

In a Collective Bargaining Dispute under the Labour Relations Code

Between

589184 Alberta Ltd. – Whitehorn Retirement Village

And

Alberta Union of Provincial Employees

MEDIATOR’S REPORT FROM ENHANCED MEDIATION

This is a first collective agreement dispute between the parties. They were unable to reach an agreement during bargaining or enhanced mediation.

AUPE was certified on April 12, 2021, for a bargaining unit of “*All employees at Whitehorn Retirement Community when employed in auxiliary nursing care.*” The parties met numerous times between October 8, 2021, and October of 2022.

When bargaining failed to result in a collective agreement, AUPE applied to the Labour Relations Board, under section 92.2, for assistance in settling the terms of this first agreement. On December 13, 2021, the Board directed the parties to engage in enhanced mediation and appointed me as the Mediator. The enhanced mediation process involved significant discussion and exchange of documents. The result was that a number of articles were signed off, and the difference on some outstanding items was narrowed.

This report sets out (a) matters resolved prior to enhanced mediation, (b) matters resolved in enhanced mediation, (c) matters outstanding, with Mediator recommendations on outstanding items.

Background

The Alberta Union of Provincial Employees is Alberta's largest union, representing approximately 90,000 Albertans who work in government, health care, education, boards and agencies, municipalities, and private companies. The majority of AUPE's members work in the public sector. Members of AUPE work in occupations that include clerical, nursing, social services, trades and maintenance, and technical work.

AUPE's Health Care Sector has approximately 44,000 members working for public, private, and not-for-profit health care providers. The largest employer in this sector is Alberta Health Services. AUPE represents all Auxiliary Nursing Care (ANC) employees and General Support Services (GSS) employees within Alberta Health Services. AUPE members also work in many auxiliary hospitals, large and small continuing-care facilities, others work for large voluntary, faith based and charitable not-for-profit organizations, and many run by private for-profit companies. Approximately one third of AUPE's total members are direct employees of the Alberta provincial government, working in a wide variety of occupations, while about half of AUPE's total members are employed in the health-care sector.

AUPE Bargaining Unit

Labour Board Certificate No. CR- 05757 (Exhibit 1) certifying AUPE as the bargaining agent for a bargaining unit described as "*All employees when employed in auxiliary nursing care*". The bargaining unit is composed of approximately 87 persons employed as Licensed Practical Nurses (LPNs) and Health Care Aides (HCAs).

Employer

589184 Alberta Ltd. (Whitehorn Village Retirement Community) ("Whitehorn") is the operating company responsible for operations management of a rental independent living, assisted living, and memory care community located in Calgary, Alberta. Whitehorn is a part of a portfolio of three Alberta-based seniors facilities managed under the Origin Active Lifestyle Communities ("Origin") brand. Origin operates these senior living communities under long term management agreements with each unique Investor Owner of each facility. As such, Origin must seek the final approval of the Investor Owners of each unique asset it manages for all annual operating budgets and business strategies.

The Whitehorn Village Facility

Whitehorn Village is a 53-suite facility located in Calgary NE, which provides independent living, assisted living and memory care. The Employer website describes memory care, in part, as follows: *“Our community is designed to create a safe and secure environment for community members living with Alzheimer’s disease and other forms of dementia. From monitored and secure entrances to specially-trained staff, and programs designed to engage residents – you can have peace of mind your loved one is safe and thriving at Whitehorn Village.”*

The Employer cares for some 160 residents at Whitehorn Village. Their staffing levels are determined by Alberta Health Services, as AHS provides the funding. The Employer provided that their shift staffing was as follows:

Days	3 LPN	18 HCA
Evenings	3 LPN	12 HCA
Nights	1 LPN	5 HCA

There are approximately 87 employees in the AUPE bargaining unit that cover the shifts shown above.

The Whitehorn Village facility is a for profit operation. The CEO, Neil Prashad, started this Employer group some two decades ago. He stresses that this is a small operation, an outlier, which cannot reasonably be compared to much larger employers in size or scope. Mr. Prashad recognizes and accepts that certain changes, including additional costs, have come with the unionization of the Whitehorn facility. That said, he has well established and streamlined administrative practices that he sees as working at Whitehorn. He is adamant that those stay in place. Mr. Prashad does not agree that his workplace is suited for a host of parameters set by the historical precedents of others. His view is that he has created a longstanding and positive environment which differentiates Whitehorn from those others.

The Enhanced Mediation Process

Section 65 of the Code does not provide any specific guidance to a mediator conducting enhanced mediation. The Code guides the Mediator and the parties by the usual provisions:

- (3) The Mediator shall, in any manner the Mediator considers fit, inquire into the dispute and endeavour to effect a settlement.
- (4) During the Mediator's inquiry the Mediator shall
 - (a) hear any representations made to the Mediator by the parties to the dispute,
 - (b) mediate between the parties to the dispute, and
 - (c) encourage the parties to the dispute to effect a settlement.

Since enhanced mediation for first collective agreements was introduced, the parties and mediators have developed a range of approaches and processes for conducting enhanced mediation. When parties cannot reach a settlement during enhanced mediation, the enhanced mediators have released reports containing their recommendations on terms and conditions to settle the outstanding proposals. Such recommendations, when added to agreed upon items, form a settlement document that will be subject to the ratification of the parties.

I met virtually with the parties together on October 4 and 5, 2022, in informal mediation. A number of articles were signed off. Enhanced mediation dates were scheduled for January 10, 11, 12, 2023. These were cancelled by the Employer for a legitimate reason. The parties submitted written briefs to the Mediator on March 10, 2023. The briefs were the first time the Mediator had seen the positions of the parties on many issues, including all of the monetary issues. I met in person with the parties on April 27 and 28, 2023, where additional items were signed off. I issued a draft set of recommendations to the parties on June 28, 2023, and received written feedback by July 17, 2023. The written feedback and subsequent communication narrowed the focus to 3 priority Union issues – (1) the lump sum amount, (2) premiums and (3) sick days where the Union sought improvements over the draft recommendations.

My recommendations on outstanding issues are based on information gathered throughout the enhanced mediation process.

The Applicable Principles Behind This Report

The enhanced mediation principles developed by Mediators Howes, Norrie and Opatril have created a solid foundation. These principles applicable to first agreement enhanced mediation have been explained many times in enhanced mediation reports, including several of mine. I rely on those principles as the basis for my recommendations and will reference them in this document as appropriate.

The first principle is that of replication of outcomes the parties would have otherwise voluntarily agreed to in collective bargaining, which involves:

- Looking at the parties' proposals compared to "what would have been achieved by others through the collective bargaining process". Comparability is the best guide in assessing replication.
- Not ignoring the trade-offs that may have been given to achieve the comparable provisions, and
- Looking at the outstanding proposals as part of a total compensation package (including any agreed proposals), rather than just as individual proposals that had merit or not, and
- Focusing on achieving a fair and reasonable result, reflecting a balance of the economic and social climate and merits of the individual proposals.

