IN THE MATTER OF AN ARBITRATION ESTABLISHED PURSUANT TO THE *CROWN EMPLOYEES COLLECTIVE BARGAINING ACT, 1993*

TO DEAL WITH A DISPUTE BETWEEN:

THE CROWN IN RIGHT OF ONTARIO

(as represented by Treasury Board Secretariat)

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION/SYNDICAT DES EMPLOYÉS DE LA FONCTION PUBLIQUE DE L'ONTARIO (OPSEU/SEFPO) CORRECTIONAL BARGAINING UNIT

ARBITRATOR: WILLIAM KAPLAN

NOVEMBER 25 AND 26, 2023

REPLY SUBMISSIONS OF THE EMPLOYER

McCarthy Tétrault LLP
66 Wellington Street West
Suite 5300, TD Bank Tower
Toronto, ON M5K 1E6
Fax (416) 868-0673

Sunil Kapur
Tel. (416) 601-8339

Patrick Pengelly
Tel. (416) 601-8292

Lawyers for His Majesty the King in Right of Ontario

Executive Summary

1. Set out below are the Crown in Right of Ontario's (as represented by Treasury Board Secretariat) (the "Employer") responses to the various proposals contained in the submission filed by the Ontario Public Service Employees Union/Syndicat des employés de la fonction publique de l'Ontario ("OPSEU/SEFPO" or the "Union") on October 2, 2023 in connection with the interest arbitration hearing scheduled for November 25 and 26, 2023. In particular, the Employer has responded to significant issues identified in various paragraphs, which are cited from the Union's submission for ease of reference. For greater certainty, the absence of a specific reference or response to any portion of the Union's submission should not be interpreted as the Employer's agreement to any of the Union's proposals or any facts or commentary asserted by the Union. The Employer generally disagrees with OPSEU/SEFPO's proposals.

Overview

Cost

2. The Union's submission continues to contain a large volume of monetary and non-monetary proposals, and it generally fails to identify any key priorities. OPSEU/SEFPO's approach to collective bargaining, beginning at the outset, continuing through mediation, and now at arbitration, has created a severe impediment to the parties making any meaningful progress over the last two years.

3. The cost impact of the Union's monetary proposals in respect of ATBs, special wage adjustments proposals and the Union's other monetary demands will result in an estimated ongoing annual cost of $261.6M or 31.08% added to base. This is unrealistic and unacceptable.

Correctional Bargaining Unit Relationship to Unified Bargaining Unit

4. OPSEU/SEFPO asserts that it is no longer tied to the Unified Bargaining Unit. This statement is completely inaccurate. Following the legislative changes to the *Crown Employees Collective Bargaining Act, 1993* that created the two standalone bargaining units - the Correctional Bargaining Unit and the Unified Bargaining Unit - the parties formally agreed to a permeability agreement. The terms of this significant agreement are now set out in the collective agreements of both units. This agreement allows for free movement between the bargaining units for purposes of employment stability, posting and filling of vacancies, health reassignment, pay administration, and accommodation. It is critical to note that the Correctional Bargaining Unit and the Unified Bargaining Unit are the only OPS bargaining units that permit this type of movement between bargaining units. This has had the effect of continuing their long-standing close relationship of more than 40 years.

5. The Correctional Bargaining Unit and the Unified Bargaining Unit have completed their first separate collective agreements, yet the collective agreement structures remain very similar, as most of the language in the articles is either identical or very similar in both collective agreements. Since the two bargaining units parted in 2018, across the board wage adjustments have continued to be consistent between the Correctional Bargaining Unit and the Unified Bargaining Unit.

Historical Across The Board Adjustments

6. The Employer recognizes that any arbitrated wage settlement that might be ordered will need to be made on a gradual basis.

7. The Employer has provided compelling reasons that the appropriate wage settlement for this arbitrator to consider is the (still to be established) final Unified Bargaining Unit wage settlement. The two bargaining units have had the same or very similar across the board wage settlements for more than 30 years dating back to 1992.

8. In almost all situations the Correctional Bargaining unit has reached the same or similar across the board wage settlements at the same time as the Unified Bargaining Unit - or in some situations, after the Unified Bargaining Unit has reached a tentative settlement. This close relationship between the two units becomes even more significant in of the context of this arbitration because the Unified Bargaining Unit retains the right to strike, while the Correctional Bargaining Unit now has interest arbitration and no longer has the right to strike.

Special Adjustments

9. It is the Employer's position that none of the comparators identified by OPSEU/SEFPO are appropriate comparators for the purposes of this interest arbitration.

<u>Correctional Officer/Youth Worker</u>

10. OPSEU/SEFPO continues to compare the Ontario Correctional Officer 2s ("Ontario CO2") and Federal CX2s, apparently continuing to rely on the dated *Joint Committee Report on Federal Correctional Officers 2000* to support its assertion that the Federal CX2 positions and the Ontario CO2 positions perform the same duties.

11. It remains the Employer's position that if this arbitrator chooses to select a federal comparator, then the appropriate comparator is the Federal CX1. Unlike Federal CX2s, approximately 96% of Ontario CO2s do not perform any case management whatsoever, and therefore their duties are closer to the CX1s.

12. That being said, the Employer continues to maintain that the most appropriate comparator for the Ontario CO2 is the Alberta Correctional Peace Officer 2 ("Alberta CPO2"), as the duties and responsibilities of the Alberta CPO2 match very closely with the Ontario CO2, and the profiles of the inmate populations that these positions supervise also closely match (being between 70% and 80% remanded prisoners, respectively).

13. In response to OPSEU/SEFPO's asserted comparison between Ontario correctional officers and Ontario police, it continues to be the Employer's position that there are significant fundamental differences between the two jobs and work environments, and the Union's reference in an arbitration decision that is now 45 years old does not establish any reasonable basis to use Ontario police officers as a comparator for correctional officers in OPSEU/SEFPO.

Probation Officer/Probation and Parole Officer

14. The Federal Parole Officer classifications are not valid comparators for Ontario Probation & Parole Officers ("Ontario PPOs"). For example:

    (a) Federal Parole Officers do not supervise probationers. By contrast, the caseload of Ontario PPOs is almost exclusively probationers.

    (b) The individuals that the Federal Parole Officers supervise have all received sentences of 2 years or more, which correlates with an individual being convicted of a more serious crime. By contrast, Ontario PPOs generally supervise individuals who have committed less serious crimes (e.g. probationary supervision or parole supervision).

15. The most appropriate comparator for the Ontario Probation Officer/ Probation and Parole Officer Probation, Officer 2 is the Alberta Correctional Service Worker 2. The duties and responsibilities of these positions match closely, and the profiles of the individuals that these positions supervise is also similar.

Nurse Classifications

16. ONA Hospital Nurses are not appropriate comparators. If this arbitrator chooses to award a special adjustment to the Correctional Nurse classifications, it is the Employer's position that any special adjustment amount combined with any ATB increases to the Nurse classifications should result in a wage rate that is less than that received by ONA Hospital Nurses in order to distinguish the critical point that while some of the work is similar, there are also certain differences in the work.

Other Correctional Bargaining Unit Positions

17. The appropriate comparators for other Correctional Bargaining Unit positions are Unified Bargaining Unit positions, not the comparators that the Union has set out. The majority of these positions were recently transferred from the Unified Bargaining Unit into the Correctional Bargaining Unit on January 1, 2018, so many of the positions continue to exist in both bargaining units. Looking outside the Unified Bargaining Unit for comparators is both unrealistic and impractical.

18. OPSEU/SEFPO has pointed to various federal positions as comparators for different OPSEU/SEFPO represented positions in addition to correctional officers, probation and parole officers and nurses. For example, in addition to an ATB increase of 15.8% over the term of the collective agreement, OPSEU/SEFPO seeks a catch-up amount of 31% for Rehabilitation Officer 2 positions. This is an increase of nearly 50% (46.8% non-compounded). No event or change has occurred with respect to this position since April 1, 2019 that supports any rationale for such a massive increase.

Benefits

19. The Employer is opposed to the Union's benefit proposals except as noted below:

    (a) In response to OPSEU/SEFPO's proposal on FXT benefit opt-in, while the Employer does not agree to OPSEU/SEFPO Correctional Bargaining Unit

proposal, it is amenable to the same changes reached for the Unified Bargaining Unit with respect to FXT benefit opt-in.

(b) In response to OPSEU/SEFPO's proposal on paramedical entitlements, while the Employer does not agree to OPSEU/SEFPO's Correctional Bargaining Unit proposal, it is amenable to changes reached for the Unified Bargaining Unit, with a go-forward implementation date.

Non-Monetary Issues

20. There are still a large number of non-monetary proposals on the table from OPSEU/SEFPO. From the Employer's perspective, it is unable to identify OPSEU/SEFPO's key priorities as OPSEU/SEFPO has not done so. However, the Employer can discern that since the Union has raised the issue of Compensating Time Off for the last three rounds of collective bargaining, including this one, this is a priority for OPSEU/SEFPO. The Employer notes that the Union's CTO proposal regarding 40 hours, which should remain outside the collective agreement, is very much linked to the Employer's FXT shift scheduling proposal - the two proposals go together.

Conclusion

21. The Employer reiterates that the long-standing past bargaining history between the Unified Bargaining Unit and the Correctional Bargaining Unit must be considered a key factor in this interest arbitration. As set out above and as detailed in the Employer's submissions, the comparators selected by the Union are not appropriate. The relevant interest arbitration criteria and the overall bargaining context support the Employer's proposals and positions.

