IN THE MATTER OF AN INTEREST ARBITRATION

Between

Revera Retirement LP by its general partner REVERA RETIREMENT GENPAR INC.
Operating as "Our Parents' Home"
("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	Lynelle Storgan Executive Director Our Parents' Home

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 "Our Parents' Home" ("OPH" or the "Employer") and the Alberta Union of Provincial Employees ("AUPE" or 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. OPH 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 purchased in December 2020. 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 95 employees in the following classifications: Active Living Aide, Environmental Services Assistant, Health Care Aide, Licensed Practical Nurse, Housekeeping Aide, Personal Support Assistant, Mashgiach, and Receptionist. Health Care Aides ("HCA") being the most populous classification working approximately 64% of the employee group.

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

Position	No. of Full-time Employees	No. of Part-Time (casual) Employees
Active Living Aide	1	1 (1)
Environmental Services Assistant	0	0 (1)
Health Care Aide	21	16 (24)
Housekeeping Aide	3	1 (1)
Licensed Practical Nurse	5	5 (7)
Personal Support Assistant	0	0 (2)
Mashgiach	0	1 (1)
Receptionist	1	3 (0)

Bargaining Background

6. The employees in this bargaining unit have been unionized since May 6, 2021. The Union sent notice to bargain on May 20, 2021, and negotiations commenced in January 2022 with the exchange of ingoing proposals.

7. They met a total of seven times on the following days in 2022: January 25-26, April 7-8, 21-22 and May 20 but were unable to achieve a collective agreement.

8. The parties 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 McConachie Gardens ("McConachie") 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 several proposals that were either new or exceeded the Union's previous position and raised a preliminary objection on the basis of 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 Employer's preliminary objection and the terms of the first collective bargaining agreement between the parties.

Preliminary Objection– Employer

12. The Employer raised a preliminary objection based on the timeliness of the Unions submissions on three matters, No Pyramiding, Sick Leave and Vacation. It stated 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, pyramiding, sick leave and vacation just three days prior to the hearing and with respect to the proposal on pandemic pay, midnight the day before the hearing was to start.

13. The Employer recognized that these proposals at McConachie match the proposals at the Our Parent's Home table, they had not previously been raised by the Union at this site.

14. The Employer argued the case law on late proposals is clear, which is that you can not file late proposals that have never been tabled before. In the case before me it asserted that these late proposals were not tabled until three days before the hearing. This was identified in the exhibits and demonstrate 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 that the Employer 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 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 the basis for the proposals is to ensure consistency between the two agreements, however the Employer noted that this argument fails to meet the threshold for changed circumstances. The Employer asserted 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).

Preliminary Objection– Union Evidence

17. Merryn Edwards, a negotiator for the Union provided evidence on the Employer's objection on the 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.

18. 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.

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

20. With respect to the proposals regarding premiums, Ms. Edwards testified that the Union reduced the proposal in February 2023 when bargaining broke off for McConachie and its last proposal was $2.00 evening and $4.00 weekend premiums. However there had been no further discussion on monetary proposals.

21. 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 the Union filed a Labour Board complaint in mid-January 2023. The proposal was for the top up to be maintained throughout the pandemic. 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") while they were self-funded at McConachie. The resolution to the Labour Board complaint was to have this matter dealt with as part of this arbitration.

22. 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

23. The Union reviewed the specific proposals the Employer is objecting to. It noted that its proposal related to pyramiding was reflected in the ingoing position at Article 14.04 which states that the premium is to be paid in addition to regular wages and overtime. This makes it clear that the pyramiding of premiums was not a new or amended proposal but is consistent with the Union's ingoing proposals.

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 $2.00 per hour pandemic premium at the McConachie location, resulting in the Union filing a complaint to the Labour Board. This proposal is at this table as a result of the resolution conference held March 20, 2023, at the Labour Board.

26. 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.

27. The Union relied on the following authorities: Collective Bargaining and Agreement (8:6000), David Corry, *United Nurses of Alberta and AHS*, (GE-08153; December 18, 2019); Centre Jubilee and United Steel Workers, [1994] O.L.R.B. Rep. 821 and *Government of Alberta and Alberta Union of Provincial Employees*, Phyllis Smith, January 31, 2020.

28. It argued the case law is clear and cited David Corry that whether sudden or not, a change in circumstances is not akin to bad faith bargaining. Any prohibition on the addition or change of proposals is intended 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 it was within its rights to amend its proposals accordingly and as a result, the Union's actions are not tantamount to bad faith.

29. Union counsel cited Arbitrator Johnson in the case of *UNA and AHS, supra*, at page 26 in which he noted that in some context 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.

30. 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.

31. The Union also cited Arbitrator Smith in the *Government of Alberta and AUPE, supra,* wage reopener decision. In that case the union objected to the employer's modification of its monetary proposal from 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.

32. The Union asserted this interpretation is consistent with the Ontario Labour Board decision in *Centre Jubilee, supra,* which it submitted for the principle 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.

33. 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. With pyramiding, the proposal is essentially the same as it was modified through the course of bargaining, however there was no fundamental difference between what was proposed initially and the proposal at arbitration. With respect to the pandemic pay, the Union noted that this arose due to changing circumstances.

34. The Union also noted the lack of an Enhanced Mediation process for these parties and 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

35. The Employer noted 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

36. 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 on No Pyramiding, Sick Leave, Vacation and HCA Pandemic Pay were untimely as they were either not part of the Union's ingoing proposals or exceeded their previous position in the issues.

37. The Employer relied upon the 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.

38. 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.

39. 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 counter-proposals. 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."

40. 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."

41. In this case I have reviewed the identified 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 and as noted the last exchange of proposals on this matter would have been in May 2022 after which the parties agreed to proceed to arbitration.

42. 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 this would fly in the face of the express agreement between the parties that these matters would be determined separately. It is not compelling evidence of a change in circumstances.

43. 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.

44. 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.

45. While I appreciate there are aspects of the analysis of the bad faith decisions advanced by the Union in support of their position, I am not persuaded 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, should they be allowed as part of the submissions of the Union at the Interest Arbitration.

46. I find the cases of the Employer are more relevant to my determinations on this issue and 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.

No Pyramiding

47. The Employer did not dispute the Union had included Article 14.04 in its ingoing proposal for pyramiding of premiums, however in its April 3, 2023, proposal it had altered its position on 13.07 which had limited pyramiding unless provided for in the collective agreement. The ingoing proposals are as follows:

> 13.07 There shall be no pyramiding of differentials, premiums, and bonuses for purposes of computing overtime hourly rates, unless so stated expressly in this agreement.
>
> 14.04 Upon ratification, Employees shall be paid both Evening/Night and Weekend premiums in addition to regular pay and overtime pay.
> April 3, 2023
>
> 13.07 Effective date of ratification, an Employee shall be paid both Shift Differential and Weekend Premium in addition to regular pay and overtime pay.
>
> 14.04 Upon ratification, Employees shall be paid both Evening/Night and Weekend premiums in addition to regular pay and overtime pay.

48. It is clear the ingoing proposals of the Union contemplated the stacking of Evening/Night and Weekend premiums, however the difference in Article 13.07 is not insignificant in that it contemplates how overtime is calculated, which is distinguishable from the April 3, 2023 proposal. The April 3, 2023, proposed language of Article 13.07 already captures the concept in Article 14.04 such that it is unnecessary. However, the change in the language of 13.07 is different and arguably exceeds the ingoing

proposal. Further, it is unclear from the Union's presentation as to what it is intended to capture. I find that I do not have the jurisdiction to address this change and will consider the Union's ingoing proposal when deciding on Article 13.07.

Vacation

49. While the Union had clearly introduced the concept of vacation entitlement in its ingoing proposal there were significant changes in the Union's April 3, 2023, proposal. The Union's ingoing proposal on vacation for full-time, part-time, and casual employees are reproduced below.

