IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

The Crown in Right of Ontario

(Represented by Treasury Board Secretariat)

and

OPSEU/SEFPO

(Correctional Bargaining Unit)

Before:	William Kaplan Sole Arbitrator
Appearances	
For The Crown:	Sunil Kapur Patrick Pengelly McCarthy Tetrault Barristers & Solicitors
For OPSEU:	Nini Jones Cassandra Jarvis Olivier Bishop-Mercier Jones Pearce Barristers & Solicitors

The matters in dispute proceeded to a hearing on November 25, 2023.

Introduction

This interest arbitration was consensually convened to decide matters in dispute between The Crown in Right of Ontario and OPSEU for the renewal of the collective agreement for the Correctional Bargaining Unit (Corrections) which expired on December 21, 2021. OPSEU (union) represents approximately 8500 employees, spread across two ministries: the Ministry of the Solicitor General and the Ministry of Children, Community and Social Services (employer). Union members work in a variety of classifications: Correctional Officers (CO) and Youth Service Officers (YSO) (59%), Probation and Parole Officers (PO) (13.2%), Health Care (Nurses, Psychologists, Pharmacists, Social Workers) (9%) Administrative (8.8%), and otherwise. About a third of all employees are engaged on a contract or fixed term basis (FXT). Since 2018, when Corrections became a stand-alone bargaining unit, terms and conditions of employment – if not agreed – are to be resolved by interest arbitration.

An interest arbitration hearing proceeded in Toronto on November 25, 2023. However, prior to that the parties were able, on their own, and in mediation in September 2022 and April and July 2023, to resolve some outstanding issues, and all agreed-upon items are to be incorporated into the collective agreement settled by this award. Any union or employer proposal not directly dealt with in this award is deemed dismissed.

Overall Context

This interest arbitration must be placed in context: Part of that context is, of course, the COVID-19 pandemic (pandemic) where employees worked very hard in the most difficult of circumstances to keep inmates, people on probation, themselves and the community safe.

Another important factor to keep in mind is inflation: persistent and high inflation has had a dramatic effect on wages and spending power (discussed below). Also relevant to these proceedings is that the *Protecting a Sustainable Public Sector for Future Generations Act* (Bill 124) was enacted prior to commencement of bargaining, and it established a three-year moderation period limiting compensation in each of the three years to 1%. As is well known, on November 29, 2022, the Ontario Superior Court declared Bill 124 unconstitutional, and while the decision is currently under appeal, no stay was sought. In the aftermath of the judicial decision, the union significantly revised its monetary proposals, costed by the employer at $261.6M annually – or more than 30% to base – a costing that was vigorously disputed by the union.

Statutory Criteria

In determining the outstanding issues, all factors considered relevant, including those set out in Section 29.7(2) of the *Crown Employees Collective Bargaining Act,* must be taken into account:

> The Employer's ability to pay in light of its fiscal situation.
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> The extent to which services may have to be reduced, in light of the decision or award, if current funding and taxation levels are not increased.
>
> The economic situation in Ontario.
>
> A comparison, as between the employees and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.
>
> The employer's ability to attract and retain qualified employees.

Union Submissions

In the union's view, the members of the Corrections bargaining unit were woefully undercompensated – especially when compared with their federal counterparts – an intolerable situation made worse by the ravages of inflation, which showed no sign of meaningfully abating

any time soon, if ever. The members of this bargaining unit occupied mostly frontline positions and/or predominately worked in institutions where – daily – they faced a ubiquitous threat of violence. The members of this bargaining unit, the union continued, kept our communities safe and did so with especially heroic and steadfast service during the darkest days of the pandemic.

The union described in detail the everyday challenges of working in a correctional institution (and they predated the pandemic and continue to this day). COs, nurses and ancillary employees worked in dangerous overcrowded conditions where routine work could be immediately interrupted by both threatened and real acts of violence. The inmate population was volatile, presented with trauma, with mental health challenges and suffering from substance abuse; in summary, an incarcerated population of the most dangerous and physically and psychologically vulnerable members of society. Across the system, whether a CO, YSO, nurse or ancillary employee, or a PO working outside an institution, the men and women of this bargaining unit did their jobs in extremely difficult and stressful circumstances. Nurses provided healthcare to thousands of people while employees engaged in ancillary services made an indispensable contribution to the operation of correctional institutions.

Working during the pandemic was especially challenging: correctional facilities were susceptible to the rapid spread of disease; hardly a surprising situation given movement of staff and inmates in and out, along with overcrowded living conditions and very poor ventilation. To inhibit the spread of COVID, numbers were temporarily reduced (but have crept back up) and lockdowns were frequently imposed. But the job of maintaining the safe care, custody and control of the inmate population became even harder as outbreaks became more and more common and new

rules and regulations were imposed all dramatically increasing the responsibilities of the COs. In the meantime, chronic staff shortages caused by high turnover made a hard job even more difficult.