Employer's Reply Submissions to the OPSEU/SEFPO Correctional Bargaining Unit's Interest Arbitration Brief

Issue	OPSEU/SEFPO Paragraph Reference	Employer's Reply
1. Overview **(Paragraphs 1-5)**	1. This interest arbitration will conclude only the second collective agreement of OPSEU/SEFPO's stand-alone Correctional bargaining unit. All workers in the Correctional bargaining unit perform difficult and important frontline work under a ubiquitous threat of violence, the traumatic effects of which have historically been overlooked. Arbitrator Burkett, in 2016, found that these workers are seriously undercompensated for their labour, relative to their comparators, including their correctional colleagues in the Federal sector. Arbitrator Kaplan, in 2019 reached the same conclusion. Since then, the members of the Correctional bargaining unit remain woefully undercompensated compared to their Federal counterparts, and there has been extraordinary inflation, which demands a meaningful response through wage increases. 2. However, this interest arbitration is not only about wages. The parties have engaged in virtually no collective bargaining, in spite of the Union's best efforts, and as of the date of this brief, the Employer has declined to advance a monetary proposal. 4. In addition, OPSEU/SEFPO and the Employer have agreed to a three year term, with the collective agreement commencing January 1, 2022 and concluding on December 31, 2024.	• The Crown in Right of Ontario (as represented by Treasury Board Secretariat) (Employer) disputes the part of the Ontario Public Service Employees Union/Syndicat des employés de la fonction publique de l'Ontario's (OPSEU/SEFPO) statement in paragraph 1 that Correctional Bargaining Unit workers work under a ubiquitous threat of violence, the traumatic effects of which have been historically overlooked. The Employer also disputes the statement that the members are woefully undercompensated compared to their federal counterparts. The Employer is not clear 'who' has overlooked this. • In accordance with changes to the *Workplace Safety and Insurance Act, 1997* made in 2016, if a first responder or other designated worker such as a correctional officer is diagnosed with posttraumatic stress disorder (PTSD) and meets specific employment and diagnostic criteria, the first responder or other designated worker's PTSD is presumed to have arisen out of and in the course of their employment, unless the contrary is shown. • The Employer disagrees with the statement in paragraph 1: "Since then, the members of the Correctional Bargaining Unit remain woefully undercompensated compared to their Federal counterparts, and there has been extraordinary inflation, which demands a meaningful response through wage increases". The Ontario CO2 and the Federal CX2 jobs have significant differences, explained in detail in the Comparator section of the Employer's interest arbitration brief, and the long-standing historical differences in compensation reflect the job function differences. • The Employer disagrees with OPSEU/SEFPO's assertion in paragraph 2 that there has been virtually no collective bargaining. The parties have engaged in bargaining on numerous occasions - in numerous small and large group meetings, as well as three mediation dates. The Employer has also advanced detailed monetary proposals, including on April 27, 2022 and April 4, 2023 in its mediation brief. • In respect of paragraph 4, the parties have both proposed a three year term, however the parties have not agreed to the term as an agreed-to item. Therefore, the term should be reflected in the arbitration award.
2A. The Workers and the Work in the Correctional Bargaining Unit **(Paragraphs 6-55)**	9. Amendments to CECBA have significantly altered the number and composition of bargaining units in the Ontario public sector. Since January 1, 2018, the Correctional bargaining unit stands alone; it is no longer tied to the Unified bargaining unit under the Central collective agreement. In addition, because of these amendments, members of the Correctional bargaining unit lost the right to strike and must instead access a statutory mechanism of binding interest	• **In respect of paragraph 9, the Employer disputes OPSEU/SEFPO's statement that it is no longer tied to the Unified Bargaining Unit.** Following the implementation of the legislative changes to the *Crown Employees Collective Bargaining Act, 1993* (CECBA) that created the two standalone bargaining units, the Correctional Bargaining Unit and the Unified Bargaining Unit, which formalized the separate negotiation of collective agreements, the parties formally agreed to a permeability agreement. The terms of this agreement are now set out in Appendix 64 of both the Correctional Bargaining Unit and Unified Bargaining Unit collective agreements, which allows for movement between the bargaining units for a number of purposes including employment stability, posting

Issue	OPSEU/SEFPO Paragraph Reference	Employer's Reply
	arbitration to conclude a collective agreement, where the parties find themselves at an impasse. 10. As described below, in recent years, these parties have not had significant success through consensual negotiation. There appears to be a pattern emerging whereby these parties resolve their collective agreements through third party arbitration, rather than at the bargaining table. As described below, this lack of bargaining success is despite the best efforts of the Union. 14. The Federal government has jurisdiction over adults serving custodial sentences of two or more years and is responsible for supervising such offenders while they are on conditional release. The provincial correctional services programs are responsible for adults serving custodial sentences that are less than two years, adults being held temporarily in remand (such as those awaiting bail, trial, or sentencing), as well as offenders who are subject to community supervision (such as probation or parole). 15. There are several important consequences flowing from this divided jurisdiction. First, provincial institutions hold a transient and varying population of individuals for shorter periods of time, while Federal institutions hold a relatively stable population of individuals in custody for longer periods of time. As of 2022 the average length of stay in a provincial institution, for remanded inmates, was 48 days, and for sentenced inmates, the average length of stay was 60 days. Further, as a result of the high proportion of inmates in remand, provincial institutions typically have a high proportion of inmates suffering from substance use/dependence and/or untreated mental illness. This state of affairs means there is an increased risk of	and filling of vacancies, health reassignment, pay administration, and accommodation. Even since 2018, across the board wage adjustments have continued to have been consistent between OPSEU/SEFPO Unified and Corrections. • It is also inaccurate in paragraph 9 that the Correctional Bargaining Unit lost the right to strike. The parties mutually agreed to proceed to interest arbitration on outstanding matters in 2015, and pursue legislative amendments to provide the Correctional Bargaining Unit its own standalone collective agreement and access to interest arbitration. OPSEU/SEFPO in fact campaigned to influence for the change to interest arbitration from right to strike. In the Corrections Insider dated July 2020, it specifically states *"The new standalone corrections collective agreement replaced the right to strike with interest (binding) arbitration – something corrections members long sought..."* • In response to paragraph 10, the Employer disagrees with the Union's characterization of lack of bargaining success. OPSEU/SEFPO's massive number of non-monetary and monetary bargaining proposals and inability to prioritize have contributed to a lack of progress. • In response to paragraph 14, it should be noted that although OPSEU/SEFPO has not stated it, another key component for which provincial correctional services programs are responsible for are in respect of adults serving conditional sentences. • In paragraph 15, OPSEU/SEFPO states that the provincial correctional system has a significantly larger population of offenders who are subject to various forms of community supervision and therefore significantly greater workload demands for employees working in community supervision. The Employer wishes to clarify that the core functions and responsibilities of staff in the Provincial and Federal systems differ, and make for an incompatible comparison as it relates to workload. • Further, with respect to paragraph 15, the Employer disagrees with OPSEU/SEFPO's allegations regarding what OPSEU/SEFPO says is chronic overcrowding in Ontario's institutions. In 2020, the Ontario government announced it was making significant investments in correctional services, including the investment of more than $500 million over five years to transform correctional facilities across the province. Some of this funding has also been used to modernize outdated infrastructure and address other challenges. In paragraph 22, OPSEU/SEFPO states that the "Crown's optimal rate of inmate occupancy is 85%." Although this is referenced in the Auditor General 2019 report, the Crown has never stated an optimal inmate occupancy rate. Inmate occupancy rates fluctuate as inmates move in and out of facilities. Regarding the Critical Incident Stress Management (CISM) and Peer Support Program (PSP) activations for Correctional Services noted by OPSEU/SEFPO in paragraph 30, it is important to note that the

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	violence in provincial correctional institutions relative to their Federal counterparts. Finally, the provincial correctional system has a significantly larger population of offenders who are subject to various forms of community supervision (and, therefore, significantly greater workload demands for employees working in community supervision). 22. These challenging and dangerous conditions are exacerbated by chronic overcrowding. The Crown's optimal rate of inmate occupancy is 85%, which gives institutions the flexibility to adjust for sudden influxes of inmates and to separate inmates who are not compatible for security reasons. However, to address overcrowding, the Crown has in many cases "retrofitted" its older institutions to increase notional capacity figures. In practice, this retrofitting has not generally entailed any physical expansion to the institution but, instead, means that inmates are double-, triple-, or quadruple-bunked, or even required to sleep on mattresses in the shower. For example, in the Thunder Bay Jail, up to four inmates are held in a 40-square-foot cell that was designed for two. The third and fourth inmates sleep on the floor, one underneath the bottom of the bunk bed. 30. Correctional staff may request support from stress management teams to help them process the aftermath of critical incidents — significant workplace events that overcome their usual coping abilities. From January 1, 2017 to March 30, 2022, the Crown's Critical Incident Stress Management ("CISM") teams provided support to correctional staff 774 times at SolGen institutions, and from 2018 to 2022 there were 99 CISM activations at Youth Justice institutions. The CISM program was gradually replaced by a Peer Support Program. From summer 2021 to June 2023, there were a total of 1,578 Peer Support Program activations within SolGen institutions and community offices, and 195 Peer Support Program activations at	increased use of the PSP is due to the broadened criteria and increased satisfaction when compared to the previous program. The PSP is a more robust program which includes the opportunity for individual outreach for workplace or non-workplace situations, critical and non-critical issues, as well as activations for specific events within Community Correctional Services (death of a person under Ministry supervision, heinous offence committed by a person under Ministry supervision) which were beyond the scope of CISM. Staff feedback has also reported satisfaction with the PSP. In paragraph 31, while OPSEU/SEFPO describes the role of probation officers, it should be noted that in the Ministry of the Solicitor General (SOLGEN) there are Probation & Parole Officers (PPOs) and in the Ministry of Children, Community and Social Services (MCCSS) there are Probation Officers (POs). OPSEU/SEFPO speaks to both these roles in the Correctional Bargaining Unit as though they are synonymous, however that is not the case. While many of their core functions are similar, there are significant differences in their approach to working with individuals under their supervision, their policies, assessment tools (RNA – Risk Needs Assessments for youth vs LSI-OR – Level of Service Inventory Ontario Revision for adults) processes and workload. • In paragraph 33, OPSEU/SEFPO states that employees in a number of classifications complete rehabilitative work and cites core duties. The Employer would like to clarify that these duties are not consistent across institutions and would fluctuate based on workload demands and other factors. For example, in a smaller facility, employees' rehabilitative work may be more limited. Rehabilitative work may also increase as time out of cell increases within an institution. In youth facilities, clients are already frequently out of their rooms attending school and also attend programming with frequent close interaction with staff. • The Employer's view is that OPSEU/SEFPO's statement in paragraph 34 that many bargaining unit members "supervise inmate workers in areas with easy access to weapons" is misleading and exaggerated. OPSEU/SEFPO may be referring to employees in institutions who oversee inmates carrying out certain jobs, who require certain tools to complete these jobs (e.g., inmates working in the kitchen using kitchen knives). It is important to clarify that the intended use of these objects are as tools needed to perform work, not weapons. It is also important to note that inmates entrusted with such duties would be those who have a long history of good behaviour and a level of trust established, which significantly mitigates any potential risks. Further, there are a number of safety protocols in place to prevent the improper use or theft of these tools, including safety protocols such as the use of body scanners, metal detectors and strip searches. As well, taking inventory of sharps at each shift changeover to prevent tools being removed from the designated area, and clear direction in the standing orders on how to handle and mitigate risks of inmates working in these areas of the institution.

