

## MINUTES OF SETTLEMENT

BETWEEN:

CANADIAN UNION OF PUBLIC EMPLOYEES  
LOCAL 2974

AND

CORPORATION OF THE COUNTY OF ESSEX

WHEREAS the County has adopted and implemented a revised Attendance and Wellness Policy (Policy Number 07-002) (with a last revision date of January 20, 2016) (“the AWP”);

AND WHEREAS Local 2974 filed Policy Grievance 2015-05-21B with respect to the AWP;

AND WHEREAS Local 2974 also filed individual grievances on behalf of certain employees affected by the AWP in 2015 (i.e. 2016-01-08A (Hermann); 2016-01-08B (Lamothe); 2016-01-08D (Shepley); 2016-01-08E (Kidd); 2016-01-08F (Nicholls); 2016-01-08H (Metcalf); 2016-01-08I (Quick); 2016-01-08J (Ward); 2016-01-08K (Murray); and 2015-05-21B (Policy)) ;

AND WHEREAS Policy Grievance 2015-05-21B was referred to Michael Watters as a sole arbitrator;

AND WHEREAS the parties hereto wish to resolve these grievances without litigation;

THEY DO HEREBY AGREE AS FOLLOWS:

1. With regard to the interpretation and application of the AWP in respect of personal emergency leave days under section 50 of the *Employment Standards Act, 2000 (ESA, 2000)*, the parties agree as follows:

- a. The County shall not count personal emergency leaves under the *Employment Standards Act, 2000 (ESA, 2000)* as a “day” or “an occurrence” of “non-occupational illness or injury” when determining whether the employee’s number or rate of such absences comprises an “absence concern” under the AWP.

- b. In accordance with section 50(7) of the *ESA, 2000*, the County may require an employee who takes a personal emergency leave to provide evidence reasonable in the circumstances that he or she is entitled to such leave. The parties acknowledge that an employee who takes a personal emergency leave without adequate justification for same may be subject to discipline, subject in all cases to the applicable collective agreement.
  - c. An employee who wishes to take a day (or part thereof) of paid sick leave under article 19 of the Local 2974.1 or Local 2974.2 collective agreement (e.g. first day of hospitalization, first day of accident or second day of illness) as a personal emergency leave day under section 50 of the *ESA, 2000* too, shall advise the County that he or she will be doing so in accordance with section 50(3) of the *ESA 2000*, in which case the County shall treat the day (or part thereof) as a paid sick leave day under Article 19 and a personal emergency leave day under the *ESA 2000*, provided the conditions for taking such leaves under that Act are satisfied.
  - d. An employee who takes a day (or part thereof) of unpaid sick leave under article 19 of the Local 2974.1 or Local 2974.2 collective agreement (e.g. 1<sup>st</sup> day illness) shall be presumed to have requested that he or she wishes to take that day (or part thereof) as a personal emergency leave day under section 50 of the *ESA, 2000* too, unless he or she specifically advises the County that he or she does not wish that it be treated as a personal emergency leave under the *ESA, 2000*. In this case, unless the employee specifically advises otherwise, the County shall treat the unpaid sick leave day (or part thereof) as a personal emergency leave day under the *ESA 2000*, provided the conditions for taking such leave under that Act are satisfied.
2. With regard to the interpretation and application of the AWP in respect of absences caused by "disability" (under the Human Rights Code), the parties acknowledge and agree that:
    - a. Under the AWP, the County may, in its discretion, decide not to count such absences as a "day" or "an occurrence" of "non-occupational illness or injury" when determining whether the

employee's number or rate of such absences comprises an "absence concern" under the AWP.

- b. The County will exercise this discretion reasonably and in accordance with the *Human Rights Code*.
  - c. While the County has a legitimate interest in monitoring non-culpable absences, including absences related to disabilities under the *Code*, under the AWP, the County will provide a flexible individualized approach to ensure consideration of specific and various employee concerns and/or needs.
3. Absences of an employee while in receipt of LTD benefits shall not be counted a "day" or "an occurrence" of "non-occupational illness or injury" when determining whether the employee's number or rate of such absences comprises an "absence concern" under the AWP. The County may nonetheless address and respond to such employee's excessive innocent absenteeism, but not in any mechanical or mandatory fashion under the AWP but individually, in light of all relevant factors, and in accordance with the Code throughout.
4. Subject to the foregoing, for the Local 2974.1 and Local 2974.2 bargaining units, a qualifying absence concern shall be identified based on the following:
- a. where an employee is absent due to non-occupational illness or injury in any calendar quarter for 3 or more "occurrences",
  - b. for a full-time employee (including an employee who is temporary full-time for the entire calendar quarter) who is not an office and clerical employee, where such employee is absent from work due to non-occupational illness or injury in any calendar quarter more than  $\frac{1}{4}$  of the employee's regularly scheduled work days (or 130 or more of the employee's regularly scheduled work hours),
  - c. for a part-time employee who is not an office and clerical employee, where such employee is absent from work due to non-occupational illness or injury in any calendar quarter more than  $\frac{1}{4}$  of the employee's regularly scheduled work days (or 60 or more of the employee's regularly scheduled work hours), and/or

- d. for an employee who is an office and clerical employee, where such employee is absent from work due to non-occupational illness or injury in any calendar quarter for 5 or more the employee's regularly scheduled work days.
5. The County will not advise employees of any possible termination of employment due to attendance concerns at the First or Second Meeting or in correspondence which follows such Meetings, unless exceptional circumstances apply in which case Local 2974 will be advised, and a meeting with Local 2974 shall be held in advance to discuss the matter.
6. As provided for in the AWP, the County will not unreasonably violate an employee's privacy and shall act in compliance with all applicable privacy legislation and the collective agreements, when requesting personal health information from employees under the AWP.
7. Effective on the date of execution of this agreement, at the end of the calendar quarter upon completion of the compilation of the names of employees (in the Local 2974 bargaining units) who are impacted by the AWP, the County agrees to review the list of affected employees with Local 2974 (President/representatives) in order to give Local 2974 the opportunity to advise the County of any issues or concerns which the County may wish to explore further.
8. When appropriate, the County will meet with individuals in advance when it is known or suspected that an affected employee has/had attendance issues in a given quarter due to traumatic or extenuating circumstances, and that in such cases the employee may be given a "grace period" of one quarter where consideration is warranted at the discretion of the County.
9. As the parties have had an opportunity to gain a better understanding of and develop a new approach to the AWP, the County will recommence the AWP, effective the first quarter of 2016. This is being done on a one-time good faith basis.
10. The County shall rescind the AWP letters for all Local 2974.1 and Local 2974.2 bargaining unit employees which relate to the 3<sup>rd</sup> and 4<sup>th</sup> quarter of 2015. Hence, effective the first quarter of 2016, all such employees shall be treated under the AWP as if they are not yet at any Meeting step under the AWP.

11. The parties agree that these minutes of settlement comprise full and final settlement of, and Local 2974 does hereby withdraw without prejudice to any other matter between the parties, the following grievances: 2016-01-08A (Hermann); 2016-01-08B (Lamothe); 2016-01-08D (Shepley); 2016-01-08E (Kidd); 2016-01-08F (Nicholls); 2016-01-08H (Metcalf); 2016-01-08I (Quick); 2016-01-08J (Ward); 2016-01-08K (Murray); and 2015-05-21B (Policy).
12. Michael Watters shall be seized with respect to the interpretation and implementation of these Minutes of Settlement.

DATED THIS 20<sup>th</sup> DAY OF JUNE 2016

  
Local 2974

  
The County