

ARBITRATION

In the matter of a voluntary collective agreement interest arbitration pursuant to a collective agreement with a term from April 1, 2017 to March 31, 2020

BETWEEN:

UNITED NURSES OF ALBERTA
("UNA" or the "Union")

- and -

**ALBERTA HEALTH SERVICES,
COVENANT HEALTH,
LAMONT HEALTH CARE CENTRE,
THE BETHANY GROUP (CAMROSE)**
(collectively referred to as "AHS" or the "Employers")

AWARD

BOARD OF ARBITRATION

D. P. Jones, Q.C.....	Chair
David Williams.....	UNA's Nominee
Lynn Michele Angotti.....	AHS's Nominee

APPEARANCES FOR THE UNION

Kristan A. McLeod and Gordon Nekolaichuk (co-counsel); Heather Smith, David Harrigan and Lee Coughlan (representing the Union); John O'Grady and Joshua Bergman (witnesses); members of the bargaining committee).

APPEARANCES FOR THE EMPLOYERS

Craig W. Neuman and Jessica Thomson (co-counsel); Raelene Fitz and Kim LeBlanc (lead negotiators); Rick Mann (senior advisor); Monica Williams (Director LR/HR, Covenant Health); Scott Palmer and Richard Hyndman (provincial bargaining coordinator's office, Government of Alberta); Pedro Antunes (witness).

HEARD at Edmonton, Alberta on December 4 and 5, 2019.

AWARD ISSUED at Edmonton, Alberta on January 10, 2020.

I. BACKGROUND

(a) The bargaining context

[1] This voluntary interest arbitration arises out of the current collective agreement between the United Nurses of Alberta (“UNA”) and Alberta Health Services (“AHS”), Covenant Health, Lamont Health Care and the Bethany Group (Camrose) with respect to employees in the Direct Nursing bargaining unit. AHS is authorized to represent the other three Employers in collective bargaining, including this arbitration.

[2] The collective agreement covers approximately 28,755 regular, temporary and casual employees, equating to approximately 18,000 full-time equivalents.¹ The bargaining unit is the largest single one in the province.

[3] The prior collective agreement expired on March 31, 2017.

[4] The current collective agreement was adopted by the parties following ratification of a mediator’s report in February 2018. Its nominal term is from April 1, 2017 to March 31, 2020.

[5] Among other things agreed to by the parties, the current collective agreement:

- provides for no wage increases for nurses on April 1, 2017 or on April 1, 2018—that is, the first two years of the agreement,

1. As of March 31, 2019.

- provides for a wage reopener effective April 1, 2019 for the third year, which is the subject of this interest arbitration,
- contains Letter of Understanding #20 re Job Security which provides that no full-time or part-time regular employee with an FTE will have their FTE reduced as a result of workforce reductions or position elimination or displacement during the period to March 31, 2020, and
- includes revised and expanded provisions about the process for addressing professional responsibility concerns.

(b) The wage reopener

[6] The current collective agreement provides for a wage reopener in the third year in the following terms:

WAGE RE-OPENER

Year 3 - The Parties shall commence negotiations to reach agreement on the wages payable in Year 3 (April 1, 2019 to March 31, 2020) of the Collective Agreement on February 15, 2019.

The Parties agree that the only item open for negotiations shall be the wages in the Salary Appendix of the Collective Agreement. This re-opener shall not be construed in any way as “opening the agreement” for negotiations on any other issues by either side.

If the Parties have not been able to agree upon the wage adjustment, at any time after March 31, 2019, either Party may give written notice to the other Party of its desire to submit resolution of the wage adjustment to interest arbitration before a three-member panel comprised of a nominee of both parties and a chair chosen by the parties from among the following arbitrators: David Phillip Jones, Andrew C. L. Sims, or W. D. McFetridge.

If the parties are unable to agree upon the chair, the Director of Mediation Services shall choose the chair from among the arbitrators named above.

The arbitration hearing shall be held by no later [than] June 30, 2019. In reaching its decision, the arbitration panel shall consider the matters identified in section 101 of the Alberta Labour Relations Code.

[7] Bill 9 effectively amended the time frame contained in the last paragraph to require the arbitration hearing to be held between November 1 and December 15, 2019.

(c) Section 101 of the *Labour Relations Code*

[8] Although section 101 of the *Labour Relations Code* does not directly apply, the parties have directed that the arbitration panel shall consider the matters referred to in that section, which reads as follows:

101 To ensure that wages and benefits are fair and reasonable to the employees and employer and are in the best interest of the public, the compulsory arbitration board

(a) shall consider, for the period with respect to which the award will apply, the following:

- (i) wages and benefits in private and public and unionized and non-unionized employment;
- (ii) the continuity and stability of private and public employment, including
 - (A) employment levels and incidence of layoffs,
 - (B) incidence of employment at less than normal working hours, and
 - (C) opportunity for employment;

(iii) the general economic conditions in Alberta;

and

(b) may consider, for the period with respect to which the award will apply, the following:

- (i) the terms and conditions of employment in similar occupations outside the employer's employment taking into account any geographic, industrial or other variations that the board considers relevant;

- (ii) the need to maintain appropriate relationships in terms and conditions of employment between different classification levels within an occupation and between occupations in the employer's employment;
- (iii) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered;
- (iv) any other factor that it considers relevant to the matter in dispute.

II. POSITIONS OF THE PARTIES

[9] UNA is asking for a salary increase of 3% effective April 1, 2019.

[10] The Employers are asking for salaries to be decreased by 3% effective from the date of the arbitration award. (The Employers' original position was no change in salaries. After the provincial election in May 2019 which resulted in a change in Government, the Employers received a new mandate requiring public sector employers to seek wage rollbacks.)

III. SUMMARY OF SUBMISSIONS FOR UNA

[11] UNA provided extensive written and oral submissions as well as *viva voce* evidence from John O'Grady (an economist, who was qualified as an expert), David Harrigan (long-time Director of Labour Relations and chief negotiator at UNA), and Joshua Bergman (professional responsibility advisor at UNA).

[12] Ms. McLeod started by reviewing the principles to be considered in interest arbitrations (which are described more fully in the Decision below).

[13] UNA bases its 3% wage increase proposal on (a) changes to the cost of living and to wages generally; (b) Alberta nurses' wages compared to those in other western provinces; (c) the Alberta economy; (d) AHS's financial position; (e) the Government's ability to increase revenue; (f) the shortage of nurses; and (g) the parties' bargaining history.

[14] UNA's submissions can be summarized as follows.

(a) changes to the cost of living and to wages generally

[15] The cost of living increased 4.6% during the first two years of the collective agreement, when there was no increase in salaries.² With a predicted 1.7% increase in the cost of living in 2019,³ no wage increase would mean nurses' real wages falling by 6.3% over the course of the collective agreement. If wages were reduced by 3%, this would result in a cumulative real decrease of 9.3% in salaries over the period of the collective agreement.

[16] The overall average wage rate for all employees in all industries in Alberta has increased by 7.2% since April 1, 2016, during which period nurses' hourly wages have not increased.⁴ The provincial government forecasts that the annual increase in average weekly earnings in Alberta will be 1.8% in 2019.⁵

2. Exhibit 1, O'Grady Report, pp. 1-2. From April 1, 2010 to April 1, 2017, the top wage rate increased 14.0% compared to a 12.3% increase in CPI. From April 1, 2010 to April 1, 2019, the top wage rate increased 14.0% compared to a 16.9% increase in CPI.

3. Exhibit 1, O'Grady Report, p. 3.

4. Exhibit 1, O'Grady Report, p. 4. Mr. O'Grady testified that the overall average wage rate includes increases due to progression and promotions, but he thought not bonuses, overtime or commissions. The average would also increase if the number of hours worked increased.

5. Exhibit 1, O'Grady Report, Table No. 6, p. 5. Mr. O'Grady agreed that "earnings" is not the same as "base wage rate". See also UNA Exhibit 1B at p. 26.

(b) *Alberta nurses' wages compared to those in other western provinces*

[17] Alberta wages in almost every sector are generally higher on average than those in the rest of Canada—approximately 14% higher in 2018, after the 2015-16 recession.⁶

[18] However, although Alberta has been the wage leader for nurses for at least the last 20 years, the rates currently paid to Alberta nurses is less than 14% higher than the rates paid to nurses in British Columbia, Saskatchewan or Manitoba. Increasing Alberta salaries by 3% would maintain the 14% average differential paid in other western provinces. Comparisons with other sectors of the workforce, both unionized and non-unionized, public and private, is one of the factors which interest arbitrators are required to take into account under section 101 of the *Labour Relations Code*.