When examining comparability, the most relevant comparable agreements are those negotiated by similarly placed parties, for a similar timeframe, in a similar industry, within the same or similar locations. Reasonable comparators can be identified by the parties, through other first agreement settlements, enhanced mediator recommendations or interest arbitration awards but must consider the specific circumstances of the parties to those comparable and cannot merely extract only favourable positions without considering the trade-offs that may have occurred to achieve those favourable results.

Mediators know that bargaining involves give and take. Each party determines the point at which they can settle, based on their experience and mandate. While each party provides justification for each demand, it is rare that either side achieves everything they set out to attain. It comes down to the value of the total package. The number of trade-offs in any comparable settlement reflect the give and take in that bargaining, how monetary improvements were allocated, the relative starting position of those parties, and any unique items that may exist at that workplace. When making comparisons, mediators and negotiators need to remember this.

A first collective agreement includes total compensation and language that is the starting point for future negotiations. The parties will build on that first agreement base in collective bargaining round after bargaining round. Items in other mature collective agreements may take time to acquire and perhaps may only be achieved in subsequent bargaining rounds.

The health care industry is highly regulated, and industry standardization is a factor. AUPE, as the dominant union in this part of the health care industry, seek to obtain the maximum level of

standardization. While standardization is an understandable goal, it does not automatically follow that standardization will be entirely accomplished in a first contract.

First agreement bargaining should not create windfalls for either party, ignore market conditions, or justify proposals for less than what exists in the relevant range of terms and conditions that similarly placed unions and employers would negotiate in similar locations and industries. The range of terms and conditions in a first agreement does not simply mirror what the most sophisticated and mature agreements contain, neither will a first agreement be so minimal as to be contrary to employee legislative rights or contrary to economic principles. New or significant changes, often referred to as breakthrough provisions, should be freely negotiated between the parties rather than compelled, but they can be included if they are deemed justifiable and reasonable. Notably, the party advancing each position has the obligation to present strong, convincing evidence to support it.

The language of a first agreement should be precise and allow for practical implementation and administration. The language should reflect the reality of the workplace and the current situations that occur there. If the workplace changes, language changes can be bargained in future rounds.

Finally, it is worth noting that Arbitrator Casey’s arbitration decision (Signature Living) reinforced these principles and provided guidance on how much deference is owed to the recommendations of the enhanced Mediator. That decision noted that arbitration was not a second “kick at the can” without any consideration of the enhanced mediation process. Arbitrator Casey noted that the Arbitration board is not a rubber stamp but does place significant weight on Mediator recommendations.

Comparator Agreements

The most relevant comparator agreements are those negotiated by similarly placed parties for a similar timeframe and in a similar industry and within the same or similar locations.

These parties have no joint history of completing or administering a collective agreement. The parties submitted a significant number of agreements for consideration as comparators, and most of the agreements submitted by the parties do not closely adhere to the relevant criteria above. As well, there was no substantive submission or position taken by either party that the operational aspects of the Whitehorn facility played a role in which comparators were operationally appropriate, or which proposed provisions were appropriate, or not, from their perspective.

Employer

The Employer put forward the following comparators:

<u>Union</u>	<u>Employer</u>	<u>Location</u>	<u>Expiry</u>
HSAA	Christenson Communities Ltd	Lacombe	01-31-2024

AUPE	Revera (Edgemont)	Calgary	12-31-2018
CUPE	McKenzie Towne Retirement	Calgary	12-31-2020
AUPE	Seasons Retirement Communities	Wetaskiwin	12-31-2020
AUPE	Seasons Retirement Communities	Ponoka	12-31-2024
AUPE	Chantelle Management Ltd.	Innisfail	02-01-2017

The Ponoka agreement was not included in the Employer attachment. I was able to locate the most recent version through the Mediation Services website. It expires December 31, 2024.

Union

The Union provided 28 comparators but did focus on some Calgary based first agreements. Further, it is AUPE’s position that the Mediator should provide substantial weight on AUPE agreements in the same or similar locations in Alberta, especially those in the long-term care, supportive living, independent living nursing care industry in Alberta communities.

Analysis

The most relevant comparator agreements are those negotiated by similarly placed parties for a similar timeframe and in a similar industry and within the same or similar locations.

AUPE is one of the parties and AUPE have many Calgary based agreements, including first agreements, in place. AUPE makes the case that their agreements should receive preference for consideration, given their dominance in Alberta’s health care sector. For this file, it is my view that AUPE agreements are the most suitable comparators.

Employer’s Comparators

HSAA Christenson (Lacombe) - While current, this agreement is not an AUPE agreement and is not a good fit with the relevant comparator agreement criteria set out above. I would not consider Lacombe as “the same of similar location” as Calgary.

AUPE Revera (Edgemont) – Edgemont is a privately owned retirement home in NW Calgary. It is owned by HCN Revera Lessee LP. The renewal agreement cited by the Employer expired in 2018. I note that an updated agreement, expiring 12-31-23 is now in place. That AUPE Revera negotiation ended in an arbitration decision by Arbitrator Norrie dated February 23, 2023. Edgemont was agreed to by the Union as a comparator, and it is appropriate to consider the current rates and conditions in that collective agreement.

CUPE Revera (McKenzie Towne Retirement) - the renewal agreement included by the Employer expired December 31, 2020. Inasmuch as I consider AUPE agreements as appropriate for this file, I will not include the CUPE Revera (McKenzie Towne Retirement) as a comparator. AUPE is one of the parties, is predominant in Alberta health care, and have numerous Calgary based first agreements to use as comparators.

AUPE Seasons Retirement Communities (Wetaskiwin) – The Employer submission included a CBA that expired December 31, 2020. I was able to locate the most recent version through the Mediation Services website. It expires December 31, 2023. There are sufficient AUPE Calgary based agreements that better reflect the Calgary market. I do not see a Wetaskiwin agreement as a suitable comparator, given the numerous other Calgary based AUPE agreements for facilities similar to Whitehorn Village.

AUPE Seasons Retirement Communities (Ponoka) - The Ponoka agreement was not included in the Employer attachment. I was able to locate the most recent version through the Mediation Services website. It expires December 31, 2024. There are sufficient AUPE Calgary based agreements that better reflect the Calgary market.

AUPE Chantelle Management Ltd. (Innisfail) – The Employer included this CBA, which expired on February 1, 2017. I was able to locate the most recent version through the Mediation Services website. It expires January 31, 2022. There are sufficient AUPE Calgary based agreements that better reflect the Calgary market.

Union Comparators

The Union has put forward some 28 comparator agreements from across Alberta. Based on the criteria for comparators, I do not consider many of those as relevant in the current matter. The Union brief does highlight a smaller number of comparators, including:

AUPE Masterpiece Southland Meadows – October 16, 2020 to March 31, 2024. I note that this facility is in Medicine Hat. There are sufficient AUPE Calgary based first agreements that better reflect the Calgary market.