That revolving door of employees – discussed in further detail below – was illustrated by data indicating, for example, that in 2018-2019, approximately 25% of the COs across the province had less than two years of work experience. This was the direct result of the terms and conditions of employment, and the employer's failure to recruit and retain, leading to increased employee illness, work-related stress, negative life events, burnout and compassion fatigue. The high number of contract employees made the situation even worse (and many of them had to wait years before being able to become full-time and permanent).

The preceding background and context informed many of the union's proposals.

As noted above, after Bill 124 was declared unconstitutional, the union revised its economic demands to reflect that the moderation period prescribed by legislation – that had informed its initial asks – was no longer governing. The union sought, among other things, wages of 6.8% in the first year, 5% in the second year and 4% in the third year, introduction of Factor 85, and special classification adjustments for 13 classes ranging from 7.1% to 33%. The union also sought improvements in a wide variety of areas, as elaborated below. All its proposals, the union submitted, were justified by the appropriate application of the statutory and normative interest arbitration criteria beginning with replication and demonstrated need.

Replication/Demonstrated Need

The primary goal of interest arbitration, the union argued, was to replicate free collective bargaining where there is a right to strike or lockout. Neither party is to be advantaged or disadvantaged by the substitution of interest arbitration for the right to strike or lockout. Replication meant following recent collective bargaining settlements, and a growing number of awards that replicated these freely bargained settlements, all of which were reviewed by the union, and all of which supported the union's economic demands. Demonstrated need was amply established and was fortified by a review of the statutory criteria. Not all statutory criteria, the union pointed out, need be met to justify a proposal. And in this case, it was appropriate to begin with the applicable comparators.

A comparison, as between the employees and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.

The union took strong issue with any suggestion that Corrections should be compared with, and then follow, the Unified Bargaining Unit (Unified). That was not, the union suggested, replication: it was duplication and it was unjustified. There were appropriate comparators for Corrections and they were Federal correctional officers: FCX, and Ontario policing. Notably, Arbitrator Burkett recognized in a 2015 award that federal and Ontario corrections officers were paid more or less the same before 2001, but that a delta between the two then began to grow. Arbitrator Burkett concluded that the widening salary differential established "a specific catch-up objective for Ontario correctional employees." The union insisted that the Burkett award and its findings were governing. Notably, as the union pointed out, Arbitrator Burkett began to remedy this situation when he awarded special catch-up increases based on FCX wages, and a

pattern of doing so was then established by the further adjustments that followed in the next award resolving the differences between the parties.

These catch-up increases were, the union submitted, entirely justified because Ontario and Federal correctional employees perform the same job, especially the Ontario COs and FCXs. Both groups of correctional officers are responsible for the care, custody and control of inmates and face the same challenges in their very comparable workplaces.

A comparison could also be drawn between COs and Ontario policing employees and also between Corrections and Federal POs. There was a significant overlap in duties again acknowledged – the union pointed out – by Arbitrator Burkett in his 2015 award and again, a finding that was governing. In these circumstances, there was no justification for the wage delta between these groups, an unacceptable situation that the union urged be finally remedied after having been repeatedly raised.

The economic situation in Ontario

The economic situation in Ontario had to be considered, and that meant taking inflation meaningfully into account. To be sure, inflation had begun to modestly decelerate, but barely: it still remained above 3% in 2023 and no one was predicting an early return to historic norms, (targeted at 2%). The dramatic increases to the cost of living experienced in 2021 and continuing to this day, were now hard baked into prices and that will persist, the union argued, over the entire term of this collective agreement (and no one was predicting de-inflation). Moreover, the union pointed out, annual inflation numbers actually understated its real impact. For example,

food inflation was even higher than the annual composite figure – about 10% in 2022 – and prices were continually increasing in virtually every single food category. This was a serious matter; indeed, it was one that was recognized by the Federal government with its 2023 introduction of a grocery rebate for eligible Canadians. At the same time, and paradoxically to fight inflation, rising interest rates were having a real impact on working people: mortgage rates had increased at a dramatic rate with a knock-on effect on the cost of rental housing. The bottom line, the union submitted, was that substantial wage increases were needed to meet historical and projected inflation, not to mention the contribution and service of Corrections employees.

The extent to which services may have to be reduced, in light of the decision or award, if current funding and taxation levels are not increased

In the union's view, none of its proposals could lead to a reduction of services and none of its proposals would require taxation levels to be increased. To be sure, more funding had to be allocated to Corrections, but doing so was necessary and affordable. Ontario's economy was robust and provincial finances strong. The economy rebounded quickly from the pandemic, with impressive GDP increases. Data and projections for 2023 were similarly rosy with government revenues on the rise while deficits were on the decline. There was, the union observed parenthetically, no inability to pay and no reason, in any event, why Corrections employees should continue to subsidize the community by accepting substandard wages and working conditions. The law on this point was categorical: public sector employees must be fairly paid for the services they provide.