(c) *the Alberta economy*

[19] While the Alberta economy was undoubtedly overheated prior to 2015, and there was a recession in 2015-16, what is relevant for wage increases as of April 1, 2019 is the economic data that would have been available in late 2018 and early 2019.

[20] The 2019 economic data indicates that Alberta's economy is healthy and growing. Real GDP and real GDP per capita has increased in Alberta since 2016, and is expected to continue increasing.⁷ The population is increasing. While oil prices have not returned to their record highs, they have recovered from record lows in April 2016.⁸

6. Exhibit 2 and Exhibit 1, O'Grady Report, pp. 6-7.

7. Exhibit 1, O'Grady Report, pp. 10-11.

8. Exhibit 11.

[21] Given that the parties agreed to no increases during the first two years of the collective agreement to address the 2015-16 recession, it would be unreasonable to conclude that they would have agreed to a third zero or a wage rollback as the provincial economy improves.

(d) AHS's financial position

[22] AHS ran operating surpluses in both 2017 and 2018. While it had an operating deficit in 2019, it still had an accumulated surplus of \$1,278,424,000.⁹

[23] After bargaining concluded, it unilaterally agreed to a paid “living donor” leave. It has also benefitted from lower pension contributions since January 2018, which will continue at least through 2020.¹⁰

[24] AHS's financial position does not justify either wage stagnation or reduction.

(e) the Government's ability to increase revenue

[25] The provincial government has chosen to have low personal and corporate income tax, and no provincial sales tax. Consistent with arbitral jurisprudence, these government policies should be given no weight when determining a fair wage increase for Alberta nurses. The government's assertions regarding ability to pay cannot dictate the outcome of this interest arbitration.

9. Exhibit 12, referring to AHS's Annual Reports and Consolidated Financial Statements.

10. Exhibit 14.

(f) the shortage of nurses

UNA submits that there is a shortage of nurses. Joshua Bergman, the Union's professional responsibility advisor, provided evidence of some situations that had come to his attention which led him to conclude that there is a shortage of nurses in at least some parts of the health care system. David Harrigan, the Union's Director of Labour Relations, described a number of grievances which were related to staffing issues at various sites in the system. He also referred to Letter of Understanding #7 in the collective agreement which was agreed to some rounds ago at a time when there was a serious shortage of nurses in the province.

[26] The fact that there is little voluntary turnover of nurses is irrelevant given that there is no other provincial employer of nurses comparable to AHS and the other three Employers governed by this collective agreement.

[27] There is projected to be a shortage of nurses both in Canada and in Alberta.¹¹ Alberta imports nurses from other jurisdictions.

[28] Unless Alberta nurses receive a wage increase, the shortage of nurses will increase, particularly amid a growing and aging population. Recently, recruiters from Prince Edward Island came to Alberta to recruit nurses who might be vulnerable to being laid off (even though wage rates are lower in PEI).¹²

11. Exhibit 1, O'Grady Report, pp 8-9, referring to the *Canadian Occupational Projection System* which if pro rated would project a shortage of 1,702 nurses in Alberta; and to *Alberta's Occupational Demand and Supply Outlook, 2015-2025* which in 2015 projected a shortage of 123 (out of a projected demand of 55,218) in 2019, a shortage of 440 (out of a projected demand of 57,537) in 2020, and 5,234 (out of a projected demand of 71,624) in 2025, based on key economic assumptions in 2015 of a 2.4% annual growth rate for GDP, an average annual unemployment rate of 4.8%, an average annual employment growth rate of 1.6%, and the average annual participation rate of 71.7%: see Tab B to the O'Grady Report at p. 6.

12. Exhibit 16.

(g) *the parties' bargaining history*

[29] Nurses have already had their wages frozen for two years. UNA expected there would be an increase in the third year. UNA has never before agreed to three consecutive zero wage adjustments, and would not have done so in this case. UNA has also never agreed to a wage rollback (which would be a “breakthrough” change to their bargaining relationship, which should only be done in a negotiated settlement, not an arbitration). The historical pattern of settlements between the parties is relevant when replicating what the parties likely would have agreed to.¹³

(h) *Relevant time for making the determination about what the parties would have agreed to*

[30] Ms. McLeod referred to the decision of Arbitrator Burkett in *City of Belleville Police Services Board and Belleville Police Association*¹⁴ that the appropriate time frame for considering other settlements in the public sector is when the parties would have settled, not subsequent events:

It must be found therefore that although the current economic situation militates towards a lesser increase, the Belleville police officers would have received an increase in line with the increases set out above if they had settled in 1991. In my view it would be grossly unfair to now disregard these settlements and thereby single out the Belleville police officers for special treatment vis-à-vis other public sector employees in this area. The timing alone distinguishes this case from the Brantford award relied on by the Police Services Board.

13. *Cascade Aerospace Inc. and Unifor, Local 114 (Article 2.10)*, 2015 CarswellNat 4590 (Lanyon) at paragraph 58.

14. 14 May 1992, referred to by Arbitrator Sims in *Olds College v. Olds College Faculty Association* (31 January 2011) at p. 7, and by this Arbitrator in *The Board of Governors of the Southern Alberta Institute of Technology and The SAIT Academic Faculty Association* (26 June 2012).

Accordingly, whatever might be the impact of the downturn on 1992 salaries it is my view that the established patterns for 1991 must prevail.

[31] Ms. McLeod therefore submitted that point of reference for the various factors relevant to the arbitration should be the period from February through June 2019, which is when the parties had agreed to negotiate or the arbitration hearing would take place if they had not reached a prior agreement.

(i) Conclusion

[32] UNA's position is that a 3% wage adjustment would replicate the result of a freely negotiated agreement. Such an adjustment would go some distance to keeping pace with increases in the cost-of-living and other wage increases in the province, as well as some distance in maintaining the historical position of Alberta nurses compared to those in the other western provinces. The Alberta economy is healthy, as is AHS's financial position. An increase in wages would assist in addressing the shortage of nurses. There is no justification for no adjustment, let alone a rollback—neither of which UNA would have agreed to.

IV. SUMMARY OF SUBMISSIONS FOR THE EMPLOYERS

[33] The Employers provided extensive written and oral submissions, as well as *viva voce* evidence from Pedro Antunes (chief economist at the Conference Board of Canada, who was accepted as an expert) on behalf of the Employers.

[34] Mr. Neuman started by reviewing the principles to be considered in interest arbitrations (which are described more fully in the Decision below).

[35] The Employers' submissions can be summarized as follows.

[36] Section 101 of the *Labour Relations Code* specifies that the wages and benefits resulting from this arbitration are to be fair and reasonable to employees, employers, as well as being in the best interest of the public. In reaching such a result, section 101 requires consideration of the wages and benefits in other sectors of the economy; the continuity and stability of public and private employment, including employment levels and the incidence of layoffs; and the general economic conditions in Alberta.

[37] The health care system is paid for by taxpayers. While the Employers are not asserting an inability to pay, neither the current nor increased salaries are justified in light of the general economic situation in Alberta, comparability with the private sector, the stability of employment in this sector, or the principle that the public sector should lag and not lead the private sector.

[38] The general economic situation in Alberta after the 2015-16 recession can be characterized by turmoil and uncertainty:

- (a) Prior to the recession, Alberta had the highest growth rate in the country, by some distance. However, real GDP and real GDP per capita in the province shrank significantly during the recession. While there was some growth in GDP in 2018, it stalled in 2019, the average forecast for real GDP growth forecast in 2019 is only 0.6%, and low GDP growth is forecast to continue in 2020.¹⁵ Similarly, while real GDP per capita fell during the recession in 2015-16, it went up in 2017, was stagnant in 2018, is forecast to decline by 1% in

15. AHS Brief, paragraphs 46 to 48, 57, and Figures D, E, F, L, V and Y.

2019, and is not forecasted to catch up to pre-recession levels until 2023 or later.¹⁶ Much of the growth in the Alberta economy is related to the price of oil, which dropped substantially in 2015-16 and is not forecast to materially increase in the near future.¹⁷ This weakness affects the whole economy.

