IN THE MATTER OF AN INTEREST ARBITRATION

Between

Revera Retirement LP by its general partner REVERA RETIREMENT GENPAR INC.
Operating as "McConachie Gardens"
("Employer")

And

Alberta Union of Provincial Employees
("Union")

Union Counsel	Bill Riguttto
Union Representatives	Dave Malka Merryn Edwards – in attendance with staff, bargaining committee members, Chapter Executive and interested employees Leslie Davies Richard Hymen
Employer Counsel	Bob Bass and Amy Rezek
Employer Representatives	Barb Howell Executive Director McConachie

The Hearing was held on April 10, 2023, with additional submissions by the Union received April 10, 2023, and the Employer's rebuttal on April 27, 2023.

Background

1. Revera Retirement LP by its general partner REVERA RETIREMENT GENPAR INC., operating as "McConachie Gardens" ("McConachie" or the "Employer") and the Alberta Union of Provincial Employees (the "Union") have been attempting to negotiate a first agreement between the parties and have agreed to proceed by voluntary interest arbitration to resolve outstanding matters.

2. McConachie is a privately owned retirement home in the City of Edmonton. It is owned by Revera Retirement LP by its general partner REVERA RETIREMENT GENPAR INC and was opened

in July 2019. Revera owns 15 retirement homes in Alberta. The service workers at the homes are represented by several different Unions, AUPE, CUPE and UFCW. In total 13 of the 15 facilities are unionized and 11 have current collective agreements and are listed below.

Retirement Home	Union	Expiry Date
The Edgemont	AUPE	December 2023
Aspen Ridge	AUPE	January 2024
Churchill	AUPE	December 2022
Riverbend	AUPE	December 2020
Scenic Acres	AUPE	December 2022
River Ridge	AUPE	December 2024
Our Parents' Home	AUPE	1st agreement TBD
McConachie Gardens	AUPE	1st agreement TBD
Meadowlands	UFCW	December 2023
McKenzie Towne (LPN/HCA)	CUPE	December 2023
Chateau Renoir	CUPE	April 2024
Scenic Grande	CUPE	December 2023
Heartland	CUPE	December 2022

3. AUPE is Alberta's largest union, representing approximately 93,000 Albertans who work in government, health care, education, boards and agencies, municipalities, and private companies. Approximately 53,000 of its members work for public, private, not for profit and for-profit health care providers. Over 15,000 of them work in senior's care outside of the Alberta Health Services ("AHS") system. These members include both auxiliary nursing care and general support services roles.

The Bargaining Unit

4. The bargaining unit at McConachie is comprised of approximately 130 employees in the following classifications: Active Living Aide, Environmental Services Assistant, Health Care Aide, Licensed Practical Nurse, Cook, Dietary Aide, Dishwasher, Housekeeping Aide, Laundry Aide, and Receptionist. Health Care Aides ("HCA") being the most populous classification with approximately 27% of the employees followed by Licenced Practical Nurses ("LPN") who comprise 21% of the employees according to the Employer's submissions.

5. The distribution of employees across the classification is as follows as of February 2023:

Position	No. of Full-time Employees	No. of Part-Time (Casual) Employees
Active Living Aide	4	1 (8)
Cook	4	1 (2)
Dietary Aide	6	2 (10)
Dishwasher	0	4 (2)
Environmental Services Assistant	0	1 (1)
Health Care Aide	9	16 (10)
Housekeeping Aide	5	3 (4)
Laundry Aide	1	2 (0)
Licensed Practical Nurse	5	7 (15)
Receptionist	0	2 (5)

Bargaining Background

6. The employees in this bargaining unit have been unionized since October 19, 2020. The Union sent notice to bargain on October 30, 2020, and negotiations commenced in May 2021 with the exchange of ingoing proposals.

7. They met a total of thirteen times on the following days: May 18-19, 27-28, September 16-17, 28-29 and October 28, 2021, and in 2022 on January 10-11, February 11 and 25 but were unable to achieve a collective agreement. The Union presented a package for settlement of the collective agreement on February 25, 2022.

8. On March 14, 2022, the parties were scheduled to meet in mediation, however they agreed to a voluntary arbitration process to resolve the impasse to settle the terms of this first agreement. I note that because of this agreement there is not a finalized ESA in place and the parties did not engage in Enhanced Mediation so there are no recommendations for consideration at hearing.

9. The parties agreed that this matter and another first agreement arbitration matter between the parties at the Our Parent's Home ("OPH") would be heard together on April 6, 2023, as a matter of convenience, however each matter would be determined on its own and addressed separately.

10. On April 3, 2023, in preparation for the hearing, the Union sent an email identifying the issues that remained outstanding between the parties. Further, on April 5, 2023, the Union submitted an updated wage proposal that included a new HCA Pandemic Premium and a new Redcircling proposal. The Employer noted that there were a few proposals that were either new or,

exceeded the Union's previous position and raised a preliminary objection based on timeliness. I will address this objection before addressing the determination on the outstanding issues.

11. The parties agreed to proceed by way of a combination of written submissions and evidence presented at hearing. Based on the evidence and submissions of the parties, I am issuing the decision with respect to the preliminary objection and the terms of the first collective bargaining agreement between the parties.

PRELIMINARY OBJECTION

Preliminary Objection– Employer Opening

12. The Employer raised a preliminary objection based on the timeliness of the Unions submissions on two matters: sick leave and vacation. It stated that the parties had prepared briefs based on extensive work done to narrow the issues between them, however they only received the Union's proposals on these issues, three days before the hearing. The Union also submitted a proposal on pandemic pay and Redcircling at midnight the day before the hearing.

13. The Employer recognized that these proposals at McConachie match the proposals at the OPH table, however, they had not previously been raised by the Union at this site.

14. The Employer argued that the case law on late proposals is clear, which is, you can not file late proposals that have never been tabled before. In the case before me these late proposals were not tabled until three days before the hearing. This was identified in the exhibits and the Employer argued that it demonstrates that the outstanding Union proposals identified on April 3, 2023, exceeded previous proposals or were completely new. The Union was put on notice that day by the Employer that it would be raising the issue of the timeliness of the proposal at arbitration.

15. The Employer identified that the Union had put a caveat on its proposals in that it "reserves the right to table proposals at any time during bargaining", however this unilateral reservation to table any proposal at any time up until arbitration, is not supported in case law. The Employer further argued that even if the Union argues that there are changed circumstances, the bar to allow amended or new proposals is high (*Princess Margaret* – CITE Arbitrator Burkett).

16. The Union argued that the basis for the proposals is to ensure consistency between the two agreements. The Employer noted that this argument fails to meet the threshold for changed circumstances. The Employer asserted that other than this argument, there are no other changed circumstances which could justify the late submission. The issue of the economy or the pandemic were not new to the Union and is unlike the facts in *Princess Margaret* where; there was a closure of 33 beds, a significant nursing shortage and the use of agency nurses which arose during bargaining and after conciliation between the parties. Having said that, in that case

Arbitrator Burkett still noted that these factors did not meet the threshold of "a material change in circumstances" and were not "necessary to be decided in order to conclude a collective agreement" (at page 9).

17. The Employer also argued that the Union's position that it submitted these proposals to align the provisions of the agreement with OPH. The Employer asserted this is not a valid rationale for allowing the submissions of late proposals as the two agreements were bargained separately and while the arbitration process was coordinated for expediency, the matters were to be addressed separately.

Preliminary Objection– Union Evidence

18. Merryn Edwards, a negotiator for the Union provided evidence on the Employer's objection on timeliness of the new or amended proposals. She confirmed that the Union's ingoing proposals identified by the Employer as an Exhibit to these proceedings are accurate.

19. Ms. Edwards testified that the pyramiding proposal is consistent with the OPH ingoing proposals as they spoke to "No pyramiding unless specifically stipulated". She also noted that at OPH there had been no bargaining on monetary proposals as the parties had agreed to expedite the process to have OPH included in the hearing for McConachie.

20. Ms. Edwards stipulated that the sick time proposal was a change but not an escalation as the ingoing proposal for OPH was that full-time employees would be credited 12 sick days and part-time employees would accrue at a rate of one and a half days per month for hours worked equivalent to full-time employees up to 120 hours. She noted that at McConachie the employees are credited 12 sick days which are replenished annually and do not accrue.

21. With respect to the proposals regarding premiums, Ms. Edwards testified that the Union reduced the proposal in February 2022 when bargaining broke off for McConachie and its last proposal was $2.00 evening and $4.00 weekend premium. However there had been no further discussion on monetary proposals.

22. Ms. Edwards acknowledged that with respect to the pandemic pay proposals these were submitted as part of the package of proposals at arbitration as OPH was still in receipt of the $2.00 per hour wage top up for HCAs. McConachie, on the other hand, had discontinued this practice and as a result the Union filed a Labour Board complaint in mid-January 2023. When the proposals were first exchanged, OPH was paying the pandemic pay and Ms. Edwards noted that these funds were provided by Alberta Health Services ("AHS") for OPH, however at McConachie they were self funded. The resolution to the Labour Board complaint was to have

this matter dealt with as part of this arbitration. The Union's proposal is for the top up to be maintained throughout the pandemic.

23. Ms. Edwards noted that the Union also tweaked the proposals on vacation considering a complaint the Union has on an OPH vacation issue.

Preliminary Objection– Union Argument

24. The Union explained that its proposals regarding sick time and vacation were tweaked because of developments in bargaining and there are no fundamental differences between the ingoing proposals and what was submitted at arbitration.

25. The Union acknowledged that this is different than the provisions related to pandemic pay as that was not present in their ingoing proposals. Unlike the other three issues, this only surfaced in reaction to the Employer's decision in January 2023 to withdraw the pandemic premium resulting in the complaint to the Labour Board. This proposal is at this table because of the resolution conference at the Labour Board.

26. The Union reviewed the specific proposals the Employer is objecting to. The Union explained that its proposals regarding sick time and vacation were tweaked because of developments in bargaining and there are no fundamental differences between the ingoing proposals and what was submitted at arbitration.

27. The Union acknowledged that this is different than the provisions related to pandemic pay as that was not present in their ingoing proposals. Unlike the other issues, this issue only surfaced in reaction to the Employer's January 2023 decision to withdraw the pandemic premium resulting in the complaint to the Labour Board. This proposal is at this table because of the resolution conference at the Labour Board.

28. With respect to the general principles to be applied to the issue of timeliness, the Union argued that the Employer's position is overly legalistic and contrary to the policy objectives of a Wagner regime collective bargaining approach. The Union asserted that the resolution to these matters should entail a comprehensive solution that does not leave important issues dangling, as those may be loose ends that will lead to further potential disputes between the parties.

29. The Union relied on the following authorities: Collective Bargaining and Agreement, David J. Corry, 8:6000; *United Nurses of Alberta and Alberta Health Services and Alberta Union of Provincial Employees and Health Sciences Association of Alberta*, GE-08153, December 18, 2019; *Alberta Union of Provincial Employees and The Crown in Right of Alberta*, Phyllis Smith January 31, 2020; and *Centre Jubilee Centre v. United Steelworkers of America*, [1994] OLRB 0840-93-U.

30. It argued the case law is clear and cited David Corry for the premise that whether sudden or not, a change in circumstances is not akin to bad faith bargaining. The prohibition regarding the addition of late proposals is to prevent the parties from modifying their respective positions to avoid reaching a collective agreement. The Union argued that it modified its positions not to create an obstacle to concluding an agreement, but due to a change in circumstances. Further, it asserted that as the parties agreed to arbitration to conclude the agreement, they were not close to achieving a resolution on their own and that the Union's actions are not tantamount to bad faith.

31. Union counsel cited the Labour Board decision of *UNA and AHS, supra,* at page 26 where Chair Johnson noted that in some contexts a material change in circumstances support a change in the position of the parties. In that case the Board concluded that AHS's change in position was in response to the change in government mandate and as a result was a material change in circumstances and did not violate the rules against receding horizon.

32. The Union argued that this doctrine applies to proposals on the pandemic pay issue as this was a material change in circumstances outside of bargaining that brought the issue to a head, thus making it a bargaining issue.

33. The Union also cited Arbitrator Smith in her *Alberta and AUPE, supra,* wage reopener decision. In that case the Union objected to the employer's modification of its monetary proposal from a zero percent wage increase to rollbacks. Arbitrator Smith dismissed the Union's objection on the basis that there were new or changing circumstances and that bargaining is not a static process so there is nothing untoward for a party to modify its position in advance of interest arbitration.

34. The Union asserted this interpretation is consistent with the Ontario Labour Board decision in *Centre Jubilee and United Steelworkers, supra,* decision which it submitted in support of the principle that there is no such thing as receding horizon bargaining when the parties are headed to interest arbitration, as the arbitration process inevitably leads to the conclusion of a collective agreement.

35. With respect to sick leave and vacation, the Union argued that these issues were identified in the ingoing proposals and were only tweaked because of negotiations and there was no fundamental difference between what was proposed initially and the proposal at arbitration.

36. With respect to the pandemic pay, the Union noted that this arose due to changing circumstances.

37. The Union also noted the lack of an Enhanced Mediation process for these parties and that the issue of timeliness should only be relevant when a party is raising new issues versus tweaking or

evolving its position and only in circumstances whereby doing so creates an obstacle to the conclusion of a collective agreement.

Preliminary Objection– Employer Reply

38. The Employer argued that for a party to tweak a proposal and bring it closer to the resolution is one thing, however in this case the Union can not rely on the replication argument or that it brought the parties closer. Instead, the proposal submitted at arbitration was an increase to the ingoing proposal.

Preliminary Objection – Decision

39. When the Union identified the outstanding issues between the parties on April 3, 2023, the Employer immediately objected on the basis that the new proposals were untimely as they were either not part of the Union's ingoing proposals or exceeded their previous position in the issues.

40. The Employer relied upon the June 1989 case of *Princess Margaret Hospital and ONA* (unreported), where Arbitrator Burkett dealt with the preliminary matter of late filed proposals. Arbitrator Burkett decided on the weight of supporting authorities, not to allow the addition of proposals after the scope of the dispute had been defined through collective bargaining. He determined that absent "compelling evidence that would justify such a course", the jurisdiction at arbitration is based on the matters in dispute at the time. He confirmed that the orderly framework of collective bargaining must be respected and to accept the addition of late proposals would undermine this structure leaving it vulnerable to being bypassed.

41. Arbitrator Burkett addressed that the preconditions laid out by Arbitrator Swan in *the Regional Municipality of Peel (Peel Manor and Sheridan Villa Homes for the Aged) and Ontario Nurses' Association,* (May 9, 1985) require a material change of circumstances and that the tabling of a new proposal or issue must be necessarily incidental to the conclusion of a new collective agreement. His interpretation was that even if a material change in circumstances was established, it must be assessed as whether allowing its inclusion at interest arbitration justifies overturning the framework of collective bargaining. Arbitrator Burkett did not believe that it did in that case.

42. Arbitrator Burkett addressed the issue of whether actual prejudice to the employer is proven in allowing the admission of the late proposals as not relevant for his consideration. At para 8 he states,

> "The framework for collective bargaining is established with the initial exchange of bargaining agendas and the subsequent exchange of proposals and counterproposals. The concessions made by one side are in response to and conditioned upon the position taken by the other side. There is obvious prejudice to the party that has relied upon the framework, established by the orderly exchange of proposals if the other party is allowed to table a fresh set of demands at the last minute. Whereas these demands would surely evoke a series of different responses the party relying on the established framework has already exposed bargaining limits that go beyond."

43. In that case the union had a caveat attached to its proposals stating that it "reserved the right to add to, amend or delete proposals." This is pertinent to the case before me as AUPE has also expressly stipulated in its proposals to the Employer that it reserves the right to add to its proposals. Arbitrator Burkett had this to say.

> "Firstly, the union can not contract out of the statutory framework for orderly collective bargaining. More importantly, however, the inclusion of this type of caveat has never been taken to mean that fresh demands can be added at will at any time. The caveat means that if through inadvertence or error a proposal was overlooked it may be added. However, as the bargaining progress and the framework takes shape the parties, through the conduct of exchanging proposals, impliedly waive the caveat so that after there has been substantive bargaining between the parties it can no longer be said to exist."

44. The question before me is whether the identified proposals should properly be allowed as part of this interest arbitration process. In this case I have reviewed the proposals to determine if they were in fact late additions or, exceeded the Union's ingoing proposals. It is relevant for my consideration that the parties did not engage in enhanced mediation before agreeing to interest arbitration to resolve this first agreement. Enhanced mediation will often ensure the parties have engaged in further discussion and the mediator will define the issue and make recommendations. As noted, the last exchange of proposals on this matter was February 22, 2022, after which the parties agreed to proceed to arbitration so not only has time passed, but there may be miscommunication as to their respective positions.

45. At some point, the positions of the parties must be crystallized to identify the issues in dispute and in my estimation, this is at the point that negotiations end. For an interest arbitrator to permit a party to effectively "pad its proposals" on the eve of arbitration is contrary to labour relations interests. I also do not find that the "alignment of proposals" between the two matters being heard together is an appropriate rationale to justify accepting the changes, as it would fly

in the face of the express agreement between the parties that these matters would be determined separately.