The employer's ability to attract and retain qualified employees

The overall labour market was tight and nowhere was this better illustrated than in Ontario's correctional institutions: they were chronically understaffed. The employer's assertions to the contrary were not, the union submitted, credible or compelling. For instance, there may be many people applying for CO positions – that number was provided – but how many of these met minimum qualifications? That number was not disclosed notwithstanding repeated union requests, and the union urged that an adverse inference be drawn. The union also pointed out that between 2019 and 2022 the number of bargaining unit employees dropped despite the addition of 500 net new positions across the Ministry of the Solicitor General, and the share of employees with more than ten years of service declined from 42% to 37%. There was a high degree of turnover of FXT employees – a population comprising approximately 1/3 of the bargaining unit, and the situation was so dire in some regions that in 2022 the employer was required to introduce a northern incentive to attract employees to work at select adult institutions. Notably, there was a significant use of overtime – about 1,270,000 hours a year – and the only explanation for that was that the institutions were understaffed. In all these circumstances, the claim could not be persuasively made that there was not a recruitment and retention crisis: the evidence was to the exact opposite effect.

Union Proposals

Beginning with wages, the union argued that appropriate across-the-board increases, and classification adjustments, were critical. That meant the following general wage increases in each year of the term: 6.8%, 5.0% and 4.0%. These increases were all justified and in line, the union argued, with the increasing weight of freely bargained settlements and interest arbitration awards

replicating these settlements. None of these awards and settlements emanated, the union acknowledged, from its proposed comparators, but it was now widely recognized as appropriate, in the current economic circumstance of high and persistent inflation, to cast a wide net and consider and apply economic outcomes from all sectors, especially freely bargained agreements.

When this analysis was completed, it was beyond question that replication, together with all the other criteria, required significant wage increases: the specific general wage increases the union sought. These increases were the bare minimum necessary for union members who were coming off a decade of stagnant wage growth – members who were finding it harder and harder to pay their bills because of the corrosive effect of inflation on wages. It was also necessary to keep in mind the actual terms and conditions of their employment where they had to daily face the ongoing challenges of an overcrowded, understaffed, and dangerous workplace.

The union also sought numerous special classification adjustments ranging from 7% to 31%. These targeted increases were necessary to correct demonstrated inequities between comparable employees and to give effect to the statutory criteria. The union emphasized that some catch-ups were ordered in the last two interest arbitrations between the parties. Those catch-up awards began to remedy some of the identified disparities, but overall did not come even close to completing this task. Moreover, the earlier awarded catch-ups did not include all the classifications where the incumbents remained significantly behind. The union asked that attention be paid to these justified increases. Detailed submissions were made about all classifications for which adjustments were sought.

There was, the union repeated, a serious recruitment and retention crisis overall, but especially so with nurses. Indeed, the employer had acknowledged as much. RNs could not be recruited and retained and so agency nurses had to be employed to fill urgent gaps. At the same time, it was almost impossible to fill Nurse Practitioner (NP) positions: 75 positions have been created, but only 8 NPs were employed across the province. Federal correctional nurses were the appropriate comparators as there was no dispute that the nurses in both federal and provincial institutions did exactly the same thing. The same could be and was said about nurses employed at the Brockville Mental Health Centre and at Waypoint. The union sought a special adjustment of 19.5% to bring Corrections nurses to industry standard. The union also advanced a proposal – comparable to that found in the central agreement between ONA and the Participating Hospitals – to credit nurses with prior clinical experience.

The union sought the elimination of the first three steps on the Correctional Officer Supervision classification. A nine-step grid had been unilaterally imposed and the union took issue with it as non-normative in the bargaining unit. Elimination of the first three steps was also necessary to eliminate undesirable wage compression, as the union illustrated in its submissions. Introduction of Factor 85 – replacing Factor 90 – was a union priority and was necessary and justified to bring Corrections into line with all its established comparators and could be achieved at a reasonable annual cost of only $9M, or an approximately 1% salary increase. A suite of benefit improvements was also sought, including for mental health.

The union was categorically opposed to the employer's benefit package: it had not requested and did not want a Health Care Spending account, which made no sense for this bargaining unit for

reasons that the union explained. For example, FXT employees pay 100% of the benefits premium cost but would not be eligible, under the employer's proposal, to receive the Health Care Spending account. How the union asked, could that be fair? Other aspects of the employer proposal, for example a brand-new drug plan, would amount to an unjustified breakthrough for which there was no quid for the quo: it moved from 3 drugs requiring prior authorization – the current situation – to as many as 200. Other administrative changes – supposedly in the name of cost savings – imposed new financial burdens on employees and did or would do nothing but fetter their access to important negotiated benefits. This proposal, the union insisted, was advanced with absolutely no evidence of demonstrated need and was justified solely on the basis that Unified and other bargaining units had agreed to it.

Another amendment proposed by the union would ensure that all wage increases were incorporated into the calculation of LTIP benefits for disabled members. The union proposed that contract employees be given the option to pay 100% of the premium for benefits and access health benefit coverage– not just on hire – but after issue of this award in recognition that individual circumstances may have changed and that it can often take years for these FXT employees to roll over to regular classified status. It also proposed memorialization of the current threshold for rollover eligibility to regular status: rollover at 1725.50 or 1904 straight time hours as applicable. This change would also improve the situation of some POs, where an eighteen-month threshold was in place. Improvements to bereavement leave, military leave and union leave were advanced, along with enhancements to compensating time off and the PO Allowance and to the definition of qualified medical practitioners for the purpose of enlarging the list of individuals accredited to provide sick notes, among other proposals.