- (b) While the unemployment rate in Alberta was less than 5% in 2013 when the economy was probably overheated, unemployment increased significantly during the recession, peaking at 8.1% in 2016; came down to 6.6% in 2018; but has increased again in 2019 and is forecast to remain high in the range of 7% or more in 2020.¹⁸

- (c) Alberta has had the lowest increase in the Average Annual CPI in the five western provinces during the period from 2014 to 2018: 1.59%.¹⁹ The forecasts for the increase in CPI for 2019 are in the range of 1.8%.²⁰ In addition, the cost of living in Alberta is generally lower than in the other four western provinces, and has become more so since the recession.²¹

16. AHS Brief, paragraphs 63 to 64, and Figure R.

17. AHS Brief, paragraphs 57 to 62, and Figures M, N, O and P.

18. AHS Brief, paragraphs 50 to 52, 64 to 65, and Figures G, H, S, T, W and Z.

19. AHS Brief, paragraph 53, and Figure I.

20. AHS Brief, paragraph 66 to 67, and Figures U and X.

21. AHS Brief, paragraphs 54 to 56, and Figures J and K.

The Conference Board's "Price of Labour" Index shows that the growth in the price of labour was less than inflation from 2016 to 2018, and was forecasted to be less in 2019 as well.²²

- (d) Although Alberta's provincial deficit and debt per capita is still the lowest in Canada, it has increased since 2015.²³
- (e) As reported by the Blue Ribbon Panel on Alberta's Finances (the McKinnon Report), the cost of providing public services is approximately \$2,451 more per capita than in comparable provinces. If Alberta had the average per capita spending of Canada's largest three provinces, its total spending would have been \$10.4 billion lower, and its spending on health care would have been \$3.61 billion.²⁴

[39] In summary, the economic situation in Alberta stalled in 2019. Real GDP and Real GDP per capita remain below their pre-recession levels. The rate of GDP growth is forecast to be nearly the lowest in Canada in 2019, and the unemployment rate is forecast to be the highest. Alberta also incurs higher per capita costs on health care relative to comparator provinces. These trends are likely to continue into 2020 and beyond.

[40] Notwithstanding the 2015-16 recession, Alberta nurses have enjoyed continuity and stability of employment.²⁵ Layoffs of nurses have been virtually non-existent since at least

22. AHS Brief, paragraphs 133 to 145, and Figures AAA, BBB, CCC and DDD.

23. AHS Brief, paragraph 70 and Figure AA.

24. AHS Brief, paragraphs 71 to 76, and Figures BB and CC.

25. AHS Brief, paragraphs 77 to 111.

2014-15²⁶—for the first two years of the current collective agreement, only a single UNA member in a bargaining unit of 28,755 was laid off, and that employee exercised the option to accept layoff with the right of recall rather than exercising rights to claim a vacancy or displace an employee with less seniority, and there were no nurses on the recall list at the time of the arbitration hearing. Indeed, the provisions of Letter of Understanding #20 re Job Security protect direct nursing employees from experiencing any involuntary reduction in FTE.

[41] For the 2019-20 fiscal year, AHS forecasts the number of employees will increase by 1.57%, and FTEs will increase by 1.93%. While from time to time there are issues with staffing particular units, the Employers do not perceive a general difficulty in recruiting nurses, unlike some years ago.

[42] Because of the province-wide nature of the collective agreement, intra-provincial wage comparisons are not possible. Comparing with nurses in other provinces from Ontario west, the Total Hourly Remuneration for Registered Nurses under the current collective agreement is \$58.81 per hour, which is 10.8% greater than the Ontario-West average (excluding Alberta) of \$53.08.²⁷ Similar differentials exist for other classifications under the collective agreement. The 3% wage rollback proposed by the Employers will still leave the basic hourly wage of Alberta nurses the highest in Canada by some margin. And Alberta nurses generally have the highest shift differentials.²⁸

26. AHS Brief, paragraphs 107 to 108, Figure FF.

27. AHS Brief, paragraphs 112 to 119.

28. The only exception is Saskatchewan's evening shift differential (\$3.75 vs. \$2.75): AHS Brief, paragraph 121, Figure XX; see also the note to Figure YY re BC's super premium for Friday and Saturday night shifts.

[43] Because the other five major public sector agreements all have pending wage reopener arbitrations for 2019, no comparison is available between salaries for nurses and those in the broader provincial public sector. However, both the University of Alberta Faculty and the University of Calgary Support Staff settled for a 0% increase for 2019; and the Alberta Medical Association settled for a 0% increase in its 2019 fee schedule.

[44] Most of the 111 settlements in the Unionized Health Care and Social Assistance Sectors involving wages for 2019²⁹ were negotiated in prior years when economic circumstances were different. Only six of these bargaining units involve registered nurses, and all but one of them settled for 0% for 2019.³⁰ Of the ones which settled in 2019, only two of them involve public sector employers—the AMA (Physicians) and Workers Compensation Board (Occupational Therapist I)—and both of them settled for 0%. The other settlements in 2019 involve private or non-profit operators whose wage rates lagged those in the various collective agreements with AHS. Even if all 111 settlements were relevant, the employee-weighted average settlement for 2019 is only 0.61%.

[45] With respect to wages and earnings generally in Alberta, while the Average Weekly Earnings Index has increased, it includes numerous items in addition to the base rate of pay, such as progression through a salary range, increased hours worked, overtime, shift premium pay, commissions, bonuses, promotions, and changes in the composition of employment. As a result, year-over-year changes in earnings can dramatically differ from actual changes in base wage rates. There are related problems with using the Average Hourly Earnings and

29. Tab 17 of AHS's Brief.

30. AHS Brief at paragraph 125, and Figure ZZ. The sixth was a first collective agreement that contained a 3% increase to catch up to AHS rates. The Employers also say that total compensation under these collective agreements is not comparable to the AHS agreement with respect to superior vacation entitlements, shift differentials, weekend premiums, leaves of absence and a defined benefit pension plan.

the Fixed Weighted Index of Average Hourly Earnings measures. So although there have been increases in these measures for 2019, they are not meaningful in determining increases to base wage rates. The Conference Board's Price of Labour is a better measure.³¹ The forecast increase in the Price of Labour throughout the Alberta economy is 0.9%.³²

[46] The Employers calculate that 31% of the bargaining unit employees will be eligible for pay increases of approximately 3% due to normal pay progression. 1.83% of bargaining unit employees are currently at the top step of their applicable pay grid and will be eligible for pay increases of 2% in 2019-20 by virtue of completing 20 years of nursing service and qualifying for the Long Service Pay Adjustment.³³

[47] With respect to the Union's argument that salaries did not increase in the first two years of the collective agreement whereas CPI did increase, in 2016 UNA settled for a 3% wage increase when CPI only increased 1.1%. Further, the question arises as to why only the last two years should be considered—since 2000, UNA's wage settlements have exceeded inflation by a compounded annual growth rate of 0.99% per year, resulting in a compounded total wage increase that exceeds inflation by 34.8% (not including lump sum payments and other total compensation increases).³⁴ Even after the 3% rollback proposed by the Employers, UNA salaries will have exceeded CPI increases by a considerable margin.

31. AHS Brief, paragraphs 133 to 145.

32. AHS Brief, Figure AAA.

33. AHS Brief, paragraphs 146 to 147, and Figure EEE.

34. AHS Brief, paragraphs 148 to 155. Using the Price of Labour measure, UNA settlements have increased by a compound total of 88.45% compared to 56% for the private sector, 71.32% for the public sector as a whole, and 60% for all workers: paragraph 153 and Figure FFF.

[48] In summary, the Employers submit that a reduction of 3% for the balance of Year 3 of the current collective agreement is supported by the application of the relevant criteria for an interest arbitration, aligns with general principles of comparability and replication, and reflects fair and reasonable compensation for employees, taking into account their interests as well as the interests of the Employers and the public.

V. DECISION BY THE CHAIR

[49] After carefully considering the evidence, submissions and authorities presented at the hearing, for the following reasons I have come to the conclusion that no change is justified to the wage rates during the third year of the current collective agreement.

General principles to be considered in interest arbitrations

[50] The parties largely agree on the general principles to be applied in interest arbitrations, although they disagree on how those principles should be applied in the present case.

