

IN THE MATTER OF AN ARBITRATION
AND IN THE MATTER OF WAGE REOPENER PROVISIONS CONTAINED
IN COLLECTIVE AGREEMENTS FOR THE PERIOD ENDING JUNE 30, 2020

BETWEEN:

CAREWEST

(the "Employer" or "Carewest")

-and-

**ALBERTA UNION OF PROVINCIAL EMPLOYEES
AUXILIARY NURSING CARE ("ANC")**

("the Union" or "AUPE")

AND BETWEEN:

CAREWEST

(the" Employer" or "Carewest")

-and-

**ALBERTA UNION OF PROVINCIAL EMPLOYEES
GENERAL SUPPORT SERVICES ("GSS")**

("the Union" or "AUPE")

Before a panel of P.A. Smith, Chair, Jacqueline Lacasse, Employer Nominee,
and Simon Renouf, Union Nominee on September 9 and 10, and October 19 and 20, 2020

Appearances:

For the Employer

Michael Vos, Counsel

For the Union

William Riggio, Counsel

AWARD

I. INTRODUCTION

This matter involves a dispute between the parties with respect to the appropriate wage adjustment to be determined for the third year of Collective Agreements pursuant to wage reopeners negotiated in those Collective Agreements.

The Parties

AUPE is Alberta's largest union representing approximately 90,000 workers in a variety of public sectors including 44,000 workers in the healthcare sector. There are approximately 1600 members of the ANC bargaining unit (just over half of Carewest's total staff) and 177 members of the GSS bargaining unit. It does not represent all ANC and GSS workers employed by Carewest.

Carewest is a solely owned subsidiary of Alberta Health Services ("AHS") and is Calgary's largest public health care provider. It operates ten continuing care centres in Calgary and other services for adults requiring specialized care. It has three main streams of service: complex continuing care (long term care); rehabilitation and recovery; and comprehensive community care. The Alberta long term care sector involves approximately 50 different operators, including public operators (like Carewest), private for-profit operators and private non-profit operators. Each long-term care operator provides long term care beds under contract with AHS. Because of its public sector ownership and its obligations with respect to acceptance of patients, it has essentially become the default provider with respect to extremely complex cases and for long term residents who cannot afford to pay resident charges. Currently approximately 10% of Carewest's residents are in arrears for payment, but Carewest, unlike private operators, does not evict such residents.

Carewest's services are funded through a variety of sources. AHS provides patient care-based funding ("PCBF") and specific program funding. Carewest also receives accommodation fees based on charges set by the Alberta government and paid by residents, and donations through the Calgary Health Trust for specific resident-based programs. The ANC bargaining unit wages are essentially funded through provincial base funding, and the GSS bargaining unit is funded through residential room charges which increased 2.2% on July 1, 2018, 1.6% on July 1, 2019 and 2.5% on October 1, 2020.

Six of Carewest's sites are funded through PCBF. That funding is determined by the number of long-term care beds and acuity of the residents (using an index which determines the RN, LPN, HCA, and therapy hours necessary to meet the program or site needs). Once the hours required by each employment classification are calculated, a provincial average of wage rates (which do not include all elements of staff compensation) is used to determine the specific funding required for each operator. Carewest's wages are above the provincial average and include some benefits,

such as LAPP contributions, which are not included in the provincial wage average which leads to funding shortfalls as PCBF funding pays for fewer hours than may be required. For the year ending March 31, 2020, Carewest incurred an operating deficit of \$887,000. Its accumulated unrestricted surplus of approximately \$44 million is not available to Carewest as it is controlled by its shareholder AHS and is retained for AHS's benefit.

Carewest's two designated supportive living and 16 speciality programs also receive funding based on a similar staffing model utilizing the provincial average wage rate for funded wages.

Carewest is also subject to restrictions with respect to the use of funds received from AHS. Carewest is expected to operate within 1% of its budget and if it is outside that stipulated limit it may face a potential for recovery of funds by the AHS. Carewest cannot use any debt financing to finance its operations.