The union completed its submissions by categorically rejecting various employer proposals particularly its overtime concession. Current overtime provisions were normative sectorally and elsewhere across the unionized landscape, and the union provided the evidence establishing this. Other employer proposals, for example Use of Lieu Days/Holiday Payment, Compensating Time Off and FXT Shift Schedules, to give just three of a number of possible examples, were outright concessions without any demonstrated need. In another example, requiring a doctor's note after three days of absence instead of the current five would serve no useful purpose other than to impose a real burden on sick employees – many of whom did not have a family doctor – not to mention the medical care system that was already struggling to meet demand. The proposal was completely contrary to public policy.

Employer Submissions

As stated in its brief, "the employer respects and values the critical services performed by Correctional Bargaining Unit employees," but this award settling the terms and conditions of employment for the members of the bargaining unit, the employer argued, had to be tempered by the appropriate application of the relevant and governing interest arbitration criteria, both statutory and normative.

Replication

This factor – replicating free collective bargaining – was critical. It meant fashioning an award which, to the largest extent possible, approximated the result the parties would have reached if they had freely negotiated a collective agreement. The best way of giving effect to the replication principle, the employer argued, was to look at how these parties had previously approached their

collective bargaining, together with an examination of the results that had been reached, either voluntarily or through interest arbitration. That meant – given a longstanding pattern – looking at collective bargaining outcomes reached with Unified and when they were examined, it was clear, in the employer's submission, that even with certain explainable anomalies, that Corrections, more or less, followed Unified. In current circumstances, this meant 1% in each year of the agreement with a me-too for any additional monies received in any Unified reopener.

The Employer's ability to pay in light of its fiscal situation/ The economic situation in Ontario

Extremely relevant, in the employer's submission, was the government's ability to pay in light of its fiscal situation. Interrelated with this was the economic situation in Ontario. As provincial debt grew relative to GDP – and Ontario was a highly indebted jurisdiction: it had the highest per capita debt in Canada – the ability to manage, service and repay debt was becoming increasingly difficult. Economic uncertainty was the order of the day. Government revenue growth was slowing (after the initial post-pandemic rebound). The 2023 Ontario Budget projected a $2.2 billion deficit, another deficit was forecast in 2023-24, before, hopefully, a return to surpluses in 2024-25. Any budget surplus, including the relatively low ones currently forecast for the future, was needed to pay down public debt, not to fund completely unaffordable and ultimately unjustifiable collective bargaining demands. Unduly increasing public sector compensation would hinder the government's ability to achieve and maintain a balanced budget; indeed, it would inevitably require a reduction in program spending or an increase in taxes, and quite likely both. It was actually a vicious circle: high wage settlements would likely lead to even higher inflation and the high interest rates that inevitably follow, all creating an inflationary loop.

Stated somewhat differently, the employer pointed out that high interest rates inevitably constrained government spending by increasing the cost of borrowing, borrowing that would be required to pay for unaffordable wages, should the union's profligate demands be awarded. The only way out – absent large tax increases – was for compensation increases to be restrained. Under no formulation could the union's overall economic package be described as fair and reasonable.

In current economic circumstances, the government needed to take a responsible approach to its finances. Publicly funded services had to be affordable and sustainable; they needed to reflect what was possible and prudent in the overall economic context where there was little near-term improvement projected in the provincial debt ratio while, at the same time, program expenditures were rapidly increasing. Only a balanced approach to compensation could ensure program spending was not placed at risk in the event of an economic downturn, which was quite possibly on the horizon. It was, accordingly, imperative that any awarded outcome reflect total compensation – and on this score the union's aggregate proposals, when costed, were simply unaffordable, not to mention unjustified when considered alongside the historical comparator – Unified – and just about any freely bargained settlement anywhere.

Comparison as Between the Employees and other Comparable Employees in the Public and Private Sectors of the Terms and Conditions of Employment and the Nature of the Work Performed

The fact of the matter, the employer argued, was that the parties had an established history and practice of never looking to outside comparators for general wage increases and should not depart from that history and practice now. General wage increases reached at Unified were

inevitably mirrored in Corrections. That was, the employer argued, the legally and factually significant baseline that the union's proposals had to be measured against. Since at least 1993, this employer and this union have not looked to outside comparators to determine general wage increases. There has been one comparator and that was and is Unified. Further illustrating how Unified results governed Corrections was illustrated as well by the transfer of approximately 2000 members of the Unified bargaining unit to Corrections in 2018.

There could be no serious debate, in the employer's submissions, that these employees, in Corrections since January 1, 2018, were best compared to employees in the same or similar classifications in the Unified (a result also required to ensure mobility and avoid unjustified pay disparities as provided for in the permeability provisions set out in Appendix 64 of each collective agreement), to avoid whipsawing, and to maintain pay equity. Any special adjustments – assuming some were awarded – a result the employer strongly opposed – should not apply to the 2000 employees who were formerly members of Unified. This group of employees should receive the exact same terms and conditions as apply to employees in the same or similar classifications in Unified. What justification could there possibly be, the employer asked, to grant a 23% special adjustment, for example, to Maintenance and Trades classifications in Corrections over and above what the same classifications received in Unified? The answer to the question, the employer suggested, was obvious: none. Any delta between the two – and all the other applicable special adjustments the union sought, if awarded – would moreover, detrimentally affect the freely negotiated permeability arrangements referred to above.