[51] The terms of reference for this arbitration require us to consider the matters referred to in section 101 of the *Labour Relations Code*:

101 To ensure that wages and benefits are fair and reasonable to the employees and employer and are in the best interest of the public, the compulsory arbitration board

- (a) shall consider, for the period with respect to which the award will apply, the following:
 - (i) wages and benefits in private and public and unionized and non-unionized employment;
 - (ii) the continuity and stability of private and public employment, including

- (A) employment levels and incidence of layoffs,
 - (B) incidence of employment at less than normal working hours, and
 - (C) opportunity for employment;
- (iii) the general economic conditions in Alberta;
- and
- (b) may consider, for the period with respect to which the award will apply, the following:
- (i) the terms and conditions of employment in similar occupations outside the employer's employment taking into account any geographic, industrial or other variations that the board considers relevant;
 - (ii) the need to maintain appropriate relationships in terms and conditions of employment between different classification levels within an occupation and between occupations in the employer's employment;
 - (iii) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered;
 - (iv) any other factor that it considers relevant to the matter in dispute.

[52] Section 101 of the *Labour Relations Code* states that the object of an interest arbitration is to determine wages and benefits which are fair and reasonable to employees and employers and are in the best interest of the public. We are required to consider the items specified in section 101(a), and we may consider the factors enumerated in section 101(b) which includes any factor we consider relevant to the matter in dispute.

[53] The guiding principle in interest arbitrations is “replication”—that is, the task of the arbitration board is to achieve a result which would most likely replicate the result that would have been achieved by the parties themselves if they had succeeded in concluding a

collective agreement, whether by a negotiated settlement or after industrial action.³⁵ The focus is on market and economic realities, and not abstract notions of social justice or fairness.³⁶ An important guide is comparability³⁷—that is, settlements reached between similar parties, for a similar time frame, in a similar industry.³⁸ Unless there is a persuasive reason for doing so, interest arbitration awards should not introduce significant changes or “breakthrough” provisions into a collective agreement.³⁹ One needs to take into account tradeoffs that may have been made in other aspects of bargaining between these parties—or between the other parties to collective agreements that are said to be comparable—in considering the issues involved in the arbitration process.⁴⁰

35. *Newport Harbour Care Centre Partnership and AUPE, Local 48*, 2012 CarswellAlta 2156 at paragraph 10 (Sims); *Re Board of School Trustees (Fernie, B.C.)*, (1982) 8 L.A.C. (3d) 157 (Dorsey); *Salvation Army of Canada (Agape Hospice) v. United Nurses of Alberta*, [2016] AGAA No. 28 (Ponak).

36. *Ibid.*, at paragraph 10; *Re Alberta Labour Relations) and IUEC, Local 122*, 2015 CarswellAlta 32588 (Sims, Carpenter, Holmes).

37. Ken Swan, “The Search for Meaningful Criteria in Interest Arbitration”, Kingston: Queen’s University Industrial Relations Centre, 1978, p. 11, as reproduced in Sack, “Ability to Pay in the Public Sector: A Critical Appraisal”, *Labour Arbitration Yearbook 1991*, Vol II, Toronto: Butterworth’s, 1991 at p. 294.

38. *Newport*, at paragraph 12; *Northern Alberta Institute of Technology and AUPE*, 2009 CarswellAlta 2466 at paragraph 16 (Sims); *Salvation Army, supra*; *Lucerne Foods Co. and UFCW, Local 373A*, 1999 CarswellAlta 2124 (Tettensor).

39. *Re Alberta Health Services and AUPE*, 2016 CarswellAlta 1367 at paragraph 10 (Sims); *Re Red Deer College and FARDC*, 21014 CarswellAlta 1126 at paragraph 11 (Smith); *Construction Labour Relations Assn. of British Columbia Union, Local 919*, (2006) 84 C.L.A.S. 140 at paragraph 8.

40. *Southern Alberta Institute of Technology v. Alberta Union of Provincial Employees, Local 39*, [2012] A.G.A.A. No. 31 at paragraph 34 (Smith).

[54] Interest arbitration is an art and not a science. Discerning the result will take into account many factors. Awards should fall within a reasonable range,⁴¹ which is “a function of the economic and social climate as much as ... a weighing, in isolation, of the merits of individual proposals.”⁴² As Arbitrator Peltz put it in *Saskatchewan Teachers’ Federation v. Saskatchewan School Boards Assn. (Renewal Collective Agreement Grievance)*:⁴³

at paragraph 66:

What would have been the result if the parties had been able to complete the collective bargaining process and conclude an agreement on salaries and allowances? The analysis is theoretical, by definition, but the answer is to be sought in objective labour market data. The board has considered all the evidence presented by the parties and has applied the replication principle. The best available comparator is the W[estern] C[anada] A[verage] representing teachers working in B.C., Alberta and Manitoba. It is not, however, a mathematical determinant. Also relevant are current settlement patterns in the Saskatchewan public service. We agree with the [employers] that the general economic climate in Saskatchewan, including the government’s fiscal position, is an important factor. So is the cost of living, as argued by the Teachers, because it affects the real value of salaries and allowances, and has been taken into account by the parties in past bargaining. Finally, an interest award should meet the test of fairness in the particular bargaining context.

at paragraph 71:

To replicate the result that reasonably should have been reached by the parties, a variety of relevant factors must be taken into account.

41. *Nelson (City) v. IAFF, Local 1343*, 2010 CarswellBC 3576 at paragraph 7 (McPhillips); *University of Manitoba and University of Manitoba Faculty Association*, 2001 CarswellMan 916 at para 8 (Freedman).

42. *Newport*, at paragraph 12. *Saskatchewan Teachers’ Federation v. Saskatchewan School Boards Assn. (Renewal Collective Agreement Grievance)*, [2018] S.L.A.A. No. 9 at paragraph 43 (Peltz).

43. [2018] S.L.A.A. No. 9 (“*Saskatchewan Teachers*”), which dealt with the period from September 1, 2017 to August 31, 2018—which is prior to the period being considered in this Award.

The ability to pay

[55] The ability to pay is sometimes said to have less or no relevance in the public sector because of the ability to levy taxes.⁴⁴ On the other hand, while public sector employers cannot use “inability to pay” as a disguise for “unwillingness to pay”, public employers should not be expected to pay more than those in the private sector,⁴⁵ or without taking into account the general economic situation in the province.⁴⁶ As Arbitrator Peltz put it in *Saskatchewan Teachers’ Federation v. Saskatchewan School Boards Assn. (Renewal Collective Agreement Grievance)*⁴⁷ at paragraph 39:

Common sense must prevail.... An arbitrator’s task is to award a public employee economic benefits which the arbitrator believes that the parties bargaining in good faith should have agreed to. Public sector employees normally reside in the communities where they work. They are part of that community. A reasonable teacher should expect to benefit from its prosperity and share a proportionate share of the hardships which befall the general community. Any objective right-thinking public employee should expect to receive wage increases which are related to the prevailing economic circumstances in the province.

[56] In the present case, the Employers have not asserted an inability to pay, but rather have focussed on the current economic circumstances prevailing in Alberta. Accordingly, it is not necessary to give further consideration to the Employers’ ability to pay.

44. *Re Living Waters Catholic Regional Division No. 42 and AUPE, Local 71*, 2015 CarswellAlta 170 at paragraph 13 (Smith).

45. *Saskatchewan Teachers’ Federation v. Saskatchewan School Boards Assn. (Renewal Collective Agreement Grievance)*, [2018] S.L.A.A. No. 9 at paragraph 38 (Peltz). See also *The University of Alberta and Association of Academic Staff: University of Alberta*, unreported, 18 July 2000 (Sims); *Springhill, supra*. See also: *The Board of Governor of the Southern Alberta Institute of Technology and AUPE, Local 039*, 2005 CarswellAlta 2746 (Sims).

46. *Ibid.* at paragraph 39.

47. [2018] S.L.A.A. No. 9 (“*Saskatchewan Teachers*”). See also *Springhill Police Assn. Local 2013 of the Atlantic Police Assn. v. Springhill (Town) (Interest Arbitration Grievance)*, 2013 NSLAA no. 2 (Richardson).

