PROVINCE OF NEW BRUNSWICK

IN THE MATTER OF AN ADJUDICATION UNDER THE *PUBLIC SERVICE LABOUR RELATIONS ACT*, R.S.N.B. 1973, c.P-25

AND IN THE MATTER OF AN ADJUDICATION

BETWEEN

CUPE 1252
(NB Council of Hospital Unions)

Grievor

\- and -

THE PROVINCE OF NEW BRUNSWICK
(FINANCE AND TREASURY BOARD)

Employer

ADJUDICATOR: Robert D. Breen, Q.C.

APPEARANCES: For the Grievor
Trent Snikkers

For the Employer
Andrea Folster, Q.C.

METHOD OF HEARING:
WRITTEN SUBMISSIONS: June 28, 2022
VIDEO CONFERENCE: July 8, 2022

DATE OF DECISION: August 10, 2022

DECISION

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I. INTRODUCTION

1. This is the Grievance of CUPE 1252 (NB Council of Hospital Unions) (“Union”), alleging violation of Article 25 – Holidays provision of the Collective Agreement between it and the Employer, Finance and Treasury Board (“Employer”), negotiated on behalf of all employees of the NB Public Sector Clerical, Stenographic and Office Equipment Operational, Institutional Services, Patient Services Group, and this by a denial of the Employer to provide a paid holiday under Article 25.01 on September 30, 2021, for the first National Day for Truth and Reconciliation (“NDTR”).

2. A referral to adjudication over this difference was made pursuant to s. 92 of the *Public Service Labour Relations Act* and, by Order dated October 18, 2021, the Chair of the Labour and Employment Board appointed the undersigned as Adjudicator to hear and determine the Union Grievance of October 6, 2021.

3. Article 25 – the Holidays provision of the parties’ renewed, as well as a previous Collective Agreement, provides, in part, as follows:

> ARTICLE 25 - HOLIDAYS:
>
> 25.01 All full-time employees shall receive one (1) day paid leave for each of the following holidays each year. This benefit shall be pro-rated for part-time employees in accordance with Article 6.01.
>
> (a) New Year's Day;
> (b) Family Day;
> (c) Good Friday;
> (d) Easter Monday;
> (e) the day fixed by proclamation of the Governor-General-in-Council for the celebration of the birthday of the Sovereign;
> (f) Canada Day; (will be kept and observed as July 1);
> (g) New Brunswick Day;
> (h) Labour Day;
> (i) the day fixed by proclamation of the Governor-General-in-Council as a general day of thanksgiving;
> (j) Remembrance Day;
> (k) Christmas Day;

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(l) Boxing Day; and
(m) all other days proclaimed as holidays by the Governor-General of Canada or the Lieutenant-Governor of the Province of New Brunswick.

[Underlining for emphasis]

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II. PRESENTATION

4. The manner of presentation for this referral to Adjudication[1], as proposed by the parties, was to provide this Adjudicator an Agreed Statement of Facts, with Exhibits attached, and written Submissions to be received by me no later than June 28, 2022. It was also agreed that video conference response presentations would then be made before me on July 8, 2022.

5. The Joint Agreed Statement of Facts entered by the parties reads as follows:
The Union and the

1. The Union and the Employer were parties to a collective agreement respecting the Clerical, Stenographic & Office Equipment Operation, Institutional Services and Patient Services Group (the CUPE 1252 Collective Agreement), with an expiration date of June 30, 2019. The terms of this agreement were extended by the statutory freeze provisions of the *Public Service Labour Relations Act,* R.S.N.B. 1973, c. P-25, and a new collective agreement expiring June 30, 2024 is now in force. The text of the collective agreement is attached (Exhibit 1)

2. On September 29, 2020, Bill C-5, *An Act to amend the Bills of Exchange Act, the Interpretation Act and the Canada Labour Code (National Day for Truth and Reconciliation),* was introduced in the House of Commons.

3. *An Act to amend the Bills of Exchange Act, the Interpretation Act and the Canada Labour Code (National Day for Truth and Reconciliation),* S.C. 2021, c.11 received Royal Assent on June 3, 2021.

[1] There were no preliminary issues raised and the parties waived any time prescriptions as to the release of an Award.

4. On September 30, 2021, all employees in the CUPE 1252 bargaining unit, were required by the employer to report for work as scheduled or to use personal earned leave credits to cover their hours of work.