46. The Union primarily relied upon the writings of David Corry in his text, Collective Bargaining and Agreement (8:6000), however I find the text addresses the issue of bad faith bargaining and is not specifically relevant to the matter of interest arbitration. He is referencing the period during collective bargaining and not at the point of interest arbitration when wading in on whether late proposals should be admitted. I will, however, use his material as illustrative of basic tenants, such as, evaluating if there has been a "change in circumstances" which has been "justified by compelling evidence." If I find that there has been a "material change in circumstances" it could potentially allow for the addition of new proposals or a change in position may be justified.

47. The fact is, that regardless of whether proposals introduced after the commencement of bargaining may result in a finding of bad faith at the Labour Board, and as a result may or may not be permissible during direct negotiations or mediation, that is not the argument before me. The objection of the Employer in this case is limited to whether the late proposals of the Union should be allowed at interest arbitration.

48. I recognize the Union has advanced decisions regarding bad faith in support of their position, however I am not persuaded that they are applicable in the case before me. I am not ruling on whether the submission of the late proposals is bad faith, but the more limited issue, should they be allowed as part of the submissions of the Union at the Interest Arbitration.

49. I find the cases of the Employer are more relevant to my determinations on this issue. It is clear to me that unless there is a compelling reason to allow the addition of the proposals submitted by the Union on the last day of mediation, or in fact as part of their submissions in this arbitration for the first time, they should not be allowed.

Sick Leave

50. With respect to the proposal on Sick Leave, there is no question that the Union proposed sick leave in its ingoing set of proposals. The relevant proposal from the ingoing proposals is reproduced below:

> *22.01 (a) After completion of the probationary period in accordance with Article 18, Employees shall be granted sick leave credits for personal illness from the date of employment.*
>
> *(b) During the probationary period worked by a Full-time continuous Employee, any time off because of illness will be without pay. After completion of the*

probationary period, such Employee shall be entitled to cumulative sick leave credit computed from the date of commencement of employment at the rate of one and one-half (1 ½) normal working days per month for each full month of employment up to a maximum of one hundred and twenty (120) normal working days.

(c) Regular part-time Employees shall be credited with sick leave credits on a prorated basis of regular hours worked.

51. In my review sick leave was identified as an issue for the Union from the outset. Its ingoing proposal was for full-time employees to accrue sick leave credits at a rate of one and a half days per month to a maximum of 120 "normal working days". This position was altered after a period of negotiation and in the Union's February 2022 proposal for settlement, it amended its position on entitlement to the following:

22.02 "Full-time and Part-Time Employees who have completed their probationary period shall be credited with ninety (90) sick leave hours per year, prorated based on start date and regularly scheduled hours. Sick leave hours shall be replenished at the start of each calendar year."

52. This position was further amended on April 3, 2023, to read as follows:

22.02 Full-time Employees who have completed their probationary period shall be credited with twelve (12) sick leave days and Part-time Employees who have completed their probationary period shall be credited with eight (8) sick leave days per calendar year.

(a) Full-time employees completing their probationary period part way through the year shall be granted sick leave with pay at the rate of one (1.0) day per month worked to a maximum of twelve (12) working days per year.
(b) Regular part-time employees completing their probationary period part way through the year shall be granted sick leave with pay at the rate of zero point sixty-six (0.66) days per month worked to a maximum of eight (8) working days per year.
(c) The Employee may carry over any unused sick days to the next year.

53. In reviewing the changes in terms proposed for sick leave, I find that there is no question the Union identified sick leave entitlement as an issue in its ingoing proposals and ongoing negotiations. I do not find that the Union escalated its demands or significantly altered its position such that it is untimely. It can be no surprise to the Employer that this issue remains outstanding and the change from the ingoing proposal to the April 3 proposal was a significant

decrease in its ask. The Employer has suggested that the wording of the April 3 sick leave proposal does not have a maximum accrual and that this represents an escalation.

54. I read the clause to state that the maximum accrual is 12 days, and this was supported by Ms. Edwards testimony at hearing where she confirmed that was the Union's proposal on sick leave. I do accept that the wording is not clear. If there was to be no maximum accrual of sick leave this would be an escalation and not permissible from my perspective. However, as there is confusion as to the interpretation of the language, I find that I am without jurisdiction to consider the change as proposed on April 3, 2023, and the Union's proposal from February 2022, should be heard. Having said that, the difference between the February 2022, and April 2023, proposals, is inconsequential as the 90 sick leave hours based on a 7.5-hour day is equivalent to 12 days for a full-time employee.

Vacation Entitlement

55. With respect to the proposal on vacation entitlement, the Union also had proposals regarding entitlement in its ingoing package. The relevant provisions are reproduced below:

20.03 Vacation Entitlement

(a) During each year of continuous service in the employ of the Employer, Full-Time and Part-Time Regular Employees shall earn entitlement to a vacation with pay. The rate at which vacation entitlements are earned shall be governed by the total length of such service as follows:

(i) during the first (1st) year of employment an Employee earns a vacation at the rate of ten (10) working days

(ii) during the second (2nd) and third (3rd) years of employment an Employee earns a vacation at the rate of fifteen (15) working days;

(iii) during the fourth (4th) to ninth (9th) years of employment, an Employee earns vacation at the rate of fifteen (20) working days; and

(iv) during the tenth (10th) and subsequent years of employment, an Employee earns a vacation at the rate of twenty-five (25) working days.

(b) Employee with less than a year of service An Employee who has less than one (1) year of service prior to the first (1st) day of April in any one (1) year shall be entitled to a vacation calculated on the number of months from the date of employment in proportion to which the number of months of the Employee's service bears to twelve (12) months.

(c) During each year of continuous service in the employ of the Employer, Casual and Temporary Employees shall earn entitlement to vacation pay. Casual and Temporary

Employees are paid vacation pay on each biweekly pay cheque. The rate at which vacation entitlements are earned shall be governed by the total length of such service as follows:

(i) during the first (1st) to fourth (4th) years of employment an Employee's vacation pay shall be 4.8% of hours worked.

(ii) during the fifth (5th) to seventh (7th) years of employment, an Employee's vacation pay shall be 6% of hours worked.

(iii) during the eight (8th) and subsequent years of employment, Employee's vacation pay shall be 8% of hours worked.

56. The Union's package for settlement of February 2022, and its submissions of April 3, 2023, both included an identical proposal with respect to vacation entitlement for full-time and part-time employees. However, the treatment of casual employees was amended to mirror the entitlement of regular employees. While I do find that the proposal for casual employees exceeds the ingoing proposal, there is no question that the Union identified vacation entitlement as an issue. Further, I do not find that there is an alteration of its position on full-time and part-time employee vacation entitlement such that I would consider it a late-filed proposal.

57. I do however find that the increase in the proposal for casual employees exceeds the ingoing proposal and does not represent a move to find common ground through negotiations. I find that the Union's proposed change to the entitlement for casual employees to be untimely and I will confine my review to the Union's February 2022, proposal as it relates to casual employees' vacation entitlement.

Pandemic Pay and Redcircling

58. With respect to the Pandemic Pay Premium and the Redcircling proposal, there is no evidence that these proposals were tabled by the Union before its April 3, 2023, submissions.

59. The Union has argued that the Pandemic Pay Premium only ended up on the table because of the Employer terminating the $2.00 per hour HCA Pandemic Pay premium in January 2023. The Union filed an Alberta Labour Board complaint in response, and this was a matter discussed in the resolution conference in March 2023. I find that this meets the threshold of changing circumstances such that it is appropriate to allow the proposal to be included. The parties were live to the issue at McConachie, and I do not find the inclusion of this proposal to be untimely. While it will be included for consideration, the determination will be whether it should be included as part of a final agreement and will not pertain to the Union's Labour Board complaint.

60. The proposal regarding Redcircling was not included in the ingoing proposals, nor was it included in the Union's wage package in its proposal for settlement of February 2022. To my mind there is no question that this proposal was late. While I am sympathetic that the parties did not engage in robust negotiations on their respective monetary positions before agreeing to proceed by way of interest arbitration, this proposal was only added three days before the commencement of hearing. To allow it to be included would only further separate the parties. It could well have been proposed as part of the ingoing proposals and certainly could have been included when it proposed its February 2022 settlement terms.

Benefits Qualifier

61. I note that in the Employer's written response it identified for the first time an additional matter of the Benefits Qualifier. This was not presented in the submissions or arguments for either party during the hearing. In its written rebuttal the Employer identified that the Union's ingoing proposal for the qualification for benefits was a 20 hour per week threshold, which remained consistent in its proposal of February 2022. However, in its April 3, 2023, submission the threshold was proposed as 15 hours per week. My review of the February 2022, monetary proposal is that the Union changed its proposal regarding the benefit eligibility threshold to 30 hours biweekly. The Union changed this to 15 hours a week in April prior to the hearing. This is not an escalation as such, but instead a difference in the calculation from bi-weekly to weekly. However, I determine that I do not have jurisdiction to consider the amended proposal and will consider only the Union's February 22, 2022, proposal of 30 hours bi-weekly.

Conclusion

62. In summary, I find that I am without jurisdiction to consider the April2023, proposals on the sick leave, casual vacation entitlement, and the benefits qualifier and will consider the February 2022 package for determination on these issues. Further, as the Redcircling proposal was not advanced at any time prior to April 3, 2023, I find that I am without jurisdiction to consider it.

63. The April 2022 proposals regarding full-time and part-time vacation and Pandemic Pay Premium are allowed.

ARBITRATION AWARD
Items in Agreement

64. Where the parties were able to agree on items during the bargaining process, these items should be included in the first agreement. Any items agreed to prior to the referral to interest arbitration are incorporated in this Award.

Items in Dispute

65. The following list of articles were identified as the remaining issues in dispute between the parties at the time of the referral to the CAB:

Article 9	Seniority
Article 14	Salaries
Article 17	Shift Premium
Article 18	Weekend Premium
Article 20	Annual Vacation
Article 21	Employee Health Benefit and Insurance Group Plan
Article 22	Sick Leave
Article 23	Retirement Savings Plan
Article 28A	Casual Employees
Article 30	Professional Fees
Article 34	Uniforms
Wages	
Pandemic Pay	

Union - Opening

66. The Union laid out its position that the purpose in calling witnesses was to highlight the realities in the field and provide a human context to the considerations in this case. It asserted that the decision should not be simply based on sanitized and dry evidence or data, such as comparators. Instead, consideration should be given to the nature of the work, which is especially critical in the case of health care workers. The Union highlighted the challenge of three years of working during the pandemic, which is even now still impacting the work of those in the long term and continuing care sector. The work itself was difficult and became more complex as a result of the pandemic, which the Union argued must be considered in evaluating the respective submissions of the parties.

67. The Union also highlighted that this is an essential services industry and while this table does not have a concluded Essential Services Agreement and do not have a right to strike, the workers still have choices. It referenced bargaining surveys completed by staff which indicate that an overwhelming majority of the 66 surveys submitted, staff indicated that they had applied for another job in the prior 12 months, all of whom answered that if their conditions regarding wages, shift premium and sick time were not increased they would look for other employment.

Union – Evidence

68. The Union called the following witnesses, Michelle Zalinski, AUPE staff member to speak to the surveys and the impact of the choices employees may make to leave, the Chair of the McConachie chapter, Tess Chua, Mimi Manirampa, a Health Care Aide ("HCA") at McConachie, Cherie Lamb, a cook at Revera Aspen Ridge in Red Deer, and Merryn Edwards, AUPE negotiator who will speak to the Union's position on outstanding issues.

69. The Union argued that the evidence of the staff is punctual, relevant, and important as it feeds into the replication labour market analysis that I must rely upon and gives voice to the workers' concerns. It asserted that this industry is fundamental for public safety in its protection of the most vulnerable people in our society which is relevant to the issues of settling a first agreement.

70. Michelle Zalinski is an Organizer at AUPE and works alongside the negotiations team to engage the membership. She had worked as an organizer at the McConachie site and was asked to provide support at the bargaining table. Ms. Zalinski testified that she prepared a two-question survey for the members at McConachie, which was conducted on paper over a two-day period, March 29 and 30, 2023. An email was sent to all members with email addresses on file with the Union and asked that they let co-workers know that the Union would be on site in the staff room to conduct the survey and that it was safe to attend and participate.

71. Ms. Zalinski stated there were two times on each of the two days for members to participate, from 06:30 to 08:30 and 13:00 to 17:00 on both March 29 and 30, and she was present for both days to explain how to complete the survey and answer any questions staff may have. These times were selected to ensure everyone would be able to participate and one or more of the bargaining committee members attended with her as well. The staff were assured that the results were anonymous and after completion they were to be placed in an envelope in a ballot box.

72. On March 31, additional surveys were sent by email to anyone on the list who had not been able to attend the first two days. Ms. Katie Cheung, an Administrative Assistant at AUPE sent out an electronic email ballot to a total of 27 members and 14 of these were returned.

73. Ms. Zalinski's evidence was that there were 92 eligible voters and there were 80 completed surveys. She tabulated the paper copies and the Election Buddy system tabulated those that were submitted electronically. Of those surveyed, 65 answered that they have applied for another job in the preceding 12 months and 78 answered affirmatively to the second question, which was that if the terms were not improved at arbitration, they would seek employment elsewhere.

74. Tessa Chua testified that she was employed by Revera as a HCA since November 2018. She served as the Chair of the local chapter and as part of the bargaining committee since 2022 and was not involved in the organizing as she was off on maternity leave when the site was certified. Ms. Chua spoke to her experience with how COVID had changed her job. She stated that when she returned from maternity leave there were significant changes in rules and protocols because of the pandemic, particularly in the period before the vaccines. Her evidence spoke to the increase in the use of PPE, dealing with residents, the impact of needing to isolate and the amount of paperwork, all which resulted in an increase in anxiety and a heightened awareness of the danger of the virus.

75. Ms. Chua spoke to the impact on the HCA routines as they performed their regular duties which included the constant changing of personal protection equipment ("PPE") every time they attended to a resident and the fact that they regularly ran out of supplies, especially gloves. Also, they were required to clean surfaces in common areas several times a day. Ms. Chua testified that her shift was from 19:00 to 03:00 during which time there were two HCAs on a floor caring for 15 to 20 residents, however they were also expected to look after the independent residents and there was also a shortage of licenced practical nurses on staff.

76. Ms. Chua stated that she had high levels of anxiety about the risk of COVID and lost a lot of weight due to the stress she experienced during this time. She had a new baby and a 70-year-old medically compromised mother-in-law that lived with them, and she expressed she was always scared that she would bring the virus home. She had to be tested at the start of every shift. One time she tested positive and had to isolate from her child for three days while waiting for the PCR test to confirm whether she had COVID or not. Ms. Chua testified that her experience was like that experienced by her co-workers.

77. After the vaccines were introduced, Ms. Chua stated that it helped alleviate some of the anxiety, but she was still afraid of spreading it to medically compromised individuals. She understood that everyone on the care floors was vaccinated, however was unsure about the independent and assisted living residents.

78. Her evidence was that there had been less than five outbreaks at McConachie and as late as a couple of months before the hearing, there had been a couple of instances in memory care. Ms. Chua described that it is difficult to manage an outbreak in memory care as it is not possible to isolate the residents effectively due to cognition and behavioural issues. During this period there was also reduced recreation and as a result residents had fewer diversions making them more challenging to manage. Ms. Chua also spoke to the increase in anxiety levels for residents as they were not able to see family, and many could not comprehend what was going on. As a result, many residents acted out physically and verbally.

79. Ms. Chua stated that as Chapter Chair for the Union she heard how frustrated members are, especially after the $2.00 COVID top up for HCAs was removed February 1, 2023, and hours were cut. Her evidence is that turnover is very high and the most typically expressed concerns are the lack of support from management, lack of benefits for part-time, hours of work, and wages. She testified that most positions are part-time but due to the lack of staff, part-time employees are mostly working full-time hours as people pick up shifts.

80. Ms. Chua noted that there are no RRSPs or shift premiums available for staff which is problematic as well. Due to the pandemic, Ms. Chua stated that even though she is entitled to 10 days of vacation she was unable to take it other than breaking one week up into separate days.

81. Mimi Manirampa is a HCA at McConachie and has been employed since April 2019. She was initially full-time, however when hours were cut in September 2022 she went part-time. This meant she had to pick up a casual position with another employer. Her current schedule is six shifts every two weeks with the opportunity to pick up additional shifts.

82. Ms. Manirampa testified that when they had their first COVID outbreak in December 2020, a whole unit of residents tested positive. She stated that she was four months pregnant at the time and there was only her and one LPN on staff. There was no dietary aide or housekeeping allowed in the unit, so they were responsible for housekeeping and food services along with their regular care duties. At the time, they did not have proper PPE and that they did not get the support they needed.

83. During this time agency staff was used to assist, however as they did not know the residents it did not completely alleviate the demands on regular staff whose job it is to ensure the wellbeing of the residents. She also noted it was always a different person, but regular staff were not coming into work as regularly because they were staying home or were restricted by the single site order in place at the time.

84. As a result, she had to leave work at the end of December 2020, for three weeks due to the stress on her pregnancy. She expressed that her biggest worry was the effect COVID may have on her baby. When she returned in January 2021, she was working full-time on the memory care floor. She ended up getting COVID from a resident in December 2021, despite being vaccinated and had to isolate from her family, including her daughter who was not a year old yet. Ms. Manirampa confirmed she did not get sick leave at the time, however later received WCB.