The Employers' proposed wage decrease

[57] I reject the Employers' proposal to decrease wages by 3% effective on the date of the award. Notwithstanding the economic situation in Alberta, there is no comparable settlement, either freely negotiated or arbitrated, in Alberta or elsewhere, that resulted in rolling back salaries for the relevant time period. Even during the recession in 2015-16, the parties settled their collective agreements without a rollback in the wages (indeed, there was an increase in 2016). The fact that wages of nurses in Alberta are higher than in some other provinces does not, by itself, justify a rollback. There is a longstanding "Alberta premium" in the salary levels of many professions and occupations. To roll back wages would be a significant change to the longstanding pattern of bargaining between these parties, a "breakthrough" which would need to be achieved (if it could be achieved) through negotiation or industrial action rather than interest arbitration.

[58] As Arbitrator Peltz put it in *Saskatchewan Teachers*, at paragraph 73:

On this approach to replication, we observe that the government acting reasonably would accept the reality that it cannot, without unacceptable consequences, force public sector units to roll back wages at this time.

[59] Accordingly, in my judgment, the Employers have not made out the case for a decrease in the salary grid.

UNA's proposed 3% wage increase

[60] In my judgment, however, UNA has also not made out the case for a 3% increase in wages effective April 1, 2019.

[61] The principal rationale for UNA's proposal is (a) the increase in the cost of living, (b) the indication that wages are generally rising, and (c) its perception that the Alberta economy is improving.

Increased cost of living

[62] In considering changes to the cost of living, the starting point is to note that the current collective agreement does not contain a provision automatically tying wage increases to increases in the CPI or other measures of the cost of living.

[63] Secondly, the parties agreed to no wage adjustments during the first two years of the collective agreement, notwithstanding the reality that there would be increases in the cost of living during those years. In addition, the current collective agreement contains other, non-wage provisions which were agreed to in the context of the agreement about wages—such as Letter of Understanding #20 re Job Security, which provides protection against layoffs for all three years of the current collective agreement. It is impossible to unbundle the monetary and non-monetary tradeoffs which the parties made in agreeing to the current collective agreement.

[64] In addition, if one is to compare just wage increases with increases in the CPI, it is not apparent why one would restrict that comparison to just the three years covered by the current collective agreement, as opposed to (say) the entire period since 2000 during which increases to wage rates have outstripped increases to CPI by a considerable margin.

[65] What is relevant, in my view, is the evidence that indicates that the forecast annual increase in the CPI in the third year of the current agreement is in the order of 1.6%. While both expert witnesses testified that the annual increase to CPI somewhat overstates the

increase to the cost of living and must be “deflated” to some extent to take account of decisions by individuals to substitute lower-priced or different goods when prices rise, nevertheless the forecast increase in the cost of living is one of the many relevant factors which must be taken into account in this arbitration to determine wage rates in the third year. However, this factor, by itself, while relevant, is not determinative of the outcome.

Indications that wages generally are rising

[66] Similarly, in my view the 1.8% forecast increase in the AWE in 2019 is a relevant factor to be considered but is not determinative. On the one hand, the evidence is that AWE refers to total earnings and is not restricted to base wage rates. It includes progression, promotion, overtime and other premiums, bonuses and commissions, and the number and composition of hours worked. On the other hand, Mr. O’Grady testified that employers would rather lay off workers than reduce wages. By its nature, the AWE (and the AWHourlyE) excludes persons who are unemployed; as a result, the AWE (and the AWHourlyE) can increase even in times of high unemployment. In my judgment, when considering the state of the Alberta economy in 2019, one cannot look just to increases in the AWE (and the AWHourlyE) while ignoring the high rate of unemployment.

[67] Another measure of what is happening to wages is the concept of the “Price of Labour” referred to by the Employers’ expert. The Alberta portion is the result of a proprietary survey of 65 large employers in the private sector. This index measures changes to base wages only, excluding other changes in earnings. It shows the forecast increase in the Price of Labour in Alberta to be 1.1% in 2019 and 0.9% in 2020, both of which are below the projected increase in CPI. Again, this is not a perfect measure, but it is relevant and needs to be weighed along with all of the other factors.

Other settlements

[68] While other comparable settlements during the period in question would also be relevant, the fact is that there are no meaningful comparables. The five other large public sector bargaining units in Alberta are also in arbitration with respect to wage rates for 2019. Most of the 111 settlements in the Unionized Health Care and Social Assistance Sectors involving wages for 2019⁴⁸ were negotiated in prior years (including the six involving smaller bargaining units that include registered nurses). Of the ones which settled in 2019, only two of them involve public sector employers—the AMA (Physicians) and Workers Compensation Board (Occupational Therapist I)—and both of them settled for 0.00%. As a result, there are no comparable settlements that would justify increases to nurses’ wages at this time. Other unionized employees are not generally keeping up with increases in CPI.

[69] In my judgment, the lack of any significant settlement in the public sector increasing wage rates in 2019 is an important factor which weighs against an increase in nurses’ wage rates.

The general economic conditions in Alberta

[70] While UNA points to some growth in real GDP and GDP per capita and some increase in the Alberta Weekly Earnings Index, which would indicate some recovery from the 2015-16 recession, the overwhelming evidence is that the provincial economy has not yet completely recovered from the recession, and is not forecast to do so until some time after the end date of the current collective agreement. After starting to recover a bit in 2018, Alberta almost dipped back into a recession in the early part of 2019 (which is when the parties were to engage in the negotiation involved in the mediation which resulted in this

48. Tab 17 of AHS’s Brief.

arbitration). The unemployment rate in the province remains very high, both in historical terms and in comparison to the rest of Canada, and that is forecast to continue for the foreseeable future. There have been significant layoffs in the private sector, particularly in the oil and gas sector which is a major component of the Alberta economy.

[71] In my judgment, the poor general state of the Alberta economy is the most compelling factor, and it weighs heavily against an increase in nurses' wage rates at this time.

The continuity and stability of nurses' employment

[72] The continuity and stability of nurses' employment in Alberta is also a relevant factor. The evidence indicates that there have been very few layoffs of nurses, and very little turnover in their employment. On the one hand, this leads to the conclusion that no premium is required during this collective agreement in order to compensate nurses for the possibility that their employment might be precarious. On the other hand, it also leads to the conclusion that salaries do not need to be increased in order to recruit or retain nurses in Alberta. While the existence of provincial wage rates means that nurses will not move from one health facility in the province to another in order to increase their earnings, there is no evidence of any significant number of nurses leaving the profession or moving to other provinces.

[73] In my judgment, the continuity and stability of nurses' employment in this economy is also a significant factor, which also weighs against an increase in nurses' wage rates at this time.

The structure of the parties' bargain

[74] With respect to Mr. Harrigan's testimony that UNA would never have agreed to no salary increases for three years in a row, and there is no previous example of no salary increases for three years in a row, I disagree with the Union's submission that such a result would change the structure of the parties' bargain and be a "breakthrough" which should only be achieved through negotiation and not by arbitration.

[75] The parties agreed that the reopener was to be about "the wages in the Salary Appendix of the Collective Agreement". They did not agree that there would inevitably be an *increase* to wages in the third year, with just the amount of such an *increase* to be determined in the future. The parties' inability to agree about the wages is precisely why this arbitration is occurring. In my view, the possibility of there being a further year of no increase must have been squarely within the contemplation of the parties, even if they might have hoped otherwise. Such a result cannot fairly be characterized as a "breakthrough" that would change the structure of the parties' bargain.

Relevant time frame

[76] In reaching my decision, I have considered the point raised by the Union that the relevant point in time for making this determination should be when the parties agreed the arbitration was to take place—namely, from April 1 to June 30, 2019—referring to the decision of Arbitrator Burkett in *City of Belleville Police Services Board and Belleville Police Association*⁴⁹ (quoted above). However, in the *Belleville* case there were other comparable settlements when the parties were negotiating in 1991 that were higher than the

49. 14 May 1992, referred to by Arbitrator Sims in *Olds College v. Olds College Faculty Association*, 31 January 2011 at page 7, and in my decision in *The Board of Governors of the Southern Alberta Institute of Technology and the SAIT Academic Faculty Association*, 26 June 2012.

subsequent economic downturn in 1992 would justify, whereas in the present case there were no comparable settlements in the public sector during the period from February through June 2019. The economic situation in Alberta during the period from February through June 2019 was not significantly better in any respect than the situation in December 2019; neither situation would justify an increase in wage rate.