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	Youth Justice institutions. This amounts to a total of 2,646 such incidents from January 2017 to June 2023. 31. Probation Officers ("POs") play an equally important role in the correctional system. They supervise and manage a large caseload of offenders, assessing their individual behaviours, accountabilities, and risk of recidivism. They use policies and their professional judgement to apply legislation, policies, and administrative practices, and prepare written reports and recommendations about the offenders under their supervision. Probation officers are repeatedly exposed to vicarious trauma in the regular performance of their daily duties, including through tasks such as reviewing detailed police reports, victim impact statements, and their ongoing work with victims. In this regard, POs shoulder an enormous responsibility for making our communities safer. 33. Employees in a number of classifications complete rehabilitative work with the inmate population. Core duties include completing a variety of psychosocial assessments considering risk-need-responsivity issues, criminogenic targets, and security risk assessments. Many employees in these positions provide individual and group programming to meet inmate social and recreational needs, cultural and spiritual needs, vocational programming, and programming designed to reduce recidivism. In addition to the risk that they experience in their direct engagement with inmates, employees in these positions are exposed to vicarious trauma through individual interviews, collateral contacts and reviewing police/court documents. 34. Employees who work in ancillary services provide vital services to ensure the operation of correctional institutions. From preparing meals, cleaning and laundry services, sorting mail, repairing infrastructure, they work diligently to ensure facilities operate safely while working directly with and around the inmate population. In	• The Employer disagrees with OPSEU/SEFPO's inference in paragraph 35 that the work of correctional staff has been undervalued when OPSEU/SEFPO states "They are critical members of the public service and should be valued as such". The Employer respects and values the critical services performed by Correctional Bargaining Unit employees who play a key role in the Justice Sector and keeping our communities safe. • With respect to OPSEU/SEFPO's statements in paragraph 39 regarding the provincial infection rates when compared to the federal population rates and the general population, the Employer notes that this statement is not specific to Ontario and the paper which is cited as the source does not provide statistics to compare with the infection rates within Ontario correctional institutions. SOLGEN posted live data with respect to inmate positive cases throughout the pandemic and generally noted the rates were similar to the communities the institution was located in, however further analytical work would need to be done to make concrete claims. • In paragraph 40, OPSEU/SEFPO states many of the measures put in place during the pandemic remain in place and are creating further pressure on frontline employes. The Employer refutes this and notes that additional staff are scheduled each day to ensure these programs can continue to function. Specifically, additional posts have been created to facilitate video court at correctional institutions across the province. • In respect of paragraph 44, whereby OPSEU/SEFPO speaks to a recent study of the Ontario correctional environment (Carleton), the Employer wishes to note that this study was not raised during collective bargaining discussions and the study itself was published in 2017. Therefore, it is difficult for the Employer to respond to the contents of this document. • In response to paragraph 47, the Employer disagrees with OPSEU/SEFPO's statements that "there are high rates of turnover in the correctional environment". The Employer also disagrees with OPSEU/SEFPO's statement in paragraph 48 "…the Employer has consistently failed to attract and retain an adequate complement of staff across correctional job categories. The Employer is frequently required to cancel job postings across various job categories, having not received sufficient applications." While OPSEU/SEFPO claims that attraction issues are widespread, the only example OPSEU/SEFPO provides to support this claim focuses on nurses. The Employer refutes OPSEU/SEFPO's claims that there are broad attraction and retention issues for positions in the Correctional Bargaining Unit. As outlined in the Employer's brief, the Employer has a strong positive record with respect to the attraction and retention of employees within the Correctional Bargaining Unit. The Employer has acknowledged that there have been challenges in recent years with respect to the recruitment of nurses which are not unique to this Employer, however, overall, there are high application volumes for completed competitions within the Correctional Bargaining Unit and retention rates are positive. For example, in the past two fiscal years, there has been a total of

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	addition to these duties, many supervise inmate workers in areas with easy access to weapons and are responsible for the laying of charges where breaches of institutional regulations occur. 35. Correctional staff as a whole perform difficult and important frontline work, all of which is critical to the overall functioning of the provincial correctional system and, therefore, the safety of the public. They are critical members of the public service and should be valued as such. Unfortunately, as described below, this has not been the case in Ontario for a long time. 39. Perhaps inevitably, COVID-19 outbreaks were frequent in correctional institutions. Canadian studies conducted at the onset of the COVID-19 pandemic (February to December 2020) reported infection rates among federally incarcerated populations that were up to three times higher than in the general population, and provincial infection rates even exceeded the federal population numbers. Temporary closures occurred throughout the Ontario correctional system, including at the Ontario Correctional Institute, Stratford Jail, Sudbury Jail and Brockville Jail, with the diversion of new admissions required at the larger institutions. 40. Of course, many of the measures put in place to facilitate requirements and services during the pandemic, such as video/audio court appearances, remain in place. Those measures, barely sustainable with a reduced inmate population, are now stretching staffing resources and infrastructure to the limit, creating permanent processes that put further pressure on frontline employees. 44. A recent study of the Ontario correctional environment confirmed an even greater prevalence of mental health disorders in that context relative to federal correctional workers in Canada. The authors opined that the differences may be due to variations such as working in	1,346 successful graduates of the Correctional Officer Training and Assessment Program. Over the same period, there has been an average of 55 applications received for completed competitions for positions within the Correctional Bargaining Unit. The Employer's records also show that the voluntary turnover rate for regular employees in the Correctional Bargaining Unit, not including retirements, has been extremely low ranging between 2.1% to 3% between 2018 to 2022. • In paragraph 49, OPSEU/SEFPO sets out that the Employer has refused to produce data relating to the total number of funded FTE positions and the number of vacant positions in each classification. The Employer does not provide this information as it pertains to management rights. • In paragraph 50, OPSEU/SEFPO references an Auditor General report from 2019, stating that two nurses served a population in which 1,870 inmates with mental health alerts were admitted in 2018/19. The Employer would caution that these numbers are not current. While the maximum capacity for Toronto South Detention Centre (TSDC) is 1,870 (excluding Toronto Intermittent Centre numbers), that number is based on all living units within the three towers being opened and staffed. TSDC's operational capacity today is 1548 capacity, while their actual count is 1374 (as of October 23, 2023). In fact, there are no institutions with 1800 inmates. • In respect of paragraph 53, OPSEU/SEFPO sets out that chronic understaffing is exacerbating challenges with correctional work and eroding quality of inmate care. In 2020, the Ontario government announced it was making significant investments in correctional services, including the investment of more than $500 million over five years to transform correctional facilities across the province. The major investment supports the hiring of more than 500 new staff over 5 years to help address challenges within the correctional system. It is also the Employer's position that the great majority of lockdowns were as a result of high sick leave usage. • In paragraph 54, OPSEU/SEFPO asserts that staffing shortages impact positions in community services, specifically that recruitment and retention issues plague administrative positions in community services. The Employer refutes this, noting that recruitment and retention of qualified and skilled staff is a SOLGEN Ministry priority and ongoing efforts are made to ensure staffing shortages do not occur. The Employer again points to its brief in respect of attraction and retention.

Issue	OPSEU/SEFPO Paragraph Reference	Employer's Reply
	remand facilities, overcrowding, or causal or fixed-term employment status. 47. There are high rates of turnover in the correctional environment. In 2018-2019, approximately 25% of COs across the province had less than two years of work experience. During the same period, approximately 50% of Sergeants – employees within the Correctional bargaining unit who supervise COs – had been in their role for less than two years. 48. Fundamentally, the Employer has consistently failed to attract and retain an adequate complement of staff across correctional job categories. The Employer is frequently required to cancel job postings across various job categories, having not received sufficient applications. Specific examples are discussed in greater detail below. 49. At both the MERC and bargaining tables, the Union requested that the Employer produce data identifying the total number of funded FTE positions and the number of vacant positions in each classification. The Employer refused to produce this data. Nevertheless, various other sources illustrate the scope and severity of this bargaining unit's staffing problems. 50. For example, a recent Auditor General Report highlighted a problematic shortage of mental health staff in Ontario's institutions. The Auditor General's analysis indicated that more than half of Ontario's institutions did not have access to a psychologist. The Auditor General also identified inadequate and inconsistent staffing of mental health nurses; in one institution, two nurses served a population in which 1,870 inmates with mental health alerts were admitted in 2018/19. In almost one-third of files reviewed by the Auditor General, the requisite mental health screening of inmates was not completed or documented.	

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	53. Chronic understaffing exacerbates the challenges associated with correctional work, but also erodes the quality of inmate care provided in Ontario's facilities. Staff shortages increasingly require inmates to be restricted to their cells, deprived of any social interaction, for long periods of time. A 2023 expert report published by Ontario's Office of the Chief Coroner found that, in 2021, close to 93% of lockdowns were due to staff shortages, while only 0.6% were due to "inmate behaviour". The Expert Panel concluded that the frequency of lockdowns and general staffing deficiencies present ongoing barriers to effective care, humane conditions, meaningful programs and the connections to family that are all essential to well-being for those in custody. The Expert Panel described a pattern of understaffing which "represents a clear and present danger to everyone, and it is likely among the primary contributing factors to an alarming rise in inmate deaths in Ontario's correctional facilities". 54. Staffing shortages also impact positions in community services. A review of reports available through the Workload Assessment Tool Monthly Reports from January to August 2023 show an average of 71.5 Probation and Parole Officer positions vacant across the province within the Ministry of the Solicitor General. This represents a vacancy rate of 8.5%. This work cannot be left unattended and must be absorbed by other employees. These staffing shortages disproportionally impact small officers where only a handful of staff are available to absorb an entire caseload. Recruitment and retention issues plague administrative positions in community services, leaving one employee covering duties at multiple office locations spread throughout lae geographic regions.	
2B. Parties' Prior	59. In his award, dated May 26, 2016, Arbitrator Burkett accepted the Union's submission that a catch-up wage increase was warranted:	• Regarding paragraph 59, Arbitrator Burkett also noted in his May 26, 2016 award: *"However, reliance upon the 1978 Shapiro Report recommending that correctional officer salaries be brought to within $1,000 of OPP salaries ($3,500 adjusted for inflation) is of no assistance in determining the tie-point in circumstances where, in the 38*

