IN THE MATTER OF

AN INTEREST ARBITRATION

BETWEEN:

OPSEU

and

LCBO

Before:	William Kaplan Sole Arbitrator

Appearances

For the LCBO:	Paul Boniferro McCarthy Tetrault Barristers & Solicitors
For OPSEU:	Steve Nield Supervisor, OPSEU Steve Crossman Research Officer, OPSEU

The matters in dispute proceeded to a mediation on February 1 & 2 and to an interest arbitration on February 4, 2017.

Introduction

On November 1, 2017, OPSEU and the LCBO (hereafter "the employer") settled a complaint scheduled to proceed before the HRTO. In the Minutes of Settlement, the parties agreed to negotiate a new wage grid that would pay permanent full-time, (hereafter "PFT") permanent part-time (hereafter "PPT") and casual customer service representatives (hereafter collectively referred to as "CSR" or "CSRs") in LCBO retail stores and depots the same wage rates. The parties agreed to negotiate the number of steps on the new grid, migration to the new grid, and progression through the new grid.

It was agreed and understood that hours paid and seniority would be taken into account and that there would be no decrease in hourly rate, seniority or placement for any CSR. Hours of work and scheduling were to be addressed in order to consider, among other matters, concerns about casual CSR precarity. The parties also committed to look at the fiscal and operational challenges created by the impact of the sale of beer, wine and cider in grocery stores and the need to modernize operations in order to meet current and future business needs including overall competitiveness. Issues specifically identified for discussion were Sunday premiums and potential agency store repatriations/store closures.

In their November 1st Minutes of Settlement, the parties also agreed, among other things, to the disclosure of relevant documents. Furthermore, they established a schedule for negotiations. Numerous days of discussion were held, but the parties were, unfortunately, unable to resolve any of the outstanding issues in dispute. As previously, agreed those outstanding issues proceeded to a mediation in Toronto on February 1 & 2, 2017 and then to a hearing on February 4, 2017.

The Minutes of Settlement provided that the principles of interest arbitration pursuant to s. 4 of CECBA and s. 40 of the Labour Relations Act would constitute the framework for the arbitration. Needless to say, those principles, along with others pertaining to pay structures, have been carefully considered together with normative interest arbitration criteria, most notably replication. Ability to pay was not raised and the unique circumstances of this particular interest arbitration have been carefully taken into account. It is clear from the evidence that the new grid is immediately and significantly financially advantageous to seventy percent of the casual employees – on whose behalf the HRTO complaint was filed. Creation of new full-time positions, likewise, squarely addresses precarity. Notably, the parties agreed upon the start and end rate for the new grid and several ancillary matters related thereto.

Award

CSR Grid

The new grid shall be effective November 1, 2016. Retroactivity to all current and former employees within ninety days of issue of award.

Nine step grid.

0	$15.08
1	$16.26
2	$17.53
3	$18.90

4	$20.37
5	$21.97
6	$23.68
7	$25.53
8	$27.53

Migration

Migration of all CSRs on to the grid shall be based on the following formula that incorporates total lifetime hours paid and seniority. Initial placement on the grid shall not result in any decrease in hourly rate or seniority. CSRs to migrate to new grid based on calculation of 2080 hours per year except for 0 to 1 which will be based on 1040 hours. Once migration has occurred, the union and/or CSRs will have thirty (30) days to challenge placement with any documentation to be provided to a joint committee established by the parties.

Progression

Step 0 to 1 at six months. Steps 1 to 5 at 1750 hours or two years, which ever comes first. Progression from Step 5 at 2080 hours.

Core Hours

Effective commencement of the new collective agreement, the employer to ensure that the percentage of casual employees working more than one thousand (1000) hours annually will continue with no less than fifty percent (50%) of the total casual employee complement. The employer will share the actual percentage with the union annually and will adjust upward any percentage required from a deficiency in the previous year.

The employer will continue its scheduling practices as indicated in: *10yr Analysis of Hours Worked (Casual employees only)* provided during the proceedings. It is, however, understood changes may occur as the result of the creation of new full-time jobs as set out below.

Full-time Positions

The employer will post and fill 100 new PFT positions by August 1, 2017 and a further 100 new PFT positions will be posted no later than January 1, 2018 and filled no later than April 30, 2018.

This direction is made in recognition of the employer's obligations under the current collective agreement, outstanding grievances, and requirement in the Minutes of Settlement to consider precarity. The parties are to negotiate a new post and fill process in forthcoming collective bargaining. As part of that process, the parties are further directed to attempt to resolve the outstanding grievances in light of, and taking into account, the direction contained in this award concerning these new PFT positions.

The PVR process outlined in the Letter of Agreement – Permanent Vacancy Review eliminated effective January 1, 2017. There will continue to be no obligation to post PPT positions.

Sunday Premium

Eliminated effective April 1, 2017. Parties directed to amend Article 7 of the collective agreement so as to provide that PFT CSRs and Retail POS/Help Desk employees working on Sundays will be scheduled on a rotational basis so that no one in either of these groups will work more than one (1) Sunday in every four (4) to a maximum of thirteen (13) in a fiscal year. Moreover, no PFT CSR or Retail POS/Help Desk employee will be scheduled to work a Sunday directly following a Saturday that is their regular scheduled day off. A PFT will have two (2) consecutive scheduled days off in the week they work a Sunday.

Agency Stores

Effective date of award, and notwithstanding LOU re Agency Stores, for every agency store that it is repatriated the employer may open a new agency store.

Conclusion

At the request of the parties, I remain seized with respect to the implementation of this award including any challenges to grid placement and to the issues arising out of the awarded new PFTs.

DATED at Toronto this 10th day of February 2017.

"William Kaplan"

William Kaplan, Sole Arbitrator