Collective Bargaining

Bargaining with respect to the Collective Agreements concluded in July 2019 through memorandums of settlement which provided for 0% increases in the first two years of the contract term and a wage reopener for the third year of the Agreements. As noted in the Employer's evidence, there were some improvements to the total benefits package for both bargaining units because of the settlements. The wage reopeners in each of the ANC and GSS Collective Agreements were identical and provided that if there was no agreement with respect to the wage adjustment, *"at any time after September 1, 2019, either Party may give written notice to the other party"* that that party wanted to proceed to arbitration.

The parties commenced bargaining with respect to the wage reopeners in the fall of 2019. Carewest's original mandate and direction from its owner, Alberta Health Services, was a 0% wage adjustment. That mandate and direction was changed shortly after bargaining had commenced (and the 0% proposal had been made to the Union), to seek a 2% rollback in wages. The Union's proposals going into bargaining on the wage reopener, and ultimately only proposals, was a 7% increase for ANC workers and 7.85% for GSS workers. Carewest's mandate was again reviewed and revised after the AHS /ANC wage reopener arbitration decision was released to reinstate the 0% proposal for both the GSS and ANC workers.

The parties were not able to agree with respect to the wage adjustment and the matter was submitted to arbitration in accordance with the terms of the wage reopener. The arbitration hearing did not proceed to hearing by November 1, 2019 as contemplated but occurred almost one year later.

II. LEGAL PRINCIPLES

The wage re-opener provisions in both Collective Agreements require the arbitration panel to consider the principles in section 101 of the Labour Relations Code. That provision reads as follows:

To ensure that wages and benefits are fair and reasonable to the employees and employer and are in the best interest of the public, the compulsory arbitration board

- (a) shall consider, for the period with respect to which the award will apply, the following:
 - (i) wages and benefits in private and public and unionized and non-unionized employment;
 - (ii) the continuity and stability of private and public employment, including
 - (A) employment levels and incidence of layoffs,
 - (B) incidence of employment at less than normal working hours, and
 - (C) opportunity for employment;
 - (iii) the general economic conditions in Alberta.

and

- (b) may consider, for the period with respect to which the award will apply, the following:
 - (i) the terms and conditions of employment in similar occupations outside the employer's employment taking into account any geographic, industrial or other variations that the board considers relevant;
 - (ii) the need to maintain appropriate relationships in terms and conditions of employment between different classification levels within an occupation and between occupations in the employer's employment;
 - (iii) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered;
 - (iv) any other factor that it considers relevant to the matter in dispute.

The application of these provisions has been the subject of extensive review in arbitral jurisprudence. The numerous case references will not be repeated in this award but the following reflects a summary of the principles which have emerged from a long line of arbitral decisions which are relevant to this panel's consideration of the issue before it.

What has emerged from the cases, several which were cited by the Union and the Employer in their extensive submissions to this arbitration panel, is that the overarching principle governing interest arbitrations is the replication principle. Interest arbitrators, in an admittedly unscientific process, seek to reach a conclusion which reflects what would have been achieved through the process of collective bargaining utilizing the entirety of the tools available in the collective bargaining tool chest. The inter-relationship between this over-arching principle and the mandatory and discretionary criteria set out in section 38 of the *Public Service Employees Relation Act* (the “Act”) and the *Labour Relations Code* (“the Code”) is obvious. Bargaining does not occur in a vacuum and economic realities in the province contemplated in the mandatory criteria will have a significant impact on what the parties will ultimately agree upon. Similarly, as the core of replication is comparability, that is, that parties would aim to achieve a result which is comparable to what other similarly situated workers have achieved, the relevance of the discretionary criteria is again obvious.

From these general principles have flowed more detailed direction and guidance from the cases. Comparability requires care in application to ensure that all the trade offs which may have resulted in a particular agreement are properly recognized and that the totality of the compensation is recognized.

