

IN THE MATTER OF AN INTEREST ARBITRATION
UNDER the *Hospital Labour Disputes Arbitration Act*

BETWEEN:

Foyer des Pionniers

(the “Employer”)

- and -

Canadian Union of Public Employees and Local 1771-00

(the “Union”)

and in the matter of the renewal of a collective agreement that expired on December 31, 2020.

BOARD OF ARBITRATION:

Jesse Kugler – Chair
Irv Kleiner – Employer Nominee
Wassim Garzouzi – Union Nominee

APPEARING FOR THE EMPLOYER:

Dan McPherson, Advocate
Nathalie Morin, Administration
Danielle Plamondon, Director of Finance
Guy Catellier, Board Member

APPEARING FOR THE UNION:

Chantelle Flowers, Advocate
Felicia Forbes, Long-Term Care/Retirement Home Coordinator
Norm Berthiaume, National Representative
Adrianna Atkins, Bargaining Committee Member
Maureen Aubertin, Bargaining Committee Member
Manon Vaillancourt, Bargaining Committee Member

Hearing conducted by way of written submissions filed on July 28th and August 11, 2023.

AWARD

1. This is an interest arbitration under the *Hospital Labour Disputes Arbitration Act*, RSO 1990, c H-14 (“*HLDAA*”). This board of arbitration is duly constituted to resolve the outstanding issues between the parties.

2. This Board issued an Award dated November 29, 2022 which concluded a three-year renewal collective agreement with a term of January 1, 2021 to December 31, 2023 (the “Award”). The Award, and the parties renewal collective agreement, was subject to *Protecting a Sustainable Public Sector for Future Generations Act, 2019*, SO 2019, c 12 (“*Bill 124*”). The significant financial constraints imposed by *Bill 124* applied to each year of the parties’ renewal collective agreement and prevented the Board from properly considering and applying the criteria set out in subsection 9(1.1) of the *HLDAA* and the principles developed in the arbitral jurisprudence. Accordingly, in addition to language addressing self-isolation and training, the Award provided wage increases that were limited to 1% per year and granted modest improvements to weekend premium and vision benefits.

3. The Award contained the following “re-opener” provision with respect to monetary issues in the event that *Bill 124* was found to be unconstitutional:

Pursuant to subsection 9(2) of the *HLDAA*, we remain seized with respect to interpretation and implementation, and to correct any inadvertent errors or omissions. We will also remain seized and grant a re-opener with respect to monetary issues should the constitutional challenge brought to *Bill 124* by this Union and others be successful, should the Union be granted an exemption from the legislation or should the legislation be amended in respect of compensation.

4. On November 29, 2022, the Ontario Superior Court of Justice released its decision in *Ontario English Catholic Teachers Assoc. v. His Majesty*, 2022 ONSC 6658 (the “Decision”). In the Decision, the Court found *Bill 124* to be contrary to section 2(d) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) and without justification under section 1 of the *Charter*. As a result, the Court declared *Bill 124* to be “void and of no effect.”

5. The parties have requested that this Board reconvene pursuant to the “re-opener” provision in the Award to determine monetary issues for the term of renewal collective agreement, without the constraints imposed by *Bill 124*, in accordance with the criteria set out in subsection 9(1.1) of the *HLDAA* and the applicable arbitral principles. The parties filed extensive written submissions

setting out their positions on the issues in dispute which have been carefully considered by this Board.

6. Having regard to the submissions of the parties, the statutory criteria, and the established arbitral principles including replication and comparability, we hereby award that the renewal collective agreement be amended as follows:

- **WAGES**

- January 1, 2021 – 0.5% (in addition to the 1% already awarded)
 - January 1, 2022 – 2.5% (in addition to the 1% already awarded)
 - January 1, 2023 – 2.5% (in addition to the 1% already awarded)

- **RPN ADJUSTMENT**

- Adjustment of \$1.00 to each step of the RPN wage grid effective the date of this award.

7. Wages are retroactive to the dates indicated. Retroactivity is to be paid to current and former employees within 60 days of the date of this award. The Employer shall send a letter within three pay periods of the date of this award to the last known address of each former employee entitled to retroactive payments advising them of their right to claim retroactivity. The Union will be copied with such letters. Former employees who fail to claim their payments within 60 days following said three-week period shall be deemed to forfeit any claim for payment.

8. Any and all proposals not included above are rejected.

9. Pursuant to subsection 9(2) of the HLDAA, we remain seized with respect to interpretation and implementation, to correct any inadvertent errors or omissions, and with respect to all matters

in dispute between the parties until a collective agreement is in effect in accordance with the terms of this award.

Dated at Toronto, Ontario this 15th day of August 2023.

“Jesse Kugler”

Jesse Kugler – Chair

“I dissent in part”

Irv Kleiner – Employer Nominee

“I dissent in part”

Wassim Garzouzi – Union Nominee