5. On October 6, 2021, the Union filed a grievance on behalf of the CUPE 1252 bargaining unit alleging a violation of Article 25 of the collective agreement as a result of the Employer's refusal to provide a holiday on September 30th (National Day for Truth and Reconciliation) **(Exhibit 2).**

6. On October 18, 2021, the Employer replied to the grievance denying a violation of the collective agreement on the basis that a holiday proclaimed by the Governor-General of Canada applies to holidays observed throughout Canada and not federal holidays applying to employees in federally regulated workplaces only **(Exhibit 3).**

7. On October 19, 2021, the Union referred the grievance to adjudication.

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6. As cited in the above, attached as Exhibits before me are the text of the current Collective Agreement, the Union Grievance and the Employer Reply to the Grievance. As shown, the parties' Agreed Statement of Facts references Bill C-5[2], a federal *Act* (NDTR) which amended the federal *Acts* named, with Royal Assent given on June 3, 2021. As expressly provided, the amendments acted to add the NDTR holiday date, September 30, to each of the *Acts* named.

7. The express Purpose of Bill C-5 is set out in s. 1 of the Bill below:

Purpose of this Act

1 The purpose of this Act is to respond to the Truth and Reconciliation Commission of Canada's call to action number 80 by creating a holiday called the National Day for Truth and Reconciliation, which seeks to honour First Nations, Inuit and Métis Survivors and their families and communities and to ensure that public commemoration of their history and the legacy of residential schools remains a vital component of the reconciliation process.

[2] Bill C-5 and the Hansard page of the Senate debates of June 3, 2021 were filed with me.

8. There is no dispute that the amendments under Bill C-5, cited under "Her Majesty, by and with the advice and consent of the Senate and the House of Commons of Canada", did not include an amendment to the federal *Holidays Act*. Bill C-5 did not add September 30 as a "legal holiday" under that *Act* and, while following enactment the NDTR was observed in New Brunswick, it was not recognized as a statutory holiday.

III. ISSUES

9. As settled in the parties' Agreed Statement of Facts, the central issue before me in this case is as to the question set by the Employer in its written Submission; *i.e.*, are members of the CUPE 1252 bargaining unit, as described above, entitled to a paid holiday on September 30 for the NDTR September 30 date in accordance with the terms of Article 25.01 of the parties' Collective Agreement. A second issue raised before me by the Union is as to whether the parties' Article 25.01 obligates the Employer to now compensate all affected bargaining unit employees by reason of it not recognizing the September 30 NDTR in 2021 as holiday under this provision.

IV. THE POSITIONS OF THE PARTIES

10. Both parties are in wide agreement before me as to the instructions settled in arbitration caselaw and the leading arbitral texts as to the proper approach to be taken to the interpretation of a collective agreement, *i.e.*, as directed in the authoritative Brown and Beatty text (*Canadian Labour Arbitration*), 5th ed, (Toronto, Thompson Reuters, 2021, looseleaf), at paras 4:20 and 4:21:

> It has often been stated that the fundamental object in construing the terms of a collective agreement is to discover the intention of the parties who agreed to it, and,
>
> In searching for the parties intention with respect to a particular revision in the agreement, arbitrators have generally assumed that the language before them should be viewed in its normal or ordinary sense…

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11. The Employer too, as has been referenced in several arbitration awards since, cites from the approach directed by the New Brunswick Court of Appeal in *Irving Pulp and Paper Ltd. v. Communications, Energy and Paperworkers Union of Canada, Local 30*, 2002 NBCA 30 at para. 10, in part, below:

> …the presumption is that the parties are assumed to have intended what they have said and that the meaning of provision of a collective agreement is first sought in the express provisions…

12. The Union, turning directly to Article 25.01 says, first, that the condition of a proclamation made, as set out in the language of the Collective Agreement at (m) of Article 25.01 was clearly met here, *i.e.*, Royal Assent was given by the Governor General to Bill C-5 on June 3, 2021, following the Bill proceeding through Parliament and the Senate. The Union says to limit the inclusion of the NDTR under Article 25.01(m), as the Employer seeks to do, if not a holiday under the federal *Holidays Act*, "would be in opposition to the spirit and intent" of the parties' collective agreement.