AUPE Covenant Care (Foyer Lacombe) – first agreement expired July 16, 2021. I note that this facility is in St. Albert. There are sufficient AUPE Calgary based first agreements that better reflect the Calgary market.

AUPE Well Being Services (Millrise) – a Calgary based first agreement. Mediator Howes made enhanced mediation recommendations for this facility in April of 2018, for an agreement that expired December 31, 2019. An updated agreement is not yet available.

AUPE Covenant Care (St. Marguerite Manor) – a Calgary based not-for-profit first agreement, which has since been renewed.

AUPE Covenant Care (St. Teresa Place) – a Calgary based not-for-profit first agreement. Mediator Norrie made enhanced mediation recommendations for this facility in May of 2021, for an agreement that expired December 31, 2022. An updated agreement is not available.

Selecting Comparators

The Employer’s comparators include some expired agreements even though renewal versions are in place. In fairness, those updated agreements were not posted at the time the Employer brief

was submitted. As well, some of their comparators are from outside the Calgary market, despite an ample number of recent first agreement comparators in the Calgary market.

The Union has also put forward agreements from outside the Calgary market. It is my view that there is no shortage of Calgary market AUPE first agreements that are appropriate comparators. Accordingly, there is no compelling reason to consider agreements beyond the Calgary market.

I did provide the parties with recent Calgary based AUPE first agreements for consideration, as follows:

Collective Agreement	Expiry
Signature Living (Rocky Ridge)	Dec 31, 2021
Covenant Care (St. Teresa Place – Calgary) (First Agreement)	Dec 31, 2022
Covenant Care (St. Marguerite Manor - Calgary)	Dec 31, 2022
Chartwell (Eau Claire) Calgary	Feb 7, 2023
AgeCare (Skypointe ANC) Calgary	Dec 31, 2024

This list was first shared with the parties in March of 2023. There is no doubt that each party has a different view of these comparators, and each favour some over others. The Union did put forward the two not-for profit Covenant Care agreements – St. Teresa Place and St. Margurite Manor. The others were not suggested by either party, and none of the list above were commonly accepted, despite the fact that they align much more closely with the criteria set out for comparators and were all arrived at through Mediator recommendations.

The Employer has proposed the Calgary based AUPE Revera (Edgemont). The Union has agreed to the most recent Revera (Edgemont) agreement as the **lone common comparator**. The choice of Revera (Edgemont) as the lone agreed upon comparator seems somewhat odd, given the Revera (Edgemont) agreement has been twice renewed. If, however, the parties agree that Revera (Edgemont) is the single best comparator, they could easily come to terms on outstanding issues based on the Revera (Edgemont) agreement. They have not done so, and are unlikely to, as their last positions do not closely adhere to the Revera (Edgemont) agreement.

I suspect that most of the remaining differences between the parties arise from their choice of proposed comparable agreements, along with their unwillingness to agree on additional comparator agreements more closely aligned with the criteria.

The parties have agreed on Revera (Edgemont) as a comparator, which I will use. Other Calgary based AUPE agreements put forward by the Union include the two not-for-profit Covenant Care agreements, and the AUPE Well Being Services (Millrise) agreement. The latter expired on December 31, 2019, but it did involve written enhanced mediation recommendations by Mediator Howes. Those agreements also provide guidance to this process.

Matters Resolved Prior to Mediation or During Enhanced Mediation

Complete Articles Agreed to or Signed Off Prior to Enhanced Mediation

	Preamble
Article 1	Term of Collective Agreement
Article 3	Union Security and Representation
Article 4	Union Membership and Dues Deduction
Article 5	Management Rights
Article 6	Respectful Workplace
Article 8	Probationary Period/Orientation
Article 9	Seniority
Article 10	Performance Appraisals
Article 15	Contracting Out
Article 21	Jury Duty Leave
Article 27	Discipline and Dismissal
Article 29	Occupational Health & Safety
Article 30	Copies of the Collective Agreement
Article 31	Legal Indemnification
Article 34	Resignation/Termination of Employment
LOU #5	Protection of Privacy and Access to Personal Information

Complete Articles Signed Off During Enhanced Mediation

Article 2	Definitions
Article 7	In-Service Programs, Professional Development
Article 11	Appointments and Transfers
Article 12	Hours of Work
Article 14	Salaries
Article 18	Named Holidays
Article 19	Vacation
Article 24	Leave of Absence
Article 26	Layoff & Recall
Article 28	Grievance & Arbitration
Article 32	Employee-Management Advisory Committee
Article 33	Uniforms
LOU #6	Re: Staffing and Employment Agencies

Outstanding Issues

Article 13	Overtime (13.06 Banking)
Article 16	Other Compensation
Article 17	Shift and Weekend Premium (17.01-17.03)
Article 20	Bereavement Leave & Personal Leave (20.01, 20.07, 20.08)
Article 22	Sick Leave

Article 23 Workers Compensation (23.01, 23.02(a) and 23.03(b))
Article 25 Employee Benefit Plan & RRSP

LOU #1 Re: Severance
LOU #2 Re: Flexible Spending Account
LOU #4 Re: Outbreaks and Pandemic Management

Salary A Pay Rates for HCA and LPN

The Mediator's Recommendation With Respect To The Outstanding Matters

I will start by acknowledging the positive work that has been done by the parties in signing off many articles. While these agreed upon items are largely non-monetary in nature, they do indicate the ability and desire of the parties to try and work together to reach mutually satisfactory solutions. The monetary items are often more difficult to resolve, and much of what remains are monetary issues. There are numerous Calgary based enhanced mediation recommendations that were not put forward by either side, which is their prerogative. While they will not be used as comparators for that reason, there are common themes that the Mediators have noted. Certainly, there are no perfect comparators. If there were, then this process would be far easier and perhaps not as often required. First agreement Mediators note the differences between for profit operator agreements and not for profit operator agreements when assessing the weight to provide to comparable agreements. I also see a difference between first agreements where Mediators recommend provisions for consistency with other existing agreements vs. first agreements where the parties have no history. Including provisions for consistency with existing agreements between the parties enriches first agreements beyond what may be seen by that Mediator as appropriate for a stand-alone agreement, albeit for legitimate reasons.

Total compensation, or the total package, prevails over individual proposals. Exact comparability is not achievable because there are trade-offs in bargaining that are not easily identifiable. Different agreements have various overtime rates and thresholds, different wages and premium amounts, varying pension and benefit levels and employee co-pay for benefits, different vacation levels, and other monetary items.

The desired outcome of any enhanced mediation are recommendations which are appropriate, given the comparators, and that both parties can ratify. I do note the Union's brief, at page 6 states ***"Most of the outstanding items are of a monetary nature, we have maintained the position if the employer was willing to come even close to the relevant range of pay for the membership, we could reach a tentative agreement."*** While I appreciate this sentiment, and seeming flexibility, it was not always evident in the Union's last formally tabled positions on some of the remaining issues. I also respect and appreciate that the Employer has made movement through the Mediator, since the last time the parties were together.