Issue	OPSEU/SEFPO Paragraph Reference	Employer's Reply
Bargaining History **(Paragraphs 56-64)**	**Given the deterioration of Ontario correctional salaries relative to Ontario police salaries, given the deterioration of the differential between Ontario Correctional salaries and Ontario Police salaries relative to this differential in other jurisdictions, and given the deterioration of Ontario correctional salaries relative to federal correctional salaries, a catch-up increase is warranted.** 61. In this context, Arbitrator Burkett ordered a catch-up wage increase of 3% for correctional staff and 2% for probation staff, effective in the first year of the collective agreement, as of January 1, 2017. In a subsequent award, Arbitrator Burkett clarified that all employees within the Correctional Bargaining Unit working within a correctional facility were entitled to the 3% increase... 64. The parties were unable to resolve all the issues between them, and the matters in dispute proceeded to interest arbitration before Arbitrator William Kaplan. In his award, dated April 1, 2019, Arbitrator Kaplan accepted that significant, additional catch-up was warranted. Arbitrator Kaplan ordered that there should be across the board increases totaling 7.5% over the life of the agreement, with additional staggered increases totaling 7% for Correctional Officers/Youth Workers and 3% for Probation Officers/Nurses. The resulting collective agreement covered a term from January 1, 2018 to December 31, 2021.	*years since, the parties have ignored the 1978 specific tie-point recommendation in their salary negotiations".* Further, much of Arbitrator Burkett's analysis focused on the differentials between Ontario and other provinces in respect of Correctional salaries. The last interest arbitration decision of Arbitrator Kaplan in 2019 also did not cite police as comparators. • In respect of paragraph 61, it should be noted that the time of Arbitrator Burkett's award and supplemental award in 2016, the Correctional Bargaining Unit did not include the Unified Bargaining Unit wall-to-wall employees who transferred into the Correctional Bargaining Unit effective January 1, 2018 (e.g., nurses, records clerks, maintenance mechanic, cooks). • In respect of paragraph 64, OPSEU/SEFPO sets out that the Arbitrator Kaplan during the last round of bargaining ordered that there should be across the board increases totalling 7.5% over the life of the agreement, with additional staggered increases totaling 7% for Correctional Officers/Youth Workers and 3% for Probation Officers/Nurses. The Employer wishes to clarify that the 7% and 3% special wage adjustments that Arbitrator Kaplan saw fit to award only to Correctional Officers, Youth Workers, Probation & Probation and Parole Officers and Nurse classifications. At the time of the award in 2019, the Correctional Bargaining Unit included the Unified Bargaining Unit wall-to-wall employees who transferred effective January 1, 2018.
3. Current Round of Bargaining (Paragraphs 65-99)	65. The parties commenced the current round of negotiations in November 2021, prior to the expiry of the last collective agreement. Unfortunately, in the context of an unconstitutional labour relations framework, the parties failed to make any meaningful progress towards concluding a renewal collective agreement. 66. Bill 124, the *Protecting a Sustainable Public Sector for Future Generations Act*, contained draconian restrictions on collective	• In general, for this section, OPSEU/SEFPO has made several assertions pertaining to this current round of collective bargaining that the Employer views as incorrect and at times misleading. • Regarding paragraph 65, 66, 67, 70, 76 it should be noted that the *Protecting a Sustainable Public Sector for Future Generations Act* only contained monetary restrictions and had no bearing on non-monetary items. Despite this, the parties had limited success on both non-monetary and monetary bargaining. The Employer again submits that OPSEU/SEFPO's massive number of non-monetary and monetary bargaining proposals and inability to prioritize contributed to a lack of progress in concluding a renewal collective agreement. The Employer made a

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	bargaining in the public sector. It capped compensation increases for unionized employees – including members of the Correctional bargaining unit – at a meagre 1% annually for a three-year moderation period. It also prohibited any anti-avoidance measures as a result of the moderation period. As discussed below, Bill 124 has since been found to violate the *Charter*'s guarantee of free association and, therefore, has been declared void and of no effect. 67. Given the then-applicable constraints of Bill 124, the Union sought to use the current round of negotiations as an opportunity to address and "clean up" various language issues, including many items which it expected to be uncontroversial or otherwise in the nature of housekeeping. Consequently, while the Union advanced a lengthy list of non-monetary proposals, it anticipated that many items could be resolved between the parties, well in advance of and without the need for third-party mediation or interest arbitration. Unfortunately, the Employer did not respond to most of the non-monetary items the Union tabled. Where the Employer did respond, it generally rejected the Union's proposals outright, with little rationale and without countering. As a result, virtually nothing of substance was resolved between the parties directly. 68. The Employer initially identified the provincial election as a significant barrier to its ability to obtain direction to respond. Beginning in approximately May 2022, the Employer suspended the discussions entirely; the parties did not resume bargaining until approximately September 2022. 70. The Employer's refusal to grapple with or respond to the Union's proposals continued through to the parties' first mediation, scheduled for two days in September 2022. The parties exchanged briefs in advance, and the Union felt optimistic upon seeing the Employer's	number of counter proposals and met with the Union in small group sessions to discuss and provide rationale on numerous occasions during collective bargaining, and made a number of attempts to ask OPSEU/SEFPO to identify key priorities to assist the parties in reaching an agreement. The Employer is unclear what "concessions" are being referred to when OPSEU/SEFPO states the Employer sought concessions on an agreed item. • In respect of paragraph 68, the Employer disagrees with the Union's characterization of the election as a "significant barrier." Generally, no matter which government is in power, during the "writ" period prior to an election, there is little direction from the government in place while the election period is going on. In this regard, changes to the daily operation of the provincial government are by virtue of a well-established constitutional principle known as the "caretaker convention" which dictates that governments should act with restraint from the day the election is called until new government is sworn in, or when the election result returning the incumbent government is clear. During the caretaker period, public service operates in a caretaker role, carrying on only routine or very urgent business and avoids binding future government to the extent possible. Matters that would require Cabinet or Treasury Board approval are not acted on, unless absolutely necessary. • In respect of paragraph 78, 80, 81, 83, 84, 88 the Employer disagrees with the Union's characterization of bargaining. In September 2022, the parties had reached impasse and engaged in conciliation without success. The parties then engaged in mediation in early September and were unable to make progress. When the decision of the Ontario Superior Court of Justice was released in November 2022, the only factor that changed was the 1% restrictions on salary and total compensation were no longer in place. The Employer and Union were already at impasse on non-monetary and monetary issues, so the Employer's view is that it was moot to open up the entire scope of collective bargaining, including non-monetary bargaining, when it was not impacted by the legislation in the first place. • Regarding Paragraph 89 and 90, it is not uncommon during collective bargaining, including at mediation, for either the Employer or the Union to set out in its monetary proposals that salary is to be discussed. • Regarding paragraph 97 and 98, the parties mutually agreed to cancel July 25th, and that is why November 25th and 26th have been scheduled for interest arbitration. • Regarding paragraph 99, the Employer disagrees with the Union's characterization of bargaining, and has previously tabled a wage proposal. It is inaccurate for the Union to say, "To date, the Union has no wage proposal from the Employer".

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	brief indicated a willingness to discuss several outstanding items. However, at the mediation, the Employer suddenly reversed its position. It essentially refused to negotiate or otherwise engage with any of the Union's proposals. The Employer repeated its position that the Union should be required to identify its final priority items and position, and withdraw all other proposals, before the Employer should even be required to engage with the package at all. The Employer even attempted to extract concessions from the Union in exchange for signing off on a short list of housekeeping items that had been previously agreed. 76. The Union submits that the bargaining of these parties under Bill 124 is a perfect example of the *Charter* violation Justice Koehnen described above. The Employer, emboldened by a guaranteed maximum 1% compensation increase, refused to engage with the Union's non-monetary proposals whatsoever. As described below, the Employer has since purported to rely upon that unconstitutional bargaining history to justify its continued rejection of meaningful negotiations. 78. The Employer's bargaining approach has been frustrating for the Union. However, following the release of Justice Koehnen's decision, and the removal of unconstitutional barriers to free collective bargaining, the Union was hopeful that the parties could start fresh and negotiate on terms consistent with the balance that the *Charter*'s guarantee of free association seeks to strike. Unfortunately, as described below, the Employer's intransigent approach to collective bargaining did not change. 80. The Employer rejected the Union's proposed approach. On March 1, 2023, it responded, declining to meet with the Union directly, and indicating its preference to continue with third-party mediation with the	

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	assistance of Arbitrator Kaplan. It then asserted that, given the lack of progress under a bargaining framework which violated the Union's members' *Charter* rights, any further mediation "must be restricted to monetary issues," stating: > Given the lack of progress made at the parties' previous mediation session, and the significant amount of time in bargaining already spent discussing nonmonetary issues, we are of the view that the parties are at impasse on outstanding nonmonetary issues and there is limited value, if any, in using these dates to further discuss these issues. 81. The Union responded on March 8, 2023, setting out its concerns with the Employer's proposed approach. It expressed concern as to whether formal mediation could be constructive without the parties having even exchanged proposals or otherwise presented or discussed those proposals. The Union also reminded the Employer of its refusal to bargain at the last mediation, confirming that it was "not interested in another futile mediation in the absence of meaningful bargaining." However, in a sincere attempt to move the discussions forward, the Union proposed a compromise approach, whereby the parties (i) would meet directly on April 12 and/or 13 to present and discuss their proposals and commence negotiations; and (ii) would ask Arbitrator Kaplan and their respective lawyers to remain available and on standby to assist on April 14, depending on how the parties' negotiations were going. 83. In response to the Union's proposal, on March 14, 2023, the Employer reiterated that it would not meet with the Union to bargain in any context other than a formal mediation with lawyers. The Employer again purported to justify its position with reference to the fact that, under the unconstitutional restrictions of Bill 124, the parties were unable to make meaningful process towards a collective agreement. It also repeated its previous position that the Union must identify its	

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	final priorities, and withdraw all other items, before the Employer would engage with any of the Union's proposals at all. Finally, the Employer ignored the Union's requests for information regarding its pension proposal, noting merely that it "does not support" the Union's position. 84. The Employer's letter of March 14, 2023 was disappointing. It left the Union with the understanding that, consistent with its approach to date, the Employer had no intention to engage seriously with the Union's proposals – or even engage in meaningful collective bargaining at all. 88. The Union was surprised when, by close of business on April 4, 2023, the Employer had not provided a new bargaining proposal. Instead, the Employer delivered to Arbitrator Kaplan, through counsel, a formal mediation brief; the Employer flipped a copy of its mediation brief to the Union later that evening, as an "FYI". 89. The Union was even more surprised when it reviewed the Employer's mediation brief and found that <u>it had failed to articulate any proposal on wages.</u> The parties had expressly discussed the exchange of comprehensive proposals following the striking of Bill 124. Indeed, the Employer had initially insisted that the mediation should be restricted to monetary issues only. Remarkably, however, the Employer's brief indicated merely that salary was "[t]o be discussed". 90. The Union was extremely disappointed by this development. It was left with the distinct impression that the Employer's failure to advance any position on wages was indicative of an overall lack of respect for the Union and for the negotiation and mediation process.	

