

IN THE MATTER OF AN ARBITRATION  
ESTABLISHED UNDER THE TERMS OF  
HOSPITAL LABOUR DISPUTES ARBITRATION ACT, RSO 1990, c. H 14

BETWEEN

CARESSANT CARE NURSING and RETIREMENT HOMES LTD.  
COURTLAND NURSING HOME

And

CAW-CANADA, LOCAL 302

AWARD

DOUGLAS C. STANLEY, CHAIR  
IRV KLEINER, EMPLOYER NOMINEE  
TERRY MOORE, UNION NOMINEE

Appearances:

For the Employer

Wayne Hulme, VP, HR

Wanda Sanganesi, VP, HR

Cheryl Macdonald, Manager HR

For the Union

Robert Buchanan, National Rep.

Rusty Sproul, Sec. Treasurer

Barb Lanthier, Chairperson

Sophie Habl, Committee

Brenda Lagrandeur, Committee

Hearing held in WOODSTOCK ONTARIO, DEC. 13, 2012

Award issued on March 4, 2013

This Board of Arbitration was established by agreement of the parties under the terms of the Hospital Labour Disputes Arbitration Act. RSO 1990, c. H 14. That legislation prohibits strikes in the broader “health care sector” and substitutes binding arbitration as the means to settle collective bargaining contract disputes. Under the terms of that Act, in addition to taking into consideration all factors the Board deems relevant, they are required to take into consideration very specific criteria for arriving at an Award. We are required, by statute, to consider 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 these criteria there are well-established and accepted arbitral principles governing interest arbitration awards under this system. In particular, the overwhelming body of arbitral precedent that says what we should be doing in *Interest Arbitration* is attempting to “replicate” what the results of free collective bargaining might have been had the parties had the opportunity to strike or lockout in the event of failing to agree.

The two parties to this arbitration are Courtland Nursing Home, a 54 bed nursing home privately owned by Caressant Care Nursing and Retirement Homes Limited, located in Courtland ON, and CAW-Canada, Local 302, representing approximately 50 employees in the

Cook (level1)	start	18.13	18.54
	3 months	18.69	19.11
	1 year	19.04	19.47
	2 years	19.36	19.80
Dietary Aide/Cook	start	17.48	17.87
	3 months	17.96	18.36
	1 year	18.37	18.78
	2 years	18.68	19.10
Houskeeping/Laundry	start	16.43	16.80
Liason	3 months	17.89	18.29
	1 year	18.28	18.69
	2 years	18.72	19.14
Laundry/Housekeeping	start	16.32	16.69
Dietary Aide	3 months	17.79	18.19
	1 year	18.19	18.60
	2 years	18.62	19.04

The Union explained their approach to “pattern bargaining” achieved through coordinated bargaining groups. They have 3 of these coordinated groups one for the Extencicare group of Homes where they have representation rights, one for the Revera group and another group of 20 Participating Homes.

Caressant has never agreed to coordinated bargaining and bargains separately with CAW at four Homes Woodstock, St. Thomas, Courtland and Harriston. The Union contends that in the past settlements at Woodstock and St. Thomas acted as a guide for the other two Homes. Woodstock is the largest of these four Homes (150 employees) and its agreement expires first in the cycle of bargaining.

In the last round of bargaining the Employer settled at Woodstock with a similar settlement at St. Thomas. The wage package at both Homes was 2.25% (2009), 2.25% (2010) and 2% (2011). The parties failed to reach agreement at this Home and went to arbitration under HLDA the

classifications of RPNs, PSWs, Cooks, Dietary and Laundry Aides and Activities personnel at the home. There are approximately 10 full-time and 40 part-time in the unit. Part-time employees are defined as those who work up to thirty paid hours per week.

Caressant Care Nursing and Retirement Homes Limited owns and operates other nursing homes in Ontario. CAW, in separate Locals represents other private, charitable and municipal homes that are licensed, funded and regulated by the provincial government under the Long Term Care Homes Act. CAW represents the employees at three other homes owned and operated by Caressant Care – Harriston Home (86 beds), Woodstock Home (154 beds) and St. Thomas Home (114 beds).

The parties have a mature collective bargaining relationship and this is the second successive time they have had to resort to arbitration under HLDAA. The last Award of Arbitrator Stakman was issued on July 29, 2011. In accordance with the terms of HLDAA, the agreement we are dealing with has a two-year term, February 1, 2013 to January 31, 2015. The parties did resolve some issues in bargaining and those agreed to items are incorporated into and form a part of this Award.