A DRAFT set of recommendations was issued on June 28, 2023. The parties provided me with written feedback which, along with additional communication with each party, has narrowed the gap to 3 priority items for the Union – lump sum, premiums, and sick days. I acknowledge the significant movement made by the Union in identifying only these 3 items as the barrier to a

ratified agreement. No items were signed off by the parties after the DRAFT recommendation, so the recommendations in the DRAFT are carried here, with appropriate improvements to the 3 priorities cited by the Union. I urged the parties to work to resolve these 3 issues to achieve a settlement. They were unable to find agreement.

Of note, the parties have agreed that this agreement “*shall be in force and effect from the date of ratification to April 12, 2024*”. While the parties each indicated an openness to extending that date, they have not agreed to. Thus, I have used the April 12, 2024, expiry date, which eliminates the ability to phase in improvements over time. It is with this context that I set out my recommendations. The items that formally remain outstanding are listed below, with recommendations for each.

Article 13 Overtime (13.02 – 13.06)

The sole outstanding issue is Article 13.06. The Union proposed the following language:

13.06 Overtime may be accumulated upon request and taken off at a mutually acceptable time at the applicable overtime rate. Such accumulation shall not exceed eighty (80) hours. Time off not taken by the last pay period of March in any given year shall be paid out unless otherwise mutually agreed by the Employee and Employer.

The Union has stated that this is an important issue for them.

The Employer strongly opposes the concept of banking and takes the position that overtime will simply continue to be paid out rather than banked.

Recommendation

I see the merit in each position.

There is no doubt that the Union can point to overtime banking language in many other CBA. That said, the longstanding Employer practice at the Whitehorn facility has been to pay out overtime when it is earned, with no ability to bank it. There is no dispute that the Whitehorn facility pays little overtime. In my view, this mitigates the Union’s concern.

Paying out overtime as it is earned does not disadvantage employees. While a banking arrangement may be convenient for employees, it does add administration requirements for the Employer. This is a first collective agreement. The parties will be back in negotiations in 2024. For the reasons above and given the very specific and longstanding practice at the Whitehorn facility, I do not recommend the language proposed by the Union. I want to make it unequivocally clear that this recommendation is very specific to the Whitehorn facility and is not intended for replication at other sites unless the same conditions apply.

Article 16 Other Compensation

The Union has proposed (1) Preceptor Pay, (2) Practicum Pay, (3) In-charge Premium Pay, and (4) Professional Registration Fees for LPN.

The Union position is that currently, LPNs are being asked to be preceptors, while HCA are being asked to mentor students. As well, the Union position is that LPNs currently pay approximately \$350 per year on registration fees.

The Employer simply takes the position that none of the Article 16 Union proposal should be included and is not appropriate for a first collective agreement.

Recommendation

Preceptor Pay, Practicum Pay, In-charge Premium Pay

I note Mediator Norrie's comments in the St. Teresa Place enhanced mediation recommendations, as follows:

"Article 15 Other Compensation

At the conclusion of mediation, all of Article 15 remained outstanding with the exception of Temporary Assignment Pay at 15.05. There was agreement that the Other Compensation provisions would apply to STP despite the fact that they are not found in most first agreement comparators, including between these parties. These represent an improvement in the total compensation and are an enhancement that flows from the agreement to work to standardizing terms and conditions with the Common Table. The differences are more in the application of the language and specific terms, such as the deeming of an LPN in charge in the absence of management." (Emphasis added)

Mediator Norrie recognized that these additional compensation issues are not found in most first agreement comparators, but that the parties themselves had agreed to them for St. Teresa Place.

Certainly, while parties may agree on these payments (Preceptor Pay, Practicum Pay, In-Charge Pay) as part of an overall settlement, with trade-offs, they are not commonly recommended by Mediators in the enhanced mediation process.

As a result, I do not recommend the inclusion of Preceptor Pay, Practicum Pay or In-Charge Pay.

Professional Registration Fees for LPN

I have indicated to the Employer that I believe that a \$200 amount is appropriate, and they have agreed to that.

As a result, I recommend the following language be included:

16.XX Licensed Practical Nurse

The Employer will reimburse Employees who, at the beginning of their next registration year, have active registration in the College of Licensed Practical Nurses of Alberta (CLPNA), two hundred dollars (\$200.00) for their dues if they have accumulated eight hundred and six (806) or more regular hours actually worked in the previous fiscal year.

Article 17 Shift and Weekend Premium (17.01-17.03)

The parties agree on the language of 17.01 to 17.05. They differ on the premium amounts in 17.01 – 17.03.

The Employer currently pays the following premiums to both HCA and LPN:

Evening premium	\$0.75 per hour
Overnight (Night) premium	\$1.25 per hour
Weekend premium	\$1.50 per hour

Recommendation

As previously set out, the parties have agreed to Revera (Edgemont) as their lone common comparator. That agreement pays higher wages than are recommended here. The Union's written reply to the draft recommendations made their position clear that if the recommended Whitehorn wage rate was lower than Revera (Edgemont) rate then the Whitehorn premiums must be higher than the Edgemont premiums.

In arriving at recommended premium amounts for the Whitehorn Village agreement, I keep several things in mind.

- The Union's brief, at page 6 states ***"Most of the outstanding items are of a monetary nature, we have maintained the position if the employer was willing to come even close to the relevant range of pay for the membership, we could reach a tentative agreement."***
- The Union's brief, at page 8, when specifically commenting on Articles 17.01 to 17.03 states, in part, ***"We are not looking to have the highest premiums or differentials, we were prepared to negotiate reasonable increase in alignment with the relevant range."***
- The Union's argument that Revera (Edgemont) wages are higher than those recommended for Whitehorn, and thus it is appropriate for the premiums at Whitehorn to be higher than those at Revera (Edgemont).
- The parties will be back in the bargaining table in 2024.
- The overall increased cost to the Employer because of what they have already offered, as well as the cost of these recommendations, including wage increases.

An increase in the premium amounts is warranted. The Union seeks premiums within the relevant range. It is my view that the recommendations address the Union's stated position,

while understanding that premiums are a component of the overall compensation package being recommended.

Evening Shift Premium

The Union has proposed \$1.75 per hour effective the date of ratification in 2023. The Union proposal is to increase that amount to \$2.75 on January 1, 2024. The Employer has indicated that they are prepared to accept a \$1.75 premium at ratification.

After consideration of the factors set out above, I recommend that the evening premium be \$2.25 upon ratification. I have not recommended an additional increase for January 1, 2024. The parties will be back at the table in 2024 and can negotiate any subsequent increase themselves.

Night Shift Premium

The Union has proposed \$2.75 per hour effective the date of ratification in 2023. The Union proposal is to increase that amount to \$4.50 on January 1, 2024. The Employer has indicated that they are prepared to accept a night shift premium of \$2.25 at ratification.