Likewise, the small group of legacy positions in Corrections should continue – as has long been the case – to follow Unified. In some of the proposed classification adjustments, the employer noted, the union was seeking increases amounting to 50% of current rates – based on comparators in other jurisdictions – in a situation where incumbents were already well compensated and where there was no objective application of any of the criteria justifying this kind of outcome especially in the complete absence of any evidence whatsoever of recruitment or retention challenges.

Federal Correctional Officers Not a Comparator

Before explaining why FCXs were not a proper comparator, the employer categorically rejected any suggestion that any previous interest arbitration award – intended to replicate free collective bargaining – could be in any way binding on any subsequent interest arbitrator. That concept was, the employer argued, without legal foundation and should not be accepted. In any event, any previous determination that the COs were appropriately compared to FCXs was based on inadequate and out-of-date data and was, moreover, plainly wrong.

There were many reasons to reject FCXs as a comparator.

First, the employer argued, COs in this bargaining unit have a long-established pattern of following the general wage increases reached at Unified (and continued to do so even after that 2016 arbitral award that mistakenly suggested FCX2s were a valid comparator for CO2s). Clear, cogent and compelling evidence was necessary – but was absent – to justify a departure from the pattern.

Second, in management's submission, the duties of the CO2 were not the same as the FCX2. FCX2s engaged with inmates in their living units, assessed inmate needs, supervised inmates, prepared and implemented correctional plans and interventions to meet those needs, provided clear behavioural expectations and assessed progress, and performed counselling, to list just some of the hands-on duties and responsibilities. This sharply contrasted with the largely custodial functions of the COs working in Ontario institutions (invariably from enclosed stations/posts with a prison population comprised overwhelmingly of remands). The typical CO2 was primarily responsible for static security: only a relative handful of the more than 3000 CO2s in the system were assigned to what might be broadly described as case management duties, and of those, only fewer had case management functions equivalent or comparable to the FCX2.

Third, there was a wide delta in knowledge and skills, mental demands and training between FCX2s and CO2s. Relative accountability also differed: FCX2s, for instance, made recommendations about eligibility for temporary release. COs in Ontario did not have that responsibility, or anything like it. The only outside comparator that was conceivably relevant, in the employer's submission, were other provincial correctional officers such as in Alberta (and Ontario fared favourably in any Alberta comparison on the compensation front when total compensation was considered).

And fourth, there was also no demonstrated need or justification for a catch-up increase (especially when placed in context, a context that established a widening not narrowing of the wage gap over decades). There was no justification for catch-up, a conclusion that was reinforced when total compensation was considered: the unjustified classification increase

requested for CO2s to bring them to the union's identified federal rate was $50.5M annually. Gradualism principles also applied ruling out any such award.

Federal Parole Officers Not a Comparator

For similar reasons that FCX2s were not a valid comparator for CO2s, Federal Parole Officers were not, the employer argued, an appropriate comparator for POs. Notwithstanding that same earlier arbitration award between these parties relied on by the union for its correctional officer comparator submissions, that award, in management's estimation, wrongly concluded that the POs in Ontario did the same job as their federal counterparts (with salary increases to follow). In a nutshell, there was a wide delta between the duties and responsibilities of a PO and those of a parole officer working in the federal system. There were key differences in responsibilities because the individuals being supervised were not the same: probationers vs. parolees.

Parolees often had long criminal records, were difficult to manage, high-risk and high-need, and included offenders with extensive histories of violence and sexual assault, affiliations with gangs and organized crime. Their supervision was intensive and demanding. In contrast, POs generally supervised probationers convicted of far less serious crimes often without any custodial term ever having been served. Other differences in duties and responsibilities – reflecting the real differences in the client population – were outlined in some detail in the employer's brief.

Corrections Nurses

To be sure, Corrections nurses – there were approximately 400 of them – perform unique and critical work in correctional and youth justice facilities: "Nurses in correctional and youth justice

facilities perform work that has some similarities to the work performed by nurses in hospitals," the employer brief observed. There were recruitment and retention challenges illustrated by a growing reliance on agency nurses to fill staffing gaps. Accordingly, the employer was not opposed to a modest, fair and appropriate special wage adjustment, especially considering the recent wage outcomes received by ONA nurses employed in The Participating Hospitals.

Employer's Ability to Attract and Retain Qualified Employees

There was, the employer argued, no recruitment and retention issue (other than with nurses) because current compensation packages, not to mention other terms and conditions of employment, struck an appropriate balance between competing market forces of supply and demand. Seen through a total compensation lens, COs and other members of this bargaining unit were well extremely well-paid, (even when compared to the comparators that the union advanced, and that the employer rejected).

