IN THE MATTER OF THE LABOUR RELATIONS CODE

AND IN THE MATTER OF A COMPULSORY ARBITRATION BOARD

Between

HCN REVERA LESSEE (Edgemont) LP

("Employer")

And

Alberta Union of Provincial Employees

("Union")

Chair – Mia Norrie

Union Counsel – Bill Rigutto

Employer Counsel –Bob Bass

Argument conducted by way of written submissions.

Introduction

HCN Revera Lessee Edgemont LP ("Edgemont" or the "Employer") and the Alberta Union of Provincial Employees (the "Union") are parties to a collective agreement (the "Agreement") that expired December 31, 2018. The employees at Edgemont have been unionized since 2013 and this renewal represents the third collective agreement since certification.

Edgemont is a privately owned retirement home in the City of Calgary. It is owned by HCN Revera Lessee LP. 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 2018
Aspen Ridge	AUPE	January 2019
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

Edgemont is a retirement home setting in which a majority of beds are funded by the residents and only 31 of the 128 beds receive designated supportive living funding.

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 at Edgemont is comprised of approximately 117 employees in the following classifications: Health Care Aide, Licensed Practical Nurse, Cook, Dietary Aide, Housekeeping Aide, Activity Aide, Bus Driver and Receptionist. Health Care Aides being the most populous classification working approximately 49% of the employees and 56% of the hours worked in the bargaining unit according to the Employer's submissions.

The distribution of employees across the classification is as follows:

Position	**No. of Full-time Employees**	**No. of Part-Time (casual) Employees**
Bus Driver	0	0 (1)
Cook	2	6 (2)
Dietary Aide	3	20 (12)
Health Care Aide	18	39 (19)
Housekeeping Aide	2	6 (3)
Licensed Practical Nurse	3	10 (4)
Receptionist	1	5 (3)
Activity Aide	0	1

Bargaining Background

The Agreement between the parties expired on December31, 2018. The parties commenced negotiations in May 2019 and met a total of six times on May 1, 2, 29, 30, September 11 and December 19, but were unable to achieve a collective agreement.

The Union served the Employer with Essential Services notice to bargain on November 30, 2020, and the parties met on three occasions to negotiate an Essential Services Agreement: February 2, 5 and April 9, 2021.

The parties engaged in section 65(2.1) (d) mediation and on October 14, 2021, however, were unable to achieve a resolution.

It was determined that as a result of the failure at mediation that I would conduct an interest arbitration in accordance with accepted interest arbitration principles to resolve matters that remain in dispute between the parties. On November 16, 2021, I was appointed by Honourable Tyler Shandro, KC, Minister of Labour and Immigration as the one-member Compulsory Arbitration Board ("CAB") to hear the dispute. The parties agreed to proceed by way of written submissions.

Further negotiations were held on July 7, 2022, in an attempt to resolve the impasse, however no progress was made to address the outstanding matters in dispute.

Relying on the written submissions of the parties I am now issuing the decision with respect to the renewal of the collective bargaining agreement between the parties.

Interest Arbitration Principles

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:

> **Matters to be considered**
>
> **101** 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.

There was little disagreement between the parties on the legal principles to be applied to the interest arbitration process and these 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 detail. I will not replicate the excerpt in its entirety here but instead will summarize the key elements as follows:

- Interest arbitration seeks to replicate what the parties would have achieved through free collective bargaining.
- An arbitrator's notions of social justice or fairness are not to be substituted for market and economic realities.
- A party advancing a position carries the onus of presenting cogent evidence to support that position.
- 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.
- 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.

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."

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."

It is clear that 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 in order to split the difference.

The interest arbitration process is conservative and any change in the language 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 in the sense that it has a tendency toward maintenance of the "Status Quo". 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."

This translates to the fact that status quo will prevail unless the party proposing a change has either justified its position through identification of issues in the workplace or alternatively it can demonstrate through replication and comparability that an alteration of a term or condition is appropriate. This requires compelling evidence for change and is the standard appropriately applied to the parties at interest arbitration.

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.

Comparator Agreements

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 from the geographic area of Calgary and surrounding area, especially the Health Centres. The Union has 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.

The Employer identified that the appropriate comparators for consideration for this arbitration are the thirteen Revera Retirement homes. These homes are located in Edmonton and Calgary and a number of them are AUPE agreements. The Employer noted that the bargaining relationship between AUPE and HCN Revera Lessee LP is mature and well established to support its assertion that the Revera agreements are the best comparators upon which I should rely. The Employer further emphasized that the broader universe of Retirement Homes in Alberta that receive Designated Supportive Living funding also recognize a distinction between the relative sectors.

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. This includes the agreements that the Employer has negotiated with other Unions and 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.

Items in Agreement

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

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 1 Term
- Article 3
- Article 13 Posting of Shift Schedules
- Article 15 New Temporary Assignment Pay

- Article 16 Premiums
- Article 20
- Article 22
- Article 33 Uniforms
- Article 34 Benefits
- Article 38 Retirement Savings Plan
- Wages

Having consideration for the submissions of the parties, the following constitutes our Award on these items:

ARTICLE 1 Term

1.01 January 1, 2019 – December 31, 2023

3.12 **New**

Non-Bargaining Unit Employees of the Employer shall not perform Bargaining Unit work if it displaces any Bargaining Unit Employees.

