



CONSENT ORDER

RE: An application brought by the Alberta Union of Provincial Employees affecting HCN-Revera Lessee (River Ridge) LP, HCN Revera Lessee (Scenic Acres) LP, HCN – Revera Lessee (Edgemont) LP, HCN Revera Lessee (Riverbend) LP, HCN Revera Lessee (Aspen Ridge) LP, HCN Revera Lessee (The Churchill) LP, AXR Operating (National) GP Inc.– Board File No. GE-08247

WHEREAS on March 27, 2020, the Alberta Union of Provincial Employees (“AUPE”) filed an unfair labour practice complaint against HCN-Revera Lessee (River Ridge) LP, HCN Revera Lessee (Scenic Acres) LP, HCN – Revera Lessee (Edgemont) LP, HCN Revera Lessee (Riverbend) LP, HCN Revera Lessee (Aspen Ridge) LP, HCN Revera Lessee (The Churchill) LP, AXR Operating (National) GP Inc. (collectively referred to as “Revera”) alleging breaches of sections 21, 60, 72, 74, 147(3) and 148(1)(a)(ii) of the *Labour Relations Code* (the “Code”);

AND WHEREAS Revera provided a written response to the complaint on March 28, 2020;

AND WHEREAS the complaint was scheduled to be heard before a panel of the Board on April 2, 2020;

AND WHEREAS on April 1, 2020, Labour Relations Board Chair William Johnson assigned Vice Chair Lyle Kanee pursuant to section 11 of *Code* to engage in settlement efforts with the parties;

AND WHEREAS the hearing on April 2, 2020 was adjourned to allow the section 11 process to take place;

AND WHEREAS on April 4, 2020, Vice Chair Kanee issued a Report pursuant to section 11, indicating AUPE and Revera reached an agreement to resolve all matters in relation to the dispute. The parties’ agreement was contained in a Letter of Understanding, accompanying the Report;

AND WHEREAS the parties agreed to ask the Board to incorporate the Letter of Understanding into a Board Order, resolving the above-noted complaint;

AND WHEREAS the Report and Letter of Understanding were reviewed by a Vice Chair sitting alone (Schlesinger) on April 5, 2020;

Therefore, the Board issues this Order, containing the terms of the parties’ Letter of Understanding, and resolving the matters in dispute in Board File No. GE-08247:

1. For the purposes of this Letter of Understanding, the "Pandemic Period" shall mean

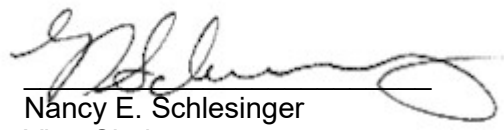
the period of time that ends the earlier of (i) the date when neither a public health emergency under the *Public Health Act* (Alberta) or provincial state of emergency under the *Emergency Management Act* (Alberta) related to COVID-19 is in force; or (ii) the conclusion of the next pay period at each Revera workplace after Revera provides written notice to the Union that the Chief Medical Officer of Revera has recommended that the single employer policy set out in this Letter of Understanding is no longer required to ensure the health and safety of Revera employees and residents.

2. Employees in AUPE bargaining unit must disclose to Revera if they currently work for any other employer. Employees must choose to work at only one employer during the Pandemic Period. Their choice must be communicated in writing by April 6, 2020, in the form attached
3. If a Revera employee decides to work for another employer, then Revera will place the employee on an unpaid leave of absence, issue the employee a Record of Employment, and allow the employee to return to work after the Pandemic Period is over. Where applicable, an employee on such leave may continue their group benefits pursuant to the terms of the governing Collective Agreement, and subject to the terms and conditions of the employee's group benefits plan.
4. If an employee suffers a loss of working hours ("Lost Hours") as a result of no longer being able to work for other employers due to their election to work solely for Revera ("Affected Employee") then, during the Pandemic Period:
 - a. Revera will increase the Affected Employee's scheduled hours of work at Revera equal to the combined number of hours in their current position with Revera plus the number of Lost Hours, up to the maximum of a 1.0 FTE position, as set out in the governing Collective Agreement.
 - b. If an Affected Employee has not been made whole for Lost Hours after having their hours increased to maximum of a 1.0 FTE position, then they will be provided the opportunity to work additional hours as overtime on a priority basis as follows:
 - i. overtime will be offered and made available to Affected Employees in priority to all other employees, including out-of scope-employees, and temp agency employees or employees of all other types of third party contractors and Affected Employees shall be given preference and first opportunity to work additional overtime provided they are available and have requested additional hours of work;
 - ii. overtime hours will be credited against Lost Hours at a rate as set out in the governing Collective Agreement for overtime;
 - iii. preference for overtime hours among Affected Employees will be based on seniority;