The fact of the matter was that demand for jobs in Corrections, far outstripped supply. The evidence – set out in the employer brief – established that application volumes always exceeded vacancies. For example, within the Ministry of the Solicitor General, there were two mass centralized recruitment processes completed for CO positions between April 1, 2022, and March 31, 2023. The first competition yielded 1425 applications to fill 158 vacancies; the second, 2163 and 180. Likewise, for the same period, for PO positions there were approximately 50 applications per posting. A similar story could be, and was, told about postings in the Ministry of Community and Social Services. When the Ministry of the Solicitor General and Ministry of Community and Social Services were considered together, there were, again between April 1,

2021 and March 31, 2023, approximately 53 applications per posting (with open competitions attracting even more applicants). No one could credibly assert a recruitment issue, nor were there any retention challenges whatsoever: thousands of potential applicants were looking for Corrections jobs and the attrition rate was completely normative. Simply put, people wanted to work at Corrections and once they obtained a Corrections job, were staying put. For example, more than 50% of current employees have been on force for more than ten years. Between 2018 and 2022, voluntary turnover (excluding retirements) was extremely low.

Employer Proposals

Accordingly, the employer proposed – and these are the most significant items – general wage increases of 1% in each year of the three-year term (with a me-too with any wage increases awarded in the Unified reopener), improvements to psychological services, and introduction of a Health Care Spending Account, albeit contingent on implementation of other cost-savings measures in its comprehensive benefits proposal (a benefit package that was widely and voluntarily accepted in the Ontario public service by OPSEU and other bargaining units).

The employer also sought the award of several efficiency-oriented proposals to address absenteeism; most significantly, amendments to the collective agreement so that employees only became eligible for paid overtime after they performed work in excess of their regularly scheduled hours over two pay periods (with a need to make up for any leaves of absence taken during those two pay periods before any overtime premium would apply). Other efficiency-oriented proposals included changes to Use of Lieu Days/Holiday Payment, Compensating Time Off, FXT Shift Schedules, Employee Portfolios, Employee Transition and Reskilling,

Recruitment and Staffing. The employer also sought to change the requirement to provide a medical certificate after five days of absence due to sickness or injury to three days of absence, a proposal it agued would reduce chronic absenteeism.

Discussion

In its brief, the employer observed that "given the previous rounds of collective bargaining, the legislative parameters in place at the time, and the recent experience of the COVID-19 pandemic…[it]…expected this round of collective bargaining with the … Correctional Bargaining Unit to be challenging." This prognostication proved accurate. After Bill 124 was declared unconstitutional, the landscape dramatically changed for obvious reasons. In this round, the employer seeks fiscal restraint/moderation, and changes to long-standing work rules especially one related to the overtime premium as well as changes to doctor note requirements to counteract excessive absenteeism, together with other efficiencies to reflect a modern and flexible organization. For its part, and also in summary, the union's proposals address its concerns about staffing shortages and retention, and the need to significantly improve wages, benefits, pensions, and terms and conditions for FXT employees, of whom there are many.

Complicating resolution was the fact that the union effectively seeks arbitral recognition that while it may have once been tied to Unified outcomes, that was no longer the case and that the only relevant comparators are to be found in Federal corrections and from policing. The employer disagrees. In its view the Federal comparators are inapposite, policing is not an applicable comparator – the jobs are completely different – and Unified has been and continues to be the start and finish point both for replication and for comparators. This was true before

2018 when there was one bargaining unit, and this has remained true since 2018 when the two were split.

A few general observations are in order.

On the one hand, there is a long-standing pattern of Corrections following Unified. But on the other, there is also more recent acknowledgement, given effect through special adjustments, highlighting important differences between the two bargaining units. To be sure, the union is fully entitled to point to results outside of Unified that it asserts are relevant, for example from law enforcement. The union can also – for reasons that appear to be now widely accepted – direct attention to freely bargained settlements and interest arbitration awards from a wide variety of sectors – something made necessary by the extraordinary and persistent inflation over the first two years, and possibly throughout, this term. If the Unified reopener process was completed, that too would be very instructive. Terms and conditions freely negotiated by this employer and its other bargaining units are also relevant to any replication analysis. But that does not and cannot lead to the conclusion that they must be robotically duplicated. Simply put, the separate Corrections bargaining unit can obviously assert its priorities, which may not necessarily be outcomes achieved in Unified.

Turning first to the competing benefits proposals, the fact of the matter is that there is one employer with one benefit plan with widespread virtually universal applicability across the OPS. That is a practical reality. A balance between the competing interests is required and is,

hopefully achieved by replicating that benefit plan together with curated changes relevant to this bargaining unit based on the criteria including demonstrated need.

Accordingly, there are additional improvements to psychological benefits, improvements that are necessary given the challenges of the work and the workplace. The awarded benefits do not include the Health Spending Account for the small number of FXT employees who participate (as was voluntarily agreed by this union and employer for the Unified bargaining unit) because there are no savings generated to fund it, not to mention the application of replication principles more generally.

