IN THE MATTER OF THE ONTARIO *LABOUR RELATIONS ACT, 1995*

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

GUELPH GENERAL HOSPITAL
- the Employer

-and-

ONTARIO NURSES' ASSOCIATION
- the Union

AND IN THE MATTER of a group grievance regarding payment for time while taking a course

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

David M. Chondon	- Counsel
Rod Carroll	- Vice President, Human Resources and Organizational Development
Annette Harrington	- Manager, Volunteer and Employee Services
Faye Hamilton	- Clinical Manager, Maternal and Child Services
Lynne Julius	- Operating Room Manager

On behalf of the Union:

Kate A. Hughes	- Counsel
Marsha Mazurk	- Labour Relations Officer
Elaine McClement	- Grievance Chairperson
Mary Beth Marcone	- Grievor
Janet Fernandez	- Grievor

Hearing held November 12, 2004 and January 20, 2005, in Guelph, Ontario.

AWARD

I. INTRODUCTION

Under this collective agreement a nurse is paid "when a nurse is required by the Hospital to attend" a course outside normal work hours. The grievor attended a course outside her normal hours and sought payment for the time spent on the course. The parties disputed whether the Employer had required the grievor to attend.

II. THE EVIDENCE

Mary Beth Marcone, the grievor, works as a nurse in the family birthing unit of the Guelph General Hospital, the Employer. The grievor's employment is regulated by the collective agreement between the Employer and the Ontario Nurses' Association, the Union.

Since the other grievor, Janet Fernandez, was ill, the parties agreed that she need not attend the hearing. The parties agreed that I would hear evidence related to Ms Marcone and remain seised of the grievance as it related to Ms Fernandez.

The basic facts were not in dispute. The Employer supported continuing education for its nurses. The Employer sometimes required nurses to take a particular course. In those instances it advised the nurses that they must take that course and it paid the nurses for the time spent on the course. When a course was required, the Employer took steps to be sure that the nurses completed the course.

On other occasions the Employer was aware of courses of value to its nurses but it did not require that the nurses take them. In those instances, the Employer advised the nurses of the course, generally by posting an advertisement on a bulletin board or by including reference

to the course in an e-mail message to the staff. The Employer did not then follow up to ensure that any nurse actually took the course - it was left to the individual nurse to make a decision on whether she or he would take the course. However, the fact that a nurse voluntarily took a course was considered in the periodic review of that nurse's work performance.

This grievance involves the MORE^{OB} course. MORE^{OB} is short for Managing Obstetrical Risks Efficiently. The Hospital had undergone an inquest into a baby's death, was concerned about liability issues in its obstetrical unit, and decided to have its obstetrical staff take this course offered by the Society of Obstetricians and Gynaecologists of Canada (the Society). In part, it did so at the urging of its insurance broker who paid part of the normal tuition costs. Both the Employer and its broker hoped that this course would reduce the risks of litigation in its obstetrical, or family birthing, unit.

The Employer contracted with the Society for the course to be offered to its employees on the Employer's premise. The July 2002 contract with the Society indicated that the Employer had introduced the program to its medical, widwifery and obstetrical nursing staff and had provided "evidence of a commitment to participate by at least 80% of its obstetrical nursing staff". However, the evidence at the hearing indicated that when the Employer signed the contract it had not informed any of its nursing staff of the course and it had no commitment from any of its nursing staff to take the course.

In the fall of 2002, Lynne Julius, the nurse manager in the family birthing unit, began the process of promoting MORE^{OB} to the obstetrical nurses. She formed a staff team, known as the core team, to help her in promoting the program. She and the core team began "talking it up" in the unit.

The Employer paid the $600 tuition for the course for each of some 60 students. Since part of the course was a self study program offered on CD Rom and the Internet, the Employer incurred additional expenses in purchasing computers for nurses and other staff to use at the hospital. The core team set up presentations for the students to visit and the Employer made a room available for these presentations. Furthermore, the workshop portion of the course was offered several times in a hospital auditorium. Finally, the Employer paid for the time of some of the other professionals who attended.