13. The Union also argues that the context set by the list of holidays showing in Article 25.01(a) to (l), and, as is found in this Article at (1) and (m), the use of "and" conjunctively prior to (m) (*i.e.*, to add all other holidays proclaimed to the existing list) signals the agreement made that the intent of the language in Article 25.01(m) is to ensure that any other holidays proclaimed, federally or provincially, are to be paid holidays.

14. The Employer, addressing paragraph 25.01, however, says that the NDTR has not been proclaimed as a holiday by the Lieutenant Governor of New Brunswick, or in any provincial enactment and, while acknowledging that the federal Bill C-5 is an *Act* that amends certain federal legislation, it did not amend the federal *Holidays Act*. While then acknowledging that the Governor General, as head of state, makes proclamations by giving Royal Assent to legislative enactments, it also says that the Governor General communicates by statute and that a reasonable interpretation of the parties' intention, by specifically referencing the Governor General in Article 25.01(m), is that a paid holiday would be only days subsequently added by amendment to that *Act*.

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15. The Employer also cites from the arbitration decisions in *Cape Breton Victoria Region Centre for Education* (2020), 314 LAC 4th 196, and *Vancouver Hospital* (1996), 54 LAC 4th 35, here to stress that benefits that incur monetary costs to an employer must be clearly expressed. Here, it argues that is not the case and that if a right to a benefit is not clearly expressed, the matter is then an issue that is best resolved through collective bargaining.

16. The Union in support of its position advanced observes that the NDTR holiday has been a disputed issue across Canada and refers to a number of arbitration Awards which, it asserts, provide clear support for the Union's grievance. The caselaw referenced is listed below:

> *AUPE and Alberta Health Services (848846)*, *Re* 2022 CarswellAlta 685
>
> *Windsor (City) and CUPE, Local 543* (40-21), *Re* 2022 CarswellOnt 1649
>
> *LIUNA, Local 1059 and London & District Concrete Formwork Contractors' Assn. (Statutory Holiday)*, *Re* 2021 CarswellOnt 13607
>
> *UFCW, Local 1006A and National Grocers Co.* (GR0148), *Re* 2021 CarswellOnt 14694
>
> *Olympic Motors (WC1) Corp. and IAMAW, Local 1857 (National Day for Truth and Reconciliation)*, *Re* 2021 CarswellBC 3513
>
> *Sodexo Canada Ltd. and LIUNA, Local 1059*, *Re* 2021 CarswellOnt 20692
>
> *Mission Hill Vineyards and SEIU, Local 2 (National Truth and Reconciliation Day)*, Re 2022 CarswellBC 1081
>
> *Terrapure Environmental and USW, Local 2009*, *Re* 2021 CarswellBC 4110
>
> *Manalta Coal Co. and Alberta Strip Miners Union, Local 1595*, *Re* 1990 CarswellAlta 993

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17. Particular reliance is taken by the Union on the decision in the *AUPE* case, as here a public sector case, where the language used referred to a "proclamation of a holiday" by the Province of Alberta or by the Government of Canada. It is noted that the arbitrator here expressly discussed the interpretation of the word "proclaimed" and found, as now argued the case, that upon receiving Royal Assent the Bill was "proclaimed into law" and must be recognized by the parties as a holiday in the parties' Collective Agreement.

18. The Union goes then to the *Windsor* and *London District Concrete Formwork* cases cited, again public sector decisions which also accept that the NDTR holiday must be recognized as a paid holiday under the terms of the Collective Agreement found there, while observing that the words used in those Agreements were less clear than as seen here, or in the language of the *AUPE* case. As noted, in the *Windsor* case, discussions focused on the interpretation of a "competent authority", and in the *District Concrete Formwork* case, an analysis had to be made on two articles in the collective agreement to determine the "relevant government" referred to. It is stressed, nonetheless, that these cases so too support the position advanced by the Union – that when a government authority proclaims, declares or otherwise announces a holiday, it must be recognized as a paid day by the parties under similar proclamatory language as shown in Article 25.01(m).

19. Addressing the *National Growers* case cited, a private sector case, it is acknowledged by the Union that while the employer's position there was that the federal Government distinguished between legal and general holidays, the arbitrator found that a "plain and ordinary meaning" of "legal" should be given – that any legal holiday authorized by either the federal or provincial government should be added to the Collective Agreement. Also, as to the *Olympic Motors* case cited, reference is made to the wording used of "any other day proclaimed by both the provincial or federal government", and the arbitrator's conclusion that the word "or"

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there did not limit the number of holidays – *i.e.*, the NDTR day would qualify as a holiday if "proclaimed" by either government.