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	97. At the mediation, instead of bargaining, the Employer, without any prior notice to the Union, announced that it would not be ready to proceed on the July 25 arbitration date and required an adjournment. This was extremely disappointing and frustrating for the Union, who had been diligently preparing for this long-scheduled date, and whose members are growing increasingly frustrated with the parties' failure to conclude a collective agreement. 98. Nevertheless, as a result of the Employer's lack of preparedness, and over the Union's significant reluctance, this arbitration was rescheduled for the weekend of November 25 and 26, 2023. 99. This arbitration is occurring between parties who have engaged in virtually no collective bargaining, and after the Employer has repeatedly and consistently refused to exchange information and rationales for its positions, while demanding the Union simply withdraw its proposals. To date, the Union has no wage proposal from the Employer.	
Applicable Comparators **(Paragraphs 108-121)**	***C. Applicable Comparators*** 108. The identification of appropriate comparators is key to the replication analysis. 109. As Arbitrator Shime indicated in *McMaster University v McMaster University Faculty Assn*, there is a great deal to be said for the principle that (subject to a slight variation due to local conditions) an assistant professor teaching biology at one university in Ontario should not receive less than an assistant professor teaching the same course at another Ontario university. In other words, it is necessary to find where similar work is performed in similar market conditions. 110. Interest arbitrators will generally consider comparators that the parties have themselves used in their negotiations, as well as	• **The Employer's position is that the comparators identified by OPSEU/SEFPO, that being federal correctional officers and Ontario police officers, are not appropriate.** During OPSEU/SEFPO's long period of free collective bargaining from 1994 to 2017 the differences in salary rates between the federal government positions identified by OPSEU/SEFPO as comparators and the OPSEU/SEFPO identified counterpart positions grew. The lower Ontario provincial wage rates continued despite the OPSEU/SEFPO bargaining unit's unfettered right to strike during this period. Since the differentials were established and continued over a period of 24 years it is imperative that an arbitrator not bridge the gap between the salary rates if indeed the arbitrator accepts that there is some level of comparison between the federal jobs and the OPSEU/SEFPO positions. Rather, the differential should be maintained. It is not up to an arbitrator to help OPSEU/SEFPO attain wage rates through interest arbitration which they had the opportunity to attain through free collective bargaining in previous years. • As set out in great detail in the Employer's October 2, 2023 arbitration brief, comparison of the federal jurisdiction across the Correctional Bargaining Unit is not appropriate for four reasons: (1) the Parties' bargaining history shows

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	comparators that have been accepted in previous interest arbitrations between the same parties. Absent a demonstrated and material change in circumstances, interest arbitrators will virtually always accept comparators which have been previously established and accepted between the same parties. This approach promotes certainty at the negotiation table and, ultimately, supports good labour relations. 111. However, as always, context is important. Comparator settlements and awards will not be automatically applied to replicate the free collective bargaining of subsequent parties where the factual circumstances – including prevailing economic, legal, or other labour conditions – are different. 112. In the present case, the Correctional bargaining unit has two well established comparators: Federal corrections and Ontario policing. These two groups have been repeatedly referenced by these parties in previous rounds of bargaining and have also been applied by the arbitrators in previous interest arbitration awards. Other case-specific comparators are discussed elsewhere in this brief. 1. The Federal Correctional System 113. Federal correctional workers continue to be a key wage and collective agreement comparator for members of the Correctional bargaining unit. 114. First, there is a well-established historical compensation relationship between correctional workers in the Federal and Ontario systems. This was confirmed in Arbitrator Burkett's award in the 2015 round of collective bargaining, where he determined that the two groups were essentially at salary parity before 2001. Arbitrator Burkett concluded that the salary differential which has developed since then with respect to the Federal group gave rise to a "specific catch-up objective" for Ontario correctional employees. Arbitrator	a clearly established pattern of consistent across-the-board increases between the Unified Bargaining Unit and the Correctional Bargaining Unit, not the Federal jurisdiction; (2) the Federal CX-2s' duties and responsibilities are not comparable to the duties of an overwhelming majority of Ontario CO2s; (3) total compensation does not support a "catchup" increase award for Ontario CO2s; and (4) generally, a "catch-up" increase is not justifiable. • With respect to comparison between Ontario correctional officers and Ontario police as set out in this section, there are huge fundamental differences between the two jobs and simply referring to a reference in an arbitration decision that is now 45 years old does not establish any cause to use Ontario police officers as a comparator for correctional officers in OPSEU/SEFPO. • Ontario police officer duties are set out in the statute *Police Services Act*: Police Officers Duties of police officer 42 (1) The duties of a police officer include, (a) preserving the peace; (b) preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention; (c) assisting victims of crime; (d) apprehending criminals and other offenders and others who may lawfully be taken into custody; (e) laying charges and participating in prosecutions; (f) executing warrants that are to be executed by police officers and performing related duties; (g) performing the lawful duties that the chief of police assigns; (h) in the case of a municipal police force and in the case of an agreement under section 10 (agreement for provision of police services by O.P.P.), enforcing municipal by-laws; (i) completing the prescribed training. Power to act throughout Ontario

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	Burkett awarded special catch-up wage increases on the basis of the Federal correctional wages, and additional increases were awarded by Arbitrator Kaplan in the subsequent 2018 round. Nothing has changed in the intervening period which would justify deviating from this settled compensation relationship. 115. Second, Federal correctional employees in Ontario perform essentially the same function as Ontario correctional employees. This is clearly the case for provincial COs and their Federal counterparts, CX officers, both of whom are directly responsible for the care, custody, and control of inmates under conditions of confinement. Indeed, in April 2000 – at a time where the two groups were essentially at wage parity – a comparative Willis Job Evaluation was completed, and both groups were rated at an identical 279 points. This was an important factor for Arbitrator Burkett in determining the comparability of Ontario and Federal correctional wages. However, even beyond the two correctional officer roles, it is beyond dispute that these two systems are broadly consistent, with many of the same duties and functions being performed under the same conditions. 116. Third, and related to the above, Ontario and Federal correctional employees face many of the same challenges in their unique workplaces. For example, studies suggest that Federal correctional officers face substantial challenges in their work environments that contribute to PTSD and other stress-induced mental health challenges. Indeed, as described above, because provincial inmates are mainly held on remand and for short sentences, there is a higher risk of violence and less opportunity for meaningful rehabilitation in the Ontario system. 2. Ontario Policing Employees 117. The difficult work performed by correctional and policing staff, along with other first responders, forms a critical part of maintaining	(2) A police officer has authority to act as such throughout Ontario. Powers and duties of common law constable (3) A police officer has the powers and duties ascribed to a constable at common law. • With the exception of Section 42(1)(a) and (b) duties applying in a limited sense to correctional officers, none of the other duties apply to correctional officers. In summary, there are stark differences between policing and corrections as policing operates in an uncontrolled work environment, requires the carriage usage of a firearm, performing investigatory duties, and requires the knowledge and application of law including not limited to laying criminal charges. The case for comparison is non-existent. In fact, in his November 27, 1985 Correctional Services Category interest arbitration award, arbitrator Martin Teplitsky states the following, some 7 years after the 1978 Shapiro Report (which the union relies on to link Ontario correctional officers with Ontario police officers as comparators): *"Having studied the briefs and having heard the evidence of witnesses, I am satisfied that correctional officers are not comparable to O.P.P Officers in terms of the principal duties performed by each group. Although both groups work in the administration of justice in the province, the principal functions of the O.P.P. constable are to prevent crime and to apprehend criminals. On the other hand, the principal functions of correctional officers are to prevent prisoners from escaping, to direct their activities within confinement and to aid in their reformation. The skills required for each set of duties are quite different. These are not comparable so as to invoke the "equal pay for equal work principal".* • In regard to paragraph 115 and 116, the Employer would like to clarify that there are differences in the roles between Federal and Provincial (Ontario) Corrections specifically due to the nature of the clients (sentenced vs. hybrid of sentenced and remand). The federal system has greater focus on relationship management and case management which is not as advanced at the provincial level. • Further, regarding paragraphs 117 to 121, there are stark differences between policing and corrections as policing operates in an uncontrolled work environment, requires the carriage usage of a firearm, performing investigatory duties, and requires the knowledge and application of law including not limited to laying criminal charges.

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	public safety in Ontario. In particular, both correctional and policing employees are responsible for the care, custody, and control of offenders within the context of a complex landscape of criminal law, constitutional rights, and public safety concerns. The rates of other policing personnel in Ontario form a valid point of comparison for the Correctional bargaining unit. 118. The 1978 Report of the Royal Commission on the Toronto Jail and Custodial Services (the "Shapiro Report") was a public inquiry by Justice B. Barry Shapiro into the treatment of prisoners and the training of correctional officers in the province of Ontario, particularly at the Toronto Jail. Part of the inquiry included a review of the recruitment and service demands on the staff within the institution. The Shapiro Report concluded that, in order to recruit and retain quality candidates, and to provide correctional staff with the professional recognition that they deserve, the increasing disparity between Ontario correctional officers and OPP Constables should be reduced: > I am of the opinion that the duties of a correctional officer at the Toronto Jail are more akin to those of a police officer than to those of an office worker. The correctional officer operates within the justice umbrella. His work is important both for security and for the rehabilitation of inmates and, therefore, for the prevention of crime. Also, his work involves physical risk. 119. In the 2015 round of bargaining between these parties, Arbitrator Burkett considered the Shapiro Report but noted that, since its release in 1978, the parties had repeatedly bargained wage settlements without reference to the salaries of OPP Constables. Accordingly, he was unable to conclude that there was a "specific tie-point" to the OPP. Nevertheless, Arbitrator Burkett noted that given the "general nature of the work", the wage rates of Ontario police employees constituted a "valid point of comparison". In particular,	