Ms Julius, who had the original responsibility to promote the program, encouraged all nurses to take the course and she kept track of those who were taking it and those who were not. There was no sign up sheet for MORE^{OB} as was the usual practice with optional courses. Rather than relying on nurses to indicate an interest in the program by signing a sheet, Ms Julius testified that she spoke individually with each nurse to pitch the course and to gauge her or his interest. Ms Julius said that she had not advised nurses they would be paid for the time spent on the course. She also said that she could not recall telling anyone that the course was mandatory.

Ms Julius testified that while she did not tell nurses they would be paid, she also did not tell them they would not be paid. Instead, she said that she informed the nurses the Hospital was supporting the course and paying the tuition, the course would be done on line, the course would require significant time and, if they agreed to take the course, they would be committed to it. She acknowledged that the nurses probably expected to be paid and she was aware that the nurses were entitled to be paid if the course was “required”.

Ms Julius testified that she knew of no other voluntary course in which each nurse was spoken to individually and encouraged to participate. She agreed that for no other voluntary course had the Employer paid this amount of tuition. She further testified that, in selling this

course and in tracking who among the staff were taking the course, the approach was vastly different from any other voluntary course.

Diana Martinoni, a staff nurse in the unit, became the interim unit manager following Ms Julius' move to another position with the Employer. Ms Martinoni said that she first heard of the MORE^{OB} program from Ms Julius who asked her if she was interested. Ms Martinoni said that she understood that the course was not mandatory but that, once in the program, the students had to complete the various components if they wished to receive a certificate.

Ms Martinoni agreed that there was no sign up sheet as was the custom for other voluntary courses. She gave as an example a voluntary course on fetal monitoring and said for that course a sign up sheet was available for interested nurses. She said that if a nurse signed up for a voluntary course there was little, if any, follow up.

Ms Martinoni agreed that she had engaged in more follow up with respect to this course than would be normal for other voluntary courses. She said that she had been approached by one of the core team members, Terry Billings, who advised her which nurses had not yet done the workshop for the course. Ms Billings identified the grievor as not having done the workshop. Ms Martinoni said that she told Ms Billings to follow up with those who had not done the workshop with a view to having them do it, and that she was later advised by Ms Billings that she had contacted the grievor about completing the workshop.

Faye Hamilton became the unit manager in February 2004, replacing Ms Martinoni. She said that soon after she began as manager she and the core team re-committed to getting the MORE^{OB} program back on track. Although the MORE^{OB} program had been underway for some 18 months, the first year of the course had not been completed. The first year had to be finished before moving to the second year.

Ms Hamilton acknowledged that from early in her time as manager she was aware that nurses felt forced to take the course.

As part of the new commitment to the course Ms Hamilton sent a document titled "The REBIRTH of MORE-OB" to all staff. That document introduced the new core team and provided additional information about the program. Ms Hamilton discussed the course at a staff meeting and again encouraged staff to take it. The minutes of that meeting were sent to all staff and included a paragraph dealing with MORE^{OB}. Ms Hamilton said that she spoke to all nurses about the MORE^{OB} course and that she sent the material about the course to all of them in order to be certain that all nurses were given an opportunity to take the course if they wanted to do so.

Ms Hamilton testified that she spoke on at least one occasion with the grievor about the MORE^{OB} course, about her attendance at the workshop, and about payment for the course. Since the grievor was taking the course, Ms Hamilton said it was possible that she had advised the grievor her attendance at the final workshop was mandatory. Ms Hamilton agreed that the grievor had raised the point that, if it was mandatory, she was entitled to payment under the collective agreement. Ms Hamilton said she had then raised with the grievor the impact which not taking the course might have on both the grievor's existing job share and her possible advancement to resource nurse.