The provisions of both the Code and the Act require a balancing of the interest of the employers, employees, and the public so that the ultimate result is fair and reasonable for employees and employers and in the public interest. Fairness to employers and employees is very much driven by the criteria set out in the Act and Code. A particular aspect of the public interest which is commonly discussed in cases being considered in periods of economic challenges is ability to pay. While that factor is of considerably more importance in private sector bargaining, it is not irrelevant in public sector arbitrations. However, its application is considerably truncated as in theory a government entity with the power to tax does not have an inability to pay in the classic sense. Consequently, as a matter of principle, arbitrators have generally not accepted that an argument which relies on an inability to pay from public sector employers when other relevant factors support increases for public sector employees. Arbitrators in reaching this conclusion have made it clear that public sector employees ought not be asked to subsidize the services they deliver to the public. However, that approach is not without limitation. Public sector employees are expected to share the pain of their community which principle is captured in the mandatory criteria. Consequently, the general economic condition and the financial realities in the province are relevant in determining what is fair and reasonable.

III. STATUTORY CRITERIA

The statutory criteria fall into two categories: mandatory criteria which require arbitrators to consider the general state of the provincial economy and the labour market, which is presumed to be the climate in which bargaining is conducted and which presumably would be considered by

reasonable parties at the bargaining table, and discretionary criteria involving consideration of appropriate comparators and internal equity, which are both presumably factors which parties would also consider at the bargaining table as the replication principle presumes that parties would bargain for what others have achieved in similar occupations and circumstances and would take into account workplace equity.

General Economic conditions in the Province

There is no doubt based upon the evidence put forward by both parties in this proceeding, which will not be reviewed in detail in this award (but which has been reviewed extensively in a series of wage reopener arbitration awards issued over the last year), that Alberta's economy in the relevant period in which negotiations did occur was stagnant and that the continued recovery from the recessionary impact of the precipitous fall in oil prices commencing in the fall of 2014, which had been predicted by forecasters in late 2018 and early 2019 had stalled, at least in part because of the decline in oil prices and the lack of pipeline capacity. The optimism expressed by forecasters about what would occur in 2019 had changed starting in the spring of 2019 with a more pessimistic view of the current and future state of the economy. There was little disagreement between the parties as to the state of the economy in the period September 2019 to March 2020.

Unemployment rates remained high and were climbing and retail sales were declining. There was little or no growth in GDP which still had not recovered to its 2014 levels. Inflationary pressures eased during the stagnation of the economy and remained lower than other jurisdictions. As noted however by the Union, given the 0% increases for two years of the Collective Agreement term, real wages have decreased due to the effects of inflation over that period and which continues into the third year of the contract. The Employer noted that that conclusion overlooks wage settlements achieved in previous bargaining rounds (including the 8% received by the GSS and ANC bargaining units between 2013 and 2017), and the grid increases.

The poor state of the economy weakened the financial picture for the resource reliant Government of Alberta which faced rising deficits. Alberta commissioned a report on how to deal with the deficit (the "Blue Ribbon Panel") which report was released in the summer of 2019 and which recommended continued and enhanced fiscal restraint in the form of reduced spending. That report sent a clear message to all public sector employers that fiscal restraint would be the norm. Admittedly that report focused on government expenditures and not revenues. As the Union pointed out the province's fiscal capacity remains relatively strong as debt as percentage of GDP in 2019/20 was 10.4%, the lowest in the country and was forecast to remain the lowest until at least 2022-23, and its tax regime remains the most favourable in the country. Given those observations, the Union argued that political choice drove the decision to impose additional fiscal restraint policies. However, while political choices may have

determined the way in which the Government has approached the financial circumstances it does not alter the financial reality of significant weakness in the Alberta economy at the relevant time as revealed by the usual markers of economic performance.

The Employer also referred to the Ernst and Young report issued in December 2019 with respect to implementation of the Blue Ribbon Panel report, containing recommendations which, if implemented, would have a significant impact on Carewest operations. As pointed out by Carewest, the recommendations respecting long term care operators and, in particular Carewest, might be considered almost draconian and might well create significant additional challenges (if Carewest is allowed to continue operations as one of the recommendations was sale of the Carewest operations). As the Union pointed out however these reports deals with the future and none have a direct impact on the 2019/20 contract year.