The outstanding items are wages, paid time for Union Chairperson, Health & Safety and Sick days for part-time employees.

## UNION POSITION

In their presentation the Union argued that we were bound by the statutory criteria and the arbitral principles, most importantly the principle of replication. The Union stressed that Arbitrators under HLDAA are to act independently and impartially and not as the instruments of government governments policies of restraint.

The Union argued that comparability has been recognized by arbitrators as a pre-eminent criteria and that “ability to pay” has been discredited as a basis for arbitrators making an award.

Numerous authorities were presented to support the Union’s argument.

## EMPLOYER POSITION

The Employer submits that the government had made it clear that there is no increase in Nursing Home funding for wages from April 2010 extending to March 2014 and possibly longer. This reality is accepted by Arbitrator Teplitsky in the SEIU Central Award, where he awarded lump sum payments equivalent to .75% in each of the two years of the SEIU/Central contract. It is further reflected by Arbitrator Kaplan in two Awards: CAW/Extendicare, Oct. 10, 2012 and CAW/24 Homes, Nov. 5, 2012 where he awarded a lump sum.

## SPECIFIC ISSUES OUTSTANDING

### ISSUE #1 - WAGES:

The Union is proposing across the Board annual wage increases as follows:

Effective Feb. 1, 2012 - 2%.

Effective Feb. 1, 2013 - 2%.

The Employer is proposing a wage freeze.

The current wage schedule is as follows:

classification		Feb 1/10	Feb 1/11
RPN	start	20.37	21.20
	3 months	21.18	21.66
	1 year	21.66	22.15
	2 years	22.52	23.03
HCA/PSW	start	17.36	17.75
Restorative/Activity Aide	3 months	18.18	18.59
	1 year	18.56	18.98
	2 years	18.83	19.25

result was a wage award of 2.35% (2010) and 2.25% (2011). (Arbitrator Starkman, July 6, 2011). Similarly Harriston did not settle, went to arbitration and achieved a wage award of 2.25% (2010) and 2% (2011). (Arbitrator Chauvin, March 7, 2012).

In this round of negotiations the Woodstock Home did not settle, went to arbitration before arbitrator Bendel, Dec. 12, 2012, who followed the lump sums Awarded by Arbitrator Teplitsky in *Participating Nursing Homes/SEIU*, Sept. 27, 2012; Kaplan in *Extendicare/CAW*, Oct. 9, 2012, and in *Group of 24 Nursing Homes/CAW*, Nov. 5, 2012 and Arbitrator Luborsky in *Re Royal Oak Long Term Care Centre/Ontario Federation of Health Care Workers, LIUNA*, Nov. 6, 2012.

The Union argues that this is an “opportunity” to address the wage disparity between this Home and the other Caressant Homes.

The different wage rates at the four Caressant Homes is shown in the table below. The difference shown is the amount that Courtland rates are behind the other Homes.

	RPN	PSW	Aide
St. Thomas	\$24.21	21.88	20.22
Woodstock	\$23.74	20.36	19.39
Harriston	\$23.93	19.40	18.81
Courtland	\$23.03	19.25	19.04
difference	(\$0.71 to \$1.18)	(\$0.15 to \$2.63)	(\$0.35 to \$1.18)

## ISSUE #2 - PAID TIME FOR CHAIRPERSON

Current Provision:

Article 4 – Union Representation

Union Proposal

New sub-section in article 4:

The Employer agrees to schedule the chairperson or her designate to hours devoted to Union matters in conjunction with her daily or weekly regularly scheduled hours in the amount of fifteen (15) hours per month. Such additional paid time for Union matters shall be in addition to such other time devoted to Union matters as is provided elsewhere in the collective agreement in preparation for grievance meetings, arbitration hearings, and negotiations for all workplace representatives.

### ISSUE #3 - PAID HOLIDAYS:

#### Current Language:

The Employer shall post a list in early November of each year asking employees to express their preference for working Christmas or New Years. Should there be insufficient volunteers to cover the requirements of the Home, employees can be assigned based upon which of the holidays they worked the previous year (i.e. if an employee worked on Christmas Day the previous year the Employer will make every effort not to schedule her to work on Christmas Day the following year).

#### Employer Proposal:

**The Employer shall post a list in September of each year ...**

#### Union Position:

The Union is opposed to the change.

The Employer submitted that the current language cannot be followed given the practice adopted by the parties for scheduling. That practice is for the various departments to schedule employees in a six-week cycle. Further, any schedule that runs into December is extended to cover the Christmas-New Years period. In 2012 the schedule for the Christmas New Years period was posted on October 8<sup>th</sup> rendering the current language impossible to apply and the Employer simply assigned employees to work the holiday based on what they had worked the previous year.

