IN THE MATTER OF A DISPUTE
PURSUANT TO APPENDIX 20 – MEMORANDUM OF AGREEMENT
RE: DISPUTE RESOLUTION RELATING TO THE IMPLEMENTATION OF THE SCHEDULED ON-CALL MODEL

BETWEEN:

PROVINCIAL HEALTH SERVICES AUTHORITY
(BC EMERGENCY HEALTH SERVICES)
Represented by Health Employers Association of BC

(the "Employer")

AND:

AMBULANCE PARAMEDICS OF BC,
CUPE LOCAL 873

(the "Union")

(Leave and Benefits Provisions)

ARBITRATORS	Vincent L. Ready and Corinn Bell, Q.C.
COUNSEL:	Ryan Goldvine for the Employer
	Jason Jackson for the Union
WRITTEN SUBMISSIONS:	December 4, 11 and 14, 2020
DECISION:	December 23, 2020

The parties agree that we have the jurisdiction, under Appendix 20 – Memorandum of Agreement, Re: Dispute Resolution ("SOC DRP"), to issue a binding decision resolving this dispute, related to the implementation of the Scheduled On-Call model ("SOC"). The SOC DRP process mandates that all decisions be rendered by the third party within fourteen (14) days of hearing the dispute.

In this dispute, the Union claims that a Scheduled On-Call Employee, including a Community Paramedic ("CP-SOC"), away from work due to illness, is entitled, under the Employer's Short-Term Illness and Injury Plan ("STIIP"), to: (i) regular working hours; (ii) pager hours; and (iii) callouts missed while absent due to illness.

The Employer disagrees and takes the position that pager hours are inherently a premium or stipend and accordingly does not attract sick pay or other leave-related entitlements. The Employer asks that the Union's position be dismissed.

The parties are aware of the relevant Collective Agreement/Appendix 18 – Introduction of SOC Model ("SOC MOU") provisions applicable to this dispute. Accordingly, these provisions will not be unnecessarily reproduced here given the need for an expeditious decision in the circumstances.

POSITION OF THE UNION

The Union argues that the crux of this dispute are the definitions of "employee's regular salary" in Article 20.01 (Short Term Disability Income Insurance) and "regular salary of employees" in 24.06 (Registered Supplemental Retirement Plan and Health and Benefit Plan). The Union argues that the SOC model is premised on the fact that an employee's regular salary includes regular hours, pager hours, and callouts. In support of its

position, the Union further points to the language of the Collective Agreement entitling regular part-time employees to the same perquisites, on a proportional basis, as regular full-time employees.

The Union submits that the parties created a new employment status in 2014: regular part-time positions. Then, in the 2019 round of bargaining, the parties introduced the SOC model, agreeing that the SOC positions would be posted as regular part-time positions in certain locations in the Province. The Union highlights that the SOC shift is a 24-hour shift comprising of regular hours and pager hours, which are different than callout hours. The Union points out that employees are required to respond to pager calls as part of their 24-hour SOC shift.

The Union submits that the parties clearly intended to include SOC pager pay as part of an "employee's regular salary" and that pager pay was intended to be included in Articles 20.01 and 24.06. The Union argues this mutual intent was clear based on the language negotiated by the parties in the SOC MOU which necessarily incorporates regularly scheduled hours and pager hours as the "regular salary of employees".

This unique 24-hour SOC shift, it is argued, should be considered part of SOC members' regular salary in the application of Article 20.01. The Union further contends that such a finding would be in keeping with the spirit and intent of Article 20.01.

The Union relies on the following case law: *Pacific Press v. Graphic Communications International Union, Local 25*, [1995] B.C.C.A.A.A. No.637 (Bird) and *HEABC v. Nurses' Bargaining Assn.*, [2001] B.C.C.A.A.A. No. A-04 (Larson).

POSITION OF THE EMPLOYER

The Employer contends that pager hours are inherently a premium or stipend, rather than pay for work performed, and accordingly do not attract sick pay or other leave-related entitlement. The Employer submits that nothing in the present round of bargaining changes the Employer's long-standing treatment of hours scheduled on-call carrying a pager as not attracting sick pay or other leave entitlements.

The Employer further claims that the Union has provided no basis, in contract or law, substantiating its assertion that sick pay, or pay for other leaves, should be paid for callouts that occurred while that employee was away from the workplace, during pager hours covered by another employee. The Employer argues if an employee is away on STIIP, that individual is not working pager hours as contemplated by the SOC Model.

The Employer asks that we pay particular attention to the wording of paragraph 14 of the SOC MOU and argues that provision is a limited exclusion to ensure that certain benefits, including the sick leave plan, do not apply to the pager hours. The Employer points out that paragraph 14 of the SOC MOU mirrors the language pre-dating this round of bargaining. Further, the SOC MOU specifically provides for payment during "working" hours and the parties negotiated that the language relating to payment for pager hours requires that employees specifically work the pager hours. The Employer submits that if the employee is away due to illness or other leaves, that employee is not "working". Finally, given the sporadic nature of pager hours, the Employer disputes the Union's assertions that such work is "regular" for the purposes of the definitions in dispute.