> 18.02 Vacation Entitlement for Full-time Employees and Part-time Employees, during each year of continuous service in the employ of the Employer. Vacation for Part-time Employees shall be pro-rated based on their full-time equivalency. 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:
>
> During the first (1st) to third (3rd) 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;
>
> During the fourth (4th) to 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;
>
> During the eight (8th) and subsequent years of employment, an Employee earns a vacation entitlement of four (4) weeks or one hundred and fifty (150) hours and eight percent (8%) of gross earnings;
>
> 23.06 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 governed by the total length of such service as follows:
>
> (a) During the first (1st) to third (3rd) years of such employment, an Employee's vacation pay shall be four per cent (4%) of hours worked;
>
> (b) During the fourth (4th) to seventh (7th) years of employment, an Employee's vacation pay shall be six per cent (6%) of hours worked
>
> (c) During the eight (8th) and subsequent years of employment, an Employee's vacation pay shall be eight per cent (8%) of hours worked.

April 3, 2023

18.02 Vacation Entitlement

(d) 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.

(e) 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.

18.03 Vacation for Part-Time Employees shall be pro-rated based on their full-time equivalency.

23.06 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 as outlined in 18.02.

50. The Union argued that the change in the proposal was to create alignment between the two matters, OPH and McConachie Gardens. The fact the parties agreed to hear these cases jointly as a matter of convenience is not a "change in circumstances" and does not justify an increase in its bargaining position three days before the commencement of the hearing. These proposals are untimely, and I do not have jurisdiction to consider the Union's April 3, 2023, proposal. As a result will be using the ingoing proposal for the purpose of my deliberations.

Sick Leave

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

19.02 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.

After completion of the probationary period, Employees 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. Part-time Employees shall be credited with sick leave credits on a prorated basis of regular hours worked.

April 3, 2023
19.02 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.

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.

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.
The Employee may carry over any unused sick days to the next year.

52. The actual proposed change in the Union's position on sick leave is unclear. The evidence of Ms. Edwards and the wording of the change would suggest that the proposal contemplates a maximum of 12 working days for sick leave accrual. If I accept that is the case, this is a move to a more reasonable position from the 120-day maximum of the ingoing proposal. Unfortunately, it is not clear if that is the intention and the Employer has objected that the language suggests no maximum accrual for full-time and part-time employees which exceeds the Union's ingoing position. I can not argue that that could be an interpretation of the language as proposed by the Union.

53. The Union asserted that this is also a case of aligning the proposals as they headed to arbitration and as already stated, the agreement to hear both matters in one hearing for the sake of expediency is not a compelling change in circumstances. As a result, I find the Union's proposal of April 3, 2023, to be untimely and I do not have jurisdiction to address the Union's changed position and will rely upon the ingoing proposal for my determination on this issue.

Pandemic Pay

54. The Union has argued that the Pandemic Pay only ended up on the table because of the Employer terminating the $2.00 per hour HCA Pandemic Pay premium at McConachie 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 note the $2.00 per hour HCA Pandemic Pay premium was still being paid to the employees at OPH as of the date of the hearing so there is a real question as to whether this meets the threshold of changing circumstances such that it is appropriate to allow the proposal to be included. The Union was aware of the circumstances at McConachie in January 2023 and certainly had plenty of time to consider an amendment to its position at OPH and failed to do so in a timely manner. Further there has been no change to the premium at OPH and if the Union wished to see it continue, it should have proposed it. Therefore, I find this addition does not meet the threshold of changed circumstances and I am without jurisdiction to consider the Union's proposal on Pandemic Pay.

55. In summary I find that I am without jurisdiction to consider the Union's April 2023 proposals on the No Pyramiding language of Article 13.07, sick leave, vacation entitlement and Pandemic Pay. I will consider the Union's ingoing proposal for determination on these issues.

Items in Agreement

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

Items in Dispute

57. 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 13	Salaries
Article 14	Shift Premiums
Article 18	Annual Vacation
Article 19	Sick Leave
Article 23	Casual Employees
Article 30	Uniforms
Article 31	Benefits
Article 33	Contracting Out
Article 34	Retirement Savings Plan
Article 35	Registration Fees
Wages	Includes Redcircling, retroactivity and Companions/PSA classification

Union Opening

58. The Union opened its case laying out its position that its purpose in calling witnesses to highlight the realities in the field and provide a human context to the considerations in this case. It asserted that my decision should not be simply based on sanitized and dry evidence or data, such as comparators. Instead, I should consider 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, which the Union argued must be considered in evaluating the respective submissions of the parties.

59. The Union also highlighted this is an essential services industry and while this table does not have an Essential Services Agreement and do not have a right to strike, the workers still have choices which the witnesses spoke to. It referenced bargaining surveys completed by staff which indicate that an overwhelming majority of the 66 surveys submitted indicated that they had applied for another job in the prior 12 months and 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

60. The Union called the following witnesses, Katie Chung an AUPE staff member to speak to the surveys and the impact of the choices employees may make to leave, the Chair of the OPH chapter, Florence Vergara, two members of the OPH bargaining committee, Renalene Zurati and Zeus Lincoln Ng, Cherie Lamb, a cook at Revera Apsen Ridge in Red Deer and Merryn Edwards, AUPE negotiator who will speak to the Union's position on outstanding issues.

61. 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.

62. Katie Cheung is an administrative professional assigned to the Negotiations Department at AUPE. She was assigned to the OPH table and specifically assisted Ms. Edwards to set up an online survey through the Union's Election Buddy voting web site. This site enables the Union to build and send out electronic ballots over email. The questions on the survey were developed by Ms. Edwards and sent to the members at OPH. The list of eligible participants was provided by AUPE's Records Department. Ms. Cheung confirmed that the survey went live from March 2 to 7, 2023.

63. Ms. Cheung identified the results were automatically tabulated by Election Buddy at the end of the identified open period. The OPH results show that of the 90 eligible voters, 71 ballots were submitted which is a response rate of 79%. The first series of questions ask for the participants level of satisfaction

with their terms and conditions translated as percentages. The last two questions being a yes or no response.

64. Renalene Zurati is a HCA working at OPH. She started in 2017 when the site was owned by Christensen Community. Revera purchased the property on December 15, 2020, and at the time the site was not unionized. Ms. Zurati believes that the Union was certified at OPH on May 8, 2021, however she was not part of the organizing at the time. She confirmed she is treasurer of Local 46, Chapter 61 and is one of the bargaining committee members for the site.

65. Ms. Zurati testified as to her responsibilities as a HCA in providing care for residents at OPH. Ms. Zurati stated she works on the dementia floor and assists approximately 16 residents with their care. She provided evidence as to how her job was dramatically impacted by COVID as the management of the dementia patients after an outbreak was challenging. It was not possible to isolate the residents and they had to swab all residents and staff every week.

66. Ms. Zurati stated her son was two years old during the first phase of COVID and as a result of not knowing whether she had been exposed or not caused considerable anxiety and meant she was unable to safely hug her son. She expressed her worry that if she were to get sick, who would look after her son. In addition, the requirement to use personal protective equipment was exhausting as to do it properly was quite complicated and needs about 10 to 15 minutes to don before entering a resident's room.

67. Ms. Zurati spoke to her commitment to the residents and that she considers them part of her family. She described the difficulties that resulted from the fact the residents were not allowed visitors for over a year, and this caused the residents to act out by becoming more verbally or physically aggressive as they did not understand what was happening. The staff had to use the stairs, were unable to have contact with anyone outside their immediate work cohort and had to eat lunch in the laundry room to minimize the risk of spreading the virus. Ms. Zurati identified that it was difficult to take vacation because of the requirement to isolate after travel or if the worker was symptomatic.

68. Her evidence was that once the vaccines were introduced it improved, however there were still a few outbreaks with the last one in early 2022 as far as she recalled.

69. Ms. Zurati spoke to the emotional toll on her and on the staff during this period, particularly when the residents were acting out and the fact that they often had to operate short staffed. Her evidence is that this continues to today because of the lifting of the Single Site Order so part-time and casual employees have returned to their other part-time jobs with other employers.