The union proposed that LTIP payments be adjusted to reflect wage increases including any catch-up or special adjustment, not just across-the-board increases. That proposal is denied. Awarded is the Experience Credit for Nurses based on that found – subject to some necessary revisions – in the central agreement between The Participating Hospitals and ONA. Correctional institutions are facing a true recruitment and retention crisis with nurses, reflected in many ways including increasing reliance on agency nurses. Crediting for nursing experience will not solve that problem, but it is an important step in efforts to do so.

CO wages are at the crux of this dispute, as is the contentious question of whether FCXs are the most appropriate comparator. Notably, both parties suggest the other relies on outdated and incomplete information in support of its proposals. It would be helpful if an objective professional assessment/comparison of the CO/FCX positions, duties and responsibilities was

undertaken in anticipation of the next collective bargaining round (which will commence shortly as there is, for all intents and purposes, only one year left in the term).

Union comparisons between COs and police officers (uniform) are unpersuasive. The evidence is clear that they are not the same – the jobs could not be more different – a conclusion readily arrived at by extensive experience in these matters. Both correctional officers and police perform important functions in our criminal justice system – and society greatly benefits from both – but they are not comparators. This is not to say, as noted above, that reference cannot be made to police settlements. These settlements covering numerous law enforcement positions can help inform the discussion and consideration of matters in dispute. Comparisons between Federal parole officers and their Ontario counterparts only go so far; there are both similarities and differences.

It is nevertheless evident that the COs, YSOs and POs, who come into regular contact with inmates are working in stressful and potentially volatile and dangerous environments. Many provincial inmates, both remanded and sentenced, present with mental health challenges, substance abuse and other trauma, with often a direct impact on the people who work in these facilities, a situation that is exacerbated by overcrowding and which can and does lead to violence or threatened violence (as noted, inmate populations were decreased during the pandemic but counts have begun to rise). The job of a CO and YSO is both structured and routine, until it is not. The same can be said about the work of PO, although obviously not to the same degree. In both cases, and throughout the system, hard and soft skills, judgment and experience are required to successfully perform these important public service functions.

Corrections nurses provide healthcare and are responsible for assessing, diagnosing and treating a wide range of physical and mental health needs. There is clearly a nurse recruitment and retention issue: the use of agency nurses provides proof of that. For all these reasons, and others, classification adjustments are being awarded for COs, YSOs and POs, and a new grid for nurses (discussed below).

I am not persuaded by any of the other sought after classification adjustments other than the special adjustments just mentioned. I do, however, accept that the Correctional Supervisor Wage Grid requires amendment. Generally accepted pay principles – ensuring appropriate deltas between the pay rates of the supervised and their supervisors, and avoidance of compression – is appropriate and is directed.

Nurse Compensation

As the employer frankly acknowledged, it does face serious recruitment and retention challenges, as is reflected by its increasing use of agency nurses (whose jobs are limited while working in Corrections as they cannot access the computer systems and do not provide mental health care). This is also demonstrated by the employer's inability to recruit Nurse Practitioners (NP). The applicable RN grids between ONA and The Participating Hospitals for the term of the collective agreement is awarded (Salary notes N1, N2 and N3 from the General Notes and Allowances of deleted effective January 1, 2024). There are a small number of NPs working in correctional institutions, and their compensation is also remitted to the parties, to be addressed following implementation of the ONA-Participating Hospitals RN grids.

Other Proposals

The employer's overtime proposal is non-normative and is rejected. Likewise, the employer's proposal enabling it to require sick notes after three days would be burdensome on employees, not to mention its impact on an already strained health care system. To the extent employees are engaging in pattern absenteeism, or the employer has reason to suspect abuse, it should take appropriate action (for example, Article 44.10 or CASMO not to mention other readily available management tools).

The employer's proposal making necessary changes to Pregnancy and Parental Leave to reflect legislative amendments to the *Employment Insurance Act* and the *Employment Standards Act, 2000* is awarded (with minor revision). These changes were freely negotiated/awarded with Unified and were also agreed to by OPPA, AMAPCEO, OCAA, ALOC, and PEGO). Replication of provisions agreed to by bargaining agents with this employer for tens of thousands of employees is persuasive.

Accordingly, and for this same reason, also awarded, are Employee Portfolio, Employee Transition and Reskilling – New Memorandum of Agreement and Recruitment and Staffing, Article 6, 56, New Appendix on Reach-back and Appendix 39 (subject to some minor revisions). Interest awards need to be balanced – reflecting free collective bargaining – and these awarded proposals are all within the range of what would be achieved in free collective bargaining absent the statutory interest arbitration default. Notably, the union did not reject any of them out of hand; indeed, there was considerable agreement, for example, about the necessary changes to Pregnancy and Parental.

Award

Term

As agreed: January 1, 2022, to December 31, 2024.

Wages (All Classifications except nurses)

January 1, 2022:	3%
January 1, 2023:	3.5%
January 1, 2024:	3%

Special Adjustments

Correctional Officers, Youth Workers, Probation Officers/Probation and Parole Officers

January 1, 2022:	1%

Nurses

January 1, 2022:	3%
January 1, 2023:	.875%
April 1, 2023:	New Grid
Start:	$37.93
Step 1:	$38.88
Step 2:	$39.86
Step 3:	$41.65
Step 4:	$43.52
Step 5:	$45.70

Step 6: $47.98

Step 7: $50.38

Step 8: $54.37

No nurse to see reduction in wages as a result of implementation of this grid.

