

**IN THE MATTER OF AN INTEREST ARBITRATION
PURSUANT TO THE *HOSPITAL LABOUR DISPUTES*
*ARBITRATION ACT, R.S.O. 1990, C.H. 14***

BETWEEN

THE PARTICIPATING CHARITABLE NURSING HOMES

(the “Charitable Homes”)

and

ONTARIO NURSES’ ASSOCIATION

(the “Union” or “ONA”)

BOARD OF ARBITRATION: John Stout, Chair

APPEARANCES:

For the Charitable Homes:
Bob Bass – Bass Associates

For ONA:
Pat Carr
Steven Lobsinger
Marilyn Dee
Andrea Kay

HEARINGS HELD BY WRITTEN SUBMISSIONS

SUPPLEMENTAL AWARD

[1] This Central Board of Arbitration was appointed by the parties pursuant to a Memorandum of Conditions for Joint Bargaining dated April 15, 2021, made in accordance with the *Hospital Labour Disputes Arbitration Act*, R.S.O. 1990 c.H. 14, as amended (“*HLDA*”). Our mandate was to resolve the outstanding issues between the parties with respect to the renewal of collective agreements between the Ontario Nurses Association (“*ONA*”) and participating not-for-profit (or charitable) nursing homes in Ontario (“*Charitable Homes*”).

[2] On October 25, 2021, we issued an award, see *Participating Charitable Nursing Homes v. Ontario Nurses Association*, 2021 CanLII 106877 (ON LA) (the “*Charitable Homes v. ONA Award*”). This supplemental award addresses issues related to wage restraint legislation, the *Protecting a Sustainable Public Sector for Future Generations Act, 2019* (“*Bill 124*”) and the *Charitable Homes*.

[3] *Bill 124* imposed a 1% total compensation cap in each year of a three-year moderation period. *Bill 124* applied to every licensee under the *Long-Term Care Homes Act, 2007*, other than a licensee that carries on its activities for the purpose of gain or profit to its members or shareholders. While *Bill 124* did not apply to long-term care (LTC) nursing homes that operate for profit, it did apply to the *Charitable Homes*.

[4] Historically, the *Charitable Homes* participated in central bargaining with *ONA* along with other for-profit *Participating Nursing Homes* (PNHs). *ONA* and PNHs have participated in central bargaining since 1991. *Bill 124* made it impossible for all of the PNHs to bargain together for the first time in 30 years.

[5] The PNHs and *ONA* signed a Memorandum of Conditions for Joint Bargaining on April 15, 2021. Recognizing the different circumstances that existed for the *Charitable Homes*, the parties agreed to a separate Memorandum of Conditions for Joint Bargaining applicable to the *Charitable Homes*.

[6] On October 25, 2021, this Board issued two awards. *Participating Nursing Homes v. Ontario Nurses Association*, 2021 CanLII 107099 (ON LA) (the “*PNH v. ONA Award*”)

applied to the for profit PNHs and the *Charitable Homes v. ONA Award* applied to the Charitable Homes.

[7] In the *Charitable Homes v. ONA Award*, we adopted all the reasons in the *PNH v. ONA Award*. We awarded all the non-monetary amendments that we awarded in the *PNH and ONA Award*. In terms of compensation however, we were forced to comply with *Bill 124*. As is usually the case, we remained seized in accordance with subsection 9(2) of *HLDA* until the parties signed new collective agreements. We also remain seized with respect to a re-opener on monetary proposals in the event that ONA was granted an exemption, or *Bill 124* is declared unconstitutional by a court of competent jurisdiction, or the Bill is otherwise amended or repealed.

[8] On November 29, 2022, Justice Koehnen of the Ontario Superior Court of Justice issued a decision in *Ontario English Catholic Teachers Association et. al. v. His Majesty the King in Right of Ontario, 2022, ONSC 6658* (the “Koehnen decision”), which addressed ten applications challenging the constitutionality of *Bill 124*. In a well-reasoned decision, Justice Koehnen found that *Bill 124* infringes upon the applicants (including ONA’s) right to freedom of association under 2(d) of the *Canadian Charter of Rights and Freedoms* and is not justified under s. 1 of the *Charter*. Justice Koehnen declared *Bill 124* to be void and of no effect. Justice Koehnen remained seized to address remedy and any ancillary issues.

[9] On December 8, 2022, ONA contacted the Chair asking that the Board be re-established to hear submissions regarding monetary compensation from July 1, 2021 to June 30, 2024 (the three year *Bill 124* moderation period). The Chair directed the parties to bargain before re-establishing the Board.

[10] On March 13, 2023, the parties advised the Chair that they were unable to resolve the issues related to compensation for the moderation period. The parties requested that the Chair issue a supplemental award based on their written submissions.

[11] After carefully considering the parties’ submissions, we find that the compensation awarded to the for-profit homes in the *PNH v. ONA Award* must be

awarded to employees represented by ONA who are employed at the Charitable Homes. The Koehnen decision is under appeal. However, no stay has been sought that would alter the declaration of *Bill 124* being void and of no effect. I agree with Arbitrator Kaplan in *Unifor v. Ornge* 2023 CanLII 5406 (ON LA), where he indicates that any “objective balancing of interests favours the employees who should not have to await the eventual judgement of the courts.” The compensation adjustments awarded to the for-profit homes in the *PNH v. ONA* Award are normative and being applied across the province.


[12] We are mindful of the difficulties that may be caused when implementing the retroactive wages and other compensation. We have therefore provided the Charitable Homes with some time to do so.

[13] Accordingly, we make the following order:

- The Charitable Homes are to immediately implement the compensation awarded in the *PNH v. ONA* Award.
- Retroactivity of all wage increases shall be in accordance with the effective dates awarded in the *PNH v. ONA* Award and will be paid for all hours paid for current and former employees. Such retroactive payments are to be made by no later than July 31, 2023.
- Retroactivity for all other compensation (premiums, benefits, vacation), will be paid as a lump sum. Retroactivity to be paid no later than July 31, 2023.

[14] In light of the uncertainty in this situation, and in the event that the appeal is allowed at either the Court of Appeal or the Supreme Court of Canada, we will remain seized with respect to a re-opener if the *Bill 124* appeal is successful, or a stay is granted and until our awards are implemented. We also continue to remain seized in accordance with subsection 9(2) of *HLDAA* until the parties have signed new collective agreements.

Dated at Toronto, Ontario this 14th day of March 2023

A handwritten signature in dark ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

John Stout – Chair