

**IN THE MATTER OF AN INTEREST ARBITRATION PURSUANT TO SECTION 40 OF
THE *LABOUR RELATIONS ACT***

BETWEEN:

The Victorian Order of Nurses (VON)

**(Brant, Haldimand, Norfolk Chatham-Kent
Durham, North Bay, Perth-Huron, Peterborough, Victoria & Haliburton, Porcupine Site – Highway
11 and the City of Timmins Sarnia-Lambton, Thunder Bay and District Toronto/York-Peel)**

and

Ontario Nurses Association (ONA)

Before:	Matthew Wilson	Arbitrator
	Phil Abbink	Union Nominee
	Brian O'Byrne	Employer Nominee

For the Employer:	Ryan Wood - Bass Associates
	Melissa Kennedy – Senior Director of Labour Relations

For the Union:	Glen Oram, Labour Relations Officer, Interest Arbitration, Diana Kutshaw Labour Relations Officer, Interest Arbitration Lorna Thompson, RN, Chair, VON Central Negotiation Team Lucja Massom, RN, Thunder Bay Heather Wareing, RN, Brant, Haldimand, Norfolk Vicki McKenna, President, ONA Cathryn Hoy, First Vice-President, ONA Bev Mathers, CEO, ONA Steve Lobsinger, Chief Negotiator Marilynn Dee, Manager II/Team Lead Pat Carr, Manager II/Team Lead David Cheslock, Manager Labour Relations, Deanna King, Labour Relations Officer Cari Baily, Labour Relations Officer Vicki Romaniuk, Administrative Coordinator, Office of the CEO
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Introduction

The parties to this interest arbitration for a renewal collective agreement are the Victorian Order of Nurses (hereafter “the employer” or “VON”) and the Ontario Nurses’ Association (hereafter “the union” or “ONA”).

The Parties entered into a Memorandum of Conditions for Joint Bargaining for the following 10 bargaining units of Registered Nurses represented by ONA across the province of Ontario:

1. VON Brant, Haldimand, Norfolk
2. VON Chatham-Kent
3. VON Durham
4. VON North Bay
5. VON Perth-Huron
6. VON Peterborough, Victoria & Haliburton
7. VON Porcupine Site – Highway 11 and the City of Timmins
8. VON Sarnia-Lambton
9. VON Thunder Bay and District
10. VON Toronto/York-Peel

The union represents approximately 68,000 registered nurses and health-care professionals working at various organizations across Ontario. At this bargaining unit, the union represents 76 full-time, 85 regular part-time and 48 casual RNs across the various locations.

The employer is a home and community care organization providing services in Ontario and Nova Scotia.

The Memorandum of Conditions for Joint Bargaining provided that in the event that the Parties were unable to conclude a settlement binding arbitration pursuant to section 40 of the *Ontario Labour Relations Act, 1995* (“the Act”) would apply.

Section 40 of the *Act* reads as follows:

Voluntary arbitration

40 (1) Despite any other provision of this Act, the parties may at any time following the giving of notice of desire to bargain under section 16 or 59, irrevocably agree in writing to refer all matters remaining in dispute between them to an arbitrator or a board of arbitration for final and binding determination.

Powers of arbitrator or board of arbitration

(2) The agreement to arbitrate shall supersede all other dispute settlement provisions of this Act, including those provisions relating to conciliation, mediation, strike and lock-out, and the provisions of subsections 48 (7), (8), (11), (12) and (18) to (20) apply with necessary modifications to the proceedings before the arbitrator or board of arbitration and to its decision under this section.

Effect of agreement

(3) For the purposes of section 67 and section 132, an irrevocable agreement in writing referred to in subsection (1) shall have the same effect as a collective agreement.

The parties were not able to conclude a settlement and thus it was left to the Board to determine the matters that had to be resolved in order that the parties could enter into a renewal agreement.

The Board was in receipt of detailed submissions from both parties.

The employer advanced an inability to pay argument supported by a detailed analysis of their current financial situation. The employer pointed out that in 2015 it was granted creditor protection under the CCAA and have subsequently closed a number of branches including the Simcoe and Parry Sound branches where ONA was the Bargaining Agent,

wound up operations in all other provinces except Ontario and Nova Scotia, and most recently closed the Nursing program at the Perth-Huron Branch.

In addition to the significant financial difficulties which pre-dated the pandemic, the employer urged the Board to consider the fact that the home care industry has been uniquely and particularly impacted negatively by the COVID-19 pandemic. As a result, the employer has been in receipt of the Canadian Emergency Wage Subsidy since Mid 2020. The employer argued that the ONA collective agreement provisions were substantially superior to their private sector competitors in the Home care sector. The employer argued that, given all of the above factors and the continuing precarious and unique financial situation of the employer, that any award on compensation should reflect the reality of these significant difficulties and that the continued viability of the employer would be of paramount consideration and importance.

The union submitted that the renewal of this collective agreement and negotiations took place post the Bill 124 moderation period and that the Board is not constrained by the legislation. The union points out that the overall compensation increases contained in the previous collective agreement were extremely modest and takes the position that as a result, the compensation increases for this collective agreement should be substantial given the previous austerity measures inflicted upon the nurses. The union disputes the employer's argument that the viability of the organization would be jeopardized by a reasonable increase in compensation. The union's view was that substantial across the board wage increases were warranted in addition to the union proposals for standardizing a number of other compensation items where there is disparity between the individual branches and bargaining units.

AWARD:

Having regard to the usual criteria considered in interest arbitration cases, the submissions of the parties, the unique circumstances of this case and other relevant factors the Board awards the following:

1. A renewal collective agreement will be entered into which will consist of the terms of the previous agreement between them which expired on March 31, 2021 as amended by the following:

(a) All items agreed to in bargaining between the parties.

(b) Term: April 1, 2021 to March 31, 2023 (agreed to by the parties).

(c) Wages: With respect to the issue of wages the Board awards:

(i) Effective April 1, 2021 - a 0.7% general wage increase across the board with retroactivity back to that date based on all paid hours for current employees as well as former employees who worked at any time between April 1, 2021 and the present date.

(ii) Effective April 1, 2022 - a 0.7% general wage increase across the board.

All Retroactivity to be paid within 90 days from issue of award.

2. All other proposals of both parties are dismissed.

3. The Board will remain seized with respect to the implementation of this Award.

This Board wants to be clear that there are unique circumstances leading to this award based on the financial information about the employer's operations shared with ONA.

Given the unique circumstances of this case and the particular economic environment under which this collective agreement was being negotiated the Board does not intend

this award to be setting any precedent, or be otherwise relevant, with respect to ONA in terms of replication.

Dated at Toronto, this 28th day of June 2021



Matthew Wilson, Chair

“I dissent in part”

Brian O’Byrne, Employer Nominee

“I dissent”

Phil Abbink, Union Nominee