January 1, 2024: 3%

I remit to the parties implementation of this new grid for any of the classifications in the Nurse Series and remain specifically seized to resolve any disputes.

RPN

Add $2 per hour increase to all steps on January 1, 2024 prior to general wage increase.

I remit to the parties implementation of this increase and remain specifically seized to resolve any disputes.

Nurse Practitioner

NP compensation remitted to the parties to be addressed following implementation of the ONA-Participating Hospital Grid. I remain seized to decide this issue should the parties be unable to agree.

Experience Credit for Nurses – LOU

Add:

This letter shall apply to full-time, part-time, and fixed-term nursing positions. Claims for related clinical experience, if any, shall be made in writing by the nurse within 90-days of the date of hire to the Employer. Credit for related experience will be retroactive to the nurse's date of hire. The nurse shall co-operate with the Employer by providing verification of previous experience. Having established the related clinical experience, the Employer will credit a new nurse with 1904 or 1725.50 hours as applicable for each year of experience, up to the maximum of the salary grid. The nurse shall be placed at the corresponding step on the salary grid commensurate with their years of experience. Merit dates/hours shall be adjusted to reflect a partial year's credit.

For clarity, this credit for clinical experience shall only be used for placement on the wage grid and will have no impact on FXT Seniority (Appendix COR19) or Continuous Service Date (Article 18).

If a period of more than two (2) years has elapsed since the nurse has occupied a full-time or a part-time nursing position, then the number of increments to be paid, if any, shall be at the discretion of the Employer. The Employer will give due consideration to an internationally educated nurse's experience where the process for registration with the College of Nurses of Ontario has prevented them from occupying a nursing position for a period of more than two (2) years. For full-time nurses, the Employer shall give effect to part-time nursing experience, and for part-time nurses the Employer shall give effect to full-time nursing experience. NOTE: For greater clarity, related nursing experience includes related nursing experience out of province and out of country.

Within 180 days from date of this award, current employees in nursing positions will have a one (1) time opportunity to submit in writing a claim for related clinical experience to the Employer. The nurse shall co-operate with the Employer by providing verification of previous experience. These claims shall be reviewed by the Employer and employees shall be placed at the corresponding step on the salary grid commensurate with their years of experience. Merit dates/hours shall be adjusted to reflect a partial year's credit. Any retroactive amounts owed shall be limited to the date of the interest arbitration award.

Benefits

Employer proposal awarded January 1, 2024 with amendments:

Psychological benefits improved, effective January 1, 2024: elimination of ½ hour cap for both employees and dependents, increase to $2500 for employees and $1750 for dependents.

Effective January 1, 2024, add Psychotherapist coverage (member of College of Registered Psychotherapists), where such services are equivalent to those provided by a Psychologist to existing Psychological services coverage. For clarity the annual maximum would cover charges for the services of a Psychologist, which would include Master of Social Work or a Psychotherapist.

Paramedical services reimbursement Physiotherapists, Chiropractors, and Massage increased to $35 effective January 1, 2024.

Vision to $400 effective January 1, 2024.

Employer directed to provide updated benefit handbook to all employees within 180 days from issue of award.

Correctional Supervisor Wage Grid

Eliminate first three steps effective January 1, 2024.

FXT

Add:

Effective sixty days following issue of this award, all active fixed term employees shall have a one-time option to elect to pay 100% of the premium toward insured benefit plans set out in Articles 39 (Supplementary Health and Hospital Insurance) and 40 (Dental Plan) for the duration of their contract and any subsequent extensions or reappointment not broken by a 13 week or greater period of non-employment. Employees will be insured under the insured benefits plan effective the first of the month immediately following their election and following at least two (2) months of continuous service.

Military Service Leave

Remitted to the parties to amend to provide that in addition to existing entitlement, the Deputy Minister may approve unpaid leave of absence for purpose of Canadian Forces Reserve training and/or any obligations pertaining to the Canadian Forces Reserve and, if leave granted, to provide for accrual of service and seniority while on that leave.

Pregnancy and Parental Leave

Effective 90 days following issue of award, employer proposal awarded except for proposed LOU (p. 185 Employer Brief) re subsequent changes and requirement to negotiate cost neutral changes.

Employee Portfolio

Employer proposal awarded.

Employee Transition and Reskilling – New Memorandum of Agreement

Employer proposal awarded.

Recruitment and Staffing, Article 6, 56, New Appendix on Reach-back and Appendix 39

Employer proposals awarded except 6.1.3 and 56.1.3.

Remitted to parties to add additional language so union can track for compliance.

Housekeeping

Employer proposals awarded.

Conclusion

At the request of the parties, I remain seized with the implementation of this award.

DATED at Toronto this 4th day of December 2023.

"William Kaplan"

William Kaplan, Sole Arbitrator