85. Ms. Manirampa also noted during that time residents in memory care were unable to understand what was happening and why they had to be isolated which caused them to act out

physically and verbally. Her evidence was that they had to call the police on some residents who became extremely abusive. She noted that it is better now in that there is not as much physical violence, however the residents still lash out verbally on occasion.

86. Cherie Lamb is a cook at the Revera Aspen Ridge facility in Red Deer and has been employed there since June 2007. At the time Revera was not the owner and there have been a few owners in the intervening period. Her evidence was that AUPE became certified as the bargaining agent approximately 10 years ago when Symphony Senior Living owned the facility. The bargaining of the first agreement with Symphony started in 2012 and Ms. Lamb testified she was a member of the bargaining committee at the time. Her evidence was that there were fundamental issues separating the parties as Symphony was paying below standard wages, shift differential and sick time.

87. Ms. Lamb testified that during bargaining the Union made no headway and as a result, the Union took a strike vote in December 2012 which was unanimously supported by the members. Strike Notice was served the following January and the Employer locked them out. Ms. Lamb stated that they were out on the picket lines in extremely cold conditions for five days and on the 5th day the parties met and achieved an agreement that reflected an improvement in sick time to 1.25 days a month to accumulate up to 120 days, and shift differential of $2.00 an hour and provided for stacking of premiums. Revera then acquired the site in October 2014 and the subsequent rounds of negotiation were with Revera.

88. Merryn Edwards is a negotiator with AUPE and in that role supports bargaining committees to develop proposals, conduct bargaining and conclude collective agreements. Her evidence focused on an explanation for the Union's outstanding proposals and will be covered in the analysis on each outstanding items.

89. The Union submitted an economic brief prepared by Dr. Richard Hyndman. Dr. Hyndman provided a broad review of the Alberta economy, the impacts of COVID and the state of the labour market generally and specifically as it relates to the healthcare sector. His analysis asserted that in a first agreement there is a lack of an established grid and as a result the general wage trends and collective agreement settlements are the basis for establishing reasonable comparators.

90. Dr. Hyndman noted that when a workforce moves from a non-union to a unionized environment there is a "union wage premium" that should be considered when determining the appropriate wage rates. He further reviewed the Average Weekly Earnings and the Fixed Weighted Index in Alberta over the relevant to the proposed term of this agreement, 2019 to 2024.

91. His conclusion is that the Compound Annual Growth Rate ("CAGR"), which is the annual average for wage changes between 2019 and 2022, is a more appropriate comparison as it considers the compounding effect of wage growth over several years. Using this data Dr. Hyndman determined that while the CAGR is 2.6% for employees across all industries, for employees in Nursing and Residential Care facilities the CAGR was 3.6% for the period 2019 to 2022, with employees being paid by the hour the increases were similar at 3.0% and 3.4%. When he applied the Fixed Weighted Index of Average Hourly Earnings the CAGR for employees working in health care and social assistance was 2.7%.

92. Dr. Hyndman, relying on the data captured by the Government of Alberta Mediation Services Division, identified the average wage settlements in health care and social assistance to be impacted by the inclusion of large public sector employers. Dr. Hyndman argued that the Alberta Health Services data is not a comparator as the public sector settlements have higher starting rates and were negotiated as part of a package of job security assurances. His conclusion was that by examining the data specific to seniors' care and without weighting the settlements, the increases in comparator agreements for the relevant years have been:

Sector	2019	2020	2021	2022	2023	2024
All Health and Social Assistance	1.13	0.91	1.16	1.93	1.72	1.52
Seniors' Care	1.05	0.98	1.21	1.88	1.68	1.54
For-profit Seniors' Care	1.24	1.06	1.38	1.87	1.75	1.50
Revera	1.93	1.84	2.21	2.04	1.88	2.25

93. Dr. Hyndman concluded that the wages in Seniors' Care have increased more than would be expected by the pattern of settlements in Alberta due to the broad categorization and weighting which is biased toward large public sector settlements.

Union Argument

94. The Union presented the economic information and submitted it should be relevant to my determination. It suggested that the Statistics Canada report reflected really good news from its perspective as it demonstrated that workers' hourly wages had increased 5.3% year over year and 135,000 jobs were added in the quarter preceding the arbitration hearing. This is in stark contrast to the prediction of a likely recession and a view that the sky is falling economically.

95. The Union recognized that the world has changed since March of 2020 when the COVID-19 pandemic was declared. It asserted that the whole ecosystem related to the labour market in health care, and in particular the relationship between workers, employers, and residents in care homes, has fundamentally been altered as a result. It argued that while the pattern that

would normally influence this arbitration would be predominantly Covid economic data, the Union asserted it should not be dogmatically imposed as that would result in an unempathetic and uncharitable outcome.

96. The Union urged me to consider the evidence of the employees at this workplace by considering their direct testimony as well as the surveys of the membership. The Union proposed that this information represented the reality of the current labour market as reflected in the evidence that the employees are prepared to walk away from the Employer and the industry. The Union asserted this labour market chronically suffers from labour shortages and this industry is chronically short staffed, and this should not be ignored and must be considered in the context of replication. It is the Union's position that the staff shortages jeopardizes the health care system in general and Revera specifically. In support, the Union cited the Government of Alberta's Ten-Year Occupational Outlook (2021-2030) which notes that health care is anticipated to grow by more than 10 times over the next 10 years because of the aging population resulting in an estimated 100,000 openings due to new positions and attrition.

97. The Union spoke to a two-month long strike at the Riverbend Revera site during which two residents died and the Government of Alberta ordered a Public Emergency Tribunal ("PET") to resolve the dispute. There were not very many interest arbitrations in health care in Alberta at the time and Arbitrator Jones' award dispelled the notion that it was appropriate to compare employees in the continuing care sector with hospitality workers. He specifically rejected artificial distinctions in the industry and found that an LPN is an LPN, and an HCA is an HCA regardless of the type of home they work in. Arbitrator Jones also rejected the argument that the level or lack of funding had any implications on market or pay.

98. The Union took the position that the market is the market and health care is health care and that the level of funding or the characterization of the industry should not be relevant to my decision.

99. The Union in its submissions cited the following authorities on interest arbitrations and the principle of replication (*Southern Alberta Institute of Technology and AUPE. Local 39*, 111 C.L.A.S. 255; *Electrical Contractors Assn. of Alberta v. International Brotherhood of Electrical Workers, Locals 254 and 424*, 1997 CLB 12317; *Newport Harbour Care Centre Partnership and AUPE, Local 48, Re*, 113 C.L.A.S. 130, *Carewest and AUPE*, (unreported) Arbitrator Smith October 9, 2013; and *Living Waters Catholic Regional Division and AUPE*, [2015] 122 C.L.A.S. 172). Each of these cases is supportive of the principle that the goal of interest arbitration is to "replicate as close as possible what the parties may themselves have achieved had they the right to use the weapon of strike and lockout" (*NAIT v AUPE,* (2009) 97 C.L.A.S. 129 at pg. 4).

100. The Union argued that it subscribes entirely to the comments of Arbitrator Sims in *Newport Care Centre, supra*, which articulates that an arbitrator's notion of fairness and social justice are not to be substituted for market and economic realities; that the process is not scientific and that the party advancing a particular position carries the onus of presenting cogent evidence; that one does not look at each issue in isolation, but instead looks to the total compensation; and that a very important guide in replicating the results of free collective bargaining comes from the settlements negotiated by similarly placed parties for similar time frames within the same or similar locations.

101. The Union asserted that the greatest consideration should not be on comparators, but instead to properly implement the principle of replication and I should rely on the strong evidence of the employees who testified at the hearing and the survey that stated 90% of the employees are seriously considering changing employers and industries because of poor working conditions. The Union argued that these surveys are an expression of rage and hopelessness as workers struggle with continuing in the profession they love while feeling disrespected and unappreciated for their efforts. It stated that this appreciation for the tremendous efforts of these essential workers should be an improvement in terms and conditions.

102. The Union highlighted that the evidence establishes that the Alberta economy is improving; oil is coming back, and deficits are disappearing with the return of revenue surpluses. As the demand for health care labour increases it exceeds the available supply. It was noted that in this environment the fact that employees are not able to withdraw their labour in a legal strike means that they are bereft of choice. The Union argued that there was evidence of what can happen when a retirement home does go on strike in the Aspen Ridge example where the employees were able to make gains because of a strike. It urged me to consider Aspen Ridge as the most compelling comparator in what the impact of a work stoppage would be for the purposes of replication.

103. The Union addressed the Employer's argument about maintenance of status quo in a first agreement and asserted that should be applied in the context of what the membership would have achieved in the event it had gone on strike. In that case one must ask if they would have achieved the specific demands such as sick leave, shift differential and wage increase or would they have settled for an agreement that codifies status quo. It asserted Aspen Ridge is an example of this and as an arbitrator not only must I apply this to the analysis of replication, but the Union also argued that I must consider the public interest if there is a "deleterious exodus" of qualified labour from the industry.

104. The Union disagreed with the Employer's assertion that the economy and the impact of COVID would result in a "lesser settlement" as none of the micro or macro data on unemployment, wage settlements or the economy justifies the Employer's position. In its submissions, the Union

advanced authorities addressing the inability to pay and in particular the general considerations for an arbitrator when addressing public sector interest arbitrations (*Re: CUPE and New Brunswick*, (1982) 49 N.B.R. (2d) 31; *Brantwood Residential Development Centre and S.E.I.U., Local 1 Canada, Re*, 110 C.L.A.S. 24; *Vancouver Police Board and Vancouver Police Union, Re*, [1997] B.C.C.A.A.A. No 621; *Newfoundland Treasury Board and N.A.P.E., Re,* (1995), 52 L.A.C. (4th) 250; *McMaster University and McMaster University Faculty Association, Re*, (1990) 13 L.A.C. (4th) 204; *Marianhill Home for the Aged and C.U.P.E. Local 2764* (unreported) June 16, 1986; *City of Toronto and Toronto Professional Firefighters Assn, Local 3888*, June 26, 2013, *Saint John Fire Fighters Association, Local 771 and The City of Saint John,* November 8, 2012; and *Covenant Health, St. Therese Villa and AUPE*, June 4, 2014)

105. The Union took exception to the Employer's argument that social justice is independent of replication as the Union's position is that the work of these employees is difficult, dangerous, and essential to the public interest and the fact that demand for this labour exceeds supply is supported by the evidence. As this process is to replicate the agreement the parties would reach if the right to strike existed, then the employees should be compensated in accordance with the capitalist principles of supply and demand.

106. The Union asserted the working conditions of the employees during COVID should be considered as the evidence of the employees at hearing spoke to the stress and the dangers faced by staff who showed up for work during the pandemic. It provided two reports to emphasize the working conditions encountered by the employees working in this sector, Time to Care, an April 2021, report prepared by Dr. Rebecca Graff McRae and a February 2023, report of the Auditor General entitled COVID 19 in Continuing Care Facilities.

107. The Union cited two interest arbitration cases in support of considering dangerous working conditions as relevant to the determination of compensation. These cases involved firefighters, *St. John Firefighters Association (Local 1075) and the City of St. John,* January 6, 2014, and *Moose Jaw Fire Fighters Association (I.A.F.F. Local 553) and City of Moose Jaw*, April 10, 2015, to stand for the principle that work in this sector is now a "dangerous occupation" and it is appropriate for an arbitration board to consider this factor when making its determinations.

108. The Union argued that the following collective agreements are appropriate comparators for my consideration: AUPE and Masterpiece Southland Meadows, October 16, 2020 to March 31, 2024 (first agreement); AUPE and Covenant Care (Foyer Lacombe), expiration July 16, 2021 (first agreement); AUPE and Well Being Services (Millrise) Ltd. (Calgary), Enhanced Mediator Recommendations (first Agreement); AUPE and Covenant Care (St. Marguerite Manor) (first agreement award). The Union argued that "significant weight should be placed on AUPE collective agreements in the long-term care, supportive living independent living nursing care

industry in Alberta communities in similar locations." It also took exception to the Employer limiting the relevant comparators to the Retirement Home sector.

109. The Union also argued that when assessing comparative wages and grids, the Union has proposed a wage grid reflective of a first agreement between the parties at River Ridge with minimal increases applied. Its position is that the comparators are not just for the purpose of general wage increases, but also to assess the respective wage grids.

110. The Union also argued that the number of full-time staff that the Employer cited as proof of strong ability to retain staff, 53% of full-time employees were hired before end of 2020, in fact demonstrates the volatility of the workforce and lends credibility to the Union's assertion that the staff are prepared to leave. The Union agreed that part-time employees are mobile and often work multiple part-time jobs so are not tied to specific sites, employers, jobs, or industries and this illustrates why more competitive working conditions are necessary to counteract this mobility and retain trained staff.

111. The Union referenced one of the Employer's authorities, Morley Gunderson in his Ontario Economic Council discussion paper entitled "Economic Aspects of Interest Arbitration" wherein he noted that wage rates being too low leads to shortages of workers. The Union asserted this is the case with this Employer as it is forced to limit vacation due to lack of staff and have had to use outside agencies to cover shortages.

Employer Argument

112. The Employer reviewed its submissions and exhibits, identifying that the McConachie site in Edmonton is one of Revera's 13 unionized retirement homes in Alberta, three of which are in Edmonton. It argued that the most appropriate comparators in this case are naturally the Revera and AUPE agreements in Edmonton, specifically the Churchill, River Ridge, and Riverbend sites.

113. The Employer highlighted that its intent is to identify the specific issues in dispute and provide accurate data including precise CBA language, references to two recent Revera sites, Edgemont and Aspen Ridge that were the subject of recent interest arbitration awards I wrote.

114. The Employer noted there is a great deal of uniformity on wage increases and where special adjustments exist, they are modest. It asserted there is no uniformity of wages amongst the collective agreements. The Employer also highlighted that Aspen Ridge is an exception to the Revera patterns because when it was purchased it had an existing collective agreement and a strike that occurred prior to its purchase. It argued this creates an anomaly that limits the

relevance of this agreement to the matter before me. It confirmed it is still a comparator but argued to rely on it to a lesser extent because of its history.

115. The Employer reviewed the principles of first agreement arbitration and interest arbitration arguing that in applying the replication and total compensation principles, the tendency should be status quo with an incremental move to industry levels.

116. With respect to the principle of replication, the Employer noted that the intent of replication is to substitute for the private-sector strike/lockout sanction and attempt to replicate what the parties might have achieved had they needed to resort to work stoppage. It also cited the decision of Arbitrator Illing in his 1994 decision of *Chelsea Park Oxford Nursing Home and SEIU Local 220*, CITE wherein at page 6 and 7, he reinforces that where a union has a significant number of voluntary settlements it provides guidance on the pattern and how it views the economic conditions at the time. It also emphasized that replication must contemplate the labour market realities in place at the time of the dispute (*Dana Manor & SEIU*, 1994, Arbitrator Samuels CITE) and that an arbitrator's notions of social justice or fairness are not to be substituted for these realities (*Re: Board of School Trustees, School District No. 1 (Fernie) and Fernie District Teachers' Association*, Arbitrator Dorsey and *Pembroke v. Pembroke Professional Fire Fighters' Association*, Arbitrator Knopf).

117. The Employer noted that there are five settlements at various Revera Retirement Homes locations that cover the proposed term of this agreement and should be compelling examples of what the parties would voluntarily agree to for the purposes of applying its replication principles. It asserted that the appropriate settlements to consider when applying the replication principle are those freely negotiated within the retirement home sector versus in the broader health care or hospitals settlements.

118. The Employer argued the case law supports that replication requires a demonstrated need to be established by the party proposing a clause. It noted that replication is not an exercise of splitting the difference and neither party should be rewarded for filing a long list of demands at arbitration.

119. The Employer also highlighted the February 2021, first agreement decision of Arbitrator Casey in *Signature Living (Rocky Ridge) Management Ltd. v. AUPE*, which noted that first agreements "should not create windfalls for either party or ignore market conditions or justify proposals for less than what exists in a spectrum or range of terms and conditions that similarly placed unions and employers would negotiate in similar locations and industries."

120. The Employer also confirmed it is not advancing an inability to pay argument and noted that inability to pay is only relevant if the employer were seeking to reduce an otherwise appropriate increase due to its financial circumstances and it is not. In addition, it argued that the concept of total compensation should have significant bearing on my determination as to the appropriate resolution of compensation matters. This includes all wages and forms of benefit that represent a cost to the Employer. It emphasized that while individual improvements may appear reasonable, the cumulative effect must be considered to determine what is appropriate in the circumstances. It highlighted a direct comparison on monetary elements between McConchie and broadly across the 46 unionized retirement agreements in Alberta on 13 key compensation matters, noting these demonstrate where mature agreements stand in the Alberta context.

121. The Employer provided data that supported that even though McConachie is a new site, it has a positive record with respect to attraction and retention of full-time employees. It argues that the turn-over of part-time employees is not an appropriate measure as part-time employees are extremely mobile as they leave to seek full-time positions or increased hours, and this is especially true for casual employees. As such, it argued that the current compensation package is sufficient.