ARTICLE 13 Posting of Shift Schedules

13.02 **New**

The Employer shall not unreasonably deny authorization for LPNs after the fact for overtime worked where such overtime arises as a result of unforeseeable circumstances in which it is impossible to obtain prior authorization.

15.12 New

(v) TEMPORARY ASSIGNMENT PAY

When an Employee is assigned by their immediate supervisor to replace another Employee in a higher paid classification within this Collective Agreement for a full or partial shift or longer, she shall be paid the Basic Rate of Pay for the classification in which the Employee is relieving, providing she is qualified to perform the substantive duties of the higher paid classification.

When an Employee is required temporarily to perform the duties of a lower paid classification, her Basic Rate of Pay will not be changed.

ARTICLE 16 – PREMIUMS

Amend:

Effective for the first full pay period following the date of the Award.

Increase all premiums in 16.01 and 16.03 by $0.25 cents per hour.

ARTICLE 20

There shall be no change to the language of the previous agreement.

ARTICLE 22

While the Parties agree that the language of Article 22 remains unchanged, they have executed a commitment letter dated February 7, 2023, that governs the interpretation of Article 22.

ARTICLE 33.01

The following amendment to provide a uniform allowance will be effective WITHIN 30 DAYS OF THE AWARD

Transition provision (not to be included in the collective agreement)

Before the effective date, and to enable a smooth transition to the Uniform allowance, the employer will supply 1 more uniform to impacted employees as follows:

(a) Dietary Aide
One apron and tie for all Dietary Aide.
(b) HCAs and LPNs
One tunic and vest
(c) Housekeepers
One tunic.
(d) Cooks
One jacket.

Amend 33.01 & 33.02 as follows

Effective 30 days of the award:

33.01 ~~The Employer will supply Uniforms as identified below:~~
~~(a) Dietary Aide~~
~~The Employer will supply and launder aprons and ties for all Dietary Aide.~~
~~(b) HCAs and LPNs~~
~~The Employer will supply and repair tunics and vests for all HCAs and LPNs.~~
~~(c) Housekeepers~~
~~The Employer will supply and launder tunics for all housekeepers.~~
~~(d) Cooks~~
~~The Employer will supply and launder jackets to all Cooks.~~

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.

When reasonably 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.

33.02 ~~The Employer will discuss with the Union any changes to Employee uniforms prior to implementation.~~

~~The Employer will consult with each Employee with respect to revisions or restrictions concerning the uniform policy.~~
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 ($0.08) per hour worked. The uniform allowance will be payable on a bi-weekly basis.

ARTICLE 34 – BENEFITS

Amend as soon as is practical following the date of the Award BUT NO LATER THAN 60 DAYS FOLLOWING THE AWARD:

34.01 The Employer will provide the following benefit plans:

(c) LIFE INSURANCE AND AD&D INSURANCE
Group life insurance and accidental death and dismemberment insurance, each in the amount of $50,000. Benefit coverage will cease on the earlier of termination of employment or attaining the age of 65.

ARTICLE 38 – RETIREMENT SAVINGS PLAN

Amend as soon as is practical following date of the award:

38.02 Employees in positions of zero point thirty-nine (0.39) FTE or greater are eligible to participate in this plan upon completion of probation.

SIGNING BONUS FOR EXISTING FULL-TME AND PART-TIME EMPLOYEES

$200 Full Time

$100 Part Time

WAGES

NORMATIVE WAGE INCREASES TO BE ADDED TO THE RATES OF PAY IN THE SALARY SCHEDULE.

EFFECTIVE DATES:

Jan 1, 2019	As outlined above or increase each rate of pay in the salary schedule by two (2.0%) percent above 2018 rates of pay; and
Jan 1, 2020	Increase each rate of pay in the salary schedule by two (2%) percent above 2019 rates of pay; and
Jan 1, 2021	Increase each rate of pay in the salary schedule by ONE POINT SEVENTY FIVE (1.75%) percent above 2020 rates of pay; and
Jan 1, 2022	Increase each rate of pay in the salary schedule by ONE POINT SEVENTY FIVE (1.75%) percent above 2021 rates of pay; and
Jan 1, 2023	Increase each rate of pay in the salary schedule by ONE POINT TWENTY FIVE (1.25%) percent above 2022 rates of pay.

The wage rates as set out above will be retroactive to January 1, 2019, except as provided for in the collective agreement. The parties shall agree upon all adjustments and retroactivity within thirty (30) days of award. All payments shall be retroactive and made to employees within sixty (60) days of award.

Any employee whose employment has terminated prior to the date of Award, will not be eligible to receive retroactively any increase in salary which they would have received but for the termination of employment.

Conclusion

I direct the parties to conclude a collective agreement based on the enclosed terms and I retain jurisdiction to assist.

I expressly reserve jurisdiction to clarify and address any issues arising from the implementation or directions set out in this Interest Arbitration Award.

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

Issued and dated this 10th day of February 2023.

Mia Norrie - Arbitrator