Conclusion

[77] Arbitrator Peltz described our task as follows in *Saskatchewan Teachers*:⁵⁰

at paragraph 39:

Common sense must prevail.... An arbitrator's task is to award a public employee economic benefits which the arbitrator believes that the parties bargaining in good faith should have agreed to. Public sector employees normally reside in the communities where they work. They are part of that community. A reasonable teacher should expect to benefit from its prosperity and share a proportionate share of the hardships which befall the general community. Any objective right-thinking public employee should expect to receive wage increases which are related to the prevailing economic circumstances in the province.

and at paragraph 73:

On this approach to replication, we observe that the government acting reasonably would accept the reality that it cannot, without unacceptable consequences, force public sector units to roll back wages at this time. The Teachers acting reasonably would accept the reality of an economic downturn and forego their goal of inflation protection, focusing on non-monetary issues and simply waiting while the government's fiscal position improves. These are descriptors of reasonable bargaining positions in the current period and they should guide an interest arbitration board in reaching its decision. As the board was completing its deliberations, it was reported that SGEU and the Saskatchewan Liquor and Gaming Authority concluded an agreement for the period April 2017 to March 2020 with zero wage increases but side-assurances of job security, a major issue in those negotiations.

[78] In my judgment, weighing all of these factors together, no change to wage rates is justified in the third year of the current collective agreement, particularly given the prevailing

50. [2018] S.L.A.A. No. 9 ("*Saskatchewan Teachers*").

general economic conditions in the province, as well as the current comparative continuity and stability of nurses' employment and the absence of any relevant other public sector settlements that would indicate either an increase or a decrease to salaries. While CPI is increasing, wage settlements are not keeping pace.

[79] In reaching this conclusion, I want to emphasize again that I have rejected any suggestion that the Employers do not have the ability to increase wages. The issue is not whether the provincial government could (or should) increase taxes in order to increase salaries in the public sector. I also recognize the public interest in maintaining quality public institutions.⁵¹ However, the decision about how to balance these two objectives is political, the responsibility of the government, and not the function of an interest arbitration.⁵²

[80] Finally, I note that the parties will very shortly be embarking on negotiating the next collective agreement, during which they can test either by agreement or after industrial action whether it would be appropriate to put in place any different result.

51. As Arbitrator Sims observed in *The Board of Governors of the Southern Alberta Institute of Technology and AUPE, Local 039*:

Obviously we must consider the interests of the public in their role as taxpayer. However, a public interest also exists in maintaining a quality institution.... Wage levels should be prudent and settled upon with due regard for taxpayers but also with due regard to the need to maintain a well staffed institution equipped with the human resources to fulfill its potential. These are not necessarily contradictory, but it is unduly one-sided to view the public interest solely from the perspective of cost to the exclusion of value.

52. See Arbitrator Dorsey's decision in *Fernie School District No. 1 v. Fernie District Teachers' Assn.*, 1982 CarswellBC 2654.

VI. DECISIONS BY THE NOMINEES

[81] Ms. Angotti concurs with the Chair's decision.

[82] Mr. Williams dissents from the Chair's decision with reasons attached.

VII. AWARD

[83] The Award is that there will be no change to wages during the period from April 1, 2019 to March 31, 2020.

[84] The Board of Arbitration thanks the parties and counsel for the quality of their submissions, which were very helpful.

SIGNED, DATED AND ISSUED at Edmonton, Alberta on behalf of the Board of Arbitration on January 10, 2020 by:



D. P. Jones, Q.C., Chair

**DISSENT OF DAVID WILLIAMS
UNION NOMINEE**

1. I have had the benefit of reading the majority decision of the Board.
2. The Board is unanimous in finding the Employer did not establish a case for decreasing the salary grid for the period April 1, 2019, to March 31, 2020.
3. Prior to the Government intervention in this arbitration, in the original dispute between the parties, the Employer proposed a 0% wage increase, while the Union proposed a 3% wage increase, for the third year of a three year collective agreement. In the previous two years, the collective agreement provided no wage increases for Alberta Nurses.
4. The majority decision awards no increases or decreases to the salary grid for the period April 1, 2019 to March 31, 2020. Based on the evidence before the Board, I conclude a wage increase of 1.75% is fair and reasonable in all the circumstances.
5. The majority decision describes interest arbitration as an art more than a science. In my view, interest arbitrators are more like scientists. Like scientists, interest arbitrators are asked to observe the world through the evidence presented by the parties and, from the evidence presented, they are required to formulate a hypothesis. The hypothesis then must be tested with an eye to disproving it. If the hypothesis is disproved, the process must begin anew.
6. Using the criteria set out in the majority decision at paragraphs 62 to 76, it is possible to test whether no change to wages for the period April 1, 2019 to March 31, 2020 is fair and reasonable or whether a modest increase in wages is fair and reasonable.

Increased cost of living

7. The following data from the Alberta Government's current budget documents with respect to the Alberta Consumer Price Index (percentage change)("CPI") was before the Board and comparison was made between the CPI percentage change and the Alberta Nurses wage percentage change.¹

Year	Alberta Consumer Price Index (% change)	Nurses wage (% change)
2017	1.6	0
2018	2.4	0
2019	1.7	?
2020	1.8	?

8. Using Statistic Canada All Item Consumer Price Index for Alberta ("StatsCan Index") Mr. O'Grady, an expert witness, found the real wages of Alberta Nurses have declined by 4.6% as a result of the two years of no increase in the collective agreement wage grid.²
9. On cross-examination, Mr. O'Grady was asked how far back in time should the comparison between the cost of living indices and Alberta Nurses wages go. In Mr. O'Grady's opinion, in collective bargaining you normally look at the current collective agreement and the two previous collective agreements.
10. In his expert report, Mr. O'Grady compared Alberta Nurses wages with the StatsCan Index for the period from April 1, 2010, to April 1, 2017, the period covered by the prior two collective agreements. Mr. O'Grady concluded that over the entire period,

¹ Exhibit 1 A Alberta Government Budget 2019, p.26

² Exhibit 1 O'Grady report p. 2

2010 to 2019, the wages of nurses increased by 14%. During that same period, the StatsCan Index increased by 16.9%. Mr. O'Grady then drew three conclusions³ :

First: the real wages of a registered Nurse are lower today then they were in 2010;

Second: it is indisputably inaccurate to say Registered Nurses have not contributed to restraint in public expenditures on health care;

Third: there is no self evident justification, based on past trends, to impose a further real wage loss on Registered Nurses, let alone a reduction in actual wages.

11. Mr. O'Grady found "as a result of the two year wage freeze in the current collective agreement the real wages of Alberta Nurses have declined by 4.6% and the real wage loss of 4.6% is *not* offset by prior real wage gains". With respect to the focus of this arbitration, Mr. O'Grady notes the Alberta Government forecasts 1.7% to 1.8% inflation over 2019 and 2020 and concludes any wage increase less than that amount will impose a further real wage loss on Alberta Nurses.⁴

12. The cost of living is one factor that must be taken into account in this arbitration. Consideration of this factor establishes that Alberta Nurses will fall even further behind in real wages unless their wages are increased. The cost of living factor supports an increase in the wage rates and not an award of 0% wage increase.

Indications that wages are generally rising

13. The Board was presented with several sets of data as set out below:

³ Exhibit 1 O'Grady report p.2-3

⁴ Exhibit 1 O'Grady report p. 2-3

Year	AWE (% change)	price of labour- private sector (% change)	price of labour - all (% change)	Nurses (% change)
2017	1.0	0.99	0.86	0
2018	1.7	1.11	0.92	0
2019	1.8	1.66	1.08	?

14. The AWE or “average weekly earnings” data was taken from the Alberta Government’s current Budget Documents.⁵

15. The Employer submitted the Conference Board of Canada’s “price of labour” metric.⁶ The two experts who testified before the Board disagreed as to the strength and weakness of AWE compared to the “price of labour” and other metrics. However, as the Government of Alberta uses the AWE and does not use the “price of labour” in its Budget Documents, it is a sensible metric for this Board to accept. Putting aside the debate as to the validity of the competing metrics, it must be noted that all metrics indicate wages increased in each year under consideration and grew in strength each year.