122. The Employer provided its submissions on the impact of the economy on this arbitration which included data to support that the Canadian and Alberta economy has been struggling for the last four years and has not been strong during the proposed term of this agreement. This has been a direct result of the COVID-19 pandemic, and is reflected in the GDP, interest rates, employment rates and oil prices all of which provide negative indicators for the state of the economy during the period relevant to this arbitration. The Employer also cautioned that AUPE's reliance on an economic recovery must be balanced with consideration of the realities and headwinds encountered during the term of this agreement. It is the period of the economic conditions between 2019 and 2022 that are relevant and not the recovery of the economy between 2022 and 2025.

123. As the term of this agreement is for October 19, 2020, to December 21, 2023, it is only the economy and settlement trends from the same period that should be considered. The Employer provided economic data reflecting the average annual wage increases in Alberta and wage settlements in the health care and social assistance sector to support its position on appropriate wage increases.

124. The Employer recognized the impact of inflation, however presented data to support its position that it appeared to be dissipating and emphasized the downward trend since the height in June 2022, noting a 0.8% deflation over the prior eight months. The Employer argued that Canada's economy is slowing and is at risk of a recession because of interest rate hikes.

125. The Employer also reviewed the principles of first collective agreement arbitration and highlighted that first agreements seldom achieve wages, benefits or language that meet the norms set by mature agreements. It argued that a first agreement should not contain major breakthroughs and should reflect a balance between the needs of the employer while ensuring that the terms of the collective agreement are sufficiently attractive to the employees in the bargaining unit. Broadly, the Employer asserted that this should be interpreted to codify status quo which would establish the Union as the bargaining representative and future gains may be achieved incrementally through negotiations.

ANALYSIS

126. The parties have both laid out their positions with respect to the applicable principles to be applied in this matter. While there is little substantive difference in their interpretation of the case law, I will lay out the key elements that I relied upon for my determination on the outstanding issues.

First Contract Arbitration

127. In 2017, Division 14.1, First Contract Arbitration, was added to the *Labour Relations Code*, RSA 2000, c L-1 (the "*Code"*) (ss 92.2-92.4). These provisions lay out the process for parties seeking assistance from the Board in settling a first collective agreement bargaining dispute. While the parties have agreed to voluntary interest arbitration, the key principles of first contract arbitration still apply to this Board.

128. Unlike section 101 of the *Code*, which applies to compulsory interest arbitration boards, section 92.4 of the *Code* does not stipulate what the Arbitration Board must consider when resolving the terms of a first collective agreement, other than it cannot alter previously agreed to terms without the consent of the parties.

129. Since the *Code* is silent and there is limited jurisprudence on this point in Alberta to date, guidance may be sought by looking to other jurisdictions where legislation related to first contract arbitration has been in place for some time. I do note that most first agreement arbitration cases deal extensively with the recommendations of an Enhanced Mediator and what deference to apply when determining the appropriate terms and conditions. We do not have recommended terms of settlement in this case; however, I will be applying the same first agreement principles to the unresolved matters before me.

130. The panel in *Yarrow Lodge* affirm the criteria laid out in the case of *London Drugs Ltd.,* BCLRB No. 30/74 [1974] 1 CLRBR 140 and at page 33 lays out its own guidance as to what terms and conditions should be applied when determining terms and conditions of employment:

> a) A first collective agreement should not contain breakthrough or innovative clauses; nor as a general rule shall such agreements be either status quo or an industry standard agreement.
> b) Arbitrators should employ objective criteria, such as comparable terms and conditions paid to similar employees performing similar work.
> c) There must be internal consistency and equity amongst employees.
> d) The financial state of the employer, if sufficient evidence is placed before the arbitrator, is a critical factor.
> e) The economic and market conditions of the sector or industry in which the employer competes must be considered.

131. The case law instructs that the contract should neither reflect a "status quo" as asserted by the Employer nor an industry "standard agreement" as argued by the Union. Instead, it should be determined on a case-by-case basis. It is not intended that a first agreement between the parties mirror a mature agreement negotiated over years of collective bargaining. As noted by the Employer in its submissions, the first agreement is in and of itself a major change to the operations and not all gains are made by the Union in one round. I agree. However, it is also relevant to note that a first agreement is also not intended to be "business as usual" for the Employer with the Union only able to achieve an agreement that simply codifies status quo with incremental movement to be achieved in future bargaining.

132. To this end there should be caution exercised such that proposals not able to be achieved at the table are not granted without justification or the use of comparators. There should be pressure on both parties to engage in meaningful negotiations as opposed to being awarded a breakthrough at arbitration. Further, to the extent that the mature agreements may have the same or similar provisions does not automatically establish an "industry standard". To achieve the right balance, one must rely on the dual framework principles of "replication" and what is "fair and reasonable in the circumstances." (*Yarrow, supra,* at p. 32)

133. Replication "is to replicate or construct a collective agreement that reflects as nearly as possible, the agreement that conventional bargaining between the parties would have produced had they themselves been successful in concluding a collective agreement. This approach seeks to put both parties in the same position they would have been had there been no breakdown in negotiations." Therefore, it is relevant to consider the timeframe that collective bargaining broke down, not at the time of the arbitration.

134. This is balanced with the notion of "fair and reasonable in the circumstances," which requires the arbitrator to assess objective criteria to evaluate what is appropriate in a first agreement. The first contract in establishing a long-term bargaining relationship needs to provide for "fundamental collective agreement rights" such as layoff, union security, grievance procedure language as well as being sensitive to the sector or industry in which the agreement is to operate. The overlay of this is the general rule that the agreement must be realistic having consideration for the economic realities of the employer and the industry and be sufficiently attractive to employees to foster the process of collective bargaining.

135. In *Yarrow Lodge* all but one of 11 outstanding issues put before the arbitrator involved compensation. In that case the employer provided full disclosure of financial statements over several years. This stresses the importance of the need for detailed information being shared to substantiate the financial position taken by employers at mediation and arbitration.

Interest Arbitration Principles

136. S. 101 of the *Alberta Labour Relations Code*, RSA 2000, c L-1, lays out the criteria for consideration by this Board, some of which are mandatory and some of which are discretionary. The matters to be considered are described as, wages for the period the award will apply, employment, general economic conditions in the province, terms and conditions of employment in similar occupations, maintenance of relative terms and conditions between classifications and occupations, need to establish fair and reasonable terms relative to the work preformed and any other factor considered relevant by the arbitrator.

137. The legal principles to be applied to the interest arbitration process are generally well understood. The decision of Arbitrator Sims in *Newport Harbour Care Centre Partnership and AUPE Local 048 Chapter 014*, [2012] A.G.A.A. No. 65 lays out the principles in more detail. I will not replicate the excerpt in its entirety here but instead will summarize the key elements as follows:

a) Interest arbitration seeks to replicate what the parties would have achieved through free collective bargaining.

b) An arbitrator's notions of social justice or fairness are not to be substituted for market and economic realities.

c) A party advancing a position carries the onus of presenting cogent evidence to support that position.

d) Regardless of whether an individual benefit may seem attractive or well supported is not sufficient, it is not viewed in isolation but is instead determined on a package basis having regard for total compensation.

e) Replication involves an exercise of evaluating comparable settlements negotiated by similarly placed parties for a similar timeframe in a similar industry as a

key indicator of what the parties may have accepted in a free collective bargaining situation.

138. Arbitrator Smith in *Carewest v Alberta Union of Provincial Employees,* 2013 CanLII 66967 (AB GAA) at page 3, further confirmed that:

> "Viewing each element in isolation without consideration of the whole of the proposal fails to recognize the collective bargaining involves a series of compromises and trade-offs to achieve an overall settlement that both parties can accept. No party to such a process does or can expect to achieve all of what is sought."

139. As Arbitrator Casey noted in *Signature Living (Rocky Ridge)* at para 42;

> "Interest arbitration is not a scientific process. There is no magic formula. A party advancing a particular position carries the onus of presenting cogent evidence to support that position. This does not equate to an issue-by-issue approach where benefits are awarded because they seem individually attractive and well supported. Collective bargaining involves choices between desirable benefits, and agreements are settled on a package basis."

140. The interest arbitration process should not reward a failure of a party to establish a demonstrated need, to set priorities or to reasonably propose language that reflects these factors (see *Dufferin County Board of Education and OSSTF; Metropolitan Toronto Boards of Education and Teachers Dispute Act*). It is not the job of an interest arbitrator to guess as to what would work or be acceptable or to compromise between the positions to split the difference.

141. The interest arbitration process is conservative, and the asks must be substantiated based on identified needs. The quote from Arbitrator Stanley in the *Ten Participating Nursing Homes and SEIU* 1987 decision captures this perfectly:

> "Arbitration is a conservative process. There must be a demonstrated need for change before we can address ourselves to the question of what change is acceptable. The Arbitration process should not be viewed as an opportunity to make changes in a collective agreement based on philosophical preferences. In this way it should closely resemble the collective bargaining process which, in our experience, tends very quickly to focus on settling real practical problems and setting aside those proposals

that stem from both parties simply seeking what would be, from their point of view, a better agreement."

142. It is understood that the arbitrator's view of fairness or what may be preferable language or potentially what may be a more attractive or elegant solution is not relevant. The exercise is one of objective analysis and to replicate to the extent possible what agreement the parties would have made had they not hit impasse. I believe the best evidence of this is to look at the comparator agreements.

143. The Union argued that the best evidence of replication is the testimony of the employees and the surveys admitted into evidence as opposed to comparator agreements, apart from Aspen Ridge as it arguably underscores the impact of what could be achieved in a strike.

144. I would like to recognize the testimony from the staff who came to describe the challenges they have faced over the last three years. There is no question that COVID created an exceedingly difficult time for everyone, but most particularly those working in the health care sector. The employees at McConachie had to provide care to an extremely vulnerable population during a very stressful time during which they and their families were at risk. I appreciate the human face the employees put on these issues, and it was very compelling testimony. I have considerable respect for all employees who persevered through these challenges and have the deepest empathy for the personal struggles they described.

145. Unfortunately, their story is not unique. It mirrors the experience of all employees who worked in the continuing care sector over this period. As much as I found their evidence to be personally moving, I am unable to use it to distinguish the work of this bargaining unit from those working at other senior homes who also endured the same or similar working conditions. I also can not accept the Union's argument that this work is best compensated as a "dangerous occupation" akin to firefighting. This argument is a novel approach and flies in the face of the statistics provided by the Employer regarding the actual situation at McConachie suffering fewer days of outbreak than other Revera and AUPE sites.

146. The circumstances at McConachie were no different than at other sites represented by the Union. While I appreciate the Union would like to frame the work as dangerous as part of my consideration of compensation, to apply this to the determination of the terms at McConachie has not occurred at any other settlement that the Union can point to, therefore it would be a breakthrough and I do not believe is appropriate in these circumstances.

147. Further, the Union has described that in its view there are serious concerns over staffing shortages and the ability for the Employer to attract and retain staff. It also submitted the employee surveys which overwhelming stated that if the expectations of the staff were not met, they would leave. The Employer has denied that it has an issue with attraction and retention and identified that the current turnover is not problematic. In this regard I must defer to the Employer. If they do not identify that there are challenges, it is not my responsibility to solve a problem that the Employer denies exists.

148. With respect to the surveys, they are not specific enough to be particularly helpful as they do not clearly state what the employees see as a tipping point, it simply identifies generally that they expect improvements in sick time, shift differential and wages. And well they should, especially in a first agreement. However, to the extent that the final terms of the agreement meet their needs, or they decide to leave is too abstract to be able to take any true direction from. I can not replace the objective data that exists with speculation as to what degree of improvement would prevent people from quitting and to do so would be inappropriate.

Comparator Agreements

149. The Union asserted that the universe of comparators includes all AUPE contracts in the continuing care industry, including long term care, supportive living, and independent living sites. This includes public, private, not-for-profit, and faith-based employers. It argued that the most relevant comparable agreements are those negotiated by similarly placed parties for a similar timeframe and in a similar industry and within same or similar locations. Yet none of the Union's identified comparator agreements it is urging me to rely upon are in Edmonton and not all are first agreements. Further it did not identify that any of the collective agreements negotiated with this Employer as being appropriate comparators. The Union has argued that the collective agreements the Employer has negotiated with other unions, such as the United Food and Commercial Workers ("UFCW") or the Canadian Union of Public Employees ("CUPE") are not relevant comparators.

150. The Employer identified that the appropriate comparators for consideration for this arbitration are the thirteen Revera Retirement homes. These homes are in Edmonton and Calgary and several of them are AUPE agreements. The Employer noted that the bargaining relationship between AUPE and Revera Retirement LP is mature and well established to support its assertion that the Revera agreements are the best comparators upon which I should rely. It most particularly emphasized the three Edmonton agreements and highlighted that these agreements were used by the parties repeatedly throughout these negotiations as source collective agreement language in achieving agreement.

151. The Employer distinguished that there are a variety of funding models that exist even across its own sites. In Edmonton, three of the unionized agreements receive some designated supportive living funding: Churchill, Riverbend and Our Parents' Home, while Riverbend receives some homecare funding and McConachie receives no funding support. All of these are AUPE agreements. In Calgary five of the unionized agreements receive some designative supportive living funding; Scenic Acres and Edgemont, both AUPE sites, McKenzie Town and Heartland, both CUPE sites, and Meadowlands (Medicine Hat) which is represented by the UFCW Local 401.

152. The Employer highlighted that while the differences in funding create a distinction, all the Revera sites are retirement homes that receive a majority of their income from rent paid by residents. It urged me to consider the settlements that have been achieved in these agreements, particularly those with identical classifications and distinguish from Alberta Health Services and long-term continuing care homes and specifically the Edmonton locations at Churchill, River Ridge, and Riverbend.

153. It relied on the 1978 decision of Arbitrator G. Adams in *York Board of Health and ONA*, in which he states that:

> "It means to us that the settlements negotiated in this particular sector under free collective bargaining are more relevant standards for comparison than the prevailing rates in public hospitals which are only indirectly related to community-based standards."

154. The Employer also highlighted an excerpt from a recent interest arbitration decision of mine between these parties at the Scenic Acres site where I determine the appropriate comparators to be used for the purpose of replication in that case as follows:

> "I accept that the best comparative collective agreements are those in the similar industry and sector, which in this case is the retirement home sector and those between the same or similar parties. I reject the Union's argument that those agreements the Employer has negotiated with other Unions are not relevant. I find they are appropriate for me to include in my deliberations. Having said that I find the best comparators to be the Revera collective agreements negotiated by the Employer with AUPE. To a lesser extent the broader universe of retirement homes in the province are also relevant, particularly those in the Calgary and Edmonton markets."

155. I disagree with the Union's assertion that there should be no distinction between the retirement home, supported and independent living agreements and the continuing care and

hospital agreements. There is a difference in the work and while I appreciate a HCA is a HCA and a LPN is a LPN, the actual day to day demands and functions vary greatly based on the resident population and their acuity levels. I further disagree with the Union that I should rely upon the Aspen Ridge agreement as the most compelling comparator. It is not a first agreement; the terms and conditions were negotiated prior to the acquisition of the facility by Revera, as was the strike; and it is in Red Deer and not in Edmonton. This is not to suggest there should be no consideration given to settlements in other locations between these parties, or those between the Employer and other Unions, or to settlements in this sector between other parties. However, they are less relevant and therefore less persuasive.

156. This is not a question of my applying a social justice lens to this matter. It is important that I can determine in an objective way what constitutes replication based on the facts presented by the Union. To this end, I believe that the use of comparator agreements negotiated or concluded for the same period by the same parties in the same or similar locations provides the best guidance as to the appropriate terms and conditions. This would consider the impact of COVID, the economy overall and the appropriate terms of settlement for this first agreement.

157. I note that replication and comparators are not the same. The use of comparators is an inexact science as it is not possible to evaluate exactly what the total compensation of each agreement was at the time it was negotiated. Nor is it appropriate to simply do a line-by-line review to establish an "industry standard". However, when you have comparators that are so similar in all respects, it is excellent guidance when attempting to establish replication as we have some idea what these parties have freely negotiated and what terms have been ratified. This is why the Revera agreements and in particular the recent first agreements with the Union and those sites in Edmonton are the best guidance as to what the parties would settle for in a freely negotiated context.

158. My position in this arbitration is that the most compelling comparators for the purpose of this arbitration are those for negotiated by the Employer with AUPE, in particular the three in Edmonton.

The Economic Data

159. The economic report submitted by the Union was helpful as it reinforced the general patterns of settlement in the industry. It did not provide any information that was controversial as to the economic headwinds still facing the Alberta economy, however it was generally more optimistic in its view than the Employer's submission. The information provided focused on the impact of the economy currently, however, there has been significant volatility over the period relevant for this decision.

160. I agree with the Employer that the proper framework for consideration of the terms for settlement, particularly the monetary items, is to look to the relevant period of October 19, 2020, to December 21, 2023. While the economy has been exceedingly volatile, one should not apply a 2023 lens to 2020 or 2021. In my estimation any consideration of the impact of the economy and in particular inflation on this agreement has been addressed by these parties at other negotiating tables. While this aids my determination on general increases, it does not necessarily provide a complete answer on what is an acceptable monetary package. This must be done on a total compensation basis. I will rely upon the comparator agreements and look to recent settlements for guidance.