Ms Hamilton acknowledged that May 15, 2004, the grievor sent her an e-mail in which the grievor again raised the provision in the collective agreement and sought payment for the course. Ms Hamilton forwarded the message to Annette Harrington, a member of the Employer's human resources staff, and asked for advice. While no written answer was provided to the grievor, Ms Hamilton said she recalled a telephone conversation with Ms Harrington at which time they decided to let the issue proceed through the normal process

if the grievor pursued the matter further.

The grievor, Ms Marcone, testified and her evidence on the background to this grievance was similar to that of the Employer witnesses. She has been employed by the Employer since 1990 and has worked primarily in the family birthing unit. At the time of the grievance she was working part time in a job share position. She said the job share was very important to her as it allowed her considerable flexibility in her work hours. The grievor was also a charge nurse on some shifts.

The grievor said that the MORE^{OB} course was introduced to her in the fall of 2002. She said she understood it was being brought in because of an increase in litigation in obstetrics and she understood that if everyone took the course it would help to standardize care and hopefully lead to a decrease in litigation. She said that she understood the course was required. She said she was given a copy of the course CD ROM by the core team without being asked if she wanted one. The grievor did not sign up for the course.

The grievor was the Union representative for the unit and said nurses asked her if they would be paid as the course was mandatory. The grievor said that she contacted her Unit President who advised her that if the course was mandatory the nurses were entitled to be paid. The grievor said that she raised the issue of payment with Lynne Julius, then the manager, who advised her that nurses would not be paid for their time spent "on line" but would be paid for the time needed for the workshop. The grievor said this conversation took place about the time the nurses received the CD ROMs in spring 2003, and Ms Julius said the course was mandatory for all staff. When the time came to pick a workshop date, the grievor said she was advised by Ms Julius that she would not be paid so she did not take the workshop.

In March of 2004 the grievor said that she was approached by Ms Hamilton who was then

the manager and Ms Hamilton told the grievor she was signed up for the workshop June 1, 2004. The grievor inquired whether the workshop was mandatory and Ms Hamilton said that it was. The grievor informed Ms Hamilton she was on vacation that week and was unable to attend. The grievor testified that Ms Hamilton told her that was the final workshop and that she had no choice about attending. The grievor testified that she was told she had to take the workshop, not simply that she had to take the workshop if she wished to complete year one, as Ms Hamilton had suggested in her testimony.

The grievor had another conversation with Ms Hamilton in April 2004 at which time she asked Ms Hamilton "point blank" whether attending the workshop was mandatory and Ms Hamilton said it was. The grievor testified that she replied that if it was mandatory she was asking for payment. The grievor said that Ms Hamilton replied that her understanding was if something was mandatory the hospital either paid for the tuition or paid the nurses for their time attending the course. The grievor said that she told Ms Hamilton that if she was not paid she would not attend. The grievor testified that Ms Hamilton indicated that if the grievor did not take the course she would have to look at the grievor's job share arrangement and also at the grievor's role as a charge nurse. I note that Ms Hamilton recalled having made a reference to the grievor's possible promotion to resource nurse rather than to the grievor's existing position as a charge nurse. In any event, the grievor said that she felt very threatened and therefore took the workshop.

The grievor testified that she sent the May 15 e-mail to Ms Hamilton indicating that she sought payment but received no written reply. She said that she and Ms Hamilton did have one further conversation in late May at which time Ms Hamilton advised her that she had changed her mind and the course was not mandatory. The grievor said that Ms Hamilton indicated the reason for the change was that the grievor had pointed out that under the collective agreement payment had to be made for mandatory courses, and that she did not

have the money to pay nurses so the course was no longer mandatory. The grievor said she still understood she had to do the course and she did the workshop. She said that Ms Hamilton did not say anything to address her concerns about her charge nurse position or her job share and at no point did Ms Hamilton advise the grievor that she was not required to attend the workshop.