16. The Board was also provided with a metric “price of labour public” which demonstrated that public sector wages increased in every year throughout the period in question, although the amount of increase each year compared to the previous year does not always increase.⁷ This data is set out in the table below:

⁵ UNA Exhibit 1A p. 26

⁶ AHS Brief Figure BBB p.54 and Figure AAA p.53

⁷ AHS Brief Figure BBB p.54

Year	price of labour - public (% change)
2017	0.61
2018	0.43
2019	0.72

17. One internal check in interest arbitration is whether the private sector is leading the way with respect to wage increases. The data before the Board confirms private sector wages have been increasing while public sector wages have been lagging behind for at least the last three years. The data demonstrates a wage increase in Alberta Nurses wages is consistent with what is happening in the private sector, even though the wage increase for Alberta Nurses would still lag behind private sector wage increases.

18. Before leaving this area, it is important to understand that all of these data points are based on information gathered from the market. The market does not make decisions in a vacuum. It is understood that the market takes into consideration general economic conditions, unemployment rates and layoffs when it makes its decisions about wage rates.

19. The fact that wages are rising under any metric favors an increase in Alberta Nurses wages and does not support an award of zero.

Other settlements

20. Comparables are the touchstone of interest arbitration. In a perfect world, the best comparable is a similar party, in the same time frame, in a similar industry and in the same geographic place. We do not live in a perfect world.

21. In this case, the parties directed that Section 101 of the *Labour Relations Code* apply to this arbitration. As a result, the Board is mandated to consider wages and benefits in the private and public sectors and unionized and non-unionized sectors.

22. Comparables in the case before us are difficult. The combination of a provincial wide bargaining unit for nurses and the lack of freely negotiated public sector settlements in healthcare in Alberta, for the time period in question, complicate matters. However, it does not mean that we should not look for other comparators in the industry and the Province.

23. As one moves away from the perfect comparable the weight or influence may diminish but nonetheless comparables can be used to retest a hypothesis and to satisfy interest arbitrators that they are on the right track.

24. The Employer provided the Board with Appendix 17, listing the unionized healthcare and social assistance sector settlements.⁸ Given the time frame of our interest arbitration, the majority decision only considered settlements in the public sector in 2019 and found two, both which settled for 0% increase.

25. If we pull the lens back a little further, and include the public and private sector unionized health care and social assistance sector settlements, we find that there were 11 settlements reached in 2019. The average settlement resulted in a wage increase of 1.32%. The median settlement resulted in a wage increase of 1.25 %. Five settlements provided wage increases of 1.75% or higher. The highest settlement was 3%. Five settlements are below 1.25%. Three of those settlements are at 1%. There are two zero increases, one in a housekeeping unit with IUOE at Evergreens Foundation and one for Occupational Therapists with HSAA at the WCB.

⁸ AHS Brief Appendix 17

26. The AMA (Physicians) settlement referred to in the majority decision referenced a May 2018 settlement. The AMA settlement provided no increases on the fee scale, but did include formula based remuneration. Mr. O'Grady estimated that the agreement between the AMA and Alberta Health resulted in a pay out to the physicians in 2017-18 averaging approximately 2.2% to 2.3% increase.⁹ The AMA settlement supported a wage increases for Alberta Nurses.

27. From the unionized healthcare and social assistance sector settlements, the majority decision concludes other unionized employees are generally not keeping up with the increases in CPI. However, the data clearly shows that unionized employees in this sector are getting wages increases. The settlements may not all keep up with CPI increases, but they do not support no wage increase at all.

28. The jurisprudence presented to the Board confirms that comparables are presumed to have considered the prevailing economic and labour market environment.¹⁰

General economic conditions in Alberta

29. The general state of the Alberta economy is a consideration on its own. However, it must be remembered that the general state of the economy has already been considered in the factors above. The increased cost of living, AWE, price of labour and other settlements have all taken into account the general economic conditions in Alberta. In interest arbitration, the most important guide is comparability. Comparability reflects what the market has judged the effect of general economic conditions to be on wages. As interest arbitrators, whatever we judge the general state of the economy to be, we must also remember the market has also been doing the same.

⁹ Exhibit 1 O'Grady report p. 9-10

¹⁰ *Salvation Army of Canada (Agape Hospice) v United Nurses of Alberta* [2016] AGAA No. 28 (Ponak) para. 5

30. While general economic conditions are a factor to be considered, they must always be tested against what the market is saying about those same conditions. Interest arbitrators must be careful not to “double count” the general economic conditions- once in the comparables and then again under this heading.
31. General market conditions are also important on a go forward basis. There were differences between the experts who appeared before the Board as to the general market conditions going forward. The Alberta Government Budget, indicates the unemployment rate going forward to be : 6.5% in 2020; 6.0% in 2021; 5.5% in 2022; and 5.2% in 2023. This is contrary to the Employer’s assertion that the unemployment rate was to remain high in the range of 7% or more in 2020. Similarly, using the Alberta Government Budget as guidance, real GDP going forward is projected as 2.7% for 2020; 2.9% for 2021 and 3.0% for 2022. The Employer asserted that real GDP would be low growth in 2020 and yet the Employer’s expert, Mr. Antunes, when taken to the Government Budget, testified real GDP in Alberta in 2020 would be higher than the national average. The outlook going forward is guarded but points to increasing improvement in the economy.
32. From the evidence set out above, the clear message from the market is that wages are increasing. At the same time, wage increases have been moderated by market conditions such that wage increases have not always kept up with the CPI. The Alberta Government budget for 2019 has the percentage change for AWE at 1.8% and the CPI at 1.7% indicating the trend is toward wage increases keeping up with CPI.¹¹
33. As a result, the general economic conditions in Alberta do not justify a zero increase in wage grid, however, the conditions do moderate expectations about the size of such a wage increase.

¹¹ See tables at paragraphs 7 and 13 above

34. If the general economic conditions in Alberta justified no wage increases, it would be expected that would be reflected in the wage rates generally and in the settlements.

Continuity and stability of nurses employment

35. The continuity and stability of employment is a factor set out in section 101 of the *Labour Relations Code*¹², and the majority decision considered it in the context of the nursing profession.

36. Given Alberta's growing and aging population it is not surprising that there have been very few layoffs of nurses. Mr. O'Grady provided the Alberta Government's own projection which estimated nursing shortages in 2019 which will grow more severe in subsequent years.¹³

37. Mr. O'Grady testified that professional groups typically have lower unemployment rates and less turnover than other types of employees.

38. The Board heard evidence about recruitment and staffing difficulties relating to nurses in AHS. In recognition of these difficulties, the collective agreement has a thirteen page Letter of Understanding on retention and recruitment initiatives.¹⁴ In May 2019, the Central Zone of AHS initiated its own recruitment and retention initiative to address staffing issues.¹⁵ The evidence presented revealed that recruitment and retention issues are never far from the parties' minds. We also heard evidence that imbalance in the labour market can lead to recruitment and retention issues. Interest arbitrators are tasked with ensuring wage awards maintain

¹² See Majority award para. 8 for Section 101

¹³ Exhibit 1 O'Grady report p. 6-7

¹⁴ Exhibit 19

¹⁵ Exhibits 20, 21, 22 and 23

balance in the labour market. Conversely, our job is not to create an imbalance in the labour market.

39. Case law was provided to the Board supporting the proposition that recruitment or retention is a “significant” factor. The case involved a small bargaining unit of 13 employees where the parties were a significant distance apart on wages. The Union proposal would amount to as much as 17.2% increase over a one-year period. In a final offer selection process, the arbitrator noted that there was not a problem with recruitment or retention and concluded that the fact was significant and “tends to push an interest arbitrator away from dramatic increases in wages.”¹⁶

40. In our case, even if one accepts there are no recruitment or retention issues, this factor suggests there is no need to add a premium to a wage increase. However, we also need to be cognizant of creating an imbalance in the market. In my view, the absence of significant retention or recruitment issues is not a reason to ignore the fact that wages are increasing in the community overall and support a moderate increase for Alberta Nurses.

Structure of the parties bargain

41. The Union framed this issue as the parties’ bargaining history.

42. The Union asserts that the historical patterns of settlement between the parties is relevant when replicating what parties are likely to agree to and this is supported by the case law.¹⁷ I accept that this is the proper framing of the issue and I will address it from that perspective.

¹⁶ *Yarmouth (Town) v Yarmouth Fire Fighters Association 2094* [2003] NSLAA No. 7 (Venoit) para. 50.