After consideration of the factors set out above, I recommend that the night shift premium be \$3.50 upon ratification. I have not recommended an additional increase for January 1, 2024. The parties will be back at the table in 2024 and can negotiate any subsequent increase themselves.

Weekend Premium

The Union has proposed a weekend premium amount of \$2.25 upon ratification, increasing to \$3.25 on January 1, 2024. The Employer offered \$1.75 upon ratification in their April 28th offer but have indicated that they are prepared to accept a \$2.00 per hour premium at ratification.

After consideration of the factors set out above, I recommend that the weekend premium be \$3.00 upon ratification. I have not recommended an additional increase for January 1, 2024. The parties will be back at the table in 2024 and can negotiate any subsequent increase themselves.

Article 20 Bereavement Leave & Personal Leave (20.01, 20.07, 20.08)

20.01

The parties agree on the bulk of the language on 20.01. The difference is in how many days are granted.

The Union has proposed that “Upon request, an Employee shall be granted up to **five (5) days** off work in the event of a death of a member of the Employee's immediate Family.”

The Employer has proposed “Upon request, an Employee shall be granted up to **three (3) days** off work in the event of a death of a member of the Employee's immediate family, and **up to five (5) days if travel in excess of three hundred and fifty (350) kilometres one way from the Employee’s residence is necessary for the purpose of attending the funeral** for the member of the Employee’s immediate family.”

Recommendation

I have reviewed this issue and 3 to 5 days are the relevant range. The Employer has offered 3 days as a base, and 2 additional paid days if travel beyond 350km one way is necessary. I recommend the Employer’s proposed language.

20.07

The Union’s April 28, 2023, position is “*Employees who are employed by the Employer on January 1st of any given year shall receive three (3) Personal Leave Days each year with pay.*”

The Employer’s brief (para 62) states “***only full-time employees should receive 3 Personal Leave Days if employed on January 1st of any given year, and that any employee who works less than 0.7 FTE should receive 1 Personal Leave Day***”.

Recommendation

After discussion with the parties, I recommend the following language:

“*Employees who work 0.6 FTE or more will receive 3 Personal Leave Days if employed on January 1st of any given year, and that any employee who works less than 0.6 FTE should receive 1 Personal Leave Day. No casual employees are entitled to personal days*”.

20.08

The Union proposal is:

20.08 Employees who commence employment after September 1st of any given year will be eligible for one (1) Personal Leave Days.

The Employer has indicated that they are prepared to agree to the language for 20.08.

Recommendation

I recommend the Union’s language above for Article 20.08, with the specific exclusion of casual employees. The language would appear as follows:

20.08 Employees who commence employment after September 1st of any given year will be eligible for one (1) Personal Leave Days. No casual employees are entitled to personal days.

Article 22 Sick Leave

There is fundamental disagreement between the parties on the sick leave provision, including (1) eligibility, (2) amount of sick time, and (3) banking of sick time.

22.02

The Employer handbook (2.03) currently provides “full-time team members are entitled to five (5) paid sick days per year. Sick days are not accrued from year to year”.

The Union has proposed:

22.02 Effective date of ratification a Full-time Employee shall accrue sick time at the rate of fifteen (15) days per year, or one point two five (1.25) days per month. Accrual will commence with the date of employment. A Regular Employee shall not be entitled to apply sick leave credits prior to the completion of the probation period. The Employee may accumulate sick leave credits up to a maximum of one hundred and twenty (120) days. Sick leave accrual will be prorated in the case of Part-time Employees.

The Employer’s brief (para 64) has proposed:

22.02 Effective date of ratification a Full-time Employee shall accrue sick time at the rate of five (5) days per year, or one point two five (1.25) days per month. Sick leave accrual will be prorated in the case of Part-time Employees.

The Employer clarified that their position was 5 days a year maximum.

Recommendation

The Union places significant value on eligibility, the number of sick days, as well as the ability to accrue and carry over sick time. The Union argues their members may not be sick each year, but when they do become sick, they may well need more time off than the 5 days proposed by the Employer. Sick days are a priority item for the Union.

Currently, the Employer allots sick days at the start of the year for use in that year, with no accrual or carryover. This is a longstanding practice at the Whitehorn facility.

There are 3 issues to consider.

Employees eligible for sick days

The Employer’s existing policy is that only full-time team members are entitled to sick days. That is not common in AUPE agreements, including Revera (Edgemont) which provides sick time for full-time and part-time employees, albeit at different levels. Well Being Services (Millrise) does as well, and pro-rates sick leave credits for regular part-time employees.

As a result, I recommend that full-time and part-time employees are eligible for sick days.

The number of sick days.

Revera (Edgemont) is the lone agreed upon comparator. Article 22.02 of the Revera (Edgemont) agreement provided twelve (12) sick day credits for Full-time employees, and eight (8) sick leave credits for Part-time employees.

As a result, I recommend that Full-time Employees receive 12 sick days per year, and Part-time employees receive a prorated number of days.

The issue of banking.

The longstanding Employer practice at the Whitehorn facility is what the Employer has proposed with no banking of sick days. Many, if not most, AUPE collective agreements provide for the banking of sick time. Revera (Edgemont) provides employees the ability to carry over sick days to the next year.

Despite the current practice, I see sick day banking as quite different than overtime banking. Employees may not be sick in one year but could be in the next. A recent, albeit exceptional, situation included employees who contracted Covid, or had to quarantine consistent with Employer policies and/or regulations. These were often lengthy periods beyond 5 days, and sometimes more than once per year. In more normal times, employees may be sick with a cold, pneumonia or some other condition which could also occur multiple times during the year. Certainly, the parties should agree that an employee absent themselves from a facility like Whitehorn when they may be contagious, or otherwise unable to safely perform their duties. This is in the interests of the employee, Employer, other staff and the people who reside at the Whitehorn facility.

I recognize that the Employer wishes to continue to have streamlined administration of sick days. To that end, and as a reasonable compromise, an appropriate number of sick days per year, and a simple banking mechanism make sense. As a result, I recommend the following language for 22.02:

22.02 On January 1 of each year a Full-time Employee shall be credited paid sick time at the rate of twelve (12) days per year. Employees hired after January 1 will receive a pro-rated number of sick days for that year.

A Regular Employee shall not be entitled to apply sick leave credits prior to the completion of the probation period. The Employee may accumulate sick leave credits up to a maximum of thirty-six (36) days. Sick leave credits will be prorated in the case of Part-time Employees.

22.03

The Union has proposed:

- 22.03 Sick leave credits shall not accrue during:
- (a) Any period of sick leave in excess of thirty (30) calendar days; or
 - (b) A leave of absence without pay which is in excess of thirty (30) calendar days; or
 - (c) An absence while in receipt of disability insurance or Workers' Compensation benefits which is in excess of thirty (30) days.

The Employer has proposed:

- 22.03 Sick leave credits shall not accrue unless Employee is working in accordance with their scheduled hours.