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	Arbitrator Burkett found it useful to consider the OPP as a relative comparator. 120. The parties had extensive reference to policing comparators before Arbitrator Kaplan in 2019. 121. Again, nothing has changed in the intervening period which would justify deviating from Arbitrator Burkett's conclusion. OPP and other Ontario police collective agreement terms, including salaries, continue to be relevant as relative comparators for the Ontario correctional system.	
Economic Considerations (Paragraphs 122-149)	124. Until recently, for the preceding decade, inflation has hovered between approximately 1-2% and generally below the Bank of Canada target of 2%. For example, the Consumer Price Index ("CPI") rose 0.7% in 2020. That pattern changed in 2021, when CPI increased on an average annual basis of 3.4%, followed by a historic 6.8% increase in 2022. The 6.8% CPI inflation rate marked a 40-year high, the largest annual average increase since 1982. 125. While some projected inflation to abate to some extent in 2023,114 significant relief remains to be seen. Statistics Canada reports a 4.3% year-over-year increase in March 2023, followed by an uptick to 4.4% in April 2023. The inflation rate finally slowed to 3.4% year over year in May 2023, largely driven by lower year over year prices on gasoline (excluding gasoline, the CPI rose 4.4% in May 2023 following a 4.9% increase in April 2023). Since May 2023, inflation has remained well above the Bank of Canada's target; Statistics Canada reports CPI increases of 2.8% in June and 3.3% in July.[117] In August 2023, gasoline prices began to rise again, and the CPI inflation rate jumped up to 4%. 128. More recently, accelerating mortgage interest costs have emerged as the most significant contributor to inflation. These	• In paragraph 124, OPSEU/SEFPO provides information on Consumer Price Index (CPI) and asserts a pattern of increasing CPI. The Employer would like to clarify that in the context of COVID-19 there were rapid decreases in interest rates and record low demands for services which impacted the CPI. Particularly, the 6.8% Ontario CPI increase in 2022 was anomalous. • In paragraph 125, OPSEU/SEFPO indicates that inflation will continue to be high and relief has not yet been seen. The Employer notes that there are significant risks to the inflation outlook related to the weakening economic outlook. In Q1 Canadian annualized real gross domestic product (GDP) growth was revised down from 3.1% to 2.6% and decline of 0.2% was posted in Q2. These numbers indicate that the economy is weakening. Inflation is projected to moderate. In September 2023, Canadian CPI inflation moderated to 3.8% year-over-year from 4.0% in August. • In paragraph 128, OPSEU/SEFPO suggests that further interest rates increases are likely. The Employer refutes that, despite interest rates being unpredictable, more interest rate increases are not expected based on a survey of the Big 5 chartered banks. Four of five of the Big 5 chartered banks had recently predicted that interest rates will be unchanged while only one was predicting rates will increase. In fact, on October 25, 2023, the Bank of Canada announced that is not increasing the interest rate. • In paragraph 133, as of September 2023 Ontario's unemployment rate was 6.0% up more than a percentage point from 4.9% in April 2023. • In paragraph 140, OPSEU/SEFPO suggests that the economy has performed "better than expected" so far this year. The Employer suggests that the Canadian economy is showing indications that it has slowed. Canadian real GDP declined by 0.2% (annualized) in 2023Q2. GDP has largely been driven by strong immigration/population increase,

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	increases are caused by monetary steps taken to curb inflation; the Bank of Canada has repeatedly raised its target interest rate since the pandemic, most recently to 5% in July 2023. The August 2023 CPI inflation rate increase means that further interest rate hikes are more likely. 140. Despite more conservative projections, the existing 2023 data paints a similarly rosy picture. The Canadian economy grew at an annualized rate of 3.1% in the first quarter of 2023. That growth – the strongest among all G7 countries for the quarter – beat out the federal agency's own forecast of 2.5%. Ontario's real GDP increased by 1% in the first calendar quarter of 2023, reflecting better-than-expected economic performance so far this year. 142. Strong GDP growth and resulting tax revenue have meant windfall gains for the Ontario government. The Province experienced a historically strong revenue increase of 12.2% (+$20.2 billion) in FY 2021-2022,[162] and in FY 2022-2023 surpassed $200 billion in revenue for the first time ever.163 Ontario's FY 2022-2023 revenues were $20.6 billion higher than forecast in the 2022 Budget. Revenues in FY 2023–2024 are projected to be $204.4 billion. 143. As a result of these gains, the government is now projecting a deficit of $2.2 billion in FY 2022-2023, down dramatically from the 2022 Budget's expected near $20 billion deficit. The province's FY 2023–2024 deficit is projected to be $1.3 billion. Three years ahead of schedule, the Province's 2023 budget also includes plans to eliminate the deficit altogether by FY 2024-2025. 144. Given Ontario's strong economic position, the Union does not expect the Employer to rely upon any true inability to pay. However, given the virtual certainty that the Employer will protest the cost of the	while productivity is flat or decreasing. Ontario's real GDP growth slowed to 0.2% (quarter-over-quarter) in the second quarter of 2023. This followed a downwardly revised 0.8% rate of real GDP growth in the first quarter of 2023. • In response to paragraph 142, the Fall Economic Statement released on November 2, 2023, shows that Ontario's FY 2022-2023 revenues are down $7.5B and projected revenues for FY 2023-2024 are also down $2.6B from the figures quoted in OPSEU/SEFPO's brief. • In paragraph 143, the fiscal outlook presented in the submission has deteriorated since the release of the *2023 Budget* and *2023-24 First Quarter Finances*. The *Public Accounts of Ontario 2022-23 r*eported a deficit of $5.9 billion in 2022-23. With the release of the *2023 Ontario Economic Outlook and Fiscal Review* the government is now projecting deficits of $5.6 billion in 2023–24 and $5.3 billion in 2024–25 followed by a modest surplus of $0.5 billion in 2025–26. This revised fiscal outlook reflects updated economic and revenue information and higher contingencies to mitigate near-term risks in 2023–24, and slower economic growth projections in 2024 and 2025.In paragraph 144, the Union states it does expect the Employer to rely upon any true inability to pay and in paragraph 145, the Union states ability to pay is irrelevant in public sector interest arbitrations where the Crown itself has control over what it can pay. The Union also noted in paragraph 149 that a true ability to pay argument would be untenable given current economic conditions. The Employer refers to its interest arbitration submissions in respect of Ability to Pay. Generally, the Union's contentions are not balanced and heavily discount the Ability to Pay criteria. Despite an inability to point to a balance sheet as an inability to pay, taxpayers should not have to take on the burden of unreasonable costs. In Halifax (Regional Municipality) v IAFF, Local 268, 1998 CarswellNS 553, arbitrator Kuttner aptly noted the following on this point: i) Ability to Pay 42 *Traditionally, the argument against accepting ability to pay as a guiding criterion in determining public sector wages has been premised on the theory articulated by Arbitrator Shime that 'public sector employees should not be required to subsidize the community by accepting sub-standard wages and working conditions'. But one must be cautious not to conclude from that principle that there is not a ceiling to the economic burden which the citizenry can be expected to bear under a 'deep pocket' theory of the public employer's ability to pay. True, we may not be able to point to a balance sheet as proof of such inability, but one need only take note of the not uncommon phenomenon of the citizens' tax revolt to recognize that for the public employer, as for the private, there is a bottom line. The more modern commentators and the contemporary arbitral jurisprudence are both more finely attuned to the overarching significance of broader economic realities to particular bargaining relationships in the public sector. In this regard, one cannot ignore that the early ability to pay doctrine was rooted in Keynesian economic theory and its tolerance for deficit financing which, although once orthodox*

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	Union's normative monetary proposals, the Union has provided a brief overview of the ability to pay analysis. 145. A particular concern for interest arbitrators in the public sector is ensuring that workers do not unfairly bear the brunt of the government's fiscal policy. This consideration is typically known as "ability to pay" and is generally considered functionally irrelevant in public sector interest arbitrations, where the Crown itself has control over what it can pay. Arbitrator Shime has noted that "public sector workers should not be required to subsidize the community by accepting substandard wages and working conditions." Indeed, if the public wants a particular service, then it should be willing to pay a fair price for it. 149. A true inability to pay argument would be untenable given current economic conditions. Accordingly, in the present case, the Union submits that this factor is irrelevant.	*has now become heresy - so much so, that governments of whatever stripe across Canada have abjured it as they strive for the balanced budget.* • Therefore, a fair price for wages should not equate to unreasonable costs for taxpayers. Even though the Union's submission tries to diminish the value of this interest arbitration criteria, were it not to play a role in interest arbitrations, it would obviously not be established as a criteria under CECBA, as well as in other statutes in Ontario which govern collective bargaining.
Attraction and Retention (Paragraphs 150-155)	151. Arbitrators have repeatedly recognized that the Crown has fallen increasingly behind its correctional comparators. In this context, the Crown will inevitably have a difficult time incentivizing its existing staff to stay, let alone recruiting new employees. The rates that correctional workers could earn at the Federal facilities in Ontario are relevant both to the Employer's competitiveness within the Province and to the employment choices that the employees may make. 152. Even leaving aside relative compensation, unfortunately, correctional work does not attract the same prestige or respect accorded to other public safety personnel, such as police officers or firefighters. In this regard, the comments of Justice Shapiro apply with equal force today as they did in 1978:	• The Employer refutes OPSEU/SEFPO's characterization in paragraph 151 that the Crown has fallen increasingly behind its correctional comparators and that the Crown will have a difficult time attracting and retaining staff. As outlined in the Employer's interest arbitration brief, Ontario correctional compensation is on par with valid external comparators, such as Alberta. • Further, the Employer's recruitment and retention records as referenced in Section 2 above and in Section 7.4 of the Employer's interest arbitration brief make clear that overall, the Employer does not have difficulty attracting and retaining staff. There are also other indicators to demonstrate that interest in Correctional Bargaining Unit positions remains high - from January 1 to August 31, 2023, the corrections recruitment pages have received a total of 21,538 unique page views – this is above average views for corrections content. • In isolated cases where recruitment may be more difficult, such as in remote areas in the North where many employers experience difficulties recruiting staff, the Employer has successfully employed targeted approaches to support staffing such as the Northern Attraction Incentive Pilot (NAIP) which is aimed at recruiting and