161. The Union has advanced numerous cases on the question of the Employer's ability to pay and the consideration of public sector employers when determining monetary terms. I note the Employer has not advanced an inability to pay argument and is not a public sector employer. The Employer has instead argued that it expects to have the same or similar terms as its competitors and other Revera sites. This is reasonable as there should be no expectation that the financial terms would exceed the comparators such that an argument about affordability would need to be made.

Other Relevant Considerations

162. One of the general considerations that I am bearing in mind is that the parties have agreed to a term until December 2023, which means that they will be back to the bargaining table in a few months. This will impact both the consideration of whether a specific term should be included in the final agreement and, whether there is a runway to phase in monetary elements of the agreement in stages to manage the costs to the Employer.

Items in Dispute

163. For each of the items in dispute I will summarize the respective submissions of each party as well as my determination. Having consideration for the submissions of the parties, the following constitutes my Award on these items:

Seniority

<u>The Union's Proposal</u>
Article 9 – Seniority

9.01. (a) The seniority date of all Regular Employees shall be the date upon which the Regular Employee commenced in the worksite, including all prior periods of uninterrupted service as a Casual, Temporary, or Regular Employee.

(b) Seniority shall not apply during the probationary period, however once the probationary period has been completed, seniority shall be credited from the seniority date established pursuant to Article 9.01(a).

164. The issue of seniority has been described by the Union as a significant issue and has identified that it objects to the concept of casual or temporary employees accruing seniority as too broad and should encompass the work in the bargaining unit from the time of hire, pre-certification.

The Employer's Proposal

13.01 An employee will establish seniority upon completion of their probationary period, the employee's name will be placed on the seniority list with seniority for all hours worked dating from the date they were hired by the Employer.

165. The Employer is seeking a definition of seniority for all employees that starts after probation and objected to the date of hire as it would recognize people who have been around longer over those who may have worked more hours and gained more experience. It further raised an objection on the basis that it would result in a significant cost to be considered from a total compensation perspective.

Decision

166. The issue of seniority and how it is calculated is a significant issue for unions and their members as it is a key factor in how employees exercise many of the rights and entitlements provided for in the collective agreement. It is unusual for any seniority clause to provide for seniority for casual and temporary employees and while seniority being determined by hours worked is seen frequently where a significant part-time workforce exists, it is not the case in the comparators between this Employer and this Union.

167. In this industry where there are a very limited number of full-time positions and most of the employees are part-time. The part-time employees traditionally use seniority to select schedules or lines or compete for additional hours, and it is most common to use date of hire for this purpose. This will avoid the challenges that may arise if an employee who works multiple part-time jobs but has been employed longer is competing for a full-time position with a more recent hire who has been able to pick up more hours.

168. I am not persuaded that this proposal is a significant compensation issue as suggested by the Employer as seniority does not directly impact on pay matters, but merely is the tool by which employees exercise their respective rights and entitlements under the collective agreement. In addition, there was not a significant period between Revera opening McConachie and the date of certification such that it would create a significant bump using date of hire by Revera.

169. I find that the appropriate determination of seniority should be the date upon which a Regular employee commenced working in the bargaining unit and should include hours worked as a casual or temporary employee. I accept the Union's proposal.

170. The language based on the comparator Revera and AUPE agreements shall be:
Article 9 - Seniority

9.01 a) The seniority date of all Regular Employees shall be the date upon which the Regular Employee commenced in the bargaining unit, including all prior periods of uninterrupted service as a Casual, Temporary or Regular Employee.

b) Seniority shall not apply during the probationary period, however once the probationary period has been completed, seniority shall be credited from the seniority date established pursuant to Article 9.01a)

171. The concern with a new collective agreement is that it will mean all regular employees employed at the time of certification would have the same seniority date. To this end there should be some recognition of the time worked prior to certification when they worked for this Employer as a one-time calculation of seniority to avoid the potential challenges this could present in future job postings or vacation selection.

172. As a result, I direct that the parties use the date hired by the Employer prior to certification to establish the seniority date upon implementation of this award.

Salaries

<u>The Union's Proposal</u>

173. The Union had three proposals under this Article.

14.07 Effective date of ratification, an Employee shall be paid both Shift Differential and Weekend Premium in addition to regular pay and overtime pay.

14.09 OVERPAYMENT

(a) Should the Employer issue an Employee an overpayment of wages and/or entitlements, then the Employer may make the necessary monetary or entitlement adjustments and take such internal administrative action as is necessary to correct such errors. The Employer shall notify the Employee in writing that an overpayment has been made and discuss repayment options. By mutual agreement between the Employer and the Employee, repayment arrangements shall be made. In the event mutual agreement cannot be reached, the Employer shall recover the overpayment by deducting up to ten percent (10%) of the Employee's gross earnings per pay period.

(b) UNDERPAYMENT

Should the Employer issue an Employee an underpayment of wages and/or entitlements, then the Employer shall make the necessary monetary or entitlement adjustments within the next following pay period after such underpayment is reported or noticed and take such internal administrative action as is necessary to correct such errors. The Employer shall notify the Employee in writing and advise of the corrective action to be taken.

174. The Union asserted that the stacking of premiums is common in the comparator agreements and that the overpayment/underpayment language was required to address frequent payroll errors at the site.

The Employer's Proposal

175. The Employer objected to all three of the Union's proposals. It asserted there should be no pyramiding as that is consistent with the comparator agreements. It also objected to the inclusion of the overpayment and underpayment as there was no evidence of actual issues with payroll beyond the employee surveys referenced by the Union.

176. It proposed the following language on No Pyramiding

21.01 No Pyramiding

(a) There shall be no duplication or pyramiding of any premiums (i.e. shift, weekend, overtime, sick, holiday, etc) for the same hours, regardless of the purpose for the premiums.

Decision

177. I could find no language in the comparator agreements between the parties, other than Edgemont, that provides for over or underpayment language. As a result, I decline to include this language.

178. I also note that the Union has sought to address pyramiding in the Salaries Article and in the Shift Premiums Articles. I will address this proposal in both places. Upon my review of comparators, I find that there is a provision regarding the stacking of premiums in almost all of them and that is the wording that I find is appropriate to include here.

179. The language based on the comparator Revera and AUPE agreements shall be:

14.07 There shall be no pyramiding of differentials, premiums, and bonuses for purposes of computing overtime hourly rates, unless so stated expressly in this agreement.

Shift Premiums and Differentials

The Union's Proposal

180. Article 17 – Shift Premiums

17.01 EVENING SHIFT

(a) A Shift Differential of: Effective date of ratification - two dollars ($2.00) per hour shall be paid:

(b) to Employees working a shift where the majority of such shift falls within the period fifteen hundred (1500) hours to twenty-three hundred (2300) hours; or

(c) to Employees for each regularly scheduled hour worked between fifteen hundred (1500) hours to twenty-three hundred (2300) hours, provided that at least one (1) hour is worked between fifteen hundred (1500) hours to twenty-three hundred (2300) hours;

(d) to Employees for all overtime hours worked which fall within the period of fifteen hundred (1500) hours to twenty-three hundred (2300) hours.

17.02 NIGHT SHIFT

17.02.1 A Shift Differential of: Effective date of ratification – four dollars ($4.00); per hour shall be paid:

17.02.2 to Employees working a shift where the majority of such shift falls within the period twenty-three hundred (2300) hours to zero seven hundred (0700) hours; or

17.02.3 to Employees for each regularly scheduled hour worked between twenty-three hundred (2300) hours to zero seven hundred (0700) hours, provided that at least one (1) hour is worked between twenty-three hundred (2300) hours to zero seven hundred (0700) hours;

17.02.4 to Employees for all overtime hours worked which fall within the period of twenty-three hundred (2300) hours to zero seven hundred (0700) hours.

17.03 All premiums payable under this Article shall not be considered as part of the Employee's Basic Rate of Pay.

17.04 Effective date of ratification, an Employee shall be paid both Shift Differential and Weekend Premium in addition to regular pay and overtime pay.

Article 18 – Weekend Premium

18.01 A Weekend Premium of:

Effective date of ratification - two dollars ($2.00); per hour shall be paid:

a) to Employees working a shift wherein the majority of such shift falls within a sixty-four (64) hour period commencing at fifteen hundred (1500) hours on a Friday, or

b) to Employees working each regularly scheduled hour worked after fifteen hundred (1500) hours on a Friday provided that at least one (1) hour is worked within a sixty-four (64) hour period commencing at fifteen hundred (1500) hours on a Friday;

c) to Employees working all overtime hours which fall within the sixty-four (64) hour period commencing at fifteen hundred (1500) hours on a Friday.

18.02 All premiums payable under this Article shall not be considered as part of the Employee's Basic Rate of Pay.

18.03 Effective date of ratification, an Employee shall be paid both Shift Differential and Weekend Premium in addition to regular pay and overtime pay.

181. There are currently no shift premiums in place at McConachie and the Union is proposing the introduction of three shift premiums for all employees. This proposal encompasses not only the creation of a premium, but also the amount of the premium, the eligibility criteria and a specific provision pyramiding of premiums. It justified its proposals on the basis that it is in the ballpark of the comparators, should include all employees and not just HCAs and LPNs and allow for premium stacking.

The Employer's Proposal

184. The Employer argued for the maintenance of status quo and specifically objected to the monetary impact of the Union's proposal, especially that the eligibility criteria allow for several options combined to "get the best of both worlds". It noted there are a range of premiums across the comparators and as there are no shift premiums now it is a monetary item that must be considered in the context of total compensation. The Employer also noted that shift premiums that differentiate between the general support services and health care classifications is common throughout the comparators and at a minimum should be incorporated here.

Decision

185. This was identified by the Union as a significant issue for its members and a review of all comparators, both narrowly and more broadly demonstrates that it is common for shift and weekend premiums in this industry. I do however acknowledge the Employer's concern regarding the amount, the eligibility and pyramiding as each aspect of the Union's proposal increases costs and, in some cases, quite dramatically.

186. Having consideration for the costs and the timing of this Award, given that the parties are headed into negotiation before the end of the year, I still find that it is appropriate to include an evening, night, and weekend premium. Normally I would stage its implementation to manage the cost implications, however given the expiration of the agreement I am limited in my ability to utilize this tool.

187. In my review of the comparators, I find that the eligibility should be based on hours worked within a set period and there shall be no pyramiding. All employees should be eligible for shift premiums; however, it is appropriate to maintain the distinction between health care and general support services positions with respect to the amount of the premium and the period of eligibility. To address the Union's concern regarding work on the weekends which may be compensated less than weekdays, I note that the comparator agreements resolve this issue by having a specific weekend rate for day, evening, and night shifts.

188. I recognize that these costs will have a significant impact on the Employer and will be considered as part of the total compensation.

189. The language based on the comparator Revera and AUPE agreements shall be:

> 14.01 Licensed Practical Nurses (LPN) & Health Care Aide (HCA) Weekday (Mon-Fri) Premiums
>
> (a) In addition to their regular rate of pay. Employees shall be paid a premium of one dollar fifty cents ($1.50) per hour for all hours worked on the evening shift (1500 - 2300).
>
> Effective December 31. 2023 the evening shift shall be compensated two dollars ($2.00) per hour for all hours worked.

(b) In addition to their regular rate of pay. Employees shall be paid a premium of two dollars ($2.00) per hour for all hours worked on the night shift (2300 - 0700).

Effective December 31. 2023 the night shift shall be compensated two dollars and fifty cents ($2.50) per hour for all hours worked.

14.02 Licensed Practical Nurses (LPN) & Health Care Aide (HCA) Weekend (Sat-000l hrs to Sun-2359 hrs) Premiums

(a) In addition to their regular rate of pay. Employees shall be paid a premium of one dollar and fifty cents ($1.50) per hour for all hours worked on the day shift (0700 - 1500).

Effective December 31. 2023 the weekend day shift shall be compensated two dollars ($2.00) per hour for all hours worked.

(b) In addition to their regular rate of pay. Employees shall be paid a premium of two dollars and fifty cents ($2.50) per hour for all hours worked on the evening shift (1500 - 2300).

Effective December 31. 2023 the weekend evening shift shall be compensated three dollars ($3.00) per hour for all hours worked.

(c) In addition to their regular rate of pay. Employees shall be paid a premium of three dollars ($3.00) per hour for all hours worked on the night shift (2300 - 0700).

Effective December 31. 2023 the weekend evening shift shall be compensated three dollars and twenty-five cents ($3.25) per hour for all hours worked.

14.03 All other Employee Classification Weekday (Mon-Fri) Premiums In addition to their regular rate of pay. Employees shall be paid a premium of one dollar ($1.00) per hour for all hours worked

between nineteen hundred (1900) hours and zero seven hundred (0700) hours.

14.04 All other Employee Classification Weekend (Sat-0001 Hrs to Sun-2359 Hrs) Premiums. In addition to their regular rate of pay, Employees shall be paid a premium of one dollar and fifty cents ($1.50) per hour for all hours worked between zero one (0001) hours Saturday and twenty three hundred and fifty nine (2359) hours Sunday.

14.05 All premiums under this Article shall not be considered as part of the Employee's Basic Rate of Pay.

Annual Vacation

The Union's Proposal

a. Vacation Entitlement
    i. During each year of continuous service in the employ of the Employer, Full-Time and Part-Time Regular Employees shall earn entitlement to a vacation with pay. The rate at which vacation entitlements are earned shall be governed by the total length of such service as follows:
        1. during the first (1st) year of employment an Employee earns a vacation at the rate of ten (10) working days
        2. during the second (2nd) and third (3rd) years of employment an Employee earns a vacation at the rate of fifteen (15) working days;
        3. during the fourth (4th) to ninth (9th) years of employment, an Employee earns vacation at the rate of fifteen (20) working days; and
        4. during the tenth (10th) and subsequent years of employment, an Employee earns a vacation at the rate of twenty-five (25) working days.
b. Vacation for Part-Time Employees shall be pro-rated based on their full-time equivalency.

190. The Union is proposing an increase to the current vacation entitlement for all employees, providing for vacation to be based on years of continuous service and allowing for part-time to

be able to bank the vacation time and take paid vacation off consistent with the full-time employees as currently they are paid out accrued vacation on each cheque. The Union's proposal includes a proposed increase in vacation for casuals. This will be addressed in the section on Casual Employees.

The Employer's Proposal

23.01 Full-time employees shall be entitled to the following vacation with pay. A year of service for vacation accumulations is equivalent to one thousand nine hundred fifty (1950) hours worked.

Service	**Vacation Time Eligibility**	**Vacation Pay (% of earnings)**
Start	Two (2) weeks	4%
After two (2) years of completed service	Three (3) weeks	6%
After eight (8) years of completed service	Four (4) weeks	8%
After fifteen (15) years of completed service	Five (5) weeks	10%

All full-time employees entitled to vacation time off shall be paid their vacation pay when they take their vacation; it will be paid on the regular bi-weekly pay schedule, assuming they have sufficient funds in their vacation bank.

The accrued vacation must be taken during the vacation year immediately following the year it was accrued and not prior to that.

23.02 Part-time employees shall receive vacation with pay on their biweekly pay as outlined below.

A year of service for vacation accumulations is equivalent to one thousand nine hundred fifty (1950) hours worked.

Service	Part-Time
Start	4%
After two (2) years of completed service	6%
After eight (8) years of completed service	8%
After fifteen (15) years of completed service	10%

191. The Employer is seeking to maintain its current level of vacation entitlement on the basis that the vacation thresholds are above average when looking at the comparators. It proposed that these entitlements are based on it maintaining its calculation of entitlement based on hours worked as opposed to date of hire and that the increase in vacation based on date of hire should not be combined with the proposed vacation levels.

192. Further it argued that to accommodate the Union's request to allow part-time to accrue vacation and take paid time off is a significant administrative issue to transition. The impact would be that employees would not be able to take vacation until they had built up their vacation bank after the transition.

Decision

193. After a review of the comparators, the standard is to have the vacation entitlement based on the years of continuous service and not hours worked. This is particularly true when focusing on the specific comparators the Employer is arguing I should rely upon. I accept the Union's proposal of the use of continuous service, however recognizing that the current proposed vacation levels are better than most of the comparators based on the date of hire. I do take the Employer's point that to allow for its current proposed thresholds, combined with the date of hire, would be an increase in entitlement. I see no reason to increase vacation beyond the comparator first agreement provisions. This would have a monetary impact and while I heard evidence that vacation was important, it was telling that the complaint was not that there was not enough vacation, but instead that it could not be taken. This is not an issue that can be addressed by adding additional time.

194. I also note the payment of vacation per pay cheque for part-time employees is consistent with the comparators between the parties. I do note that there are agreements between the parties where this is paid out once a year as opposed to every cheque. The determination as to whether it is preferable to be paid once a year or bi-weekly is a matter best left to the parties to discuss at the negotiation table.