Recommendation

I have reviewed the positions of the parties. There is no recommended accrual of sick days. Rather, the recommendation in 22.02 modifies the current practice to allow a simple carryover.

As a result, I recommend no language be included for 22.03.

22.05

The Union has proposed:

- 22.05 Employees are required to submit proof satisfactory to the Employer of any illness or non-occupational accident upon the Employer's request. **Where the Employee must pay a fee for such proof, the Employer shall reimburse the full fee.**

The Employer agrees with the first sentence but rejects the second. The payment proposal is the outstanding issue.

Recommendation

I have considered the issue of reimbursement in other first agreement recommendations. Inasmuch as the Employer alone makes the request, they control how often it is used and the associated costs. The language proposed by the Union is common in first agreement recommendations.

Based on the above, I recommend that the Union's language for 22.05, as shown above, be included.

Article 23 Workers Compensation (23.01, 23.02(a) and 23.03(b))

23.01

The Union has proposed:

- 23.01 (a) An Employee who is incapacitated and unable to work as a result of an accident sustained while on duty in the service of the Employer within the meaning of the Workers' Compensation Act, shall continue to receive full net take home pay, provided the Employee assigns over to the Employer, on proper forms, the monies due from the Workers' Compensation Board for time lost due to accident. A deduction of one-tenth (1/10th) day shall be charged against sick leave credits for each day an Employee is off work. Employees shall only receive full net take home pay to the extent that one-tenth (1/10th) day can be deducted from sick leave credits, following which time the Employee will be deemed to be on sick leave without pay pursuant to Clause 22.06.

The Employer has proposed:

- 23.01 An Employee who is incapacitated and unable to work as a result of an accident sustained while on duty in the service of the Employer within the meaning of the Workers' Compensation Act is entitled to compensation under the Workers' Compensation Act.

The difference is AUPE's proposal that employees use sick leave credits to top up their WCB pay when injured at work.

Recommendation

I have reviewed the matter, and I recommend the Employer's proposed language.
23.02 (a)

The parties disagree on the Union's proposed language for 23.02(a), as follows:

- 23.02 An Employee receiving compensation benefits under Clause 23.01 shall be deemed on Workers' Compensation leave and shall:
(a) remain in the continuous service of the Employer for the purpose of salary increments;

The Union position is that their proposed language ensures employees are not penalized for being injured at work.

The Employer submits that Article 23.02(a) should not be included in the collective agreement, and that it does not make sense for an Employee to "remain in the continuous service of the Employer for the purpose of salary increments" where they are not actually working for the Employer on a day-to-day basis. Such Employees are not gaining the work experience and increased competence that typically accompanies continuous service and an increase in salary.

Recommendation

I have reviewed the matter. At best, agreements are mixed on this provision. As a result, I do not recommend that the Union's language for 23.02(a) be included.

Article 25 Employee Benefit Plan & RRSP

The Union proposed the following:

- 25.01 After the waiting period, Full-time and Part-time Regular Employees with an FTE of zero point five (0.50) and greater shall participate in the Employers Group 15 Benefit Plan. The Employer reserves the right to make adjustments to the Benefit Plan from time to time as needed as long as coverage remain equal or superior.
- (a) The Employer shall pay one hundred percent (100%) of the benefit plan.
 - (b) The details of the plan are available from the Employer and include a Health, Vision and Dental Plan, Group Life and AD&D Insurances, a Flex Spending Account, Short-term Disability Insurance (STD) and Long-term Disability Insurance (LTD).
 - (c) The Union will be consulted regarding any changes to the existing benefit plans.
- 25.02 Temporary Employees with a FTE of zero point five (0.50) and have completed their probationary period shall be facilitated in accordance with the enrolment and other requirements of the Insurer.
- 25.03 Flex Spending Account (FSA) is covered in LOU #3.
(**Mediator note:** Proposed LOU #2 refers to a Flexible Spending Account. LOU#3 was another issue, Workload Appeal Process, which was withdrawn by the Union.).

Registered Retirement Savings Plan

25.04 The Employer will provide eligible employees with a group Registered Retirement Savings Plan (RRSP). Eligible employees can contribute up to four (4%) percent of regular earnings which shall be matched by the Employer. RRSP contributions will be made through payroll deduction.

Participation is voluntary for those Regular Full-time and Regular Part-time Employees.

The Employer takes the position that the Union's language for 25.01 to 25.03 should not be included in the collective agreement, as a benefit plan already exists.

The Employer has proposed language for 25.04, as follows:

- 25.04 The Employer will provide eligible employees with a group Registered Retirement Savings Plan (RRSP). The Employer will match an eligible employee's contribution up to a maximum of one percent (1%). RRSP contributions will be made through payroll deduction.

Participation is voluntary for those Regular Full-time and Regular Part-time Employees.

Recommendation

I will start with the Union's proposed language for 25.01 and 25.02. The key issues are benefits eligibility, and the benefit levels. I will address each in turn.

Benefits Eligibility

The Employer's Whitehorn Village Team Member handbook states that benefits are available to regular full-time team members following the successful completion of their probationary period. The handbook states that "*Part-time team members are **NOT** eligible for benefits*". That is the Employer position. The Employer has not provided what percentage of employees are full-time vs. part time, or whether temporary employees are used at Whitehorn.

The Union has proposed that Full-time, Part-time Regular Employees and Temporary Employees with an FTE of zero point five (0.50) and greater shall participate in the benefit plan.

There is an ongoing Union concern in health care regarding benefit eligibility, as some employers may wish to reduce full-time employees to part-time in order to avoid benefit costs. The Union have negotiated protection into their agreements for such eventualities.

Revera (Edgemont) contains the following language at Article 34.01:

“Regular Employees who are regularly scheduled to work twenty (20) or more hours per week, are eligible to participate in the benefits plans.

The Covenant Care agreements provide benefits for Regular Full-Time employees, Regular Part-time employees whose regular hours of work exceed fifteen (15) hours per week averaged over one (1) complete cycle of the shift schedule, and Temporary Employees who meet the same criteria as Regular Part-Time Employees.

Well Being Services (Millrise) Article 18A.02 defines eligibility as follows:

- 18A.02 *Enrolment by:*
- (a) Regular Full-Time Employees;*
 - (b) Regular Part-Time Employees, whose regular hours of work exceed twenty (20) hours per week averaged over one (1) complete cycle of the shift schedule; and*
 - (c) Temporary Employees after six (6) months of continuous service and whose hours of work exceed twenty (20) hours per week averaged over one (1) complete cycle of the shift schedule;*

In my view, the Union proposal on eligibility is consistent with other first agreements and is appropriate. As a result, I recommend the following language for eligibility:

25.01 After the waiting period defined in the benefit policy, Full-time and Part-time Regular Employees with an FTE of zero point five (0.50) and greater shall participate in the Employers Benefit Plan. Temporary Employees with a FTE of zero point five (0.50) or greater who have completed their probationary period shall be facilitated in accordance with the enrolment and other requirements of the Insurer.