70. Ms. Zurati spoke to the lead up to the survey of the membership and her conversations with her co-workers encouraging them to participate and be honest. She has heard directly that people are looking for another job as they could not continue to work at OPH unless the terms of employment improve. Her evidence was that when Revera acquired OPH there were differences in the terms of employment and issues with where people were placed on the salary grid.

71. When the site was owned by Christensen the employees received a three percent RRSP with matching, however there was no RRSP at Revera. She testified there were also significant changes in the lines people were working and no transparency as to how or if seniority was applied. Some full-time staff lost lines and became part-time or casual and many lost benefits as at Revera only full-time are eligible for benefits whereas previously anyone working over a 0.4 received benefits.

72. Zeus Ng is a Licensed Practical Nurse ("LPN") who was hired in 2015 by Christensen at another site and was transferred to OPH when it opened later that same year. Mr. Ng is the Vice-Chair of Local 47, Chapter 61, and serves on the bargaining committee. He testified that he has worked nightshift almost exclusively since 2015 and worked night shift all through the COVID outbreak. His duties include the administration of medication and the support of HCAs when they are trying to handle aggressive residents. Mr. Ng stated that he attends to all emergencies on site, including heart attacks, wound care, and falls. These emergencies vary in frequency and severity. Mr. Ng also identified that he assists when a resident attempts to leave the facility, which is not frequent but when it happens it is usually at night when there is limited staff, one LPN for the whole building and one HCA per floor.

73. Mr. Ng's evidence was that during COVID his anxiety levels increased dramatically. This was heightened on occasions where there were outbreaks and they had to close the floor which required staff to stay on their floors and not circulate to other areas. As he was the only LPN for the whole building this policy did not apply to him as he needed to attend to the needs of residents. Mr. Ng spoke to the challenges of using PPE for all and being required to don a mask, shield, gowns, and booties every time he entered a room and then removing the PPE when he left. His evidence was that the protocols were always changing and that you could never be sure if your PPE was contaminated or whether you had been exposed which was extremely stressful.

74. Mr. Ng stated that after the vaccine was introduced, the demands were a bit lighter and they were more comfortable dealing with the challenges, however he was still concerned about possibly bringing the virus home to his family. His evidence was that this impacted his family life as he had to modify his behaviour in showing affection to protect them.

75. Mr. Ng testified that he communicated with staff regarding their needs prior to the Union's survey. From his perspective, compensation is the biggest issue. He expressed frustration on behalf of his co-workers that bargaining has been protracted since July 2021 and that some had left the employ of OPH as a result.

76. Mr. Ng also spoke to the fact that given the location of OPH in downtown Edmonton that homeless people seeking shelter is one of his biggest frustrations. When Christensen owned OPH there was a security guard on site over night, however Revera eliminated the security guard after six months and as a result he no longer has any assistance in dealing with issues with the homeless in and around the building and there is no one watching the camera. Mr. Ng described that as he is on the second floor of the 14-story building, yet is required to oversee the whole building as well as doing his job. This means if visitors come by or there is something to be dropped off, he is required to attend which can potentially

create an exposure. Further he is now required to also serve as the Fire Marshall for the building, which had previously been the security guard's role.

77. Mr. Ng also testified that it is his responsibility to assist with aggressive residents and during COVID there was an escalation in the number and severity of these incidents. He is required to handle these alone with the HCA on the floor. His evidence is that there is no pattern to the situations, but at least once or twice a week something occurs. This occasionally requires medication to assist or for a resident to be transferred to a different facility better suited for managing aggressive behaviours.

78. When Revera acquired OPH there were changes to the payment of premiums on Night Shift. Revera separated weekend and night premiums and only paid one of them with no stacking or pyramiding. Previously Christensen had paid more for weekend night shifts than weekday night shifts because of combining the premiums.

79. With respect to vacation Mr. Ng indicated that he was able to go to the Philippines for three weeks, however, he has been unable to take any time off since an anticipated pay out in 2023 for 2022 vacation had not happened, despite being unable to take time off. His evidence was he should have had 66 vacation hours accrued as of December yet it was no longer on his records and as he understood it, no one has been paid out. He did recall members were paid out for unused vacation for 2021 but did not specifically recall what he was able to take off.

80. Mr. Ng also noted that prior to Revera acquiring the site, he had participated in the RRSP matching program with Christensen by contributing 5% and the employer contributed 3%. He noted that Revera does not have an RRSP program.

81. Florence Vergara is a HCA at OPH and had been employed there since January 2019, prior to the acquisition by Revera. She is the Chapter Chair for the local and prior to 2021 was a local council representative for the Chapter.

82. Ms. Vergara testified about the difficulty staff encounters in attempting to take vacation as it was being denied when requested. Her evidence was that in 2020 she did not take any time off. Ms. Vergara stated that she is attending school and trying to use vacation to take exams but has been denied and told she must do a shift exchange. On one occasion she was approved for time off so scheduled a major nursing exam only to have the manager tell her she could not have the time off as there were too many people off on vacation that day. She was required again to get someone to cover her shift so she could attend her exam.

83. Ms. Vergara spoke to how stressful the work environment was in part to not being able to take time off, but also because she works in the evenings and the residents may become aggressive due to sundowning. Her evidence is that the medications used to calm them are not that effective and she experienced physical and verbal abuse which was very stressful and draining. She testified that this is why

getting time off is so important. Ms. Vergara noted that the employees have not been paid for unused vacation from 2022.

84. Ms. Vergara confirmed that the HCAs at OPH were still in receipt of the $2.00 per hour Pandemic Pay but there was no certainty about its future status.

85. Cherie Lamb is a cook at the Revera Aspen Ridge facility in Red Deer and has been employed there since June 2007. At that 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, there were fundamental issues separating the parties as Symphony was paying below standard wages, shift differential and sick time.

86. Ms. Lamb testified that during bargaining the Union made no headway and as a result, the Union took a strike vote in December which was unanimously supported by the members. Strike Notice was served in 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. 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.

87. Merryn Edwards is the negotiator from the Union who negotiated with the Employer and provided a summary of the outstanding proposals. The Union's position on each of the outstanding items will be covered in the discussion on each issue.

88. 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.

89. 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.

90. 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, however 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%.

91. Finally, 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 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

92. Dr. Hyndman concluded 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

93. The Union presented the economic information that it submitted 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 to 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.

94. 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.

95. 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 as the reality of the current labour market is reflected in the evidence that the employees are prepared to walk away from the Employer and the industry. The Union asserted that to ignore the fact that this labour market chronically suffers from labour shortages underscore that this industry is chronically short staffed, and this must be considered in the context of replication. It is the Union's position that this 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 and attrition in the industry resulting in an estimated 100,000 openings.

96. 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 a LPN is a LPN and a HCA is a 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.

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

98. The Union in its submissions cited several cases 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 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).

99. 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 results of free collective bargaining comes from the settlements negotiated by similarly placed parties for similar time frames within the same or similar locations.

100. The Union did assert that the consideration should not be on comparators, but to properly implement the principle of replication. I should instead 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 these surveys are an expression of rage and hopelessness as workers struggle with continuing in the profession they love while feeling disrespected an unappreciated for their efforts. It stated appreciation for the tremendous efforts of these essential workers should be an improvement in terms and conditions.

101. The Union highlighted that the Alberta economy is improving, and 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 supply for that labour. It was noted that in this environment, the employees were no longer able to withdraw their labour in a legal strike meaning 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 that example as a compelling comparator in what the impact of a work stoppage would be for the purposes of replication.

102. The Union addressed the Employer's argument about maintenance of status quo in a first agreement and while it did not disagree, but it should be applied in the context of what the membership would have achieved in the event it had gone on strike. In that case I 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, the Union also argued that I must consider the public interest if there is a "deleterious exodus" of qualified labour from the industry.