195. The language based on the comparator Revera and AUPE agreements shall be:

20.02 Vacation Entitlement for Full-time Employees and Regular Part-time Employees, during each year of continuous service in the employ of the Employer, a Regular Full-time Employee shall earn entitlement to a vacation with pay and the rate at which such entitlement is earned shall be governed by the position held by the Employee and the total length of such services as follows:

(a) During the first (1st) through fourth (4th) year of such employment, an Employee earns a vacation entitlement of two (2) weeks or seventy-five (75) hours and four percent (4%) of gross earnings;

(b) During each of the fifth (5th) through seventh (7th) years of employment, an Employee earns a vacation entitlement of three (3) weeks or one hundred and twelve point five (112.5) hours and six percent (6%) of gross earnings;

(c) During the eighth (8th) year of employment and beyond, an Employee earns a vacation entitlement of four (4) weeks or one hundred and fifty (150) hours and eight percent (8%) of gross earnings;

20.03 Regular Part-time employees shall receive vacation with pay on their biweekly pay in accordance with the entitlement provided in Clause 20.02.

Health Benefits

<u>The Union's Proposal</u>

21.01 The Employer shall provide the group plans as outlined in this Schedule.

21.02 Employees are eligible for participation in the Employee Group Benefits Plan, based on their Status. Their eligibility criteria are as follows:

a) Regular Full Time or Part-time: 30 hours scheduled or greater biweekly.

b) Temporary Employees after 6 months: 30 hours scheduled or greater biweekly.

c) Casual: Ineligible

21.03 The Employee Group Benefits Plan includes Single and Family Healthcare Coverage, Single and Family Dental Coverage, Flexible Health Spending ($800/yr), Long Term Disability (LTD), Short Term Disability, Life Insurance, Dependent Life Insurance, Accidental Death and Dismemberment and an Employee Assistance Program. Premiums shall be 100% Employer paid.

21.04 Benefit eligibility and coverage is subject to the terms and conditions of the plans or insurance policies. If the Employer changes plans and/or providers, the new plan must be at least equivalent.

21.05 Unless otherwise provided, where an Employee is granted a leave of absence of more than 30 days in duration, and that Employees is covered by any or all of the plans specified in this Article, that Employee shall, subject to the Insurer's requirements, make prior arrangement for the prepayment of the full premiums for the applicable plans. The Employee may do so in advance with monthly post- dated cheques for the Employer's portion. Failure to submit the premium payments will result in the Employer discontinuing benefit coverage for that Employee.

21.06 Participation in the Employee Group Benefit Plan is mandatory for all qualifying Employees. Eligible Employees may waive or opt out of Health and/or Dental Coverage if the Employee has documentation proving that the Employee is insured under another plan or has obtained alternative coverage.

196. The Union has several changes identified in its proposal. The most significant being regular part-time employees being eligible for benefits based on hours worked bi-weekly. Currently only Regular full-time employees are eligible for benefits. The Union is also seeking to include entitlement for temporary employees after six months, introduce an $800.00 per year Flexible Health Spending Account, introduce a Short-Term and Long-Term Disability Plan. The Union advanced these plan changes without specific detail.

<u>The Employer's Proposal</u>

22.01 Eligibility

All permanent full-time employees are eligible for benefits after four hundred and fifty (450) hours worked. In order to maintain benefit eligibility, such employees must be regularly scheduled to work a minimum of sixty (60) hours bi-weekly. An

enrolment form, to elect their benefits, must be completed no later than thirty-one (31) days after becoming eligible. Otherwise, such an employee will be considered a late applicant and must provide satisfactory evidence of good health before you will be covered, and some benefit limitations may also apply.

22.02 The Employer pays 100% of the premium for all benefits.

22.03 Benefit Plan Entitlement Summary

(a) Basic Life Insurance – Manulife Policy #38950

- Eligible employees are covered for one times (1X) their annual earnings.
- Life Insurance reduces to 50% at age 65.
- Life insurance ceases at the earlier of termination of employment, retirement or age 70.

(b) Accidental Death & Dismemberment - Manulife Policy #38950

- The AD&D benefit is an equal amount to the Basic Life Insurance.
- The AD&D benefit ceases at the earlier of termination of employment, retirement or age 70.

c) Dependent Life Insurance

- Dependent Life Insurance covers an eligible employee's spouse for $10,000, and each dependent child for $5,000.
- Dependent Life insurance ceases at the earlier of termination of employment, retirement or age 70.

d) Extended Health Care Plan – Manulife Policy #85776

- Eligible employees will be reimbursed for ninety percent (90%) of eligible expenses submitted.
- Drugs legally requiring a prescription (with some limitations). A pay direct drug card will be issued to eligible employees with a $10.00 dispensing fee cap. Mandatory generic substitution applies.
- Vision care expenses up to $175 in a twenty-four (24) consecutive month period
- Eye exams covered once in a twenty-four (24) consecutive month period to a maximum of $50

- Medical equipment and supplies
- Paramedical practitioners, limited to $350 per practitioner per year, including chiropractor, speech therapist, podiatrist, clinical psychologist, physiotherapist, osteopath, naturopath and massage therapist
- Orthotics and orthopedic shoes, limited to a combined maximum of $300 per year
- Hearing Aids, up to $300 every 5 years
- Private duty nursing up to $10,000 per year
- Out of country emergency medical expenses up to a $5,000,000 lifetime maximum, including a travel assistance card. The maximum trip duration is 60 days.
- This benefit ceases at the earlier of termination of employment, retirement or age 75.

e) Dental – Manulife Policy #85777

- 80% reimbursement of basic dental expenses, including exams and cleaning once every nine (9) months, x-rays, fillings, endodontics and periodontics
- 50% reimbursement of major expenses, including crowns, bridges, dentures
- Basic and major expenses are limited to a combined maximum of $1,500 per person per calendar year
- Reimbursement will be based on the prior year's dental fee guide for your province of residence.
- This benefit ceases at the earlier of termination of employment, retirement or age 75.

22.04 Notwithstanding the above summary, where there is discrepancy or disagreement over the application of any of the health and welfare benefits, the terms and conditions of the applicable Manulife Policy will prevail.

22.05 The Employer reserves the right to amend Health and Welfare benefits from time to time.

22.05 Contributions During Leave of Absence

a) The Employer will continue to pay their share of the cost for the benefits plan when the employee is on any approved leave of absence with pay and for the first thirty (30) consecutive calendar days of any approved leave of absence without pay.

b) If the employee chooses to retain benefits while on approved leave of absence without pay for a period of more than thirty (30) consecutive calendar days, the employee will be responsible for the Employer's share of the cost of the benefit plan(s) after the first thirty (30) consecutive calendar days. The Employer reserves the right to amend Health and Welfare benefits from time to time.

196. The Employer argued that the benefit plan is currently 100% Employer paid for Regular full-time employees and is superior in all regards to other comparator agreements. Further, it acknowledged that where comparator agreements provide for part-time benefits there is also a cost share arrangement for both full-time and part-time employees. It objected to the inclusion of temporary employees, the Flexible Health Spending Account and the addition of a Short-Term or Long-Term Disability Plan on the basis that there are no comparators that provide these provisions and as such would be breakthrough items. It noted as well that there were no details provided by the Union on its proposed changes to the benefit plan.

Decision

197. It is clear from a review of the comparators that providing benefit coverage to part-time employees based on a minimum number of hours worked per week is consistent with the comparators. What is also consistent is that this is based on a cost share percentage as opposed to 100% Employer paid. To simply include part-time employees onto this benefit plan would be incredibly expensive for the Employer. This cost would only be exponentially increased by adding each of the Union's proposals: a Flexible Health Spending Account; including Temporary employees; and adding the proposed Disability Plans. I will dispense with these last items first as there are no relevant comparators that contain the provisions proposed by the Union and I lack sufficient information to determine the financial impacts of these proposals. I decline to include a Flexible Health Spending Account, include Temporary employees and add a Short-Term or Long-Term Disability Plan.

198. The more challenging issue is the inclusion of part-time and the change of the plan from a 100% Employer paid to a cost shared plan. As noted, I lack the appropriate information and plan details to be able to appropriately assess the financial impacts of this proposal. Benefit Plans are incredibly costly, and changes can be extremely complicated. The interest arbitration process does not lend itself to a thorough analysis of the proposals without the ability to assess either the financial impacts or whether the changes align with the priorities of the membership. Further, any changes would have to be implemented with the benefits provider and would not likely take effect until after the expiration of the collective agreement. I also note that the Union laid out several critical priorities during the hearing and benefits was not identified as one of those items deemed a priority by the members who testified or by the membership surveys introduced into evidence.

199. As such, having consideration for the total compensation principles, I will refrain from making any changes to the Health and Dental coverage. The parties are at the bargaining table in a few months, and this should be a priority for discussion as the comparators support part-time benefit coverage, however the cost share and entitlements should properly be the subject of negotiation after information sharing.

200. The Employer's language is included as follows:

22.06 Eligibility

All permanent full-time employees are eligible for benefits after four hundred and fifty (450) hours worked. In order to maintain benefit eligibility, such employees must be regularly scheduled to work a minimum of sixty (60) hours bi-weekly. An enrolment form, to elect their benefits, must be completed no later than thirty-one (31) days after becoming eligible. Otherwise, such an employee will be considered a late applicant and must provide satisfactory evidence of good health before you will be covered, and some benefit limitations may also apply.

22.07 The Employer pays 100% of the premium for all benefits.

22.08 Benefit Plan Entitlement Summary

a) Basic Life Insurance – Manulife Policy #38950

- Eligible employees are covered for one times (1X) their annual earnings.
- Life Insurance reduces to 50% at age 65.
- Life insurance ceases at the earlier of termination of employment, retirement or age 70.

b) Accidental Death & Dismemberment - Manulife Policy #38950

- The AD&D benefit is an equal amount to the Basic Life Insurance.
- The AD&D benefit ceases at the earlier of termination of employment, retirement or age 70.

f) Dependent Life Insurance

- Dependent Life Insurance covers an eligible employee's spouse for $10,000, and each dependent child for $5,000.
- Dependent Life insurance ceases at the earlier of termination of employment, retirement or age 70.

g) Extended Health Care Plan – Manulife Policy #85776

- Eligible employees will be reimbursed for ninety percent (90%) of eligible expenses submitted.
- Drugs legally requiring a prescription (with some limitations). A pay direct drug card will be issued to eligible employees with a $10.00 dispensing fee cap. Mandatory generic substitution applies.
- Vision care expenses up to $175 in a twenty-four (24) consecutive month period
- Eye exams covered once in a twenty-four (24) consecutive month period to a maximum of $50
- Medical equipment and supplies
- Paramedical practitioners, limited to $350 per practitioner per year, including chiropractor, speech therapist, podiatrist, clinical psychologist, physiotherapist, osteopath, naturopath and massage therapist
- Orthotics and orthopedic shoes, limited to a combined maximum of $300 per year
- Hearing Aids, up to $300 every 5 years
- Private duty nursing up to $10,000 per year
- Out of country emergency medical expenses up to a $5,000,000 lifetime maximum, including a travel assistance card. The maximum trip duration is 60 days.
- This benefit ceases at the earlier of termination of employment, retirement or age 75.

h) Dental – Manulife Policy #85777

- 80% reimbursement of basic dental expenses, including exams and cleaning once every nine (9) months, x-rays, fillings, endodontics and periodontics
- 50% reimbursement of major expenses, including crowns, bridges, dentures
- Basic and major expenses are limited to a combined maximum of $1,500 per person per calendar year
- Reimbursement will be based on the prior year's dental fee guide for your province of residence.

- This benefit ceases at the earlier of termination of employment, retirement or age 75.

22.09 Notwithstanding the above summary, where there is discrepancy or disagreement over the application of any of the health and welfare benefits, the terms and conditions of the applicable Manulife Policy will prevail.

22.10 The Employer reserves the right to amend Health and Welfare benefits from time to time.

22.05 Contributions During Leave of Absence

a) The Employer will continue to pay their share of the cost for the benefits plan when the employee is on any approved leave of absence with pay and for the first thirty (30) consecutive calendar days of any approved leave of absence without pay.

b) If the employee chooses to retain benefits while on approved leave of absence without pay for a period of more than thirty (30) consecutive calendar days, the employee will be responsible for the Employer's share of the cost of the benefit plan(s) after the first thirty (30) consecutive calendar days. The Employer reserves the right to amend Health and Welfare benefits from time to time.

Sick Leave

<u>The Union's Proposal</u>

22.01 Sick leave is for the sole purpose of protecting Full-time and regular Part-time Employees from loss of income when legitimately absent due to a non- occupational illness or disability.

22.02 Full-time and Part-Time Employees who have completed their probationary period shall be credited with ninety (90) sick leave hours per year, prorated based on start date and regularly scheduled hours. Sick leave hours shall be replenished at the start of each calendar year.

22.03 Subject to the above, an Employee granted sick leave shall be paid for the period of such leave at the Basic Rate of Pay and the number of hours thus paid shall be deducted from the Employee's sick leave credits.

22.04 Wage replacement will commence upon the first (1st) day of illness or disability.

22.05 An Employee who has exhausted their sick leave credits during the course of an illness, and the illness continues, shall with the approval of the Employer be placed on leave of absence without pay.

22.06 An Employee claiming sick leave shall not normally be required to provide proof of illness. In those instances where proof of illness is required, the Employee shall be notified by a Manager of this requirement and will be provided with written reasons why proof of illness is required. When directed by a Manager to obtain such proof, the Employee shall be advised of the requirement prior to their return to work. Where there is a fee for such documentation, the Employer will reimburse the Employee.

22.07 Casual Employees will not be entitled to sick leave.

201. The Union is seeking 90 hours paid sick leave for Regular Employees, prorated for part-time, to be replenished annually. The current provisions for sick leave are 52.5 hours for full-time and 22.5 hours for part-time. Improvement in sick leave was identified by the Union and the members at the hearing as a priority item. It is also seeking language which would require the Employer to pay where proof of illness is required.

The Employer's Proposal

24.01 Pay for sick leave is for the sole and only purpose of protecting Employees against loss of income when they are legitimately ill or unable to work due to a non-WCB compensated injury and will be granted to Employees on the following basis providing sick leave credits are available. Employees reimbursed by an outside party for lost time shall reimburse their sick leave bank.

24.02 Upon completion of the probationary period, Employees shall be granted sick leave credits for personal illness from the date of employment as follows:

a) Full-time employees are eligible to a maximum of 52.5 hours per calendar year.

b) Part-time employees are eligible to a maximum of 22.5 hours per calendar year.

c) Casual employees are not eligible for sick days.

24.03 The Employer requires an Employee absenting themselves on account of personal illness may be required to furnish a doctor's note issued by a qualified medical practitioner certifying the Employee was unable to work due to personal illness.

Employees may need to provide medical documentation to support their absence and to help plan for their return to work. Cooperation is required to enable payment of applicable sick leave.

24.04 An Employee unable to complete their shift due to illness will be paid for their full shift from their available sick leave bank.

24.05

a) Employees granted sick leave shall be paid for the period of such leave at their current hourly rate of pay. The number of hours paid shall be deducted from their sick leave credits up to the total amount of the Employee's accumulated

credits at the time the sick leave commenced.

b) For the purpose of this clause, a defined course of medical treatment of an acute condition (i.e., chemotherapy, insulin adjustment therapy) shall be treated as a single incident.

c) Compensation under the Workers' Compensation Act shall not be charged against accumulated sick leave credits granted in accordance with Article 31.

24.06

a) Employees unable to report for scheduled work on account of personal illness must notify the Employer prior to the start of the scheduled shift with the following notice:

b) During an illness of undetermined length, the Employee will notify the Employer of their progress weekly and provide the Employer with written notice of their readiness to return to work as far in advance as possible.

c) Sick relief shifts accepted by part-time Employees may be cancelled by the Employer, with as much advance notice as possible, when the regular incumbent returns to work.

24.08 Sick leave hours may not be paid out or carried over from one calendar year to another.

202. The Employer objects to the Union's proposal on the basis that it is too costly and in a first agreement the increase in sick leave would be a breakthrough item.

Decision

203. The Union's proposal does amount to an increase in sick leave protection for full-time by five additional days and part-time based on a prorated basis. I note it is difficult to calculate the exact number of days this would amount to for part-time employees as it is based on a part-time employee's regularly scheduled hours. When I review the comparators, 12 days is not the norm, however in almost all agreements between these parties, the employee is able to accrue time in their sick leave bank once it has been used. This is an additional cost. Where this is not the case, as in the Churchill agreement between these parties, it is 12 days for full-time and 9 days for part-time. As this was identified as a priority issue, I find that an increase in sick leave is warranted, however not to the levels requested by the Union. Having consideration for the total compensation principle, I award 10 days or 75 hours to full-time and five days or 37.5 hours to part-time without carry-over.

204. With respect to the relevant comparator agreements, all but one do not contain a provision requiring the Employer to pay for medical notes. The one that does, Churchill, also does not require

such notes until after three days absence. As such this would amount to a breakthrough, and I decline to include this in the Award.