The grievor acknowledged that when she felt the course was mandatory she had not done the workshop, but after Ms Hamilton had told her in May 2004 that the course was not mandatory, she had done the workshop. The grievor said this occurred because she felt threatened after the references to her job share and charge nurse position.

In terms of the time commitment, it took the students some 24-26 hours to complete the various components of the first year of this three year course.

I note two final points. Firstly, no nurse was disciplined for refusing to take the course. Secondly, although a few nurses did not take this course, it was unclear who they were and why they did not take the course - there were suggestions that perhaps they were nearing retirement or recently hired. I found the evidence regarding those nurses who did not take the course to be so vague as to be of no assistance in resolving the grievance.

III. PROVISION OF THE *COLLECTIVE AGREEMENT*

The following is the key provision of the parties' collective agreement expiring in 2004:

ARTICLE 9 - PROFESSIONAL DEVELOPMENT

. . .

9.07 When a nurse is on duty and authorized to attend any in-service program within the Hospital and during her or his regularly scheduled working hours the nurse shall suffer no loss of regular pay. When a nurse is required by the Hospital to attend courses outside of her or his regularly scheduled

> working hours, the nurse shall be paid for all time spent in attendance on such courses at her or his regular straight time hourly rate of pay.

. . .

IV. UNION POSITION

The Union submitted the issue was straight forward. If the grievor was required to attend this course outside her normal working hours she was entitled to be paid.

The Employer had spoken with nurses individually and sought participation from them, including the grievor. That was clearly outside the norm established by the Employer for voluntary courses. The Employer bought this course in advance, paying the tuition for some 60 students at the rate of $600 per student per year. In addition the Employer paid for space, computers and CD ROMs, etc. The Employer through its managers and the core team did follow-up with the participants, something which was not done in other voluntary courses.

The grievor understood the course was required. Ms Hamilton's notes indicate that she was aware that nurses felt forced to do the MORE^{OB} program. Knowing that, Ms Hamilton then followed up with the grievor. The grievor said she was told she had to attend the workshop. When the grievor sought payment for this required course, Ms Hamilton raised the issue of the grievor's job share arrangement and indicated that it might be in jeopardy if the grievor did not complete the MORE^{OB} course. At no time did Ms Hamilton say that the course was optional, something she could have done as she knew that nurses felt forced to take the course.

The Union submitted that there was a requirement that the grievor take the course whether I accepted the Employer evidence or the Union evidence. Ms Hamilton had agreed that the grievor had raised the issue of payment and the provisions of the collective agreement under

which nurses are to be paid for "required" courses. Ms Hamilton also agreed that she had herself then raised the issue of the grievor's job share and the risk that the grievor took in relation to her job share if she failed to complete the MORE^{OB} course. That could only have been seen as a threat to the grievor.

The grievor was only told she would not be paid after she pointed out in the e-mail that if the course was required, she was entitled to payment under the collective agreement. It was only then that the Employer said it was not mandatory and that she would not be paid, but the Employer gave as the reason that it had no money in its budget to fund payment for the nurses. Note that the Employer did not tell the grievor that she no longer had to attend. The Employer should not be allowed to circumvent the agreement through semantic games.

If I accept the grievor's evidence that Ms Julius indicated the course was required, that Ms Julius promised payment for the workshop, that Ms Hamilton indicated it was mandatory and that Ms Hamilton spoke of the risk to the grievor's charge nurse position, then clearly the course was required.

Either way one looks at the matter the grievor was required under the agreement to take this course outside her normal working hours and was entitled to be paid for her time.

The Union relied upon the following authorities: *Plummer Memorial Public Hospital and Ontario Nurses' Association* (March 11, 1986) unreported (Devlin); *Oshawa General Hospital and Ontario Nurses' Association* (May 1988) unreported (Barrett); *Hotel-Dieu Grace Hospital and Ontario Nurses' Association* [2004] O.L.A.A. No. 70 (Crljenica); *Re Steinberg Inc. and United Food and Commercial Workers Union, Local 486* (1985), 20 L.A.C. (3rd) 289 (Foisy); and *Jackman Manor and British Columbia Nurses' Union* (September 24, 1992) unreported (McPhillips).