103. The Union disagreed with the Employer's assertion that the economy and the impact of COVID would result in a "lesser settlement" as it asserted 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 several cases regarding 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)

104. 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 that the 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, the employees should be compensated in accordance with the capitalist principles of supply and demand.

105. The Union asserted that 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.

106. 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.

107. The Union argued 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."

108. The Union also argued that when assessing comparative wages and grids, the Union has proposed a wage grid reflected 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.

109. The Union also argued the number of full-time staff that the Employer cited as proof of strong ability to retain staff demonstrates the volatility 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.

Employer Argument

110. The Employer reviewed its submissions and exhibits, highlighting that the OPH site in Edmonton is one of Revera's 13 unionized retirement homes in Alberta, three of which are in Edmonton. It argued that the appropriate comparators in this case are naturally the Revera and AUPE agreements in Edmonton.

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

112. The Employer noted there is a great deal of uniformity on wage increases and where there are special adjustments, they are modest. It asserted however there is no uniformity of actual wages amongst the collective agreements. The Employer highlighted that Aspen Ridge is an exception to the Revera patterns. as when it was purchased. it had an existing collective agreement and a prior strike that created an anomaly. It confirmed it is still a comparator, but argued to rely on it to a lesser extent as the Employer was asking for a total compensation consideration to these agreements.

113. 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.

114. 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 try 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*, 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 in light of 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) 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).

115. 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.

116. The Employer noted 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 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.

117. 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."

118. The Employer also confirmed it is not advancing an inability to pay argument and noted that it is only relevant if the employer were seeking to reduce an otherwise appropriate increase due to its financial circumstances and it is not.

119. The Employer further 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 direct comparisons between OPH and other Revera sites as well as more broadly across 46 retirement home agreements in Alberta on 13 key compensation matters, noting these demonstrate where mature agreements stand in the Alberta context.

120. The Employer provided data that supported that even though OPH is a recently acquired site, it has a positive record with respect to attraction and retention of full-time employees. It argues that turn-over of part-time staff 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.

121. The Employer provided its submissions on the impact of the economy on this arbitration that 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 currency of the proposed term of the agreement. This has been a direct result of the COVID-19 pandemic, and this 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.

122. As the term of this agreement is for May 6, 2021, to December 21, 2023, it is only the economy and settlement trends from the same time 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.

123. 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.

124. 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

125. 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 I will rely upon for my determination on the outstanding issues.

First Contract Arbitration

126. 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.

127. 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.

128. 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. The factors for consideration are laid out in the guiding case of *Yarrow Lodge*, *supra*,

> "…arbitrators will determine on a case-by-case basis what should be contained in specific first collective agreements. In attempting to arrive at the actual terms and conditions of a first contract, arbitrators usually employ two framework principles: the 'replication' principle, and what is 'fair and reasonable in the circumstances'" (p.32).

129. I do note that the first agreement arbitration cases deal extensively with the recommendations of the 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:

1) 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.
2) Arbitrators should employ objective criteria, such as comparable terms and conditions paid to similar employees performing similar work.
3) There must be internal consistency and equity amongst employees.
4) The financial state of the employer, if sufficient evidence is placed before the arbitrator, is a critical factor.
5) 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" nor a "standard agreement" and 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 to 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 time that collective bargaining broke down, not at the time of the arbitration, unless there has been a material change in circumstances.

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 (p. 32).

Interest Arbitration Principles

135. 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.

136. 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.

137. 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."

138. 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."

139. It is clear 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.

140. 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."

141. 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.

142. The Union argued 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.

143. 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 exceeding difficult time for everyone, but most particularly those working in the health care sector. The employees at OPH 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.

144. 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 OPH suffering fewer days of outbreak than other Revera and AUPE sites.

145. The circumstances at OPH 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 OPH 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.

146. 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 the current turnover is not problematic. In this regard I must defer to the Employer. If they do not identify there are challenges, it is not my responsibility to solve a problem that the Employer denies exists.

147. 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

148. 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 in contrast none of the identified comparator agreements are in Edmonton and not all are first agreements. Further it did not identify tany of the collective agreements negotiated with this Employer as being appropriate comparators. The Union also

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.

149. 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.

150. The Employer also 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, all of which are AUPE agreements, while Riverbend receives some homecare funding, also an AUPE agreement and McConachie receives no funding support. 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.

151. 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.

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

> "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."

153. 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."

154. 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 an HCA is an 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 that 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.

155. This is not a question of my applying a social justice lens to this matter, it is important that I am able to 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. To consider these agreements settled over this period would naturally take into account the impact of COVID, the economy overall and the appropriate terms of settlement for this first agreement.

156. 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.

157. 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

158. 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.

159. 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 May 6, 2021, and December 21, 2023. While the economy has been exceedingly volatile, one should not apply a 2023 lens to 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 the 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.

160. 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 that 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

161. 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 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 in order to manage the costs to the Employer.

Items in Dispute

162. 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 Proposal</u>

> 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).

163. 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 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.

164. 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

165. 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.

166. In this industry where there are limited full-time positions and most of the employees are part-time and have to use seniority to select lines or compete for additional hours, it is most common to provide for a date of hire as the start to calculating an employees seniority. 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.

167. 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 instead is the tool by which employees exercise their respective rights and entitlements under the collective agreement.

168. While I recognize that employees would have had considerable service prior to the purchase of OPH by the Employer, it is not appropriate to extend the seniority date to encompass time worked for Christensen, the previous owner. 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.

169. 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 9.01 a)

170. 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 after the Employer purchased OPH as a one-time calculation of seniority to avoid the potential challenges this could present in future job postings or vacation selection. Any time prior to the purchase shall not be used in the calculation of seniority.

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

Salaries

<u>The Union Proposal</u>

> 13.07 There shall be no pyramiding of differentials, premiums, and bonuses for purposes of computing overtime hourly rates, unless so stated expressly in this agreement.
>
> 13.09 (a) Underpayment of wages shall be corrected and paid within three (3) days of notification of such error.
>
> (b) Should the Employer issue an overpayment of wages and/or entitlements, the Employer shall notify the Employee in writing within six (6) months of the error that an overpayment has been made and discuss repayment options. By mutual agreement between the Employer and the Employee, repayment arrangements will 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 Employees' gross earnings per pay period.

<u>The Employer Proposal</u>

> 21.01 <u>No Pyramiding</u>

> 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.

172. The Employer objected to the Union's proposals. It argued that the proposal on underpayment and overpayment introduced a directive and restrictive process that would amount to a breakthrough. It highlighted that there is no minimum threshold of the amount of underpayment that would trigger the language and only having three days to respond is administratively burdensome. Further, it asserted there is only one comparator agreement between the parties that contains this provision, Edgemont, and it allows for five days for a correction.

173. The Employer noted with respect to pyramiding, that nine of the 11 comparator agreements contain a provision related to no pyramiding. It acknowledged the Union's language was consistent with five of the six agreements between the parties but offered that its proposed language is a reasonable alternative.

Decision

174. 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.

175. 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. This is acknowledged by the Employer, and it is unclear why it is proposing an alternative, therefore the wording from the comparator agreements is appropriate to include here.

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

> 13.07 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 Proposal

Article 14 – Shift Premiums

14.01 EVENING SHIFT
A Shift Differential of:
Effective date of ratification - two dollars and seventy five cents ($2.75); per hour shall be paid:

(a) 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

(b) 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;

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

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

(d) 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

(e) 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;

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

14.03 WEEKEND PREMIUM
A Weekend Premium of:
Effective date of ratification - three dollars and fifty cents ($3.50); per hour shall be paid:

14.03.1 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

14.03.2 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;

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

14.04 Upon ratification, Employees shall be paid both Evening/Night and Weekend premiums in addition to regular pay and overtime pay.