The Union also addressed the effect of the COVID-19 pandemic which emerged as a concern commencing in March 2020 and did affect five months of the period covered by the wage re-opener. The Union described the effect of the pandemic on the workplace that these workers must attend every day which has become increasingly dangerous and complex and which has not been properly compensated for. The Union noted that private operators received a \$2/hr premium for work during the pandemic. The Union further noted that the initial adverse effects of COVID-19 on the economy arising from the shutdowns imposed by the Province and the cities faded as economy began to reopen in May and June 2020.

The Employer acknowledged that the pandemic has created a burden for employees in its worksites but argued that the pandemic does not justify any increase in wages for the year 2019/20 given the other factors which are relevant. It also noted that the \$2/hr premium was not a permanent increase in wages but a temporary measure to permit lower paying operators to retain staff.

Provincial Labour Market

The Union's evidence with respect to the Alberta labour market suggested that it was more robust at least with respect to wages, than the relatively high unemployment rates would suggest and there were job gains in some sector including the public sectors.

Its data indicated that Alberta, in the relevant period, continued to enjoy an above average labour participation rate compared to the Canadian average. Voluntary turnover rates in Alberta in 2018 were well above the national average although that rate fell below the national average in 2019.

While acknowledging the historically high unemployment rates, the Union pointed to the data which showed that, notwithstanding the stagnant economy, wages in general had risen in Alberta in 2019. It pointed to StatsCan Average Weekly, Average Hourly and Fixed Weight Hourly Earnings data. The Union acknowledged that each of these measures had certain

shortcomings, but all reflected increases in nominal wages during the relevant time period including a 4.4% increase in Average Weekly Earnings and a 2.9% increase in Fixed Weight Hourly Earnings year over year from October 2018 to 2019. The Union further noted that the average hourly earnings in Alberta in October 2019 were the highest in Canada. The increase also occurred in the unionized sector with weighted average increases in Alberta wage settlements of 0.65% in 2018 and 1.0% in 2019. The Union further noted that those trends continued into 2020.

The Employer focused on the health care labour market in Alberta (some of which evidence was also relevant when considering the discretionary criteria to be considered by this panel). The Employer pointed out that the healthcare sector, and, in particular, the publicly operated health care sector enjoys a level of job security not typical of the oil and gas industry or other sectors of the economy. Over the term of the Collective Agreements the ANC bargaining unit grew by 147 employees to 1609 employees. There was also a modest increase in the number of GSS employees.

The turnover rates in the ANC bargaining unit over the term of the agreement ranged from 6.67% to 7.18% which is lower than the turnover rate across Carewest and much lower than the 17 to 24% turnover rate experienced by other long term care operators in 2019. The turnover rate in the GSS bargaining unit was 3.39% in 2019, again lower than the turnover rate across Carewest and much lower than the 17% to 24% rate for other long-term care operators. Both rates were lower than the provincial average identified by AUPE.

Comparators

Both the Union and the Employer referred to a number of comparators in support of the positions which they advanced in this arbitration.

The Union referred to a number of collective agreement settlements in which the AUPE had successfully negotiated wage increases with long term care operators in the Province ranging from 1.0% to 3.0%. The weighted average wage settlement in Alberta in 2020 for all workers for 2020 was 0.59%, but for health care workers in 2019 it was 1.21% and for public administration it was 0.91%.

For both the ANC and GSS bargaining units, the Employer focused on comparators in the regional Calgary market which it considers the most relevant for purposes of comparison. It referred to several organizations which operate multiple care centres in the Calgary region. The comparisons referred to did not include a comparison of the total benefits available to bargaining unit members at each of the comparators. Carewest described these additional compensation components as significant, including access to the LAPP pension plan and banking of sick leave entitlement. In that regard the Union noted that participation in the plan is not universally required or permitted as casual employees are not part of the plan nor is participation mandatory

for employees working between 15 and 30 hours biweekly nor available to those working less than 15 hours biweekly.