V. EMPLOYER POSITION

The Employer said it would have been easy to direct that all nurses were required to take the MORE^{OB} course. But that did not happen.

The Employer asked that I note the timing of the grievance, some two years into the course. The Employer suggested that the timing indicated that the grievor knew the course was not required and only raised the issue after she came in on her holiday to take the workshop, concluded that this was unjust, and decided that the whole course must have been required.

The Employer and the employees had a shared interest in reducing risk on the unit. It was not simply in the Employer's interests but also in the nurses' interests that nurses take this course. Although the Employer provided incentives for nurses to participate, under the collective agreement payment for a nurse's time is not dependent on the course being of benefit to the Employer. Instead, payment is dependent on the course being required by the Employer. Absent some compulsion or sanction, it was clear the MORE^{OB} course was not required.

Ms Julius, Ms Martinoni and Ms Hamilton were all clear that there was no discussion with anyone other than with the grievor about payment for the course. It was clear that there was no sanction imposed on anyone who did not participate nor on those who dropped out of the course. Although it was true that the completion of the workshop was required in order to complete year one, no nurse was required to complete year one.

The Employer submitted that I must decide whether the Employer imposed a measure of compulsion on the nurses to get them to participate in this course. Without that compulsion,

the course does not fit within the provisions of Article 9.07 as the course was not "required". The fact that the grievor's existing job share might be affected or a future opportunity might be affected falls short of compulsion.

The Employer asked that the grievance be dismissed with respect to the grievor.

The Employer relied upon the following authorities: *Belleville General Hospital and Ontario Nurses' Association* (March 30, 1990) unreported (P. C. Picher); *St. Mary's General Hospital, Kitchener, and Ontario Nurses' Association* (September 5, 1995) unreported (Beck); *Re Wexford Inc. and Canadian Union of Public Employees, Local 3791* (2001), 96 L.A.C. (4th) 153 (Albertyn); *Re University Hospital (U.B.C. Site) and British Columbia Nurses' Union* (1998), 1 L.A.C. (4th) 382 (Hope); *Health Employers Assn. of British Columbia v. British Columbia Nurses' Union* [2004] B.C.C.A.A.A. No. 34 (Hall); *Re Sensenbrenner Hospital and Service Employees International Union, Local 204* (2002), 115 L.A.C. (4th) 434 (Brent); and *Vancouver General Hospital v. British Columbia Nurses' Union* [2004] B.C.C.A.A.A. No. 30 (Korbin).

VI. CONCLUSIONS

There are two issues to be decided:

1. What is the meaning of "required" in Article 9.07? and,
2. Was the grievor "required" to take the MORE^{OB} course?

The meaning of required

My first task is to determine what the parties intended by "required" in this provision of the collective agreement and, as with any provision in a collective agreement, it must be

interpreted in context. The context here is a workplace with a large number of nurses and other professional employees where continuing education is common. With the many developments occurring in medical care, professional employees such as nurses wish, and are expected, to keep current. These facts were recognized at the hearing.

In addition, it is clear that better educated and more knowledgeable nurses are of greater value to the Employer. All other things being equal, those better educated and more knowledgeable nurses are more likely to be promoted to positions of increased responsibility.

In that context it is reasonable for the Employer to inform its nurses of educational opportunities and to encourage nurses to avail themselves of those opportunities. In encouraging nurses to take courses it is also reasonable for the Employer to remind its nurses that it will favour its better educated nurses for future promotions.