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

The Employer Proposal

180. The current shift premiums and differentials at OPH apply only to HCAs and LPNs and are as follows:

Premium Type	**Amount of Premium**	**When is it Applicable**
Evening Premium	$2.00	Majority of shift worked between 1500 – 2300 hrs
Night Premium	$3.00	Majority of shift worked between 2300 – 0700 hrs
Weekend Premium	$2.25	Majority of shift is worked during a sixty-four (64) hour period between 1500hrs Friday and 0700 Monday

181. The Employer is opposed to any increases in the shift premiums and the proposed language changes which would provide for pyramiding of premiums applicable to all classifications. It highlighted that 30% of shifts are evening shifts and 20% are night shifts and argued that daytime shifts on the weekend are no different than weekday shifts. As a result of the costs associated with the Union's proposals the substantial impact of these items must be considered in the context of total compensation. It also noted that as a first agreement the provisions should not mirror more mature agreements between the parties.

182. The Employer broke down there are several proposals contained in the Union's language, the increase to the premiums, amending the eligibility criteria, expanding the provisions to all employees, and allowing for pyramiding.

183. The Employer noted the current practice is to only pay HCAs and LPNs and that several of the comparator agreements maintain a distinction between these classifications and other classifications in the bargaining unit. It argued that the focus should be on HCAs and LPNs.

184. With respect to the threshold for entitlement, the Union proposal contains multiple ways to qualify for the premium, majority of hours within a period, each hour worked in a period if work at least one and all overtime worked within the period. The Union's proposal seeks to get the best of all possible worlds. The Employer argued to maintain status quo for this provision.

185. The Union also proposed to include all employees in the premiums and an increase to the Evening Premium from $2.00 to $2.75, an increase to the Night Shift Premium from $3.00 to $4.00 and Weekend Premiums from $2.25 to $3.50. The Weekend Premium would also be subject to pyramiding resulting in a total of $6.25 for all evening hours and $7.50 for all night hours. It argued there is a wide range of entitlements in the comparator agreements and that the current rates are within the normal range and to maintain status quo.

Decision

186. 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.

187. Having consideration for the costs and the timing of this Award, as the parties are headed into negotiation before the end of the year, I find that it is appropriate to address the amounts of the evening, night, and weekend premiums. Normally I would stage its implementation, however given the expiration of the agreement I am limited in my ability to utilize this tool.

188. I note the current language provides for a majority of shift worked within a defined window as opposed to being paid for each hour worked within that window. In my review of the comparators, there is no "industry standard" for this and even in AUPE comparators there is a lack of consistency as to which is preferable. I tend to agree with the Employer that the Union's proposal attempts to provide both options which is not contained in any of the comparators. As a result, I will not amend the current provisions that provide for the premiums based on a majority of shift.

189. I do not accept the Employer's position that the work on a weekend day is the same as work on a weekday. While I appreciate that this is an industry where the employees can expect to be scheduled on a 24/7 basis, the concept of a weekend premium is to compensate for the impact on the lives of the employees. This is true for all employees, not just HCAs and LPNs and where there is no ability to pyramid or stack these premiums, there should be a differentiation in the amounts in consideration of the varying weekend shifts. I am live to the evidence of the employees, in particular Mr. Ng, in noting that employees were eligible for stacking of premiums prior to the Employer's purchase, but this practice was discontinued by the Employer. This has resulted in the impact of employees being paid less for work on a weekend night than on a weekday night. This should be addressed and can be without providing for the stacking of premiums which is not supported by the comparators.

190. I do note that the comparators provide support for all employees receiving 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. There is already a specific weekend premium and if I were to accept the Union's proposal on pyramiding it would cause a substantial financial burden on the Employer. Any costs under these Articles will have a significant impact and will be considered as part of total compensation.

191. 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 an Evening premium of two dollars and twenty-five cents ($2.25) per hour where a majority of the shift falls between fifteen hundred (1500) hours and twenty-three hundred (2300) hours.
>
> (b) In addition to their regular rate of pay. Employees shall be paid a Night premium of three dollars and twenty-five cents ($3.25) per hour where a majority of the shift falls between twenty-three hundred (2300) hours and zero seven hundred hours (0700).
>
> 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 two dollars and seventy-five cents ($2.25) per hour where a majority of the shift falls between zero seven hundred (0700) and fifteen hundred (1500) hours.

(b) In addition to their regular rate of pay. Employees shall be paid an premium of two dollars and fifty cents ($2.50) per hour where a majority of the shift falls between fifteen hundred (1500) hours and twenty-three hundred (2300) hours.

(c) In addition to their regular rate of pay. Employees shall be paid a premium of three dollars and twenty-five cents ($3.25) per hour where a majority of the shift falls between twenty-three hundred (2300) hours and zero seven hundred hours (0700).

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 (07000 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.

Vacation

<u>The Union Proposal</u>

18.02 Vacation Entitlement for Full-time Employees and Part-time Employees, during each year of continuous service in the employ of the Employer. Vacation for Part- Time Employees shall be pro-rated based on their full-time equivalency. 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) to third (3^{rd}) 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 the fourth (4^{th}) to seventh (7^{th}) 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 eight (8^{th}) and subsequent years of employment, an Employee earns a vacation entitlement of four (4) weeks or one hundred and fifty (150) hours and eight percent (8%) of gross earnings;

192. The Union is seeking to include part-time employees in being eligible for paid time off for vacation which differs from the current practice of being paid our per pay period for their accrual.

193. The Union is also seeking to have the employees' previous service with Christensen recognized by the Employer for the purpose of vacation entitlement. It is relying on the offer of employment letter provided to employees after the purchase in December 2020 which stipulated the previous service at OPH prior to the start date with Revera would be counted towards their entitlement.

<u>The Employer Proposal</u>

NOTE: *REVERA 'S PROPOSAL INCLUDES MOVING FROM A 1 BANK (EARN AND TAKE VACATION IN THE SAME YEAR) MODEL TO A 2 BANK (EARN THIS YEAR TAKE NEXT YEAR) MODEL AND REQUESTS DISCUSSION ON AN AGREEABLE TRANISTION APPROACH).*

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. The vacation year runs from January 1 to December 31.

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.

An employee shall not be permitted to accumulate her vacation from one year to another.

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. The vacation year runs from January 1 to December 31.

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%

194. The Employer objected to the Union's proposal on how employees progress in vacation entitlement based on hire date as opposed to progression based on equivalent full-time hours. It took the position that the current entitlement levels as reflected in their proposal are competitive in the industry and should be maintained. It has proposed its entitlements based on this calculation which reflects its current practice. The Employer noted that the recognition of service of employees prior to the purchase of OPH was based on this calculation and not date of hire. It objected to the use of date of hire with any increase in entitlements.

195. 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.

196. The Employer also noted it is seeking to transition from a vacation accrual system to one of banking to take vacation the following year. It has indicated that it well be entering into discussions with the Union on this matter and as it is complex, has asked that I remain seized to deal with any transition issues that arise.

Decision

198 After a review of the comparators, I find that 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 almost all of the comparators if we use 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.

199 I also note that the payment of vacation per pay cheque for part-time employees is consistent with the comparators between the parties. I do note 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.

200 The potential transition of vacation as contemplated by the Employer is a complicated matter and will involve significant discussion with the Union. I do note there will be little time from the implementation from this Award to the opening of negotiations between the parties and it is appropriate that this discussion occur at the bargaining table. Having said that in the event there is progress on this issue in advance of collective bargaining, I will remain seized to assist in any matters related to the transition of vacation.

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

> 18.02 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;
>
> 18.03 Regular Part-time employees shall receive vacation with pay on their biweekly pay in accordance with the entitlement provided in Clause 18.02.

202. I recognize the current practice of the Employer has been to convert the hours worked to full-time equivalency for the purpose of vacation entitlement which has included the recognition of previous service at OPH prior to the purchase by the Employer. The Union has asked to have this service recognized to establish a date of hire backdated to an employee's original hire date at OPH consistent with the Offer Letters provided to staff. The language of this Award is a compromise to allow for continuous service at lower entitlements consistent with the comparators, however the commitment by the Employer to recognize previous service for vacation entitlement should be accommodated.