With respect to the ANC bargaining unit, Carewest referred to collective agreement settlements for the relevant period with AgeCare (Walden Heights), Intercare, Revera (McKenzie Towne), and Well Being Services (Millrise) Ltd, While each of these collective agreements provided for wage increases for 2019, those increases resulted in wages that were still below the rates paid to Carewest employees. Consequently, Carewest wages continue to have the highest overall wage grid among these competitors for ANC wages, and the increases negotiated in the competitor Collective Agreements were “catch up” increases. The Employer noted that Carewest’s leadership position is driven in part by it continuing for competitive reasons to match AHS salaries and benefits which are generally viewed as the best in the industry. For similar reasons it matches Capital Care’s monetary terms.

With respect to the GSS bargaining unit the Employer also referred to a number of collective agreements with providers in the Calgary Region which had included wage increases for the year 2019 but which again only resulted in wages that were lower than those paid by Carewest, and left Carewest as the highest payer compared to those operators. Carewest did note there it is somewhat difficult to find comparators for the GSS unit as GSS classifications are not uniform, so comparators with at least some equivalent GSS staff classifications were referred to. Carewest does not however historically match AHS wage rates for all GSS classifications. Its wage grid for the food service (which make the large majority of AUPE GSS employees at Carewest) and maintenance classifications is higher than the AHS wage grid even with the 1% awarded by in the AHS/GSS wage reopener. With respect to classifications where Carewest lags AHS, the explanation is because of the increased complexity associated with work in acute care for those classifications.

The Union in response noted that the actual wages at each of the ANC comparators have been increased by \$2.00 an hour, an increase that the Employer identified as temporary pandemic relief, and not a permanent improvement in the wage grid.

The Union in further response referred to several comparators in the province which in 2019 had higher wage rates than Carewest. Not all the comparators were located in the Calgary Region, but many were.

Both parties referred to arbitration awards issued over the last few months with respect to the wage reopeners contained in several public sector collective agreements. These included a series of awards issued by Arbitrator Jones awarding 0% increases to teachers, nurses and health science workers largely based on the general economic conditions in Alberta at the relevant time, a series of awards issued by Arbitrator Sims and Arbitrator Tettensor awarding increases to post secondary workers and a series of awards issued by the Chair of this panel which awarded a 0% increase to AHS’s ANC workers and a 1% increase to GOA bargaining unit employees and

AHS's GSS workers. The Employer also pointed to settlements with the University of Alberta faculty and University of Calgary support staff and the Alberta Medical Association in which 0% increases for 2019/20 were agreed to.

Internal Equity

The Employer noted that non bargaining unit employees have not received any increases for the last seven years including movement along a wage grid resulting in 0% increases for the last 6 years compared to 8% achieved by bargaining unit members. The Employer further pointed out that registered nurses who work along side ANC and HCA workers received 0% as a result of the Jones award.

A further source of potential internal inequity is the fact that non unionized GSS workers employed by Carewest (approximately 58% of the GSS staff) doing identical work as the AUPE GSS workers are subject to the same wage freeze as other non-unionized employees. If Carewest does not receive the usual authorization to match AUPE GSS collective agreement wage settlements (which normally occurs but may not in the current economic climate) would be disadvantaged compared to their fellow unionized workers.

Position of the parties

The parties submitted extensive briefs.

Most of their submissions have been reviewed through a consideration of the statutory criteria.

In summary, the Union's position is that:

- there were increases generally in wages in the Alberta labour market in 2019 notwithstanding the province's stagnant economic circumstances
- in the Alberta health care and public administration sector collective agreement settlements on a weighted average basis resulted in overall increases in wages in 2019/20
- some of those settlements resulted in wages higher than those currently paid by Carewest
- the general tenor of the arbitration awards is a pattern of increases including for AHS's GSS workers, and Arbitrator Jones did not properly consider the rising wages in the labour market
- Inflation has eroded the real value of the current wages by 2 to 3% and further erosion will occur if no increases are granted to for 2019/20 there will be further erosion
- COVID-19 has increased the stress and complexity of the work
- the bargaining mandate given to Carewest was a political and not economic directive
- An increase of 1 % for the GSS bargaining unit would cost \$60 to \$70 thousand dollars, and an 1% increase to the ANC bargaining unit members would cost \$350 thousand dollars, an amount which is well within the ability of Carewest to pay (Carewest did note

that these calculations were based upon wage rates only and did not include other compensatory items impacted by an increase in basic rates).