- iv. once an Affected Employee has made up their Lost Hours, the Affected Employee will no longer be scheduled for overtime in preference to other employees;
 - v. overtime hours shall be scheduled as needed in accordance with the normal scheduling practices of Revera, and shall not be provided where hours can be scheduled without incurring overtime. Except that temp agency employees or the employees of any other type of third party contractor may not be used in order to avoid the scheduling of overtime. During the Pandemic Period the Employer may only use such third party contractors if no Affected Employees or regular employees are available for the subject shift. This exception does not apply to any privately contracted services that a resident and/or their family may have and/or may make.
5. Affected Employees who do not work hours offered and scheduled by Revera will not receive equivalent pay-in-lieu; and scheduling of additional hours will be at the discretion of Revera (subject to the restrictions in Article b. (v) above), but where ever possible will comply with existing hours of work provisions, policies, and obligations under the governing Collective Agreement and will comply with the Alberta *Employment Standards Code*.
 6. The scheduling system set out above will be applied on the next regular work schedule produced by each Revera workplace, and in no case will it be applied later than April 14, 2020.
 7. Lost Hours will be determined by the average bi-weekly hours of the Affected Employee for the period of employment between January 1, 2020- April 1, 2020. Any Affected Employee who wishes to be scheduled for additional hours due to Lost Hours is required to provide to Revera copies of pay stubs for the period of January 1, 2020 and April 1, 2020 as evidence of Lost Hours and for the purpose of Revera scheduling additional hours as needed.
 8. Affected Employees who before this Agreement had elected to take a leave of absence and work elsewhere will be entitled (within four days of the date of this Letter of Understanding) to rescind their previous choice and elect to return to work with Revera during the Pandemic Period. Employees who rescind their election will be scheduled to work on the next regular work schedule produced by the applicable Revera workplace.
 9. For a transition period of 6 months following the Pandemic Period, Revera agrees that part-time employees will be contacted and offered available regular work hours in preference to casual, out-of-scope or agency employees. Agency employees will only be used to carry out bargaining unit work during this period if all bargaining unit members have been offered the work and refused. Otherwise all employees will be scheduled in accordance with pre-Pandemic Period practices and in accordance with the terms of the governing Collective Agreement.
 10. To the extent that any of the provisions of this Letter of Understanding are inconsistent with the provisions of the governing Collective Agreement, the Union expressly acknowledges that the provisions of this Letter of Understanding shall apply.

11. Further, to the extent that the provisions of this Letter of Understanding are inconsistent with any Public Health Order issued by the Chief Medical Officer of Health for Alberta, the Public Health Order shall apply. If a Public Health Order or other government instrument provides Revera with different or additional work redeployment, staffing, and/or scheduling rights than those which are set out in this Letter of Understanding, then Revera shall be permitted to exercise those rights and this Letter of Understanding will not be interpreted so as to restrict those rights.
12. Arbitrator David Tettensor shall be appointed to resolve any disputes between the parties arising from the interpretation or application of this agreement through an expedited process to be determined by the arbitrator. The Union will bring any complaints or concerns under this Letter of Understanding to the attention of the Revera before bringing a dispute before the arbitrator to provide Revera an attempt to investigate and cure any alleged complaint.
13. AUPE shall withdraw all policy grievances that have been submitted to Revera which arise out of or are related to the multiple employer exclusion and any other matters addressed in this Letter of Understanding, including AUPE grievances 848696, 848695, 848698, 848697, 848699, 848701 and 848700.
14. The parties agree to request the Alberta Labour Relations Board to incorporate this agreement into a Board order resolving the matters in dispute in Board File No. GE-08247. The parties agree that a chair alone may hear this matter.

ISSUED and **DATED** at the City of Edmonton in the Province of Alberta this 5th day of April, 2020.


Nancy E. Schlesinger
Vice-Chair