203. To do so, I am directing the parties to convert the hours of the employees as of the date of this Award to a vacation date for the purpose of future entitlements. For example, if a part-time employee has been employed since January 1, 2018, but has only worked 4,875 hours in that time (which has been recognized by the Employer for the purpose of current vacation thresholds), their date for the purpose of determining continuous service for the purpose of vacation will be two and a half years from the date of this Award, so approximately February 2021.

Sick Leave

<u>The Union Proposal</u>

> 19.01 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.
>
> 19.02 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.
>
> After completion of the probationary period, Employees 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. Part-time Employees shall be credited with sick leave credits on a prorated basis of regular hours worked.
>
> 19.03 Subject to the above, 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 their accumulated sick leave credits up to the total amount of the Employee's accumulated credits at the time sick leave commenced.
>
> 19.04 Wage replacement will commence upon the first (1st) day of illness or disability. An Employee unable to complete a shift due to illness will be paid for the hours actually

worked and the balance of the shift will be withdrawn from the Employee's sick day account if any remains.

19.05 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 provided the illness is verifiable.

19.06 Any eligible Employee claiming sick leave under this Article shall endeavour to notify the Employer at least four (4) hours before the Employee would normally report for work.

19.07 The Employer shall only request medical information when there are reasonable grounds to do so and only necessary information shall be requested. Where there is a fee for such documentation, the Employer will reimburse the Employee.
Personal health information of Employees shall be kept confidential. The Employer will retain health information separately and access shall be given only to those persons responsible for occupational health who are directly involved in administering that information.

19.08 As per article 23.10, Casual Employees will not be entitled to sick leave.

204. The Union is seeking an increase in sick leave from the current 52.5 hours or seven days for full-time employees and 22.5 hours or 3 days for part-time employees, to 12 days and eight days respectively and continuing to accrue one and one half (1 ½) days per month to a maximum of 120 working days to be carried over.

<u>The Employer Proposal</u>

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 (a) After completion of the probationary period, Employees shall be credited sick leave credits for personal illness from the date of employment.

(b) Full-time Employees, working no less than sixty (60) hours bi-weekly, shall, at the beginning of each calendar year, be credited sick leave credits for personal illness after completion of the probationary period as follows:

i. After successful completion of the probation period, Full-time Employees will be credited with fifty-two point five (52.5) sick leave hours. Part-time employees will be credited with twenty-two point five (22.5) sick leave hours. Banked sick leave hours will not be paid out upon termination. Casual employees are not eligible for sick days.

ii. Employees completing their probationary period part way through the year, if probation is completed before the fifteenth (15th) of the month, shall be credited a full month for that month x yearly entitlement. Regardless of their scheduled hours, Employees shall be granted sick leave hours at the rate of four point three seven five (4.375) hours per month worked to a maximum of fifty-two point five (52.5) sick leave hours.

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.

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.

d) 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:

- Day Shift — two (2) hours prior to shift commencing
- Evening Shift — four (4) hours prior to shift commencing
- Night Shift — four (4) hours prior to shift commencing

It is understood that there may be emergency situations that may prevent the Employee from providing proper notice. Each event will be addressed on a case-by-case basis.

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 a) If sick leave credits are exhausted before the Employee is able to return to work and, if no sick leave benefits such as those provided under Employment Insurance legislation are available to them, then Employees may apply for leave of absence pursuant to Article 17 of this agreement in which case the Employer agrees that leave of absences will not be unfairly denied.

b) Positions that have been (or it is anticipated will be) vacant due to illness, injury, or approved LOA for two (2) or more years shall be deemed to be vacant and shall be posted per Article 15.01. The Employee who held the position immediately prior to it becoming vacant shall not retain any rights to that position. Should that Employee subsequently be capable of returning to work, they shall be given first preference for the next available vacant position they are qualified for.

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

198. The Employer opposes the Union's proposed increase to the current levels of sick leave as it is extremely costly and any amendments to the current sick leave entitlement must be considered in the context of total compensation. It noted there is currently no carry-over allowed and that its sick leave entitlements are consistent with the comparators.

Decision

199. The Union's proposed increase to sick leave and carry-over provision is not supported by the comparators. It would result in significant costs and while I recognize the Union's arguments regarding the increase in the use of sick time because of the pandemic, I can not justify the increase beyond the comparators. However, when reviewing the sick leave provisions contained therein, I do find that an adjustment in sick leave is warranted.

200. The language 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.

Casual Employees

The Union 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 18.02.

201. The Union seeks to provide named holiday pay for casual employees based on a formula and provide vacation entitlements consistent with Regular employees.

The Employer 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.

202. The Employer objects to the inclusion of named holiday pay and enhanced vacation for casual employees as it is costly and not supported by the comparators.

Decision

203. 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.

204. With respect to the proposed vacation entitlements for casual employees these amounts exceed all the comparator agreements. I 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.

205. 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.

Uniforms

<u>The Union Proposal</u>

> 30.01 Uniform allowance is for the sole and exclusive purpose of maintaining appropriate work attire at all times. Employees shall have the responsibility of cleaning and maintaining their uniform in a state of good repair. Employees may be required to replace their uniform if it is not in a state of good repair.
> Where required by the Employer, uniforms for staff of all departments must be purchased from the supplier chosen by the Employer. No exceptions will be permitted unless otherwise approved by the Employer.
>
> 30.02 The Employer shall provide two (2) uniforms at no cost to new Employees upon hire.
>
> 30.03 The Employer shall provide a uniform allowance for all Employees who are required by the Employer to wear a uniform which shall be paid at the rate of eight cents (8¢) per hour paid. The uniform balance will be payable on a bi-weekly basis.

206. The Union is proposing that new employees be provided two uniforms at the time of hire.

The Employer 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 eights 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.

207. The Employer is opposed to the Union's proposal. Its current uniform allowance is based on a cents per hour formula which is in line with most comparator agreements and has been agreed as the formula for compensation between these parties at other sites.

Decision

208. Having considered the comparators, the fact that this was not identified as a priority item by the Union and that this is a first agreement between the parties, I decline to include the Union's proposal in my Award.

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

> 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.

Benefits

The Union Proposal

31.01 Employees who are regularly scheduled to work fifteen (15) or more hours per week, are eligible to participate in the benefits plans.

31.02 The Employer will provide the following benefit plans:

(a) A Health Benefit Plan which provides for (i) reimbursement for ninety percent (90%) for all medications and supplies prescribed by a physician or dentist, and (ii) reimbursement for services provided by registered paramedics including chiropractor, osteopath, naturopath, podiatrist, physiotherapist, massage therapist, acupuncture, speech therapist, and psychologist, to an annual maximum of $500 per type of paramedic practitioner. Benefit coverage will cease on the earlier of termination of employment or retirement.

(b) A Dental Plan which provides one hundred percent (100%) reimbursement of eligible basic services (including maintenance check ups, fillings, x-rays, oral surgery, endodontics, periodontics and denture repairs), with the fees to be determined in accordance with the current-year Alberta Dental Fee Guide and fee schedule. Benefit coverage will cease on the earlier of termination of employment or retirement.

(c) Group life insurance and accidental death and dismemberment insurance, each in the amount of $30,000. Benefit coverage will cease on the earlier of termination of employment or attaining the age of 65.

(d) A Flexible Health Spending Account of one thousand ($1,000) annually, prorated for part-time Employees.

31.03 The Employer shall pay the full cost of the premiums for the benefits plans.

31.04 The operation of the benefit plans shall be governed by the terms and conditions of the contracts between the Employer and the benefit insurers.

31.05 The Employer shall make information booklets available to eligible Employees who participate in the benefit plans.

210. The Union is seeking a number of improvements over the existing benefit provisions by including part-time employees with fifteen (15) scheduled hours or more per week with 100% premiums paid by the Employer, the introduction of a Flexible Health Spending Account of $1,000 per year, an

increase in the Dental Plan with 100% reimbursement and an increase in paramedical coverage to $500 annual maximum per paramedical category.