In summary, the Employer's position is that:

- Carewest faces serious current and future financial challenges with respect to funding as the current base funding for long term care is inadequate because of provincial averaging of wages and Carewest is restricted in what it spends and how it can finance its operations
- the general economic conditions in the Province at the relevant time were forecast to and turned out to be stagnant and the recovery from the recession had stalled
- the appropriate pattern to consider is the 0% increases granted to most public sector workers through interest arbitrations
- Notwithstanding the depressed state of the economy including high unemployment rates, Carewest workers have maintained a level of job security and stability not enjoyed in other industries or even with other long-term care operators
- the most appropriate labour market comparators were Calgary Region long term care operators, and Carewest, even if wages are not increased, remains the leader for GSS and ANC wages compared to other operators without regard to other elements of compensation available to Carewest employees
- The best comparator however are AHS and Capital Care as they offer compensation packages similar to Carewest and 0% increases for ANC employees are in place for both AHS, as a result of the interest arbitration award and Capital Care as a result of a settlement
- To grant increases to this group of workers will further exacerbate internal workplace inequity as non bargaining unit employees have had no increases including grid steps for 6 years and registered nurses received 0% for 2019/20.

IV. DECISION

The panel has carefully considered the submissions and the evidence presented to it in this arbitration proceeding. The sole issue before this panel is the appropriate wage adjustment for the last year of three year Collective Agreements entered into between these parties.

Before proceeding to the decision, the panel has some preliminary observations.

First, the panel heard evidence from the Union's witnesses about their frustration about a continuation of the 0% increases contained in the first two years of the Collective Agreements between the Employer and the Union's ANC and GSS bargaining units. The level of frustration has increased with the effects of the COVID-19 pandemic which has disproportionately affected those on the frontlines of service in the continuing care industry in this province. The stress, danger and complexity in this workplace is apparent and its

effect on workers who must go to work every day combined with the economic challenges facing workers who are now confined to working in a single site is obvious to anyone who has access to the reporting in the media since the beginning of the pandemic. The frustration has been exacerbated by what is viewed as discriminatory treatment by the government in refusing to provide the \$2/hr “top up” granted to workers in the same industry doing the same jobs in the same difficult circumstances but whose employer’s ownership status determines their entitlement.

However, this panel must consider this matter having regard to the relevant time frame in which negotiation with respect to the wage adjustment did occur, which was in the fall of 2019, not in the fall of 2020. That period was not affected by the pandemic, although the Covid pandemic certainly became a factor in the last quarter of the third year of the contract, it was not a factor when the negotiations with respect to the wage reopeners occurred. The panel has therefore not taken into account the impact on the workplace arising from the pandemic. That the panel has not done so should be taken as suggesting in any fashion that it does not recognize the challenges in the workplace caused by the pandemic which affects every worker, whether bargaining or non-bargaining unit employees, and which particularly affects those truly on the front line, namely the 1600 ANC bargaining unit employees of whom 70% are health care aides who must provide direct and personal service to residents who are most vulnerable to Covid.

Second, the panel was provided evidence from the Employer about the mandate that is received for bargaining from its owner, Alberta Health Services, which received bargaining directions from Alberta Health. Presumably by way of background to explain directions it received, the Employer referred to the Blue Ribbon Panel report which pursuant to instructions from the government to examine the province’s expenses (but not the province’s revenues) made it clear that control of spending on public sector employees would be an essential part of implementing the government’s fiscal restraint policy. The panel was also provided with evidence respecting the Ernst and Young report which set out recommendations to implement the Blue Ribbon Panel Report, some of which will impact the Employer in the future but for obvious reasons will have no impact on the wage adjustment for the 2019/20 year. The panel has not considered the impact of the Ernst & Young report in reaching its conclusion in this award and has not placed weight on the mandate given to the Employer for the 2019/20 wage re-opener arbitration except to the extent that the mandate is reflective of market realities. In other words, although the direction given to the Employer’s bargaining representatives does not determine what this panel decides, it may nonetheless be consistent with what this panel decides based on relevant factors the panel must or should consider in making its decision.