205. The language based on the comparator Revera and AUPE agreements shall be the Employer's language with the increase in sick leave credits:

> 24.01 Pay for sick leave is for the sole and only purpose of protecting Employees against loss of income when they are legitimately ill or unable to work due to a non-WCB compensated injury and will be granted to Employees on the following basis providing sick leave credits are available. Employees reimbursed by an outside party for lost time shall reimburse their sick leave bank.
>
> 24.02 Upon completion of the probationary period, Employees shall be granted sick leave credits for personal illness from the date of employment as follows:
>
> a) Full-time employees are eligible to a maximum of 75 hours per calendar year.
> b) Part-time employees are eligible to a maximum of 37.5 hours per calendar year.
> c) Casual employees are not eligible for sick days.
>
> 24.03 The Employer requires an Employee absenting themselves on account of personal illness may be required to furnish a doctor's note issued by a qualified medical practitioner certifying the Employee was unable to work due to personal illness.
>
> Employees may need to provide medical documentation to support their absence and to help plan for their return to work. Cooperation is required to enable payment of applicable sick leave.
>
> 24.04 An Employee unable to complete their shift due to illness will be paid for their full shift from their available sick leave bank.
>
> 24.05
>
> a) Employees granted sick leave shall be paid for the period of such leave at their current hourly rate of pay. The number of hours paid shall be deducted from their sick leave credits up to the total amount of the Employee's accumulated credits at the time the sick leave commenced.
>
> b) For the purpose of this clause, a defined course of medical treatment of an acute condition (i.e., chemotherapy, insulin adjustment therapy) shall be treated as a single incident.

c) Compensation under the Workers' Compensation Act shall not be charged against accumulated sick leave credits granted in accordance with Article 31.

24.06

a) Employees unable to report for scheduled work on account of personal illness must notify the Employer prior to the start of the scheduled shift with the following notice:

b) During an illness of undetermined length, the Employee will notify the Employer of their progress weekly and provide the Employer with written notice of their readiness to return to work as far in advance as possible.

c) Sick relief shifts accepted by part-time Employees may be cancelled by the Employer, with as much advance notice as possible, when the regular incumbent returns to work.

24.07 Sick leave hours may not be paid out or carried over from one calendar year to another.

Retirement Savings Plan

The Union's Proposal

23.01 Permanent Full Time and Permanent Part Time Employees who work fifteen (15) hours per week or more will be eligible to participate in a Group RRSP Plan.

23.02 Casual and Temporary Employees will not be eligible to participate in the Group RRSP Plan.

23.03 Employee contributions will be on a voluntary basis. The Employer will contribute two per cent (2%) of base earnings, excluding overtime and shift differential, on a bi-weekly basis for all eligible Employees who contribute at least one per cent (1%) of their base earnings, excluding overtime and shift differential, to the Group RRSP Plan on a bi-weekly basis.

23.04 Eligible Employees may make additional voluntary contributions over and above the minimum contribution of one per cent (1%) of base earnings, excluding overtime and shift differential. Such additional contributions will be matched by the Employer up to three per cent (3%).

23.05 Employees on a leave of absence will not be eligible for the Employer's RRSP contribution.

206. There is currently no retirement savings plan at McConachie and the Union is proposing a voluntary participation plan and employees need only contribute one percent (1%) for the Employer to be required to contribute two percent (2%). It further extends Employer matching up to three percent (3%) matching for all Regular employees who work fifteen hours per week or more.

The Employer's Proposal

207. The Employer is opposed to the inclusion of a retirement savings plan at McConachie on the basis that this is a first collective agreement and the Union's proposal is expensive. It advanced the argument that although most of its sites have a matching retirement saving plan, two do not. It further argued that as the agreement will expire by the end of this year that I should award status quo.

Decision

208. This is a difficult issue as all the identified comparators relied upon by the parties during negotiation, and particularly by the Employer at hearing, contain an RRSP program. It is true that this is an expensive item and as it would have to be established with this bargaining unit it is unlikely it would be implemented until after the expiration of the agreement. However, unlike the proposed benefit changes, this is a more straightforward matter to consider from a total compensation perspective. Based on the comparators I find that it is appropriate to include an RRSP program, however not require it to be established until the end of the term.

209. The language based on the comparator Revera and AUPE agreements shall be the following:

> Effective December 31, 2023
> 32.01 The Employer will establish an Employee self-directed, Registered Retirement Savings Plan (RRSP) for Regular Full-time and Regular Part-time Employees (who are normally scheduled to work forty (40) hours bi-weekly or more of the normal work hours in a bi weekly pay period.) Participation will be on a voluntary basis.
>
> 32.02 Employees on the Employer's payrolls as of the date of ratification of this Collective Agreement are eligible to enroll in the Plan without any eligibility period. For Employees hired on or after the date of ratification, the eligibility period is completion of six (6) months service.
>
> 32.03 Employees who wish to participate will contribute:
> Two percent (2%) per hour worked, matched by the Employer on a dollar-for-dollar basis, of two percent (2%) of regular earnings. Regular earnings (wages) is defined as the basic

straight time wages for all hours worked , including:

a) the straight time component of hours worked on a holiday;
b) holiday pay, for hours not worked; and
c) vacation pay.

All other payments, premiums, allowances etc. are excluded.

Casual Employees

The Union's Proposal

28A.05 Casual Employees shall receive Named Holiday pay at the rate of five (5%) percent of the Employee's basic rate of pay, general holiday pay, and vacation pay earned in the four (4) weeks immediately preceding the Named Holiday.
A Casual Employee required to work on a Named Holiday shall be paid at one point five times (1.5X) their basic rate of pay for all hours worked.

28A.06 During each year of continuous service in the employ of the Employer, Casual Employees shall earn entitlement to vacation pay. Casual Employees are paid vacation pay on each biweekly pay cheque. The rate at which vacation entitlements are earned shall be the same as regular employees outlined in 20.02.

210. The Union's proposal seeks to provide named holiday pay for casual employees and vacation entitlements that are consistent with Regular employees.

The Employer's Proposal

23.05 A Casual Employee required to work on a Named Holiday shall be paid at one point five times (1.5X) the Employee's basic rate of pay for all hours worked.

23.06 Casual Employees shall be paid four percent (4%) of their regular earnings paid at the basic rate of pay as vacation pay on each bi-weekly pay period.

211. The Employer objects to the inclusion of named holiday pay and enhanced vacation for casual employees on the basis that it is not supported by the comparators.

Decision

212. The calculation proposed by the Union for Named Holiday pay for casuals is not supported by the comparators, although there is a version of the proposed named holiday language in Aspen Ridge. I note that it differs dramatically from the proposal before me. This language would be a breakthrough and I decline to consider it as part of this Award.

213. With respect to the proposed vacation entitlements for casual employees these amounts exceed all the comparator agreements. I do note that even the agreement the Union urged me to find the most compelling limits casual vacation pay to four percent (4%). As neither of the Union's proposals are supported by the comparator agreements and would amount to breakthrough language, I decline to include them in my Award.

214. The Employer's proposed language is consistent with the comparators and shall be included as follows:

> 28A.05 A Casual Employee required to work on a Named Holiday shall be paid at one point five times (1.5X) the Employee's basic rate of pay for all hours worked.
>
> 28A.06 Casual Employees shall be paid four percent (4%) of their regular earnings paid at the basic rate of pay as vacation pay on each bi-weekly pay period.

Professional Fees

The Union's Proposal

> 30.01 Effective on January 1, 2021, for health regulated professional employees, upon proof of registration, the Employer will reimburse registration fees up to a for all Regular Full and Part time employees, as of December 1 in each calendar year and has active registration with the Professional College at the beginning of each calendar year shall receive full reimbursement for her registration.

215. The Union is proposing the full reimbursement of registration fees for all health regulated professional employees which is to include the HCAs as well as the LPNs. It argued that this is consistent with the comparators and is not exorbitant. It acknowledged that the issue of the HCAs registration fees is not settled, and the language is intended to be broad enough to capture them once the regulations are in place. The Union proposed alternatively that I consider a Letter of Understanding that requires the parties to negotiate the impacts on HCAs once the regulations are in place.

The Employer's Proposal

216. The Employer is opposed to this proposal as it is only included in 6 of the comparator agreements and is limited to LPNs for specific amounts in the range of $100 to $300, as opposed to the Union's broadly sweeping proposal. It noted that five of the Revera comparator agreements do not have any reimbursement for professional fees.

Decision

217. Having considered the limited number of comparators that contain a version of this provision, the fact that this was not identified as a priority item by the Union, that this is a first agreement between the parties, and that this agreement would expire before anyone would be eligible, I decline to include this proposal in my Award. I also am not prepared to consider a Letter of Understanding as the parties will be at the bargaining table and will be in a better position to determine if there has been any change in the status of the HCAs at that time.

Uniforms

The Union's Proposal

> 34.01 The Employer will provide two (2) uniforms to Employees upon hire.
>
> 34.02 Uniform allowance is for the sole and exclusive purpose of maintaining appropriate work attire as required by the Employer.
>
> 34.03 Where a post probationary employee is required to wear a uniform, the Employer will pay a uniform allowance in the amount of eight cents ($0.08) per hour worked. Such amount is not to form part of the regular hourly rate for purposes of overtime and paid holidays. The uniform allowance will be payable on a bi-weekly basis.

218. The Union emphasized that the uniforms required to be worn by staff are not cheap and as a result proposes the provision of two uniforms to new hires while maintaining the Employer's current cents per hour uniform allowance for current staff. This would apply to all staff regardless of hours worked.

The Employer's Proposal

> 25.01 Employees must wear the uniform or uniform components as directed by the Employer. Uniform allowance is for the sole and exclusive purpose of maintaining appropriate work attire as required by the Employer.
>
> 25.02 Where a post probationary employee is required to wear a uniform, the Employer will pay a uniform allowance in the amount of eight cents ($0.08) per hour worked. Such amount is not to form part of the regular hourly rate for purposes of overtime and paid holidays. The uniform allowance will be payable on a bi-weekly basis.

219. The Employer objected to the Union's proposal on the basis that the comparator agreements demonstrate that its current cents per hour allowance is either equal to or better than other agreements. Further it emphasized that this is a question of total compensation and should be denied.

Decision

220. Having considered the comparators, and the fact that this was not identified as a priority item I decline to include the Union's proposal in my Award.

221. The Employer's proposed language is equal to or better than the comparators and shall be included as follows:

> 34.01 Employees must wear the uniform or uniform components as directed by the Employer. Uniform allowance is for the sole and exclusive purpose of maintaining appropriate work attire as required by the Employer.
>
> 34.02 Where a post probationary employee is required to wear a uniform, the Employer will pay a uniform allowance in the amount of eight cents ($0.08) per hour worked. Such amount is not to form part of the regular hourly rate for purposes of overtime and paid holidays. The uniform allowance will be payable on a bi-weekly basis.

Wages

<u>The Union's Proposal</u>

Wages:

October 19, 2020	
Dietary Aide, Laundry Aide, Cook	2.5%
Dishwasher, Receptionist, Activity Aide, Maintenance, HCA, LPN	1.0%
Driver	2.0%
January 1, 2022	
Dietary Aide, Laundry Aide, Cook	2.5%
Dishwasher, Receptionist, Activity Aide, Maintenance, HCA, LPN, Driver	1.0%
January 1, 2023	
Dietary Aide, Laundry Aide, Cook	2.0%
Dishwasher, Receptionist, Activity Aide, Maintenance, HCA, LPN	2.0%
Driver	1.0%

222. In addition, it proposed an additional step after three years of employment; and retroactive pay for former employees.

223. The Union is proposing to emulate the first agreement wage scale negotiated between the parties at the Revera River Ridge site. It identified that the wage scale contains a top step at 5850 hours for General Support Services classifications that exceeds the current rates at McConachie which top out at 3900 hours. It proposed that this new grid step be added effective the date of certification, which it acknowledged would result in a consequential "substantial increase" for these classifications. The Union identified that considering this new wage grid which would take effect as of the date of certification, it proposed a "modest" wage package of increases that differ by classification. The result is a grid which is substantially the same as River Ridge as of January 1, 2021.

224. The Union acknowledged that the rates for the HCAs and LPNs is higher than those in River Ridge and that the Employer's proposed wage rates for HCAs and LPNs at McConachie exceeds those proposed by the Union. It noted as well that at other sites the rates for General Support Services classifications are lower in some more mature agreements. It argued that it is seeking to limit the disparity between nursing care and support services classifications that exist elsewhere.

<u>The Employer's Proposal</u>

January 1, 2021	1.75%
January 1, 2022	1.75%
January 1, 2023	1.25%

These rates would be applied to the current wage grid.

Job Group	Steps	Current
Dietary Aide Housekeeping Aide Laundry Aide Dishwasher	Start	$15.99
	Step 1 (450 Hours)	$16.48
	Step 2 (1950 Hours)	$16.99
	Step 3 (3900 Hours)	$17.70
Receptionist	Start	$16.12
	Step 1 (450 Hours)	$16.62
	Step 2 (1950 Hours)	$17.14
	Step 3 (3900 Hours)	$17.85
Cook Bus Driver Activity Aide Maintenance Aide	Start	$19.35
	Step 1 (450 Hours)	$19.95
	Step 2 (1950 Hours)	$20.56
	Step 3 (3900 Hours)	$21.42
Health Care Aide	Start	$22.34
	Step 1 (450 Hours)	$23.03
	Step 2 (1950 Hours)	$23.75
	Step 3 (3900 Hours)	$24.74
Licensed Practical Nurse	Start	$31.10
	Step 1 (450 Hours)	$32.06
	Step 2 (1950 Hours)	$33.05
	Step 3 (3900 Hours)	$34.43

225. The Employer objected to the Union's wage proposal. With respect to the application of wage adjustments by classification as this sort of "special adjustment" is not supported by the comparators or the principle of replication. It asserted that there needs to be a single general wage increase that applies across each classification.

226. The Employer defended its wage proposal as being consistent with the comparators and the application of the principle of replication supports its proposed general increases. Particularly when compared to agreements negotiated between these same parties, comprising both freely negotiated agreements and recent arbitration awards for the same period in the same industry. These settlements and awards have already contemplated the impacts of COVID and the current economic volatility and should provide the guidance on general increases.

227. The Employer highlighted that there is a dramatic difference in rates across the Alberta Retirement Home sector and that there are no "benchmark" rates of pay. It noted that the LPN and HCA wage rates place them at 8th place industry average provincially and this would be maintained using the Employer's increases over the proposed three-year term.

228. With respect to the Union's additional grid step after three years or 5850 hours, the Employer noted that each of the Revera agreements has varying levels of steps for progression and in some cases varies by classification within the agreement. It noted that there is no compelling reason for this change.

229. The Employer agreed to retroactive pay to be paid only to active Employees, employes as of the date of this Award for all hours worked from the date of Certification but objected to the inclusion of former employees in retroactive pay.

230. The Employer also agreed to maintain any employee receiving a wage rate which is above the awarded wage rates, at their current rate of pay until the wage schedule for their classification surpasses their current rate of pay, (Redcircling).

Decision

231. With respect to the general increases the parties do not appear very far apart, however when contemplating the full extent of the Union's monetary proposals they would have a significant financial impact amounting to increases between 11% and 12.75% for the GSS classifications.

232. The Union only used one agreement to establish the rates it advanced at hearing. Further it did not provide any analysis or information regarding whether the rates for the GSS classifications were out of line within the industry. It is not possible to use one agreement to determine an industry standard and when I undertook to review all the comparators, not only those identified as most relevant, but also more broadly I found that there is no consistency in the grids, the steps or the rates of pay by classification. In fact, this is true even when limiting the review to only AUPE agreements.

233. Given the significant impact on total compensation and the lack of any benchmark upon which to establish appropriate first agreement rates of pay by classification I am reluctant to undertake a rewrite of the wage grid, especially when the Union appears to be cherry picking the best of the GSS rates to use. I recognize the River Ridge agreement is a first agreement recently freely negotiated between these parties, and I also note that the Union has indicated that the nursing care staff were supportive of the increases for the GSS classifications even if it meant less for them, however that does not compel me to apply either the differentiated general increases or the proposed wage grid.

234. I do note that when I compare the wage grids broadly across the Retirement Home sector, several of the classifications may appear to be undercompensated, however given the Employer's grouping of classifications on the wage grid this is not universal. Several

classifications such as dishwasher and maintenance worker benefit from their grouping with other generally higher paid classifications. While I find that the 2020 rates of pay for some classifications behind the rates in comparator agreements, I must bear in mind that this is a first agreement and that to do an appropriate market analysis one needs to compare positions and duties and not just look at the rates of pay.

235. As a result of the above analysis, I decline to award the Union's proposals on the differing wage adjustments by classification and the proposed new wage grid adding a new top step at 5850 hours.

236. My review of the general wage increases proposed by the Employer in the context of 2023 settlements in the Health Care and Social Assistance sector and more specifically at the retirement home settlements demonstrate that the general wage increase proposed by the Employer is low. I recognize that the increases are in line with recent awards I have issued between these parties, however, there have been some marked changes in the settlement pattern for 2023. When examining the Revera settlements alone as broken down by Dr. Hyndman, I acknowledge that the unweighted average settlement is one point eighty eight percent (1.88%). It is also noted that the pattern of settlements in the sector has shown an increase in both weighted and unweighted settlements since he prepared his report.

237. Based on the above data, the Employer's proposed increase for 2023 is slightly less than the average in the sector and for Revera specifically. However, having consideration for the principle of total compensation for this first agreement between the parties and the number of monetary adjustments in this Award based on the identified priorities of the Union, I am not prepared to increase the general wage increases beyond the pattern of increases in the sector.

238. Based on comparators and the principle of replication I award the Employer's proposed general wage increases. While I determined that the Redcircling proposal advanced by the Union was untimely, the Employer agreed to both it and retroactive pay for active employees to the date of certification of the Agreement and these terms will therefore be included in the Award.

