

IN THE MATTER OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT  
AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

REVERA LONG TERM CARE INC. and its  
PARTICIPATING NURSING HOMES  
*Banwell Gardens, Baywoods Place, Carlingview Manor, Columbia Forest, Dover Cliffs,  
Elmwood Place, Hallowell House, Lakehead Manor, McGarrell Place  
Ridgeview, Rose Garden Villa, Roseview Manor and The Meadows*

-and -

THE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL  
WORKERS UNION OF CANADA and its Locals 229, 302, 504, 830, 1106 and 2458  
(CAW-CANADA)

Peter Chauvin  
**Arbitrator**

APPEARANCES:

On behalf of the Union:

Katha Fortier, Tullio DiPonti  
and others

On behalf of the Employer:

Sharlene Ireland, John Rushton  
and others

The parties agree that I have been duly constituted as arbitrator in this matter pursuant to the *Hospital Labour Disputes Arbitration Act*, R.S.O. 1990, c. H. 14, as amended (“*HLDAA*”), and I have the jurisdiction to settle the provisions of the renewal collective agreements between them. There are 13 nursing homes involved in this dispute each with their own separate collective agreement. With the exception of one agreement (Banwell) which expired on July 31, 2012, all the other collective agreements expired on October 31, 2012.

The nursing homes range in size from 70 beds to 303 beds and are located in distinct municipalities throughout the province.

The Union presently represents employees occupying job classifications typically found in a service bargaining unit in this sector, such as Registered Practical Nurse (“*RPN*”), Health Care Aide/Personal Support Worker and Laundry/Housekeeping/Dietary Aides.

In the last round of joint negotiations, the parties were unsuccessful in reaching a freely negotiated Memorandum of Settlement which resulted in an interest arbitration award dated October 5, 2011.

In this instance, the parties are again unable to agree on the outstanding issues in dispute and, as a result, they have sought resolve through the interest arbitration process.

There are numerous items remaining in dispute between the parties as identified below:

Union Proposals

Union Committee  
Uniforms  
Premium Payments  
Paid Holidays  
Vacations  
Health & Welfare Benefits  
Leaves of Absence  
Education Fund  
Layoff & Recall  
Women’s Advocate  
Discrimination & Harassment  
Working Short Form  
Letters of Understanding

### Employer Proposals

Management Rights  
 Job Posting  
 Leaves of Absence  
 Probationary Period  
 Payment of Wages  
 Paid Holidays  
 Layoff & Recall  
 Work of the Bargaining Unit  
 Bereavement Leave  
 Premium Payments  
 Vacation  
 Health & Welfare Benefits  
 Uniforms  
 Disciplinary Notations  
 Retroactivity

In determining the outstanding issues, I have been guided by the legislative criteria set out in the HLDA including the following:

1. The employer's ability to pay in light of its fiscal situation.
2. The extent to which services may have to be reduced, in light of the decision or award, if current funding and taxation levels are not increased.
3. The economic situation in Ontario and in the municipality where the hospital is located.
4. A comparison, as between the employees and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.
5. The employer's ability to attract and retain qualified employees.

In addition to considering and applying the aforementioned statutory criteria, it is typical in these types of matters for an Arbitrator or a Board of Arbitration, in assessing the various demands of the parties, to apply the well-accepted "replication principle" and the notion of "total compensation" in attempting to discern what these parties, in a free strike/lockout bargaining environment, would likely achieve in all of the prevailing circumstances. Those circumstances include, among others, the general economic realities of the times covered by the term of the collective agreement as well as the employees' legitimate expectations from comparing their wages and working conditions with other similarly situated employees, within the context of their industry as a whole.

Recent interest arbitration awards in the nursing home sector have been influenced by the economic situation in Ontario which also appropriately informs the disposition in this award.

I award as follows on the items in dispute:

**1. Work of the Bargaining Unit**

Amend article in all agreements to read as follows:

*Those persons excluded from the terms of this Agreement shall not be permitted to perform any bargaining unit work except in the following types of situations:*

- (a) *In an emergency.*
- (b) *When qualified employees are not readily available.*
- (c) *On experimental work.*
- (d) *In the instruction or training of employees, including demonstrating the proper method to accomplish the task assigned.*

***Notwithstanding the aforementioned language, it is understood and agreed that nursing home construction/maintenance/equipment retrofits are not considered work of the bargaining unit.***

**2. No Discrimination/Harassment/Bullying**

Amend existing language to read as follows and insert in all collective agreements:

*The Employer and the Union agree that there shall be no discrimination, interference, restraint or coercion exercised or practised by either of them or by any of their representatives, with respect to any Employee by reason of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partner status, family status or handicap, save and except those limitations set out in the Legislation of the Province of Ontario.*

***The Employer and the Union agree that there shall be no bullying in the workplace. Bullying is defined as repeated, persistent, continuous behaviour as opposed to a single negative act. Bullying may also be known as mobbing, abuse, workplace aggression, violence, victimization, and social undermining.***

*Where the term "spouse" or "partner" is used in this Agreement, it shall mean a person to whom the Employee is married, or whom the Employee is living in a conjugal relationship of at least one year in duration, including a person of the same or opposite sex.*

*The Employer and the Union are committed to providing a positive environment for Employees. All Employees have the right to be treated with respect and dignity. Each individual has the right to work in an atmosphere which promotes respectful interactions and is free from discrimination and harassment as provided therein.*

*The parties agree to abide by the Ontario Human Rights Code.*

*The Employer and the Union agree not to interfere with, restrain, coerce or discriminate against Employees with respect to union membership or participation in lawful union activities.*

**3. Women's Advocate**

Union's proposal awarded in part. Employer to provide unpaid leave to one employee per home to participate in the training. However, any expenses to be assumed by the Union directly and/or through the paid educational leave program.

**4. Disciplinary Notations**

Insert the following language in all agreements:

***Leaves of absence in excess of thirty (30) continuous calendar days will not count towards the [insert the number of months in the collective agreement] month period noted above.***

**5. Layoff & Recall**

Amend all collective agreements that do not currently contain such language to provide that where applicable, the Job Posting provisions of the collective agreement will supersede the Recall provisions (i.e. junior employees on layoff do not take preferential jobs over senior employees).

**6. Working Short LOU and Workload Review Form**

Amend existing Working Short LOU to read as follows:

***Letter of Understanding – Workload Review***

***In the event that an individual employee or a group of employees have a workload concern, the matter will be addressed as follows:***

- a) At the time the workload issue occurs, discuss the issue with the Employer to develop strategies to meet resident care needs using current resources.***

***If necessary, using established lines of communication, seek immediate assistance from an individual(s) identified by the Employer who has responsibility for timely resolution of workload issues.***

- b) Failing resolution at the time of occurrence of the workload issue, the workload concern(s) will be reduced to writing using the Union's standardized form and addressed at the next scheduled labour/management meeting.***

Implementation of Workload Review Form attached hereto as Appendix A.

7. Term - Two (2) years.

8. Wage Increases

Year 1	0%
Year 2	0%

9. Lump Sum Payments

With the exception of Registered Nurses, lump sum payments to all other employees of \$400 in each year for full-time employees and \$200 in each year for part-time employees. Registered Nurses are to be paid 1% of wages as a lump sum. These lump sum payments are to be paid annually on a pro-rata basis. The first lump sum payment will be payable within two (2) pay periods of the issuance of this award. The second lump sum payment will be payable within two (2) pay periods of January 1, 2014.

10. Retroactivity

Insert the following language in all agreements, deleting/replacing all language of a similar nature:

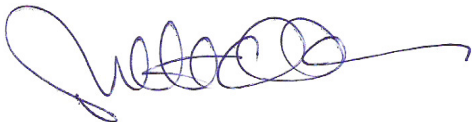
***It is agreed that any retroactive payment negotiated or awarded will only be payable to those employees employed on the date of ratification and/or the date of the interest arbitration award based on hours paid. Despite the foregoing, employees who legitimately retired, regardless of the time frame, or employees who voluntarily left their employment within sixty (60) calendar days of the date of ratification and/or the date of the interest arbitration award will also be eligible for the retroactive payment.***

11. I make no award on all other terms in dispute.

12. All previously agreed issues are deemed to be included in this Award.

I will remain seized of these matters in accordance with subsection 9(2) of HLDAA until new collective agreements for each of the 13 homes are signed and in effect between the parties.


Signed at Toronto, this 19 day of December, 2012.




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Peter Chauvin, Arbitrator

## Appendix A - Workload Review Form

<b>WORKLOAD REVIEW FORM</b>	 www.caw.ca
CAW represented staff members are to complete all sections and forward copies to the Unit Chairperson as soon as possible.	
Name (print) & Classification:	
Signature:	
Occurrence Date:	Time:
Workplace:	Unit:
Brief Description of Workload Concern:	
Recommendation to Resolve:	
Name/Title of CAW Representative Notified:	
Date/Time of Notification:	
A summary of workload concerns may be tabled as an agenda item at the next scheduled Labour Management meeting.	