20. Continuing with, as is claimed, like cases, reference is made by the Union to the *Sodexo Canada* case, again a grievance granted and recognizing the NDTR as a holiday, the arbitrator there addressing, as advanced here ought apply, a wide and inclusive interpretation to language which read "The Employer will recognize any new Statutory Holiday proclaimed by the government" – a like inclusive approach, it submits, is called for here.

21. Further, from its filed cases, referral is made by the Union to two cases where the NDTR holiday was not recognized. First, as observed, in the *Mission Hill Vineyards* case the language there directed that both the federal and provincial governments must have proclaimed the holiday in order for it to be added to the collective agreement. So too the Union speaks to *Terrapure Environmental* case, there a link taken to a failure of the parties to specifically include Easter Monday, a federal holiday, *i.e.*, a finding made that if an intent to include all federal holidays, as argued, the Easter Day would have been included. The Union, while noting this case offered a "different approach", also notes that Easter Monday is a listed holiday under Article 25.01 here.

22. As well, as to the caselaw relied upon, the Union cites from the recently issued New Brunswick public sector decision in *IBEW Local 37 v. NB Power Corporation*, date of decision January 26, 2022, an Award also addressed by the Employer. The Union, for its part, stressed that this case addresses a public sector employer in New Brunswick, and is a case where the language in issue, as it puts it, is "similar" – and upheld a union grievance and ordered financial compensation to affected members for a failure to recognize the NDTR day. The Union highlights that while much of the decision focused on the words "appropriate federal

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authority" the Collective Agreement language there, similar to here, speaks to "any other day proclaimed".

23. The Employer for its part, however, says the *NB Power* case can be distinguished, based on the express language used – *i.e.*, there proclaimed by an "appropriate Federal or Provincial authority". It argues that much of the analysis taken in NB Power was about whether the union members were claiming the benefit of a holiday proclaimed by a government without jurisdiction over its members. It stresses again – specific language is required to achieve the result claimed here.

24. The Employer further asserts that the federal government has left it to the provinces to decide if the NDTR would be recognized as a public holiday – it stresses that as a Constitutional Monarchy, the duties of the head of state and the head of government in Canada are distinct.

25. As follows next in its written submission, the Employer cites the arbitration award in *Compass Minerals Canada Corp.* (2017), 284 LAC 4th 54, the arbitrator in that case addressing an interpretation of a collective agreement that did not provide for supplementary vacation with pay, with an instruction given that a grievance arbitrator cannot "rewrite" the parties agreement in the absence of an ambiguity established or resolved by extrinsic evidence – that an arbitrator's task is to determine what the collective agreement provides or requires, not what he thinks it should provide or require.

26. The Employer closes in its written submission by asking that the Union Grievance be dismissed – *i.e.*, as follows from its central argument, to say again that the NDTR is not a holiday proclaimed by the Governor General entitling employees here to the significant benefit of a new paid holiday.

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27. In its closing position, the Union restates its principal argument points, summarized below:

1. The caselaw in support of a recognition of NDTR is overwhelmingly in favour of this Grievance;

2. Citing *Manalta Coal Co*., the caselaw points to a broad approach to the meaning of the words proclaimed or declared in a collective agreement;

3. The condition precedent here of a proclamation made was met when the Governor General gave the communication of Royal Assent on June 3, 2021;

4. There is no jurisdictional question here - the parties have addressed the exact scenario of "any day proclaimed" and agreed that federally proclaimed holidays must be included under Article 25.01.

28. Finally, the Union restates its position that the NDTR day, called upon to be added to the Collective Agreement, calls for all affected bargaining unit employees to be made whole – which must include an order for compensation to be paid to these employees for the first NDTR day on September 30, 2021.

29. The response submissions via teleconference of the parties were heard on July 8, 2022. The Union's position is to say that there is no jurisdictional issue involved in this case and that this case is to be determined by the Collective Agreement terms – which Agreement includes a listing of the federal Easter Monday as a paid holiday. The Union also stresses once more the fact that the parties' Collective Agreement speaks to "all other days" as holidays in (m) of Article 25.01 – and repeats its contention that these words cannot now be limited to days listed in the federal *Holidays Act* only. The Union again cites the several NDTR cases cited and relied upon – as it puts it, cases which support the Union's position to new holidays proclaimed.