¹⁷ UNA Brief para. 62-63

43. The collective bargaining history provided by the Employer demonstrates Alberta Nurses wages have fallen below CPI for two years in a row on two occasions. In 2010 and 2011 wage rates for Alberta Nurses fell below CPI in both years. The offset was closed by wage increases in 2012. Similarly, in 2013 and 2014 Alberta Nurses wages fell below CPI in both years and in 2015 the offset was narrowed and 2016 the offset was closed. The information provided by the Employer confirms that historically, when nurses wage increases fall below CPI for two years in a row, the difference is made up in the following two years.¹⁸

44. The history provided by the Employer, prior to the current collective agreement also demonstrates that Alberta Nurses have never fallen more than 2 percent below CPI without a correction in subsequent years. At this time, Alberta Nurses are already 4.6% behind CPI and will be 6.3% or more behind of CPI with a third year of no increase in the wage grid.¹⁹

45. David Harrigan's evidence established the Union has never agreed to three "zeros" in a row and would not have accepted a third zero. The parties bargaining history does not support an award of zero and indeed supports an increase. The bargaining history is clear that UNA would have addressed the gap between the Alberta Nurses wages and CPI.

Conclusion

46. The majority decision of the Board cites the decision of Arbitrator Dorsey in *Fernie School District No. 1 v Fernie District Teachers Association*, 1982 Carswell BC 2654. That decision involved an interest arbitration for teachers at a time of considerable political and economic turmoil. I have adopted some of the considerations set out by

¹⁸ AHS Brief Figure FFF p. 59

¹⁹ AHS Brief Figure FFFp. 59

Arbitrator Dorsey to suit the case at hand. To paraphrase the Dorsey panel, the arbitration board:

- is not bearers or enforcers of government policy;
- must act independently;
- needs to bring some appreciation of the parties' dilemma, the current economic situation and a consistent standard to our decision;
- must, on the one hand, be concerned for the nurses who have not had a pay raise since April 2016; who confront inflation and a spread in wages behind other groups; and who face unknown losses in jobs or wage reductions in 2020 depending on decisions by the government or choices by AHS;
- must, on the other hand, be concerned for AHS who is faced with cost cutting and reduced finances;
- must not be rendered paralytic by concerns of parties who fear that any increase in nurses wages will somehow bring harm to the healthcare system;
- must recognize the interest arbitration process is neither equipped nor intended to take responsibility to make provincial public policy and financial choices;
- ought not to try to replicate that political decision but do what we think the parties would agree to in the environment of the current economy;
- must attempt to replicate what the parties would have ultimately agreed to had they done so through collective bargaining with the *threat* of a work stoppage.

47. The parties agreed that Section 101 of the *Labour Relations Code* should guide our decision. It mandates that our decision be fair and reasonable to the employees and employer and is in the best interest of the public.

48. The public, as users of health services have an interest in maintaining quality public institutions.²⁰ The public also has an interest as taxpayers.

49. Public sector employers do not have to be the best employers in the community but they should be a good employers and also seen as fair employers.²¹

50. Public sector workers wages should be comparable to the community's wage expectations. The jurisprudence supports the notion that if a community needs and demands the public service, then the community must bear the necessary cost to provide fair and equitable wages and not expect public employees to subsidize the community by taking substandard wages.²²

51. The majority decision at paragraph 77 relies on the following passages Arbitrator Peltz decision in *Saskatchewan Teachers*²³ to describe the Board's task:

at paragraph 39:

Common sense must prevail.... An arbitrator's task is to award a public employee economic benefits which the arbitrator believe that the parties bargaining in good faith should have agreed to. Public sector employees normally reside in the communities where they work. They are part of that community. A reasonable teacher should expect to benefit from its prosperity and share a proportionate share of the hardships which befall the general community. Any objective right-thinking public employee should expect to

²⁰ *The Board of Governors Southern Alberta Institute of Technology and AUPE, Local 039*, 2005 CarswellALTA 2746 (Sims) p.4

²¹ *Springhill Police Assn., Local 203 of the Atlantic Police Assn. v Springhill (Town) (Interest Arbitration Grievance)* [2013] NSLAA No 2 (Richardson, QC) para. 22 citing Arbitrator Shime

²² *Ibid para. 22* and *The University of Alberta and Association of Academic Staff: University of Alberta* (unreported, 18 July 2000, Sims, QC), at page 3 citing Arbitrator Tettensor

²³ *Saskatchewan Teachers' Federation v Saskatchewan Schools Boards ASSN. (Renewal Collective Agreement Grievance)* [2018] S.L.A.A. No. 9 (Peltz)

receive wage increases which are related to the prevailing economic circumstances in the province.

and at paragraph 73:

On this approach to replication, we observe that the government acting reasonably would accept the reality that it cannot, without unacceptable consequences, force public sector units to roll back wages at this time. The Teachers acting reasonably would accept the reality of an economic downturn and forego their goal of inflation protection, focusing on non-monetary issues and simply waiting while the government's fiscal position improves. These are descriptors of reasonable bargaining positions in the current period and they should guide an interest arbitration board in reaching its decision. As the board was completing its deliberations, it was reported that SGEU and the Saskatchewan Liquor and Gaming Authority concluded an agreement for the period April 2017 to March 2020 with zero wage increases but side-assurances of job security, a major issue in those negotiations.

52. With respect to paragraph 39 of *Saskatchewan Teachers* an important addition is the jurisprudential principle that public employees should not be expected to subsidize the community by taking substandard wages. That is at the heart of an award in light of a potential third zero. In the face of growing CPI, does a third zero force Alberta Nurses to take substandard wages? In my view, it does.

53. With respect to paragraph 73, Arbitrator Peltz describes that Teachers acting reasonably would "accept the reality of an economic downturn and forego their goal of inflation protection, focusing on non-monetary issues and simply waiting while the government's fiscal position improves." In our case, by agreeing to zero increase for 2017 and 2018 the Alberta Nurses already accepted the reality of the economic downturn. But more importantly, "waiting for the government's fiscal position to

improve” is the definition of ability to pay. No “ability to pay” evidence or argument was raised in this case.

54. The real issue is that having sat on the sidelines for two years and watched their wages be eroded by CPI while the wage indicators in the Province rise, should Alberta Nurses be forced to sit on the sidelines for a third year?

55. In *Saskatchewan Teachers*, the arbitrator was addressing wage increases over a two-year term from September 1, 2018 to August 30, 2019. Arbitrator Peltz awarded a 1% increase at the end of the term, thereby not allowing the teachers to sit on the sidelines for more than two years.

56. In my view, in the current environment, Alberta Nurses have watched their wages be eroded by CPI while the wage indicators in the Province rise. To award another zero increase for the third year of their agreement will force Alberta Nurses to take substandard wages to subsidize the community.

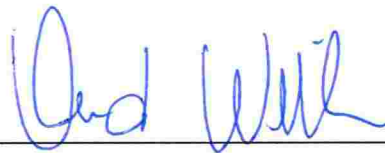
57. From a review of all the factors above, it is clear that a wage increase is in order but that any increase needs to take into account the general economic conditions and the stability of the nurses’ employment.

58. Given the data that both private and public wages rose over 2017 and 2018 and continued to rise in 2019, a good employer acting reasonably and who is seen as a fair employer would not seek to widen the offset between its nurses and CPI or to widen the offset between its nurses and other groups. Similarly, in the current economic environment, nurses acting reasonably would be content to address the offset consistent with what is happening in their community. The public should be satisfied that both the nurses and the employer are reflecting what is happening in the community and taxpayers should be content that private sector wages are leading the way and that public sector wage increases are lagging but following. A fair minded and informed taxpayer would see this as a fair award.

59. To again adapt the Dorsey decision to the matter before this Board: in summary, the award is really a recommendation of fair and reasonable salary increase. It is for the government to decide whether it will accept the recommendation and make funds available to AHS, restrain the implementation of the award, take other action or leave AHS, nurses and communities to deal with the effect of implementing the award.

60. With this in mind and considering all the foregoing, I would have awarded an increase of 1.75 % to the salary grid for the period April 1, 2019 to March 31, 2020.

SIGNED, DATED AND ISSUED at Edmonton, Alberta, January 9, 2020 by:



David Williams, Union Nominee