The Employer also notes that prior to the introduction of the SOC Model, both full-time and regular part-time employees had access to assignment of on-

call and standby shifts, and the Employer never paid sick leave or other leave entitlements for those shifts when the employee was subsequently not available.

The Employer relies on the following case law: *Re United Automobile Workers, Local 112 and De Havilland Aircraft of Canada Ltd.*, (ON) (1961), 11 L.A.C. 350) and *Capital Health Authority (University of Alberta Hospital) v. U.N.A., Local 301*, 90 L.A.C. (4th) 328.

DECISION

The issue here is to decipher the mutual intent of the parties regarding the applicability of leave entitlements to pager hours in the SOC Model. In this case, the parties have not presented extrinsic evidence from collective bargaining.

The well-established rules of collective agreement interpretation are cited in *Pacific Press v. Graphic Communications International Union, Local 25, supra*. Those principles are as follows:

> The first major issue I address is one of interpretation. I reaffirm my adherence to the rules of interpretation which I set out in *White Spot, supra*. I summarize as follows:
>
> 1. The object of interpretation is to discover the mutual intention of the parties.
>
> 2. The primary resource for an interpretation is the collective agreement.
>
> 3. Extrinsic evidence (evidence outside the official record of agreement, being the written collective agreement itself) is only helpful when it reveals the mutual intention.

4. Extrinsic evidence may clarify but not contradict a collective agreement.

5. A very important promise is likely to be clearly and unequivocally expressed.

6. In construing two provisions a harmonious interpretation is preferred rather than one which places them in conflict.

7. All clauses and words in a collective agreement should be given meaning, if possible.

8. Where an agreement uses different words one presumes that the parties intended different meanings.

9. Ordinarily words in a collective agreement should be given their plain meaning.

10. Parties are presumed to know about relevant jurisprudence.

The principles articulated in *Pacific Press, supra*, address the primary objective of an arbitrator in interpreting the collective agreement language, including the role of extrinsic evidence. Both parties put forward very different arguments respecting the interpretation of the language in the SOC MOU with respect to the definition of "employee's regular salary" in Article 20.01 and "regular salary of employees" in Article 24.06.

The essence of the Union position is that the "newly established" and "unique" SOC Model incorporates regularly scheduled hours, pager hours and callouts missed within the term "regular salary" under Article 20, thus requiring all three be included in the calculation of short-term disability income insurance when an employee is away from work due to illness.

As noted by the Employer, such an outcome would represent a shift from the current method of calculating sick leave, and must be determined on the basis of the parties' mutual intention when they established the SOC system.

We stress that it is our primary duty to discover the mutual intention of the parties. While it is difficult to conceive of the Employer intending, simply by virtue of the creation of a new scheduling system, to move beyond its existing obligations regarding the payment of sick leave, that nonetheless could be possibly established through examination of any extrinsic evidence (see principles 3 and 4 of *Pacific Press, supra*).

The two principal types of extrinsic evidence are bargaining evidence and past practice, and neither were provided by the parties in the instant case. As a new scheduling system, there is obviously no past practice to rely on in this case. The Union itself notes that, "…the [2019] bargaining history does not reveal what was discussed specifically between the parties regarding how each collective agreement article [including sick time] is applied to Regular Part-time …". Without extrinsic evidence, we are unable to discern the mutual intention of the parties other than by examination of the specific language used to reflect their agreement in the SOC MOU.

None of the provisions of the SOC MOU, on their face, indicate a clear, mutual intention to move beyond the plain meaning of sick leave calculated on the basis of work hours missed. The plain reading of the negotiated language supports the position put forward by the Employer.

For example, the Union relies heavily on the inclusion of paragraph 1 in the SOC MOU of both "regularly scheduled hours and…(Pager hours)", within the concept of an "SOC shift". However, we find that such an inclusion in paragraph 1 does not, on its face, inexorably lead to the conclusion that both are to be considered "regular salary" under Article 20 of the Collective Agreement. Paragraph 14's exclusion of pager pay from consideration as "earnings" under Article 24.06, or as "work" pursuant to Article 16 also supports this conclusion.

The Union's position of sick time being paid for pager hours and missed calls represents a significant movement away from current sick pay calculation methodologies, and clearly falls under the heading of a "very important promise" articulated in *Pacific Press, supra.* On the evidence before us, it has not been established that such a "very important promise" was either made, or "clearly and unequivocally expressed", in the negotiated language of the parties.

For all of the foregoing reasons, we find in favour of the Employer's position in this dispute:

- STIIP or pay related to other leave entitlements for employees working SOC or CP-SOC schedules, is only attached to the regular working hours of the schedule, and not to the pager hours; and,

- There is no entitlement to any compensation for callouts that occur during pager hours when an employee is absent from work and not carrying a pager.

Dated at the City of Vancouver in the Province of British Columbia this 23rd day of December, 2020.

VINCENT L. READY

CORINN M. BELL, Q.C.