The Employer Proposal

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.

22.05 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.

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.

211. The Employer argued the current benefit plan which is 100% Employer paid for full-time employees is competitive and generally superior to benefit plans enjoyed by full-time employees in the comparator agreements. It also highlighted that where part-time employees are included in benefit plans it is generally on a cost shared basis for all employees, full-time and part-time. The Employer also objected to the inclusion of a Flexible Spending Account on the basis that none of the comparator agreements provide this benefit and as such it would be breakthrough item.

212. The Employer argued that with respect to the increase in the Dental Plan and paramedical coverage that none of the comparator agreements provide for coverage as proposed by the Union and as such should not be awarded.

Decision

213. 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 in fact 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 onto the existing benefit plan at 100% Employer paid would be incredibly expensive for the Employer and far exceed any plan in the sector, much less between these parties.

214. This cost would only be exponentially increased by adding each of the Union's proposals: a Flexible Health Spending Account; increase to the Dental Plan and the increase in paramedical coverage to $500 per category. 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, to increase the Dental Plan and increase paramedical coverage.

215. 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 cost 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 are unlikely to 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.

216. As such, having consideration for the total compensation principles and that the current plan for full-time employees is generally superior amongst the comparator agreements, 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 clearly support part-time benefit coverage, however the cost share and entitlements should properly be the subject of negotiation after information sharing.

217. 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.
>
> 22.05 <u>Contributions During Leave of Absence</u>
>
> (f) 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.
>
> (g) 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.
>
> 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.

(h) 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.

(i) 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.

(j) 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.

Contracting Out

<u>The Union Proposal</u>

33.01 Except in the case of an emergency, the Employer agrees to give the Union notice in writing, at least sixty (60) days prior to contracting out any work which may result in the layoff of any Employee in the bargaining unit. Discussions will commence between the parties within ten (10) days of such notice and every reasonable effort will be made to provide continuing employment for affected Employees with the contractor.

The Employer shall not contract out any work usually performed by members of the bargaining unit if, as a result of such contracting out, a layoff of any Employees other than casual Employees results from such contracting out.

218. The Union is seeking language that will protect employees from layoff in the event of contracting out.

The Employer Proposal

219. The Employer is opposed to any infringement on its management rights to schedule and argued that it is a significant change that would only result from a negotiation and an exchange on important matters. It submits that I should decline to include this Article.

Decision

220. The language of the Union's proposed Article is not clear as the first paragraph implies that the Employer may contract out with appropriate notice when a layoff may occur and make every effort made for continuing employment for impacted employees, however the second paragraph states that the Employer "shall not contract out any work" that would result in a layoff. This language is confusing and certainly the second paragraph is effectively a bar to the Employer contracting out where it may result in a layoff.

221. I understand there may be concerns from employees generally, regarding the potential of contracting out, however there was no evidence before me that this was a significant concern at OPH. I note that the River Ridge Agreement as highlighted by the Employer is a freely negotiated agreement between these parties and is silent on contracting out. Most of the other comparator agreements contain a notice period in the event of contracting out much like the first paragraph in the Union's proposal, however there is no consistent language or even time period for notice in the agreements I have reviewed.

222. As a result of the above, I decline to include the Union's proposed language in the Award.

Retirement Savings Plan

The Union Proposal

> 34.01 The Employer will offer 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 biweekly pay period.) Participation will be on a voluntary basis.
>
> 34.02 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 person hired on or after the date of ratification, the eligibility period is completion of six (6) months service.
>
> 34.03 Employees who wish to participate will contribute:

Three percent (3%) per hour worked, matched by the Employer on a dollar for dollar basis, up to a maximum of three percent (3%) of regular earnings.

Regular earnings (wages) is defined as the basic straight time wages for all hours worked, including: (i) the straight time component of hours worked on a holiday; (ii) holiday pay, for hours not worked; and (iii) vacation pay. All other payments, premiums, allowances etc. are excluded.

223. There is currently no retirement savings at OPH and Union proposal is to introduce a voluntary RRSP for Regular full-time and part-time employees who are scheduled more than forty (40) hours biweekly on a three percent (3%) matching basis.

The Employer Proposal

224. The Employer is opposed to including an RRSP in this first agreement between the parties. It submitted that of the 11 current Revera agreements, there are two that do not contain an RRSP program and on a broader review of Retirement Home Agreements a total of 8 out of 47 are silent on this issue. It is seeking status quo on this matter as it is an expensive item, and the agreement will expire at the end of this year.

Decision

225. This is a difficult issue as all the identified most relevant 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. I do recognize that the Employer will need time for implementation, so in consideration of the time to set the RRSP up and to assist in managing the financial impacts, I propose it be rolled out at the end of the term of this agreement.

226. 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.

Registration Fees and Professional Development

The Union Proposal

35.01 An Employee who has worked an average of point four full time equivalent (0.4 FTE) or greater in the previous fiscal year and has active registration with the College of Licensed Practical Nurses Association (CLPNA) at the beginning of the next registration year, shall receive a three-hundred dollar ($300.00) reimbursement to their College of Licensed Practical Nurses Association (CLPNA) registration fees.

35.02 All Employees employed by the Employer, designated pursuant to the Health Professions Act and working as a Licensed Practical Nurse, upon request, shall be granted a maximum of two (2) professional development days annually for professional development related to nursing skills, at the Basic Rate of Pay.

Such *Professional Development Days* are not cumulative from year to year.

Such Employee shall be advised, prior to taking any professional development days of any transportation, registration fees, subsistence and other expenses that will be paid by the Employer.

227. The Union is seeking the inclusion of language that would provide reimbursement of registration fees and two professional development days for LPNs.

The Employer Proposal

228. The Employer is opposed to the inclusion of these Articles. With respect to the professional fees, it submitted that the comparator agreements that do have reimbursement language, which represents six of the 11 Revera agreements, the amounts are less than the proposed $300.00 in half of them. This does not establish an industry standard, and it argued should not be included in this first agreement. The Employer advanced that there were even fewer of the comparator agreements that include professional development days, in fact only two of the 11 Revera agreements contain this provision.

Decision

229. Having considered the comparators, 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 the employees may be eligible, I decline to include this proposal in my Award.

Wages

230. The current wages at OPH are:

Classification	Levels	2021 Current
Housekeeping Aide Dietary Aide	Start (0-449)	$ 15.81
	Step 1 (450 – 1949)	$ 16.30
	Step 2 (1950-3899)	$ 16.80
	Step 3 (3900+)	$ 17.50
Receptionist	Start (0-449)	$ 16.61
	Step 1 (450 – 1949)	$ 17.12
	Step 2 (1950-3899)	$ 17.65
	Step 3 (3900+)	$ 18.39
Recreation Aide PSA	Start (0-449)	$ 18.21
	Step 1 (450 – 1949)	$ 18.77
	Step 2 (1950-3899)	$ 19.35
	Step 3 (3900+)	$ 20.16
Environmental Services Assistant, Health Care Aide Cook	Start (0-449)	$ 19.38
	Step 1 (450 – 1949)	$ 20.44
	Step 2 (1950-3899)	$ 21.07
	Step 3 (3900+)	$ 21.95
LPN	Start (0-449)	$ 31.90
	Step 1 (450 – 1949)	$ 32.89
	Step 2 (1950-3899)	$ 33.91
	Step 3 (3900+)	$ 35.32

<u>The Union Proposal</u>

- January 1, 2022
  - Housekeeping Aide, Dietary Aide, Cook 2.5%
  - Receptionist, Env. Serv. Asst., Recreation Aide, PSA, HCA, LPN 1.0%

- January 1, 2023
  - Housekeeping Aide, Dietary Aide, Cook 2.0%
  - Receptionist, Env. Serv. Asst., Recreation Aide, PSA, HCA, LPN 2.0%

- Redcircling
  Any Employees receiving a higher wage rate as of the date of award than the applicable rate for the Employee's classification and hours worked will be maintained at their current rate until such time as they are eligible for additional increases.