This collective agreement entitles nurses to payment for those courses which the Employer requires them to take. Accepting that there is an expectation that nurses will engage in continuing education, and that better educated nurses are more likely to advance in their careers, my task is to determine where on a continuum from casually mentioning a course, on the one end, to advising a nurse she will be fired if she or he does not take a course, on the other end, does the Employer "require" a nurse's participation.

The issue of the meaning of required, or its synonym compelled, in the context of an employee taking a course, or attending a meeting, has been considered on numerous occasions in the awards cited above. The parties drew my attention to various dictionary definitions of "require" contained in those cases. The definitions include "to demand, or to request something of, authoritatively", "to insist upon" and "to compel". Those definitions suggest "require" is considerably more that a simple request - there must be an element of

insistence or compulsion.

This provision has already been interpreted by other arbitrators and once a provision has been interpreted, the parties to a collective agreement normally order their affairs on the basis of that interpretation. Arbitrators also tend to follow earlier interpretations. I turn to the awards under this agreement and to the awards interpreting similar provisions in other collective agreements.

I agree with many other arbitrators that "require" means more that a mere request and suggests an element of compulsion or necessity. The element of compulsion or necessity need not be discipline - the lack of a disciplinary response for failing to attend is not determinative of whether attendance is required. On this point I agree with, for example, arbitrator M.G. Picher in *Re Taggart Service Ltd. and U.F.C.W., Loc. P918* (1989), 6 L.A.C. (4th) 279) cited in *Re Wexford Inc. (supra)* who was dealing with a question of whether an employee was compelled to attend an employer meeting. Arbitrator Picher noted that there were two types of compulsion - legal compulsion on the one hand and practical compulsion on the other hand. Legal compulsion - e.g. would a failure to attend attract discipline - is important but employees are sometimes compelled by other forms of pressure and those also need to be considered.

The notion of practical compulsion was considered more fully by Arbitrator Hope in *Re University Hospital (supra)* dealing with an issue of whether a nurse had to take a particular course. Applying the language of that collective agreement, Arbitrator Hope concluded that "However the language of the provision is examined, it appears to contemplate that a request must be accompanied by some measure of compulsion" (p. 387), and in that sense is similar to the provision before me. The Board there went on to find:

> . . .a breach of [the agreement] requires that the union establish that a specific employee or group of employees were requested by the employer to take a course in circumstances which implied some

> sanction or consequence in terms of the employment relationship in the event the employee refuses. The range of consequences could include disciplinary action up to and including dismissal through to an adverse impact on the eligibility of the individual nurse for promotion or other career development. (p.387-388)

I agree with some of Arbitrator Hope's conclusions. I find that "required" in this context means a request, or indication of expectation, accompanied by a measure of compulsion. The compulsion may be a threat of discipline but it may also be an indication of an adverse impact on existing employment, whether it be work assignment, current position, or otherwise.

However, in the context in which I must interpret this collective agreement, I am unable to think of any situation in which encouraging a nurse to take a course and indicating that the course will help in her or his career advancement, or indicating that successful completion of a course is a prerequisite for advancement to another position, would make the nurse's attendance in the course "required". Under this collective agreement, additional education is quite properly considered essential to many promotions and, for the Employer to acknowledge that, does not constitute compulsion. In interpreting this agreement, I disagree with Arbitrator Hope and I conclude that the measure of compulsion needs to relate to the employee's existing position.

Was the grievor required to take the MORE^{OB} course

The Employer communicated a clear expectation that obstetrical nurses, including the grievor, would take the MORE^{OB} course. Before even speaking to the nurses, the Employer signed a contract for the course stating that 80% of the nurses would take the course. The Employer, through the nurse manager, approached all the nurses, pitched the course to them and encouraged them to take it. The manager kept close track of which nurses were interested in the course. The Employer established a core team to help promote the course

and keep track of progress. Repeated mention was made of this course in staff meetings, memos and e-mails sent to all staff, not simply to those members who were interested in taking the course. When interest waned, the Employer re-established the core team and sent a memo to announce the "re-birth" of the program - a memo that once again went to all staff, not simply to those who were taking the course. The Employer invested not only in the tuition but also in computers for the course and it made space available on an on-going basis for the course. This course was promoted like no other voluntary course.