#### ISSUE #4 - SICK LEAVE

##### Current Provision:

Currently there is no sick leave provision for part-time employees and they do not receive payment-in-lieu.

Full-time employees accumulate 7½ hours for every month in which they work 75 hours. They can accumulate 60 credits, beyond that the credits are paid out at 50% of their hourly rate.

##### Union Proposal:

The Union is proposing six (6) sick days per year for part-time employees, these would accrue as one day every 2 months to a maximum of six days (not to accumulate year to year).

##### Employer Proposal:

New; 13.03 (c)

Employees who are absent the last scheduled day before and/or the first scheduled day following a paid holiday (article 11.01) shall be required to provide a doctor's note to qualify for holiday pay.

#### ISSUE #5 - HEALTH & SAFETY

##### Union Proposal:

New, add to collective agreement following requirement:

**The Employer will bring additional staff in during excessive heat.**

##### Employer Position:

Opposed

The Union presented thorough argument on this issue, citing the deleterious effects of excessive heat on patients and the consequent increase in workload.



The comparisons show that these employees are at the low end of the range of rates paid for various but not always the lowest. Some classifications show a greater disparity than others. However, the comparison also serves to demonstrate the range of rates paid in this industry and the inconsistency between and within the chains with respect to rates of pay.

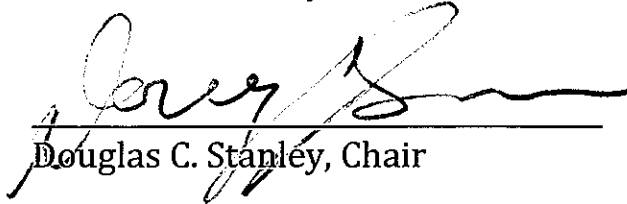
Having taken all of this, the prevailing economic climate and recent HLDAA Awards into consideration we award as follows:

All employees will receive a lump sum equal to 1% of earnings for all hours worked between February 1, 2012 and January 31, 2013, and a second lump sum equal to 1% of earnings for all hours worked between February 1, 2013 and January 31, 2014. These payments are to be made within 30 days of the end of the one-year period.

Given the employer's explanation, we award the change to language in the Holiday clause of the agreement, posting by *September*.

This Award incorporates all items agreed to and signed off by the parties in negotiations.

Dated this 4th day of March, 2013



Douglas C. Stanley, Chair

I dissent (sgd copy on file)  
Irv Kleiner, Employer Nominee

See attached dissent  
Terry Moore, Union Nominee

**Caressant Care, Courtland and the CAW Local 302, Union Nominee Dissent,  
March 1, 2013**

I find myself in significant disagreement with the majority on three key issues: wage increases, sick leave and staffing levels during heat alerts.

This unit is substantially behind the wage rates paid to other employees performing essentially the same work at other CAW organized homes within the Caressant Care chain.

Wage rate standardization across homes owned by the same parent corporation has long been a goal in this sector and has been achieved within the Extendicare/CAW Central Bargaining Group.

Our responsibility as a Board is to replicate what would have transpired within a right to strike/lockout regime. Given the size of the wage disparity between the Courtland Bargaining Unit and other Caressant Care homes, narrowing, if not eliminating, wage gaps would be a key bargaining objective under any bargaining regime, including the right to strike.

Given existence of these unjustified wage gaps and the strong likelihood of a work stoppage on the issue of closing them, I would have awarded the across the board wage increases proposed by the Union for the Courtland bargaining unit.

The fact that other Caressant bargaining units with higher prevailing wage rates have been awarded lump sum payments in lieu of across the Board wage increases, afforded this Board an opportunity to move toward intra-corporate wage standardization at a time when the gaps are not getting larger due to percentage increases to base rates. Failing to start that process now makes the issue more difficult to resolve and more contentious for these parties down the road.

On the issue of sick leave for part-time employees, the norm within the sector is either sick leave credits or payment in lieu of sick leave. This unit has neither and I would have awarded the Union's proposal for six (6) days per year.

Finally, on the Health and Safety issue related to staffing levels during heat alerts, I found the Union's arguments very persuasive with respect to the potential dangers for both residents and staff. At a minimum, I would have directed the parties to have specific discussions about the level of heat alert staffing required to bring health and safety risks into an acceptable range.

All of Which is Respectfully Submitted,

Terry Moore,  
Union Nominee, March 1, 2013