In examining all of the evidence and the jurisdiction given to this panel to determine the appropriate wage re-opener, the panel concludes that the most relevant factors for it to

consider are the economic realities that existed in the fall of 2019 and continued into 2020, and the labour market realities affecting the two bargaining units.

There is no dispute that the Alberta economy in the fall of 2019 could best be described as stagnant. The optimistic projections that were made at the end of 2018 and early in 2019 had turned out to be optimistic and as early as May 2019 at least one forecaster predicted a contraction in GDP for 2019 and others had adjusted forecasts of GDP growth downwards. Unemployment rates which had started to decline in 2018 were again rising. Retail sales and other activity were declining. While at that time there was some optimism that there would be a recovery later in 2020, there were no signs of it in the fall of 2019. Given those circumstances there is little justification at the bargaining table for the increases sought by the Union in its initial proposal nor any likelihood that those proposals or even a modified version of them would have been accepted by the Employer.

There is therefore no support for a substantial, if any increase, in wages nor any likelihood that the Union's proposals or any version of them would have and could have been accepted by the Employer.

With respect to the labour market generally there appears to be little dispute that there were nominal increases year over year generally in the labour market notwithstanding the stagnant economic conditions. Those increases did not match inflation but there were increases and those increases occurred over a variety of public and private sectors, including public administration (which covers a broad variety of occupations carried out by individuals directly employed by local or provincial governments). The increase in nominal wages varied depending on the measure used, the industry examined and the time periods in which agreements were made in the case of collective bargaining. What is relevant is that the increases in nominal wages occurred in a period when it might have been predicted that the average wages would fall because of the decline in employment in high wage paying jobs, namely the energy industry, but that did not occur. An opposite result might be expected as a result of the Covid impact on the economy where lower paid service workers were disproportionately laid off.

GSS

The Employer proposes a 0% increase for GSS workers. The Union did not press for approval of its original proposal which admittedly exceeded any comparable increases across any public or private sector for the relevant period. The Union did however submit that an increase should be granted to these workers based upon the general increases that occurred across the public and private sector from 2018 to 2019. It referred specifically to the AHS/GSS wage re-opener decision which granted a 1% increase to AHS GSS employees and other decisions in the post secondary sector which also awarded increases to workers who be comparable to Carewest's GSS workers. To require another year of 0% continues the

erosion in real wages due to inflation when across a broad sector of public and private employers' wages have increased.

The panel agrees that, in the absence of evidence of other relevant comparators which could provide additional information specific to the particular occupations, general increases in wages in the Province are relevant to the consideration of the appropriate wage adjustment. The broad range of occupations included in the Government of Alberta bargaining unit and the AHS bargaining unit did not provide any of the detail necessary to assess comparability (which is core to application of the replication principle) in a more particularized fashion, leaving only the evidence of modest increases across all occupations in the public and private sector, including public administration. That was the basis of the decisions granting a 1% increase to workers employed by the Government of Alberta and Alberta Health Services' General Support Services employees.

The Employer says that a 0% increase is not warranted for its GSS employees for several reasons. It distinguishes the AHS/GSS decision on the basis that work in an acute care facility where most AHS/GSS employees are working is more complex. It says that as far as it is able to compare its rates to other equivalent GSS workers in the Calgary market its rates are competitive and even more so when other compensation and benefits are included so there are no labour market pressures to raise rates and no recruitment or retention issues. Carewest also pointed to the pattern of settlements for 0% across a variety of public sector employers which included 0% increases for workers with some similar functions to Carewest's general support, and more generally reflected a trend of 0% in the publicly funded sectors.