Pandemic Pay

<u>The Union's Proposal</u>

239. The Union advanced the argument that at the time of certification the Employer was paying the employees at McConachie the $2.00 Pandemic Pay premium and when the Employer ended the payment of the premium on January 6, 2023, it filed a complaint with the Labour Relations Board. At the Board the parties agreed to resolve this matter during the interest arbitration process in accordance with the accepted principles outlined in this Award.

240. The Union asserted that as it did not explicitly or implicitly agree that this wage enhancement was temporary, the Employer's termination of the premium is a substantial wage rollback and as a drastic change from the wages in place at the time of certification, should be continued. The Union argued that such a rollback would be a breakthrough and thereby should be rejected.

241. Further, the Union argued that the fact that premium at McConachie was funded or not is an irrelevant consideration and that the fact that the premium continues to be paid at other Revera sites demonstrates that the labour market supports the wage enhancement as the Union refers to it. It relies upon the fact that at another Revera first agreement site, Our Parents' Home, it continues to be paid and that this is an appropriate comparator. The Union stated that the elimination of this wage enhancement would violate the "labour market and rules of replication".

The Employer Proposal

242. The Employer reviewed the history of the Pandemic Pay premium. Effective May 27, 2020, Revera announced that it had decided to extend the $2.00 per hour premium to all HCAs in their long term care and retirement homes, despite the fact that the government funding only applied to long term care and designated supportive living sites. It was applied to base pay, however allocated on employee pay stubs as a separate premium.

243. At the time it was introduced, the Employer entered into a Letter of Understanding in June 2020 with AUPE at one of its unionized retirement homes, Aspen Ridge. This was also a non-funded site and the Letter of Understanding clearly indicated the payment was unique to the COVID-19 pandemic, was not part of an HCA's hourly wages, did not form part of the collective agreement and could be cancelled by the Employer with seven days notice.

244. The Union was certified at the McConachie site on or about October 19, 2020, and the Employer acknowledged that there was no Letter of Understanding with the Union at this site regarding the Pandemic Pay premium, however at all material times the Union and the employees were aware that the premium was temporary and unrelated to the collective bargaining between the parties. This was demonstrated by the fact that the employee pay stubs identified the $2.00 as a Pandemic Pay premium distinguishable from their wages.

245. On January 6, 2023, Revera ended the Pandemic Pay premium at all of its non-funded retirement residences, both union and non-union, which led to the Labour Board complaint filed by the Union on January 12, 2023.

246. The Employer took issue with the Union's assertion that the rollback would be a breakthrough as no other non-funded site in the province is receiving this premium and the principle of replication would support not including this premium in the collective agreement at this site.

Further, it asserted that the wage rates at McConachie for the HCAs is an average of $1.11 per hour above the industry average across the three years of increases proposed and that is without the premium in place. The Employer also challenged the use of Our Parents' home as a comparator, however if it were to be used the HCA rates of pay at McConachie exceed those at Our Parent's Home, even when considering the temporary premium in place.

Decision

247 I disagree with the Union's argument that to allow for the elimination of the Pandemic Pay premium would amount to a breakthrough and that the principle of replication based on Our Parents' Home supports the continuance of this premium. I accept that the premium was understood by the Union generally and the employees at McConachie specifically to be based on the Pandemic and temporary in nature. I accept that the funding of the premium is relevant to my deliberations as the payment for the retirement home sites was gratuitous on the part of the Employer and not connected to the wages.

248. I have reviewed the comparators broadly across the retirement home sector and can find no comparators where this premium has been incorporated into the collective agreement, beyond Letters of Understandings such as the one signed by the Employer and AUPE that specifically address this premium was for the period of the pandemic. To include this at this time would be a breakthrough and I decline to consider the Union's proposal, particularly since the HCA wage rates at McConachie already exceed those at Our Parents' Home, which the Union argued was the appropriate comparator.

Conclusion

If any proposals from either party have not been dealt with directly in this Award they are hereby dismissed.

I direct the parties to conclude a collective agreement based on the enclosed terms and I retain jurisdiction to assist with any matters related to implementation of the Award. I am attaching an Appendix A with the specific changes referenced in the Award. If there is any discrepancy between the Appendix and this Award, the Award shall prevail.

I would like to thank both counsel for their able representation and submissions.

Issued and dated this 30th day of August 2023.

Mia Norrie - Arbitrator

IN THE MATTER OF AN INTEREST ARBITRATION

Between

Revera Retirement LP by its general partner REVERA RETIREMENT GENPAR INC.
Operating as "McConachie Gardens"
("Employer")

And

Alberta Union of Provincial Employees
("Union")

APPENDIX A

It is understood that the Article numbers of the following clauses may be amended during the finalization of the collective agreement between the parties.

Seniority

Article 9 - Seniority

9.01 a) The seniority date of all Regular Employees shall be the date upon which the Regular Employee commenced in the bargaining unit, including all prior periods of uninterrupted service as a Casual, Temporary or Regular Employee.

i) Seniority shall not apply during the probationary period, however once the probationary period has been completed, seniority shall be credited from the seniority date established pursuant to Article 9.01a)

As a result, I direct that the parties use the date hired by the Employer prior to certification to establish the seniority date upon implementation of this award.

Salaries

14.07 There shall be no pyramiding of differentials, premiums, and bonuses for purposes of computing overtime hourly rates, unless so stated expressly in this agreement.

Shift Premiums and Differentials

14.01 Licensed Practical Nurses (LPN) & Health Care Aide (HCA) Weekday (Mon-Fri) Premiums

(a) In addition to their regular rate of pay. Employees shall be paid a premium of one dollar fifty cents ($1.50) per hour for all hours worked on the evening shift (1500 - 2300).

Effective December 31. 2023 the evening shift shall be compensated two dollars ($2.00) per hour for all hours worked.

(b) In addition to their regular rate of pay. Employees shall be paid a premium of two dollars ($2.00) per hour for all hours worked on the night shift (2300 - 0700).

Effective December 31. 2023 the night shift shall be compensated two dollars and fifty cents ($2.50) per hour for all hours worked.

14.02 Licensed Practical Nurses (LPN) & Health Care Aide (HCA) Weekend (Sat-OOOl hrs to Sun-2359 hrs) Premiums

(a) In addition to their regular rate of pay. Employees shall be paid a premium of one dollar and fifty cents ($1.50) per hour for all hours worked on the day shift (0700 - 1500).

Effective December 31. 2023 the weekend day shift shall be compensated two dollars ($2.00) per hour for all hours worked.

(b) In addition to their regular rate of pay. Employees shall be paid a premium of two dollars and fifty cents ($2.50) per hour for all hours worked on the evening shift (1500 - 2300).

Effective December 31. 2023 the weekend evening shift shall be compensated three dollars ($3.00) per hour for all hours worked.

(c) In addition to their regular rate of pay. Employees shall be paid a premium of three dollars ($3.00) per hour for all hours worked on the night shift (2300 - 0700).

Effective December 31. 2023 the weekend evening shift shall be compensated three dollars and twenty five cents ($3.25) per hour for all hours worked.

14.03 All other Employee Classification Weekday (Mon-Fri) Premiums

In addition to their regular rate of pay. Employees shall be paid a premium of one dollar ($1.00) per hour for all hours worked between (1900 - 0700).

14.04 All other Employee Classification Weekend (Sat-0001 Hrs to Sun-2359 Hrs) Premiums

In addition to their regular rate of pay. Employees shall be paid a premium of one dollar and fifty cents ($1.50) per hour for all hours worked between 0001 Hrs Saturday and 2359 Hrs Sunday.

Annual Vacation

20.02 Vacation Entitlement for Full-time Employees and Regular Part-time Employees, during each year of continuous service in the employ of the Employer, a Regular Full-time Employee shall earn entitlement to a vacation with pay and the rate at which such entitlement is earned shall be governed by the position held by the Employee and the total length of such services as follows:

(a) During the first (1st) through fourth (4th) year of such employment, an Employee earns a vacation entitlement of two (2) weeks or seventy-five (75) hours and four percent (4%) of gross earnings;

(b) During each of the fifth (5th) through seventh (7th) years of employment, an Employee earns a vacation entitlement of three (3) weeks or one hundred and twelve point five (112.5) hours and six percent (6%) of gross earnings;

(c) During the eighth (8th) year of employment and beyond, an Employee earns a vacation entitlement of four (4) weeks or one hundred and fifty (150) hours and eight percent (8%) of gross earnings;

20.03 Regular Part-time employees shall receive vacation with pay on their biweekly pay in accordance with the entitlement provided in Clause 20.02.

Health Benefits

22.06 Eligibility

All permanent full-time employees are eligible for benefits after four hundred and fifty (450) hours worked. In order to maintain benefit eligibility, such employees must be regularly scheduled to work a minimum of sixty (60) hours bi-weekly. An enrolment form, to elect their benefits, must be completed no later than thirty-one (31) days after becoming eligible. Otherwise, such an employee will be considered a late applicant and must provide satisfactory evidence of good health before you will be covered, and some benefit limitations may also apply.

22.07 The Employer pays 100% of the premium for all benefits.

22.08 Benefit Plan Entitlement Summary

(a) Basic Life Insurance – Manulife Policy #38950

- Eligible employees are covered for one times (1X) their annual earnings.
- Life Insurance reduces to 50% at age 65.

- Life insurance ceases at the earlier of termination of employment, retirement or age 70.

(b) Accidental Death & Dismemberment - Manulife Policy #38950

- The AD&D benefit is an equal amount to the Basic Life Insurance.
- The AD&D benefit ceases at the earlier o f termination of employment, retirement or age 70.

j) Dependent Life Insurance

- Dependent Life Insurance covers an eligible employee's spouse for $10,000, and each dependent child for $5,000.
- Dependent Life insurance ceases at the earlier of termination of employment, retirement or age 70.

k) Extended Health Care Plan – Manulife Policy #85776

- Eligible employees will be reimbursed for ninety percent (90%) of eligible expenses submitted.
- Drugs legally requiring a prescription (with some limitations). A pay direct drug card will be issued to eligible employees with a $10.00 dispensing fee cap. Mandatory generic substitution applies.
- Vision care expenses up to $175 in a twenty-four (24) consecutive month period
- Eye exams covered once in a twenty-four (24) consecutive month period to a maximum of $50
- Medical equipment and supplies
- Paramedical practitioners, limited to $350 per practitioner per year, including chiropractor, speech therapist, podiatrist, clinical psychologist, physiotherapist, osteopath, naturopath and massage therapist.
- Orthotics and orthopedic shoes, limited to a combined maximum of $300 per year.
- Hearing Aids, up to $300 every 5 years
- Private duty nursing up to $10,000 per year
- Out of country emergency medical expenses up to a $5,000,000 lifetime maximum, including a travel assistance card. The maximum trip duration is 60 days.

- This benefit ceases at the earlier of termination of employment, retirement or age 75.

l) Dental – Manulife Policy #85777

- 80% reimbursement of basic dental expenses, including exams and cleaning once every nine (9) months, x-rays, fillings, endodontics and periodontics
- 50% reimbursement of major expenses, including crowns, bridges, dentures
- Basic and major expenses are limited to a combined maximum of $1,500 per person per calendar year
- Reimbursement will be based on the prior year's dental fee guide for your province of residence.
- This benefit ceases at the earlier of termination of employment, retirement or age 75.

22.09 Notwithstanding the above summary, where there is discrepancy or disagreement over the application of any of the health and welfare benefits, the terms and conditions of the applicable Manulife Policy will prevail.

22.10 The Employer reserves the right to amend Health and Welfare benefits from time to time.

22.05 Contributions During Leave of Absence

c) The Employer will continue to pay their share of the cost for the benefits plan when the employee is on any approved leave of absence with pay and for the first thirty (30) consecutive calendar days of any approved leave of absence without pay.

d) If the employee chooses to retain benefits while on approved leave of absence without pay for a period of more than thirty (30) consecutive calendar days, the employee will be responsible for the Employer's share of the cost of the benefit plan(s) after the first thirty (30) consecutive calendar days. The Employer reserves the right to amend Health and Welfare benefits from time to time.

Sick Leave

24.01 Pay for sick leave is for the sole and only purpose of protecting Employees against loss of income when they are legitimately ill or unable to work due to a non-WCB compensated injury and will be granted to Employees on the following basis providing sick leave credits are available. Employees reimbursed by an outside party for lost time shall reimburse their sick leave bank.

24.02 Upon completion of the probationary period, Employees shall be granted sick leave credits for personal illness from the date of employment as follows:

a) Full-time employees are eligible to a maximum of 75 hours per calendar year.

b) Part-time employees are eligible to a maximum of 37.5 hours per calendar year.

c) Casual employees are not eligible for sick days.

24.03 The Employer requires an Employee absenting themselves on account of personal illness may be required to furnish a doctor's note issued by a qualified medical practitioner certifying the Employee was unable to work due to personal illness.

Employees may need to provide medical documentation to support their absence and to help plan for their return to work. Cooperation is required to enable payment of applicable sick leave.

24.04 An Employee unable to complete their shift due to illness will be paid for their full shift from their available sick leave bank.

24.05 a) Employees granted sick leave shall be paid for the period of such leave at their current hourly rate of pay. The number of hours paid shall be deducted from their sick leave credits up to the total amount of the Employee's accumulated credits at the time the sick leave commenced.

b) For the purpose of this clause, a defined course of medical treatment of an acute condition (i.e., chemotherapy, insulin adjustment therapy) shall be treated as a single incident.

c) Compensation under the Workers' Compensation Act shall not be charged against accumulated sick leave credits granted in accordance with Article 31.

24.06 a) Employees unable to report for scheduled work on account of personal illness must notify the Employer prior to the start of the scheduled shift with the following notice:

b) During an illness of undetermined length, the Employee will notify the Employer of their progress weekly and provide the Employer with written notice of their readiness to return to work as far in advance as possible.

c) Sick relief shifts accepted by part-time Employees may be cancelled by the Employer, with as much advance notice as possible, when the regular incumbent returns to work.

24.07 Sick leave hours may not be paid out or carried over from one calendar year to another.

Retirement Savings Plan

Effective December 31, 2023

32.04 The Employer will establish an Employee self-directed, Registered Retirement Savings Plan (RRSP) for Regular Full-time and Regular Part-time Employees (who are normally scheduled to work forty (40) hours bi-weekly or more of the normal work hours in a bi weekly pay period.) Participation will be on a voluntary basis.

32.05 Employees on the Employer's payrolls as of the date of ratification of this Collective Agreement are eligible to enroll in the Plan without any eligibility period. For Employees hired on or after the date of ratification, the eligibility period is completion of six (6) months service.

32.06 Employees who wish to participate will contribute:

Two percent (2%) per hour worked, matched by the Employer on a dollar-for-dollar basis, of two percent (2%) of regular earnings. Regular earnings (wages) is defined as the basic straight time wages for all hours worked , including:

a) the straight time component of hours worked on a holiday;

b) holiday pay, for hours not worked; and

c) vacation pay.

All other payments, premiums, allowances etc. are excluded.

Casual Employees

28A.05 A Casual Employee required to work on a Named Holiday shall be paid at one point five times (1.5X) the Employee's basic rate of pay for all hours worked.

28A.06 Casual Employees shall be paid four percent (4%) of their regular earnings paid at the basic rate of pay as vacation pay on each bi-weekly pay period.

Uniforms

34.01 Employees must wear the uniform or uniform components as directed by the Employer. Uniform allowance is for the sole and exclusive purpose of maintaining appropriate work attire as required by the Employer.

34.02 Where a post probationary employee is required to wear a uniform, the Employer will pay a uniform allowance in the amount of eight cents ($0.08) per hour worked. Such amount is not to form part of the regular hourly rate for purposes of overtime and paid holidays. The uniform allowance will be payable on a bi-weekly basis.

Wages

January 1, 2021	1.75%
January 1, 2022	1.75%
January 1, 2023	1.25%

These rates would be applied to the current wage grid.

Job Group	Steps	Current
Dietary Aide Housekeeping Aide Laundry Aide Dishwasher	Start	$15.99
	Step 1 (450 Hours)	$16.48
	Step 2 (1950 Hours)	$16.99
	Step 3 (3900 Hours)	$17.70
Receptionist	Start	$16.12
	Step 1 (450 Hours)	$16.62
	Step 2 (1950 Hours)	$17.14
	Step 3 (3900 Hours)	$17.85
Cook Bus Driver Activity Aide Maintenance Aide	Start	$19.35
	Step 1 (450 Hours)	$19.95
	Step 2 (1950 Hours)	$20.56
	Step 3 (3900 Hours)	$21.42
Health Care Aide	Start	$22.34
	Step 1 (450 Hours)	$23.03
	Step 2 (1950 Hours)	$23.75
	Step 3 (3900 Hours)	$24.74
Licensed Practical Nurse	Start	$31.10
	Step 1 (450 Hours)	$32.06
	Step 2 (1950 Hours)	$33.05
	Step 3 (3900 Hours)	$34.43

Retroactive pay to be paid only to active employes as of the date of this Award and shall be for all hours worked from the date of Certification.

All employee receiving a wage rate which is above the awarded wage rates, shall be maintained at their current rate of pay until the wage schedule for their classification surpasses their current rate of pay.