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30. Addressing then the Employer's position taken as to the *NB Power's* decision as being somehow distinguishable, the Union says that it, as the other NDTR cases cited by the Union, lead to a like result – that a reference to any or all holidays proclaimed is consistently applied in the caselaw cited – to recognize the now enacted NDTR holiday.

31. Turning then to an alleged cost factor, as raised by the Employer as important here, it is pointed out by the Union that each of the public sector cases cited by it resulted in make whole orders – and compensation ordered due. Further, it says that the *Vancouver* case, cited by the Employer, is an instance where, in effect, there would be a call made for new language – it stresses the point: no new language is required in the Article 25.01(m) position argued by the Union here. It also repeats its central point: to reassert that the parties' Collective Agreement at Article 25.01(m) speaks to when a new holiday is proclaimed by either a federal or provincial government.

32. The Employer's position in response is to stress again that the Collective Agreement in this case references a proclamation of the Governor General – not as in the other cases cited by the Union, which speak to the provincial and/or federal governments. As such, it is restated that because of this proclamation distinction settled upon, the federal *Holidays Act* applies – that this is how the Governor General's proclaims holidays. As a result, it is submitted in this case that in the absence of a holiday proclamation under the federal *Holidays Act*, the question of a New Brunswick NDTR Holiday is now left to the Province to determine – or to negotiate.

33. A referral to the language of New Brunswick's *Days of Rest Act* was made by this Adjudicator here and a reference there to a "proclamation" by the Governor General language found. The response of the Employer, it is noted, however, was to

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say that the *Days of Rest Act* really finds no application here – a seven-day continuous operation in place.

34. The Employer also makes reference to the cost factor again as important – that this fact should be taken as a consideration in support of the Employer's submission.

35. Of note, brief replies to these response positions were proffered. The Union spoke to the Employer's response arguments as "semantics", and cites the federal *Royal Assent Act*. The Employer once more repeats its position that it is through the federal *Holidays Act* that the Governor General proclaims holidays – and that this did not happen here.

V. ANALYSIS AND REASONS

36. It is plainly accepted in this NDTR adjudication reference that there is no dispute that arises over a division in powers, or a need by this Adjudicator to address separate collective agreement terms. The issue for determination here falls squarely under a consideration of the words of the parties' Article 25.01 – part of the parties' Holidays provision – in particular an interpretation and application of the choice of the language found in (m) of Article 25.01, following (l); *i.e.*, "and" … "all other days proclaimed as holidays by the Governor-General of Canada or the Lieutenant-Governor of the Province of New Brunswick".

37. To the investigation to be followed here, it is helpful, first, to look to the holidays listed in the parties' Agreement that precede (m) of Article 25.01. As clear, there are the three legal holidays listed under the federal *Holidays Act* – argued here by the Employer as how the Governor-General of Canada makes proclamations and communicates by statute.

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38. However, under Article 25.01 (a) to (l), in addition to the three legal holidays under the federal *Holidays Act*, there are other statutory holidays listed, provincial and federal, including NB's New Brunswick Day, and the federal Easter Monday Day. In their Collective Agreement, the parties can then be said to have clearly recognized holidays in Article 25.01 which are taken from different sources – federal and provincial – with holiday benefit obligations for each following. I am satisfied that this immediate context set in Article 25.01 (a) to (l) is informative to the interpretation and application of the inclusive Article 25.01 (l) "and" (m).

39. I turn then to the NDTR holiday, the intent of which, under the Purpose provision set in Bill C-5, is stated as a response to the Truth and Reconciliation Commission of Canada's call to action No. 80 – to create a holiday called the National Day for Truth and Reconciliation.

40. This federal Bill included amendments to several federal statutes and received Royal Assent by written declaration of the Governor-General on the 3rd day of June 2021. There is no dispute that the federal *Holidays Act* was not one of the statutes amended, however, and that the Province of New Brunswick has not declared the NDTR day a statutory holiday.

41. As follows these informing contextual points for a Decision here, the analysis I am called upon to follow – *i.e.*, my role here, I accept – as settled in the arbitration caselaw and texts – is to determine the objective and mutual intention of the parties from the language terms of Article 25.01, or, as is stated in the *AUPE* case, to hold the parties accountable to the "bargain they have struct".