Benefit Levels

It is my view that the current Employer benefit plan be adopted for this first agreement, and that language be included that accurately represents this.

As a result, I recommend the following language:

25.02 The Employer's existing Benefit Plan will remain in place at ratification. The Employer reserves the right to make adjustments to the Benefit Plan from time to time, including the changing of benefit providers, as needed as long as the coverage remains equal to or superior to the existing benefit plan. The details of the plan are available from the Employer. A copy will be provided to the Union.

The Employer shall pay one hundred percent (100%) of the benefit plan.

The Union will be consulted regarding any changes to the existing benefit plans.

Flex Spending Account (25.03)

In addition to the Employer benefit plan, the Union has proposed the introduction of a flex spending account. Their proposal makes reference to a LOU establishing a flexible spending account of \$1100 annually, with an additional \$125 annually for LPN and HCA.

The Employer position is that a flex spending account should not be included in a collective agreement.

Some agreements have flex spending accounts, while other do not. I do not consider flex spending accounts as common in first agreements. Where flex spending accounts have been included in first agreements, they have typically (1) been negotiated between the parties, with accompanying trade-offs, which may include employee co-pay for benefits, or (2) had been put in place by an Employer prior to certification.

The Employer does not currently have a flex spending account. The Union proposal is a significant additional cost item for the Employer that is not common in enhanced mediation recommendations unless agreed to by the parties, or already in place. I note that the Employer is paying 100% of the benefits plan, with no cost-sharing arrangement with employees. The issue

of a flexible spending account can be negotiated between the parties in subsequent rounds of bargaining.

As a result, I do not recommend the inclusion of a flex spending account.

RRSP 25.04

The Union position is “Eligible employees can contribute up to four (4%) percent of regular earnings which shall be matched by the Employer.”

The inclusion of RRSP language in first agreements is common, with a range of maximum percentages. I have indicated to the Employer that I believe 2% is appropriate, and they have agreed. As a result, I recommend a 2% maximum be included.

LOU #1 Re: Severance

The Union has proposed a letter of understanding, a portion of which has been agreed to by the Employer. The key difference is the severance formula. The Union calls for levels greater than the *Employment Standards Code*. The Employer position is that the minimum obligations set out in the *Code* are appropriate.

Recommendation

A severance formula is not common. As a result, I will not recommend one here.

LOU #2 Re: Flexible Spending Account

The Union has proposed the establishment of a flexible spending account of \$1100 annually, with an additional \$125 annually for LPN and HCA.

The Employer position is that LOU#2 should not be included in a collective agreement and cite several comparators in support of their position.

This matter was dealt with at 25.03, where I did not recommend its inclusion.

LOU #4 Re: Outbreaks and Pandemic Management

The Union has proposed an LOU dealing with Outbreaks and Pandemic Management. The Employer has agreed to some portions of the Union’s proposed language.

What remains outstanding is the following language proposed by the Union:

Pandemic/Outbreak Leave

X.4 The Employer must provide one paid Pandemic/Outbreak Leave for all Employees who:

1. Are required by the Employer, by law, or by the Chief Medical Officer of Alberta or Canada to self-isolate or quarantine.
2. Are required by their Employer, by law, or by the Chief Medical Officer of Alberta be tested for an infectious disease.
3. Have a family member residing with them who is required by their Employer, by law, or by the Chief Medical Officer of Alberta to self-isolate or quarantine.
4. Has health issues related to the outbreak/pandemic that would otherwise be covered by Sick Leave.
5. Are required to provide care for a family member residing with them who have health related issues related to the outbreak/pandemic."

X.5 Vaccinations

No Employee will be denied pay because they have not received the applicable vaccination because of a medical or religious exemption and are therefore unable to attend work during an outbreak of a contagious disease that requires Employees to be vaccinated. The Employer may request proof of the exemption, and upon receipt of the proof, appropriate accommodations will be provided.

The Employer position on X.4 and X.5 above is that they should not be included in the collective agreement and the language is not found in comparator agreements.

Recommendation

The Union's proposed language is not common in first agreements.

As a result, I do not recommend inclusion of the language proposed by the Union.

Salary A Pay Rates

The last formal offers exchanged between the parties were on April 27 and 28, 2023, which had a significant gap on wage rates. It is evident that the current Whitehorn HCA and LPN rates are well behind market. The written feedback from the parties on the DRAFT was that both sides could accept the recommended wages as part of the package, subject to the 3 priority items raised by the Union being addressed appropriately.

Recommendation

The Union' last proposal for wages was an **HCA** top rate of **\$26.16** (\$25.08 plus increases of 2.0% and 2.25%). The Union's last proposal for wages was an **LPN** top rate of **\$36.12** (\$34.63 plus increase of 2.0% and 2.25%). The Union proposal would be in place as of April 1, 2023.

In subsequent discussions with the Employer, they are prepared to increase their wage rate offer. For simplicity, I have included the **Employer's proposed table** that would be **effective on the**

date of ratification. Given that the contract will expire in less than a year, there are **no wage increases** beyond this initial table.

Position	Start	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
Hours	0	1950	3900	5850	7800	9750	11700	13650
HCA	\$20.25	\$20.86	\$21.48	\$22.11	\$22.77	\$23.45	\$24.15	\$24.87
LPN	\$26.83	\$27.63	\$28.45	\$29.30	\$30.17	\$31.07	\$32.00	\$32.96

The parties have also agreed that (1) employees will be placed on the grid according to service, and (2) that if such placement causes an employee to have a grid rate lower than their current rate that the employee’s current rate would be protected through “red circling” – in other words the Employee’s existing rate would be maintained until their service moved them to an equal or higher rate on the grid.

From the Employer perspective they have put significant additional funding into their total compensation offer. For wages, the Employer position (1) improves existing rates, (2) agrees to the 8-step grid, and (3) agrees to place employees on the grid based on their service. From the Union perspective, they argue that this Employer has saved money over time, and certainly since certification, by paying rates well behind market. The Union proposals are aimed at ensuring that their members are paid according to the Calgary market.

The existing employee rates and distribution, as provided by the Employer, are as follows:

HCA (86)	LPN (23)
\$22.30-16	\$32.55-1
\$21.50-1	\$31.55-1
\$20.60-2	\$30.45-2
\$20.20-3	\$27.80-1
\$20.00-3	\$27.45-2
\$19.75-6	\$27.00-5
\$19.50-1	\$26.50-7
\$19.40-9	\$26.30-2
\$19.05-1	\$26.25-2
\$18.70-5	
\$18.50-40	

HCA

The Employer’s proposal is for a top 2023 HCA rate of \$24.87. As part of a total package, it is my view that a 2023 top HCA rate of \$24.87 is appropriate and represents a 9.1% increase over the existing Whitehorn top HCA rate. As a result, I recommend the Employer’s proposal for the 2023 wage table for HCA, with a top rate of \$24.87.