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	Recruitment of correctional officers has been, is, and hopefully will not continue to be difficult. The career of being a jail guard has always ranked low in status among social service positions. It has all of the hazards of police service but none of the glamour.	retaining frontline correctional personnel in the Northern Region. Since May 2022, NAIP has been successful in attracting three PPOs to the Kenora area and 130 new Correctional Officers (COs). • The Employer has also acknowledged in its brief that there have been challenges in recent years with respect to the attraction and retention of nurses, however this is a result of a confluence of factors affecting the nursing profession more broadly (e.g., increased demands on the provincial healthcare system), and are not unique to this Employer. • In respect of paragraph 152, the Employer disagrees with the Union's assertions that correctional work does not attract the same prestige or respect as other public safety personnel. There have been extensive improvements to pre-employment and in employment training, introduction of availability of new uniform/dress uniform for Correctional Officers, significant investments to transform correctional facilities, and ongoing recognition programs such as recognition programs for Correctional Officers.
LTIP **(Paragraphs 156-161)**	158. The Union negotiated language in Article 42.2.1(j) of the Collective Agreement that states, "… the total monthly LTIP benefit payment under the plan shall be adjusted by an increase equal to those provided for under Article COR17." In amending the collective agreement to reflect the parties' most recent interest arbitration award, the parties included in COR17 only the "across-the-board" wage increases, inserting the list of special wage adjustments in a new Appendix COR39. Neither party averted to the connection between this amendment and Article 42.4.1(j). 159. However, the Grievance Settlement Board found on the language of the Collective Agreement that the parties intention was to deny LTIP recipients the benefit of 'catch-up' wage increases. This was not the Union's intention, and it seeks to remedy the parties' oversight. 160. The parties already have a shared understanding of the impact of salary adjustments on the Union's disabled members in receipt of WSIB benefits, as confirmed by the Grievance Settlement Board in *Ontario Public Service Employees Union (Mills et al) v Ontario (Solicitor General)*.179 In that decision, Vice-Chair Banks concluded	• **OPSEU/SEFPO's proposal to include special wage adjustments in monthly LTIP payments is inconsistent with provisions for the OPSEU/SEFPO Unified Bargaining Unit and other OPS bargaining agents. There is no compelling reason why OPSEU/SEFPO Correctional Bargaining Unit members on LTIP should receive greater entitlements than those in other bargaining units.** • In paragraph 158, OPSEU/SEFPO asserts that "neither party averted to the connection" between the special wage adjustments negotiated in Appendix COR39 and Article 42.4.1(j). The Employer refutes OPSEU/SEFPO's suggestion that it was simply an oversight that the special adjustments negotiated under Appendix COR39 were not included in the LTIP salary provisions in Article 42.4.1(j). From the Employer's perspective, this was not an oversight. As noted by OPSEU/SEFPO in paragraph 159, the issue of whether Article 42.2.1 (j) shall include special wage adjustments was previously considered by the Ontario Grievance Settlement Board (GSB) in GSB #2016-2772, and was dismissed. • The Employer continues to oppose OPSEU/SEFPO's proposal with respect to LTIP payments being adjusted by the amount of special wage adjustments. LTIP payments are currently adjusted by an increase equal to those provided under Article COR 17 (Salary), which is appropriate. This was effective January 1, 2015, and was a significant ongoing improvement negotiated at the time. Clearly, the parties at the time intended it to apply only to general wage adjustments.

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	that the term "regular salary" included any collective agreement wage adjustments, whether part of the "across the board" increases, or by way of special classification-specific salary adjustments. There is no principled basis to treat members in receipt of LTIP any differently.	• The Employer also notes that recent special wage adjustments per the last interest arbitration award have only been provided to certain groups in the Correctional Bargaining Unit, and the Union's proposal would extend special wage adjustments to all employees on LTIP, which is not appropriate. • With regard to OPSEU/SEFPO's assertion in paragraph 160 that there is no basis to treat members in receipt of LTIP differently from those in receipt of WSIB benefits, the Employer points to the Supreme Court of Canada ruling in *Battlefords and District Co-operative Ltd. v Gibbs,* [1996] 3 S.C.R. 566 (which was considered in the above-noted GSB grievance) which concluded that it is not helpful to compare benefits allotted to employees for different purposes, and it is understandable that insurance benefits for different purposes will differ.
Bereavement Leave **(Paragraphs 162-172)**	165. The Union makes this proposal, without seeking to increase the paid dates (as seen in many recent collective agreements, including the recent freely negotiated agreement between Unifor and Ford of Canada, where paid bereavement leave for immediate family members was increased to five (5) days. 166. The inclusion of stepsiblings in bereavement leave provisions is normative, as seen in numerous collective agreements, including direct comparators such as the collective agreements of the Union of Canadian Correctional Officers (2021-2022), the Ontario Provincial Police Association (Uniform and Civilian, 2019-2022), the National Police Federation (2021-2023), the BC General Employees' Union (2022-2025), the Manitoba Government and General Employees' Union (2019-2023), and the Nova Scotia Government & General Employees Union (2021-2024). 168. Finally, the entitlement to bereavement leave by either partner in the event of miscarriage, stillbirth, and pregnancy loss – without any corresponding reduction of pregnancy leave entitlements – is a reasonable and compassionate approach that recognizes these unique, historically overlooked losses, and supports the physical and mental health of any employee who experiences them. It is particularly important for the Union's FXT members, who have more	• **In paragraph 166, OPSEU/SEFPO provides a list of organizations which it notes as direct comparators. The Employer's position is that the organizations outside the OPS cited by OPSEU/SEFPO are not key comparators to OPSEU/SEFPO Corrections for such entitlements. The most relevant comparator for the Correctional Bargaining Unit is the Unified Bargaining Unit, which has Bereavement Leave provisions equivalent to those currently provided to Correctional Bargaining Unit employees. There is no compelling reason that OPSEU/SEFPO has provided for why Correctional Bargaining Unit employees should be provided greater entitlements than Unified Bargaining Unit employees.** • In paragraph 165, OPSEU/SEFPO indicates that it "makes this proposal without seeking to increase paid dates". However, OPSEU/SEFPO's proposal to expand the list of relatives for which employees are entitled to three paid days of Bereavement Leave under Article 48.1 would effectively result in productivity costs to the Employer (employees are off in more instances) and could require backfilling. The Union's proposal for consequential changes to FXT, Seasonal and Student employees would also result in additional costs to the Employer. • In paragraph 168, OPSEU/SEFPO indicates that miscarriage, stillbirth and pregnancy loss have been historically overlooked. However, employees who have a miscarriage or stillbirth within 17 weeks of their due date are entitled to Pregnancy Leave under the *Employment Standards Act, 2000* (ESA) which is the greater of 17 weeks, or 12 weeks after the stillbirth or miscarriage. Employees are eligible to receive EI during pregnancy leave, which the Employer tops-up to 93% of salary for Regular employees in accordance with Article 50 and 76. • Employees may also request Special and Compassionate Leave under Article 49 and/or Special Leave under Article 25. These current entitlements are with pay and are sufficient to cover any additional time off for miscarriage, stillbirth, or pregnancy loss. These current entitlements are with pay and the Employer's view is that they are sufficient to cover bereavement of relatives not currently mentioned in Article 48.

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	limited access to support and resources in the event of pregnancy loss. 170. Finally, the Union has proposed a normative enhancement to the funeral leave entitlement for the purposes of travel to attend the funeral of a listed relative. The status between their work and attending an out-of-town family funeral and can disproportionately impact employees living in remote or rural areas. By setting a 400-kilometre threshold, the Union's proposal is more conservative than the language adopted by a comparator such as the Manitoba Government and General Employees' Union, whose members are entitled to a maximum of two days' leave without loss of salary for attendance at a funeral in excess of 225 kilometers from the employee's residence. 171. Further, the proposed reduction to a 400-kilometre threshold is easily warranted for OPSEU's Correctional bargaining unit members, given the relatively remote location of many Correctional bargaining unit employees' workplaces (including the Fort Frances Jail, the Kenora Jail, the Thunder Bay Correctional Centre and Thunder Bay Jail, the Monteith Correctional Complex, and the Northwest corridor for community services offices, simply by way of example). This change would assist in meeting both the needs of employees taking positions in remote communities away from their extended families, and the Employer's recruitment needs for these remote postings.	• OPSEU/SEFPO's proposal sets out bereavement leave days do not need to be taken consecutively. For clarity, the current language in the collective agreement does not require the three days of leave under Article 48.1 to be taken consecutively and employees have the ability to discuss the timing of bereavement leave with their manager. • Regarding paragraph 170 and 171, the Union is seeking to change the entitlement from 2 days without pay to 2 days with pay to attend a funeral that is 400km away instead of 800 km away (800 km is current entitlement). Again, OPSEU/SEFPO provides no compelling reason for why the Correctional Bargaining Unit should have entitlements over and above the Unified Bargaining Unit who are their most relevant comparator.

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Experience Credit for Nurses **(Paragraphs 173-181)**	174. The Union's proposal mirrors existing language in the ONA-Central Hospital Collective Agreement, specifically Article 19.05 of the ONA 2021-2023 Central Hospital Collective Agreement. 175. Currently, the failure to recognize past experience – and therefore, requiring nurses to be placed at the bottom of the pay grid – causes enormous problems in both recruitment and retention – as this Employer has repeatedly acknowledged. 176. First, in respect of recruitment, the Employer has acknowledged ongoing recruitment and retention issues in nursing positions. Although the Employer has indicated they provide ongoing advice to hiring managers and human resource advisors – there is no formal policy document regarding wage grid placement and years of experience that has been provided to the Union. As such, any adjustment to a new nursing hire's placement on the wage grid is left to the absolute discretion of the hiring manager, at the time of hire. This, of course, leads to enormous problems, including members being paid in a manner inconsistent with the wage grid, the collective agreement, and at an arbitrary level as compared to their colleagues performing the same job. This undermines the Union as the exclusive bargaining agent, and creates gross unfairness across the classification. 180. The Employer consistently rebuffs any initiative proposed by the Union, defends its practice as within its rights, and takes the position that there is no breach of the Collective Agreement. That position carries through in grievances, in response to which the Employer relies on its managements rights to refuse to remedy pay inequities. The Union advises its members not to advance such grievances as there is no reasonable chance of success, as a result of cases like these:	• **OPSEU/SEFPO's proposal is inconsistent with provisions for the Unified Bargaining Unit and other OPS bargaining agents with nursing positions.** • In paragraph 174, OPSEU/SEFPO has cherry picked ONA as a comparator for its proposal, and also made other modifications not present in the ONA agreement. • The Employer disagrees with OPSEU/SEFPO's statements in paragraph 175. It is the Employer's practice to hire new (external) nurses and initially place them into different steps of the range in accordance with market conditions, pursuant to the Pay on Assignment Policy. Accordingly, new nurses are not always hired at the minimum of the pay grid. These practices also apply to other nursing positions across the OPS as well, and OPSEU/SEFPO's proposal, if awarded, would have implications for other OPS bargaining units with nursing positions. • In response to paragraph 176, the Employer is following the collective agreement, and applicable policies. The Union has not been undermined as an exclusive bargaining agent. • In response to paragraph 180, the Employer refutes that it has consistently rebuffed initiatives proposed by OPSEU/SEFPO. The parties have engaged in dialogue at the ministry-level Ministry Employee Relations Committee (MERC) table. In addition, the Employer does not wish to further fetter its management rights.