With respect to the grievor, there were multiple requests and a clear expectation that the grievor would take the course. The fact that she had not completed year one by doing the workshop was noted and, with the manager's blessing, a member of the core team contacted her to encourage her to complete it. Then Ms Hamilton, the new manager, discussed the completion of year one with the grievor. Ms Hamilton raised the possibility that failure to complete the course might have an adverse impact on the grievor's existing job share arrangement, something which was of great importance to the grievor.

There was a discussion between the grievor and Ms Hamilton about the issue of the workshop being required although, as noted, their recollections of this differed. It may be that there was a misunderstanding and that Ms Hamilton was simply indicating the workshop was required if the grievor wanted to complete the first year of the program, and that Ms Hamilton did not say that the grievor was required to complete the course. Given that Ms Hamilton was well aware that nurses felt forced to take the course, if her position was simply that the workshop was a necessary part of an optional course, she might have made that position clear. In any event, Ms Hamilton advised the grievor that she had to attend the June workshop.

The matter did not end there. Prior to taking the workshop, the grievor sent an e-mail to Ms

Hamilton May 15, 2004, asking for payment for the time she had already spent on what the grievor indicated was a required course, and seeking payment for the time she would be spending on the June 1 workshop. Ms Hamilton forwarded the grievor's e-mail to Annette Harrington, a member of the Employer's human resources staff, seeking help "with the correct answer". Ms Hamilton did not recall making any reply to the grievor before the grievor took the workshop. Ms Hamilton testified that she thought she had a telephone conversation with Ms Harrington and that they decided to simply let the matter go through the normal process if the grievor took it further. I am left with the question of why, assuming the Employer felt this was a truly voluntary course, didn't either Ms Hamilton or Ms Harrington simply advise the grievor that she was required to take neither the course nor the workshop?

The grievor testified that after her e-mail regarding payment, Ms Hamilton did make her position on payment somewhat clearer . The grievor said that Ms Hamilton then indicated that the course was no longer required, the reason being that she did not have money in her budget to pay the nurses for the time involved.

I find that it was reasonable for the grievor to conclude the course was required. The course was heavily promoted, promoted like no other voluntary course had ever been; attendance was carefully tracked; every nurse was advised of the progress of the course whether taking the course or not; and both the manager and core team members were doing follow up. The grievor was given many indications that she was expected to take the course. I add to this the statement by Ms Hamilton that the grievor had to attend the June workshop, and Ms Hamilton's indication that the continuation of the grievor's existing job share might also be in jeopardy if she did not do so. These comments amount to a measure of compulsion. I conclude that the grievor was, in a practical sense, required to take this course.

I also note that there was a reference to an impact upon either the grievor's existing charge nurse position (the grievor's evidence) or the prospects for the grievor's advancement to resource nurse (Ms Hamilton's evidence). It appeared that the conversation was ambiguous and that each had a different understanding of the discussion. While the former might be compulsion, I would find the latter not to be. However, it is not necessary that I make a decision on this aspect of the dispute.

Finally, although Ms Hamilton did not remember the conversation, I conclude that Ms Hamilton did provide the late and somewhat ambiguous advice to the grievor that the course was no longer required as there was no money in the budget to pay nurses. However, I find that this information was insufficient to transform the course into a voluntary course.

In summary, the grievance is allowed with respect to the grievor Marcone. I direct the Employer to pay her for the first year of the MORE^{OB} course in accordance with Article 9.07 of the collective agreement. I leave it to the parties to determine the amount.

I remain seised to deal with any issues which may arise in the implementation of this award, as well as with the grievance as it relates to the grievor Fernandez.

Dated in London, Ontario, this 21st day of February, 2005.

Howard Snow, Arbitrator