LPN

The Employer's proposal is for a top 2023 LPN rate of \$32.96. The Employer points out that they have also agreed to the \$200 annual reimbursement for LPN professional registration fees. In my view, the Employer's proposed LPN rate is quite low. I do recognize the additional cost of the LPN registration fees but note the \$200 reimbursement is common in first agreements.

It is not entirely clear to me why the Employer proposed such a significant increase (9.1%) to HCA rates, but not to LPN rates (1.3%) when both rates are well behind market. The existing Whitehorn LPN top rate of \$32.55 has been in place since at least April of 2021 when certification took place. Provincial settlements between the Government of Alberta for agreements for the period April 1, 2020, to March 2024, contemplated a 4.25% increase. (1% effective Oct. 1, 2021, 1.25% on Sept. 1, 2022, and 2% on April 1, 2023). These agreements included LPNs, and presumably the AHS funding increase provided to Whitehorn for staff, including LPN, at least covered the 4.25% increase. A 4.25 % increase when applied to the Whitehorn existing top LPN rate of \$32.55 would be \$33.95. Applying the same 9.1% increase to LPN that the Employer proposed for HCA would result in an LPN increase of \$2.96, for a 2023 LPN rate of \$35.51.

The 2023 top LPN rate proposed by the Employer is low and (1) does not appear to consider the AHS funding increases and (2) is significantly lower than the percentage increase proposed by the Employer for HCA. The Employer can clarify their reasoning in their written comments on the draft.

While not put forward as a comparator by the parties for Whitehorn, the enhanced mediation recommendations for Signature (Rocky Ridge) found their way to arbitration. I have not included Signature (Rocky Ridge) as a comparator, as neither side proposed it. That said, the arbitration decision does help to shed light on the enhanced mediation process, and the balancing of interests. Arbitrator Casey, in the 2021 arbitration decision noted:

“With respect to the amount of the wage increases for LPNs and HCAs, I am concerned about the magnitude of the increases in the Mediator’s recommendations for a number of reasons. First, the overall cost of the total compensation package needs to be considered. The total cost increases are very significant especially considering the additional costs of the Group RRSP and the enhanced premiums. The Employer has not advanced a true inability to pay argument but it is appropriate to consider the overall total impact of the compensation package. Second, we are bound by the replication principle. I do not believe that in free collective bargaining that the parties would have agreed on this size of increases especially in the context of bargaining for a first Collective Agreement. On the other hand, given how much the LPNs and HCAs are behind the market in unionized workplaces I conclude that significant increases would have been agreed upon by the parties under the replication principle.”

In my view, those same words have application here. There is no question that the overall additional costs to the Employer are significant. Equally, there is no question that the current Whitehorn LPN and HCA rates are well behind the market. The Employer's proposed increase

of 9.1% for HCA, which has been recommended, acknowledges this for the HCA rate, but not for the LPN rate.

The January 1, 2023, top LPN rate at Revera (Edgemont) – the lone agreed upon comparator - is \$37.03. That number is higher than the Union’s proposed top LPN rate of \$36.12, and well beyond the Employers top 2023 LPN proposed rate of \$32.96.

Another Calgary based comparator proposed by the Union is Well Being Services (Millrise) **2019** top LPN rate of \$34.37. That rate is 4 years out of date. At minimum, the increase of the 4.25% for AHS funding would be bargained, for a projected 2023 top Well Being Services LPN rate of \$35.85.

Covenant Care (St. Teresa Place) 2021 top LPN rate is \$34.80. Mediator Norrie’s recommendations included a letter of understanding that the 2022 wage adjustment process that would automatically apply the 2022 AHS increase, which turned out to be 1.25%. It is reasonable to conclude that the 2023 AHS increase (2.0%) will be applied when those parties bargain next. That would result in a 2023 St. Teresa Place LPN rate of \$35.94.

The Employer’s proposed top LPN rate of \$32.55 does not, in my view, represent the Calgary LPN market, nor would it move the top 2023 Whitehorn Village LPN rate into a relevant range. Many recent Calgary based AUPE first agreements have LPN rates of \$35.00 hour or more for 2023. Based on the above, I recommend that the 2023 top LPN rate be of \$35.00 at the date of ratification, and the steps in the LPN table be adjusted appropriately.

Retroactivity – Lump Sum

The parties have agreed in Article 1.01 that:

“Except where otherwise stated in this Collective Agreement, this Collective Agreement including appendices attached to it shall be in force and effect from the date of ratification to April 12, 2024 ...”

Employees have expectations that, despite the protracted bargaining and mediation process, a settlement would include additional compensation for the time since they certified. I balance that expectation with the Employer’s legitimate concern on costs. To ensure administrative ease and a timely payment, it is my view that a lump sum in lieu of retroactivity is appropriate in this case.

The Employer has provided me with enhanced lump sum amounts, in lieu of retroactivity, as follows:

HCA (Full-Time)	\$750	one-time
HCA (Part-Time)	\$300	one-time
LPN (Full-Time)	\$1,000	one-time
LPN (Part-Time)	\$750	one-time

The Union's April 28th counteroffer seeks retroactivity, but the Union have indicated to me that they can accept the principle of a lump sum in lieu of retroactivity. Any difference then is the amount of the lump sum.

These employees have waited over two years since their certification was granted and may wait longer if either side fails to ratify. That is not lost on me. As well, many Mediator recommendations have moved to a lump sum in lieu of retroactivity that considers the time period from certification to ratification. The lump sum payment is also limited to employees employed on the date of ratification, which assists in limiting the overall one-time cost to the Employer. As a result, I recommend the following wording:

“2.5% lump sum payment (percentage amount applied to all hours worked from date of certification to date of ratification, based on the applicable rates recommended in this document above, and the amount is not RRSP-eligible). The lump sum payment will be made to employees employed on date of ratification. This lump sum payment is in lieu of retroactivity. The lump sum payment will be made within sixty (60) calendar days following ratification, unless otherwise extended through mutual agreement by the parties.”

Entire Report and Outstanding Proposals

This report contains recommendations on all outstanding items.

These recommendations provide immediate and significant financial improvements to virtually all employees at Whitehorn. As well, this agreement expires in April of 2024, which provides the parties the opportunity to negotiate on any items for which they may have lingering concerns. The agreed upon items, combined with these recommendations, form a suitable first collective agreement that the parties can then use as a base for future discussions.

I appreciate the time, expertise and patience of the parties in the creation of these recommendations.

Ratification by the Parties

These Mediator recommendations require a vote by each party under the Labour Relations Code.

I request that each party advise me, by email, on or before August 31, 2023, if you accept or reject these recommendations. Please copy the other party and the Labour Relations Board. This timeline may be extended by the Mediator upon written request by one or both of the parties. The date of ratification would be the latter date that either of you notify me of ratification.

Thank you for your assistance in the process.



Rick Wilson
August 6, 2023