42. Citing from the Brown and Beatty text, *Canadian Labour Arbitration*, at para. 4.21, it is then proper for me to assume that the language before me "should be viewed in its normal or ordinary sense" and, as settled by the New Brunswick Court

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of Appeal in the *Irving Pulp and Paper* case, above, at para. 10, to assume that the parties "have intended what they have said".

43. While linked, the short words found in Article 25.01(m), I find it then can be said, present two points of "difference"; first, "all other days", and secondly "proclaimed as holidays" by, here, the Governor General. The first difference goes to the dispute as to whether or not it is reasonable to say that the parties at Article 25.01(m) intended to limit additional paid holidays to the restriction advanced by the Employer, *i.e.*, only those holidays as proclaimed under the *Holidays Act*, listed now to include Canada Day, Victoria Day and Remembrance Day. While filing no caselaw directly in support of this position taken, the Employer's argument is that the language of (m) of Article 25.01 supports an intention to only recognize "all holidays proclaimed as legal holidays under the federal *Holidays Act*". It is also to be noted here, however, that this argument, if accepted, would appear to only apply to proclamations of the Governor General as in New Brunswick there is no legislation similar to the federal *Holidays Act* – "legal holidays".

44. The Union, for its part, citing wide authority asserts, as is captured in the NB public sector adjudication decision in the *NB Power* case, a claim that the express intent shown by the parties in Article 25.01(m) is to ensure that when any federal or provincial holiday is created that members of this bargaining unit would enjoy it as a paid holiday – *i.e.*, to follow the words in the *AUPE* case, at paragraph 34, the parties, by referring to a federal holiday, Easter Monday, have accepted that a source of their obligations will be found in a federal event.

45. I accept the Union's submission. The Employer's position, I am satisfied, does not find support in the "all other days" words of the parties' Agreement at Article 25.01(m), nor is it consistent with the immediate context set by the listing of paid holidays shown under Article 25.01 (a) to (l). The choice made under Article

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25.01(m), I find, is to recognize as a paid holiday any other federal or provincial holidays proclaimed, not just legal holidays under the federal *Holidays Act*. The inclusive wording of the parties' Agreement at (l) and (m) of Article 25.01, "and" … "all other days proclaimed as holidays" – either by the Governor General of Canada or the Lieutenant Governor of the Province of New Brunswick – does not objectively support the restriction asserted by the Employer to apply here. To this, as stated in response to the like argument made to the arbitrator in the *AUPE* case, at para. 47, it "in fact contradicts it".

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46. I am also persuaded that to restrict additional paid holidays under Article 25.01 to "legal holidays" under the federal *Holidays Act* only would, in effect, particularly if applicable to proclamations of the Governor General only, call for an amendment to the Collective Agreement term "all other days" at Article 25.01(m), one that I am prohibited by statute to pursue[3].

47. To this also it can be observed that the Employer's argument here does not speak to what would occur with respect to a restriction or not for a proclamation by the Lieutenant-Governor; *i.e.*, if a like meaning for all the clear words "any other days" used under Article 25.01(m) intended – again, there is no provincial counterpart to the federal *Holidays Act*. To this, and relevant also to the amendment of collective agreement bar on me as Adjudicator, I cite from the discussion in the *National Growers* case, in part, at para. 15, below:

> Yet there is no legislation in Ontario similar to *Holidays Act* in which the provincial government declares holidays to be legal holidays. Therefore, if I were to adopt the interpretation urged upon me by the employer, then presumably the language of Article 12.01(b) would have a different meaning for holidays declared by the federal government and those declared by the provincial government.
>
> [Underlining mine]

[3] Public Service Labour Relations Act, ss. 96(2)

48. Further in support of the Union's position on this, I turn to the *AUPE* decision again where the arbitrator there, at para. 35, took the words "and any and all general holidays proclaimed" and "any day proclaimed to be a holiday" as language "sufficiently broad enough to encompass a reference to a holiday that was not previously in existence…" A similar position is settled upon in the *UFW, Olympic* and *London District* cases cited.

49. The parties here, I am satisfied, have so too negotiated a like provision of purpose and intent at (m) of Article 25.01 – the object to add to the federal and provincial holidays listed any others subsequently proclaimed. It must be noted as well that the only reference to timing here is the need for a proclamation, as described.

