1990-2009.
- Forecast debt servicing cost of approximately 9% of the Province's total expenses.
- Income and weekly wages:
 - median family income: in 2009, Nova Scotia had the lowest median family income in Canada; the four lowest provinces were the three Maritime Provinces and Quebec;
 - average weekly wages: in 2010, Nova Scotia's average weekly wages were the second lowest in Canada, only ahead of PEI; the four lowest provinces were again the three Maritime Provinces and Quebec.
- The Province's total expenditures on healthcare cost in 2011-2012 will be \$3.8 billion, representing 40.4% of total Government spending.

This information confirms that the Province is struggling financially. Perhaps the best evidence of the seriousness of the situation is that not only did the Provincial Government request public sector unions to accept the 1% and 1% wage restraint, but that pattern has been accepted throughout acute care, long term care and within the broader public service.

Conclusion

As stated earlier, I disagree with awarding a third year so as to provide a window for addressing the historical pattern and in any event, if the historical pattern is to be addressed in year three, there should be further recognition of the challenged state of Nova Scotia's economy and the rationale for the pattern in the first place. The Chair has done this to an extent by excluding

Newfoundland and Labrador from the "first in Atlantic Canada". However, the Chair's structured step adjustment and the across-the-board increase in year three may seem to keep alive a pattern without, in my respectful opinion, a present rationale.

Finally, I want to extend my thanks to my colleagues on the Board for the opportunity to express my views and for their consideration throughout.

DATED at Halifax, Nova Scotia, 31st day of October, 2011.



BRIAN G. JOHNSTON, Q.C.