- Companions/PSA
  Any Employees holding Health Care Aide certification (or deemed certified) who occupy the Companion/PSA classification shall be paid at the wage rate for Health Care Aides.

- Retroactive Pay
  Retroactive pay shall be paid on the first pay following sixty (60) days from the date of ratification. It is agreed that the ratification date is the date on which the union ratified the agreement. Retroactive pay will be based on hours worked and apply to employees who were actively employed on the date of ratification.

231. The Union wage proposal is to emulate the River Ridge first agreement wage scale for General Support Services classifications which has a top grid step of 5850 hours. The addition of this step would amount to an approximate 10% increase. The Union does not propose this step for HCAs and LPNs as the wages exceed those paid at River Ridge.

232. The Union is also proposing that there be the addition of three classifications to be added to the collective agreement along with proposed wage rates: Unit Clerk, Security and Mashgiach. The Unit Clerk and Security are classifications that existed prior to Revera's purchase of OPH but were eliminated after purchase. The Mashgiach is a cook who is qualified to certify food as kosher and is currently paid $35.00 per hour. The Union is proposing a wage rate of $36.75 to $38.99 and objects to the Employer's proposal to roll this into the classification of cook and redcircle the current incumbent.

<u>The Employer Proposal</u>

233. The Employer is proposing the maintenance of the current wage schedule with the following general increases:

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

234. 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.

235. 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 of time 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.

236. The Employer highlighted that there is a dramatic difference in wage rates by classification across the Alberta Retirement Home sector and that there are no "benchmark" rates of pay. It noted that the LPN rates place them 6th place amongst their peers, and this would be maintained using the Employer's increases over the proposed three-year term. It noted that the HCA rates are not the lowest and are competitive.

237. 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.

238. The Employer objected to the inclusion of additional classifications and the proposed rates for the Mashgiach.

239. 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.

240. 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

241. With respect to the general increases the parties are not 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.

242. 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 of 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.

243. 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 that 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.

244. I do note that when I compare the wage grids broadly across the Retirement Home sector, a number of the classifications appear to be undercompensated, however given the Employer's grouping of classifications on the wage grid this is not universal. A few 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 have to 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.

245. 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.

246. When reviewing the rates paid to HCAs in the comparator group, in particular those highlighted by the Employer, I note that they are paid significantly less than their peer group. The Employer's data alone highlights the difference as being over $2.00 less per hour than the industry average and at least that when looking to Revera comparators. Even when considering the $2.00 Pandemic Pay premium still being paid to HCAs at OPH, I find they are behind market. While the difference is significant enough that it can not be made up in the term of this agreement, I find that a market adjustment is appropriate to begin to address the rates. As a result, I award a $0.25 per hour increase in the HCA rates effective January 1, 2023. This represents approximately an additional one percent (1%) for this classification and serves to decouple it from the Employer's grouping of classifications that include the Environmental Services Assistant and Cook.

247. With respect to the Union's proposed additional classifications of Unit Clerk and Security, I am not inclined to add classifications to the collective agreement that do not currently exist. There was insufficient information provided by the Union to justify the addition of the classification or what the appropriate wage rates should be. I leave this to the parties to negotiate if these classifications are reintroduced to the bargaining unit.

248. With respect to the Mashgiach, I acknowledge that at the time of certification this classification existed and continues to. While the Employer proposes to roll it into the Cook classification and red circle the incumbent, I do not have any information or justification to support either the Employer or the Union's proposal. Accordingly, I will maintain this classification at its current rate in the wage grid without a range. As a result, the incumbent will receive the general increases and the parties

can negotiate the future use of the classification and the appropriate compensation at collective bargaining.

249. The Union's proposal to pay the HCAs at their rate of pay when performing Companion/PSA work is unclear. It is not challenging the compensation for the Companion/PSA classification however is seeking to have HCAs paid at their own rate when performing those duties. If the compensation is appropriate for the work and an HCA were to pick up the shift knowing the rate of pay, then there is no reason for the increased compensation just because they are a certified HCA. However, if an HCA were to be scheduled for a shift by the Employer and directed to perform Companion/PSA work, that should be compensated at the HCA rate. The proposal by the Union provides insufficient detail to be able to differentiate on when the rate would be payable. I concur with the Employer that this does not exist in any other comparators and would amount to a breakthrough, therefore I decline to consider the Union's proposal.

250. 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 may be seen as 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, 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.

251. 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.

252. 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.

Conclusion

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

254. 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 "Our Parents' Home"
("Employer")

And

Alberta Union of Provincial Employees
("Union")

APPENDIX A

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.

c) 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 after the purchase of OPH to establish the seniority date upon implementation of this award.

Salaries

13.07 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

(c) In addition to their regular rate of pay. Employees shall be paid an Evening premium of two dollars and twenty-five cents ($2.25) per hour where a majority of the shift falls between fifteen hundred (1500) hours and twenty-three hundred (2300) hours.

(d) In addition to their regular rate of pay. Employees shall be paid a Night premium of three dollars and twenty-five cents ($3.25) per hour where a majority of the shift falls between twenty-three hundred (2300) hours and zero seven hundred hours (0700).

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

(d) In addition to their regular rate of pay. Employees shall be paid a premium of two dollars and seventy-five cents ($2.25) per hour where a majority of the shift falls between zero seven hundred (0700) and fifteen hundred (1500) hours.

(e) In addition to their regular rate of pay. Employees shall be paid an premium of two dollars and fifty cents ($2.50) per hour where a majority of the shift falls between fifteen hundred (1500) hours and twenty-three hundred (2300) hours.

(f) In addition to their regular rate of pay. Employees shall be paid a premium of three dollars and twenty-five cents ($3.25) per hour where a majority of the shift falls between twenty-three hundred (2300) hours and zero seven hundred hours (0700).

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 (07000 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.

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

Annual Vacation

18.02 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;

18.03 Regular Part-time employees shall receive vacation with pay on their biweekly pay in accordance with the entitlement provided in Clause 18.02.

I am directing the parties to convert the hours of the employees as of the date of this Award to a vacation date for the purpose of future entitlements.

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.

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

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

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

f) Casual employees are not eligible for sick days.

24.08 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.

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

24.10 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.

24.11 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:

d) 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.

e) 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.

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

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.

Health Benefits

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 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.

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

22.04 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.

22.05 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.

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

Retirement Savings Plan

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.

Wages

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

These rates will be applied to the attached grid for January 1 2022

Classification	Levels	2021 Current
Housekeeping Aide Dietary Aide	Start (0-449)	$ 15.81
	Step 1 (450 – 1949)	$ 16.30
	Step 2 (1950-3899)	$ 16.80
	Step 3 (3900+)	$ 17.50
Receptionist	Start (0-449)	$ 16.61
	Step 1 (450 – 1949)	$ 17.12
	Step 2 (1950-3899)	$ 17.65
	Step 3 (3900+)	$ 18.39
Recreation Aide PSA	Start (0-449)	$ 18.21
	Step 1 (450 – 1949)	$ 18.77
	Step 2 (1950-3899)	$ 19.35
	Step 3 (3900+)	$ 20.16
Environmental Services Assistant, Health Care Aide Cook	Start (0-449)	$ 19.38
	Step 1 (450 – 1949)	$ 20.44
	Step 2 (1950-3899)	$ 21.07
	Step 3 (3900+)	$ 21.95
LPN	Start (0-449)	$ 31.90
	Step 1 (450 – 1949)	$ 32.89
	Step 2 (1950-3899)	$ 33.91
	Step 3 (3900+)	$ 35.32
Mashgiach		$35.00

Effective January 1, 2023 - $0.25 shall be added onto the Health Care Aide rates at each step prior to the application of the January 1, 2023 general increase.

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.