50. To this need, I go then to what is claimed as a distinguishing point by the Employer in this case; *i.e.*, its claim, as to my referred to second point of difference found in Article 25.01(m), that a "proclamation" by the Governor General is different than a "proclamation" by, *e.g.,* an appropriate federal Government authority, - words in issue in the *NB Power* case. For a counter to this contention, I turn to the *Royal Assent Act*, s.c. 2002, c. 15, cited by the Union in reply, and the Hansard report of June 3, 2021, both of which attest that Royal Assent is, to cite directly from the *Act*, "the constitutional culmination of the legislative process"; *i.e.*, a confirmation that when Royal Assent of the Governor General is signified by, as here the case, "written declaration", an *Act* is set to come into force – the final step taken to a "Coming into Force"[4] of federal legislation – a like proclamation recognition addressed in the *NB Power* and *AUPE* decisions.

[4] See Bill C-5, s. 6, which provides, in part, for the NDTR to come "into force on the day that, in the second month after the month in which it receives royal assent, has the same calendar number as the day on which it receives royal assent…

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51. Further to a "written declaration", as is spoken to in the Hansard report of for the NDTR, in the *AUPE* case reference for the word "proclaim" was made to Black's Law Dictionary – there shown, at para 50, to include the following definitions: to promulgate; to announce; to publish; by governmental authority. I note too the award in *Olympic Motors*, where the arbitrator there, addressing the question of "any other day proclaimed" by a Federal or Provincial Government stated, at para. 20, that the word "proclaimed" was read to mean "officially declared". Also instructive, in the *Manalta* case, too cited by the Union, the word "proclaimed" at para 20 was given the following meaning: "established".

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52. As follows from the above, and to close on this point of difference, I cite once more from *AUPE*, at para. 53, and a statement offered taken as applicable to be said here: "As of June 3, 2021, the NDTR was 'proclaimed', as that word is generally understood in legal parlance".

53. In summary then, I confirm: I find support for the Union's proclamation position offered in this case – I accept that a Bill becomes an *Act* by proceeding through Parliament, the Senate, and upon receiving Royal Assent - proclaimed or officially declared – set to come into force. As also follows here, with Royal Assent given and a coming into force of an "all other days" holiday, the members of the bargaining unit here can be expected to enjoy another paid holiday. Once again, this by a choice by the parties of official language proclaiming a holiday - marking the completion of a legislative enactment process – words chosen, I find, that go to the same purpose and intent as those found in the *NB Power* and *AUPE* decisions.

54. Finally, my role here is as a "rights" Adjudicator, not as an "interest" Adjudicator. As such, I, as too the Arbitrator in the *AUPE* case, do not consider it appropriate for me to act on the cost implications submission of the Employer from a specific interpretation. My jurisdiction is limited to interpreting and applying the

parties' objective mutual intentions settled in the words in (m) of Article 25.01 – mindful of the immediate context set by the holiday listings preceding in Article 25.01. This determination does not call for any new language.

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VI. DECISION

55. To conclude, it is my Decision that the parties having listed as paid holidays days from federal and provincial statutes, and with an inclusive reading of Article 25.01 (l) and (m) consistent with this purpose then called for, that the intent settled in Article 25.01 (l) 'and" (m) is to confer a collective agreement holiday benefit attached to all other days proclaimed as holidays on the completion of a provincial or federal legislative enactment process.

56. The Policy Grievance of *CUPE 1252,* filed on behalf of the bargaining unit members in the NB Public Sector, Clerical, Stenographic, and Office Equipment Operational, Institutions Services, Patient Services Group, calling for the National Day for Truth and Reconciliation to be recognized as a paid holiday under Article 25.01 is therefore upheld, and the Employer, Finance and Treasury Board, is ordered to now make whole and compensate affected members of the Bargaining Unit for the September 30, 2021 day accordingly.

57. I remain seized with jurisdiction to address any issues regarding the implementation of this Award, to correct any omissions or errors necessary to give it effect, as well as the reserve of jurisdiction to address any issues which may arise relating to the quantum of the remedy to follow.

Dated at Saint John, New Brunswick, this 10th day of August 2022.

RDB
Robert D. Breen, Q.C.
Adjudicator