The Employer does acknowledge that AHS is perhaps its major competitor with respect to workers in its brief respecting ANC wage rates as part of its justification for the 0% increase to its ANC workers, but argues that the GSS work for AHS is more complex and therefore it has not historically matched AHS's GSS rates. It did point out that for food service and maintenance workers the Carewest highest step amount is greater than the AHS rate. However, there is no consistent pattern of higher wages being paid by Carewest than AHS to its GSS workers in the material present by the Employer.

The panel recognizes that there are some differences between the circumstances of its GSS workers and the AHS GSS workers, and between its workers and the workers in other public sector bargaining units. But it also notes that there is a pattern of increases to workers in the public sector for a variety of support workers and increases in a wide variety of private sector occupations. That includes Capital Care, the equivalent to Carewest in the Edmonton region, which negotiated a wage adjustment provision with AUPE which provided for increases to its workers based on AHS settlements or an interest arbitration award issued with respect to the AHS wage reopeners which resulted in an increase of 1% for its GSS workers.

The panel further notes that the Employer was granted increases in each of 2018, and 2019 for a total of 3.8% for resident accommodation charges (which funds the GSS bargaining unit wages) when GSS workers received 0% increases in wages.

In the result the panel is not persuaded that the GSS workers should receive another 0% increase and therefore determines that having regard to all of the factors to be considered that a 1% increase is appropriate for the year 2019/2020 for the last year of the Collective Agreement.

ANC

The Union seeks an increase for ANC workers in an unspecified amount but did calculate the cost of increases based on 1% and 2% increases. It points to increases negotiated for other continuing care operators and the general increases across public and private sectors reported through StatsCan indices and collective agreement settlements. It argues that another 0% increase will further erode real wages of ANC employees.

In considering this argument there was evidence that the increases negotiated were for the most part “catch up” increases. Further, in doing a more stringent analysis it is evident that the Employer’s ANC employees have a compensation and benefits package which, even in the absence of a wage adjustment, continues their favourable position compared to the others working in that occupation. While true comparability is an elusive target, arbitral jurisprudence has as a matter of principle cautioned arbitrators to consider not just the wage rates but the total package of compensation and benefits which emerges from the bargaining process as such a consideration more properly reflects the trade offs which occur in bargaining.

The Employer consistently matches the rates of its most robust competitor for workers, Alberta Health Services, and the AHS/ANC wage adjustment was set by award at 0% for 2019/20 based upon the same factors which the Employer relied upon in this arbitration. The Employer’s evidence is that its current rates without an increase remain competitive in the Calgary market and it has had no retention or recruitment difficulties.

Taking into account all of those factors, this panel determines that a wage adjustment of 0% is fair and reasonable for 2019/20. The primary factor driving this conclusion is the labour market reality for ANC employees. The Code also permits a consideration of internal equity and the panel acknowledges that non bargaining unit employees have received 0% increases for 6 years. The 0% increase granted in this award will not exacerbate internal inequity resulting from the freeze on non bargaining unit compensation, but the panel is not relying on that as the basis for this decision as non bargaining unit compensation freezes may have more to do with political decisions over the last 6 years than labour market conditions for comparable work which this panel relies upon in making its determinations in this decision.

Summary

The panel recognizes that this ward is disappointing for both ANC workers and GSS workers. The 0% increase for ANC workers and the very modest 1% increase for GSS workers continues to reflect an erosion in the real wages of these workers some of whom are among the lowest paid public sector workers in Alberta. But these decisions are driven by mandatory factors set out in the legislation including the general state of the economy.

However, this decision should not be taken as suggesting that these workers are less valued or less important to the citizens of this province who must rely on these workers to provide care and support to the most vulnerable citizens of this province. If social justice, rather than economic realities, was a guiding principle in this interest arbitration, the result might be different. However arbitral jurisprudence has consistently rejected the notion that arbitrators can and should be guided by social justice considerations and we must do the same.

The panel thanks counsel for their assistance in this matter.

Mr. Renouf dissents with respect to the 0% increases awarded to the ANC bargaining unit. Ms. LaCasse dissents with respect to the 1% granted to the GSS bargaining unit. Their dissents will follow.

Dated this 7th day of December, 2020.



P.A. Smith, Chair