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	GSB 2002-2040 (Mallard) 180 - Nurse at MHCC grieves that new nurses being placed on higher steps on the wage grid than the employee. Employer's position is that there is no CA language regarding credit for past experience to new employees at time of hire. Grievance dismissed in August 2005; GSB 2008-2878 (Lee et al)181 – Eight nurses at VCFW have their grievances regarding being incorrectly placed on the wage grid dismissed– decision in February 2009; GSB 2009-1488 (Malkki et al)182 – Three nurses at ATRC have their grievances dismissed regarding being incorrectly placed on the wage grid based on education and experience. Decision in May 2010; GSB 2011-0766 (Gregory)183 – Grievance alleged that nursing employee was incorrectly placed on the grid upon re-hire by the Ministry. Grievance dismissed December 2012; and GSB 2021-1454 (Gotsanyuk)184 – General Duty Nurse (Nurse 2) wins a competition to Mental Health Nurse (Mental Health Nurse) position – this is a promotion. Grievor attempts to seek improved salary-grid placement, based on years of nursing experience. Grievance dismissed.	
Qualified Medical Practitioner **(Paragraphs 182-183)**	183. The reality is that most individuals who require assistance with mental health related needs or other occupational stress injuries are receiving their primary treatment from psychologists or psychotherapists, not psychiatrists or other physicians. This change, to allow medical certificates from a larger group of regulated health care professionals, would reduce barriers to employees providing	• **OPSEU/SEFPO's proposal to inconsistent with provisions for the Unified Bargaining Unit.** • The Union's proposal to incorporate a new definition of legally qualified medical practitioner expands the scope of the definition that the parties previously agreed to in the wall-to-wall agreement from December 2016. The agreement incorporated the parties' existing agreed-to definition of 'Legally Qualified Medical Practitioner' into the collective agreement as a letter of understanding confirming that a legally qualified medical practitioner means a

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	required documentation to the Employer, at no risk or cost to the Employer, and without adding unnecessary and duplicative strain on the health care system.	physician, dentist or nurse practitioner, practicing within their respective scope of practice. This definition may be amended at any time by the parties with mutual agreement. • Broadening the definition of Legally Qualified Medical Practitioners may increase the potential for abuse of sick leave. As outlined in the Employer's Overtime/Absenteeism proposal, absenteeism in correctional institutions was highlighted as a key issue in the 2019 Auditor General report on correctional services and sick leave in the correctional bargaining unit remains high. • The Employer also wishes to clarify that expanding the current legally qualified medical practitioner definition for OPS STSP absence administration purposes would not result in a similar application for other purposes, e.g., LTIP claims administration. There are legal distinctions between different practitioners regarding their scope or practice and ability to provide a diagnosis. For example, a psychotherapist cannot diagnose nor communicate a diagnosis. Thus, even if such a practitioner could sign off a medical certificate for STSP purposes, for LTIP claims administration purposes, the carrier will continue to require supporting medical evidence from a legally qualified medical practitioner authorized to provide the information needed to validate a claim. In response to OPSEU/SEFPO's paragraph 183, OPSEU/SEFPO has not provided reasons to support its proposal that the Correctional Bargaining Unit should have a broader definition of Legally Qualified Medical Practitioners than the Unified Bargaining Unit, its key comparator.
FXT Benefits and ROE **(Paragraphs 184-188)**	187. Consequently, the Union has proposed that Article 31A.7.2 be amended to grant fixed term employees an additional opportunity to elect to pay for benefit coverage, following the conclusion of a collective agreement, either upon ratification or by interest arbitration award. The Union had initially proposed on-going opportunities for members to opt-in to the benefit coverage, but have amended their proposal to address the Employer's resistance to incurring these minor administrative costs on a regular or even annualized basis. 188. In addition, the Union has proposed a modest amendment to confirm the Employer's existing obligation to provide a Record of Employment (ROE). Where a fixed term employee has exhausted their earned attendance credits, the employee may need to access sickness benefits through Employment Insurance. The Union has experienced challenges in accessing an ROE, including denials from	• **The Employer is amenable to addressing certain issues raised in the Union's proposal in part with respect to Article 31A.7.2. However, the Employer does not agree to the Union's proposed language. The ability to permit employees to opt into Supplementary Health & Hospital (SH&H) benefits more frequently has cost implications and the Employer is not amenable to the Union's proposed changes. However, as OPSEU/SEFPO is aware, the Employer provided a counterproposal, consistent with what has been reached with the Unified Bargaining Unit and other OPS bargaining agents.** • The Employer's counter-proposal provides a greater opportunity to opt-in (which the Union did not accept): o One-time option for all active fixed-term employees who had not previously opted into SH&H Benefits, effective date of ratification or interest arbitration decision, the ability to opt into the benefits plan after ratification. o Option for fixed-term employees who had not previously opted in when first hired, to opt into the benefits plan within an additional 31 days following a subsequent contract extension that is for a longer period than the employee's original contract period.

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	the Employer, and while those matters are eventually sorted out, the Union's proposed language will facilitate the efficient resolution of requests for an ROE in such circumstances. Equivalent language already exists for regular members.	• OPSEU/SEFPO's proposal is to amend Article 31.A.7.2 to provide all active fixed-term employees employed, within 31 days of date or ratification/interest arbitration decision, with the option to elect to pay 100% of SH&H and dental premiums for the duration of their contract and any subsequent extensions or reappointment not broken by a 13 week or greater period of non-employment. The Employer disagrees with OPSEU/SEFPO's characterization of the Employer's position in paragraph 187. The Employer's view is that the Union's proposed changes to Article could lead to greater anti-selection where those who present a higher risk to the insurer (due to health conditions) opt into the plan and healthier people may not opt-in. • OPSEU/SEFPO also proposes to add a new Article 31A.8.4 such that a record of employment, if required in order to claim Employment Insurance sickness and disability benefits, will be granted to an employee and this document shall not be considered as termination of employment. • In response to OPSEU/SEFPO's paragraph 188, the language proposed by OPSEU/SEFPO already exists in Articles 42.4 and Article 70.4 which apply to regular employees: "A record of employment, if required in order to claim Employment Insurance sickness and disability benefits, will be granted to an employee and this document shall not be considered as termination of employment". In practice, since the Employer already issues ROEs for both Regular and fixed-term employees directly to EI in accordance with Service Canada requirements. As ROEs are issued electronically directly, and employees can access this directly on the Service Canada website, there is no need to introduce this language for fixed-term employees.
FXT Rollover **(Paragraphs 189-194)**	192. To be clear, Probation Officers are a single classification, and this differential treatment of adult Probation and Parole Officers as compared to youth Probation Officers (along with all other bargaining unit FXT employees) is arbitrary and without any rationale or purpose. 193. Illustrative of the unfairness of the extended service requirement for FXT rollovers is the parties' own collective agreement: it draws no such distinction between Probation and Parole Officers and all other full time employees in respect of probationary periods. Full-time members of the Correctional bargaining unit serve a nine month probationary period, regardless of their classification.	• Previously during collective bargaining, OPSEU/SEFPO raised a similar proposal U9-79 on December 20, 2021. The Employer made an offer to accept the Union's proposal in exchange for restrictions on the lateral transfer process that the Employer was seeking in order to meet staffing requirement levels (see E16). In response, on March 15, 2022, the Union rejected the Employer's offer and withdrew several related proposals (including U9-77, U9-81, U13 Section 3, and U15). Accordingly, it is the Employer's view that the Union's proposal should be withdrawn. • The FXT Rollover provisions, including the 12-month period for rollover, were addressed through local agreements negotiated at the ministry-level MERC table. Accordingly, if the union wants to seek changes to the FXT rollover provisions, they have the ability to raise this at the MERC table. In response to paragraph 192, while OPSEU/SEFPO cites Appendix COR24, it should be noted that the purpose of Appendix COR24 is about a specific set of circumstances which may arise during the term of the collective agreement (i.e. to address staffing realignments (downsizing) and cross-ministry transfers), it is not about roll-overs.

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		• Regarding paragraph 193, OPSEU/SEFPO notes there is "....no such distinction between Probation and Parole Officers and all other full time employees in respect of probationary periods". It is unclear to the Employer the nexus between probationary periods and rollover eligibility.
Military Service Leave **(Paragraphs 195-197)**	196. The Union's primary goal in advancing this proposal is to provide both parties with advance certainty regarding the leave and seniority entitlements of members who are also Canadian Armed Forces Reservists. Historically, the parties have had to address a significant number of grievances regarding continuity of service during an employee's military service leave. The Union has proposed normative language confirming that such employees shall not have their employment service interrupted during the leave. 197. In addition, the Union has proposed that the parties agree to broaden the military leave entitlement, to apply in respect of "any obligations pertaining to the Canadian Forces Reserve." The existing language applies only in respect of Canadian Forces Reserve training, notwithstanding the Employment Standards Act entitlement to leave in the event of any deployment to a Canadian Forces operation. This change would make it easier for reservists to volunteer and would ensure that a greater number of reservists would have a job to return to upon the conclusion of their assignment. It is fair, reasonable and necessary.	• **In response to the Union's proposal and paragraphs 196, 197, the Employer is amenable to changes that would align with reservist leave changes under the ESA, but not broadening the entitlements. Accordingly, the Employer proposes modifying Article 28.1 to remove the maximum duration of an unpaid leave to align with its obligations under the ESA:** "28.1 - A Deputy Minister may grant a leave of absence for not more than one (1) week with pay ~~and not more than one (1) week without pay~~ in a fiscal year to an employee in their ministry for the purpose of Canadian Forces Reserve training." • The Employer notes that under Article 24A.1, an employee may request a leave of absence under Part XIV of the ESA, and the Employer will comply with its obligations. This is inclusive of reservist leave under ESA. The Employer confirms that leaves pursuant to Part XIV of the ESA should be credited towards seniority in accordance with the provisions set out in the ESA. The Employer does not agree that benefits should be covered during such leave, as this is not required by the ESA (the ESA expressly excludes benefits continuation during reservist leave), such benefits coverage could lead to double-dipping (whereby an employee has both OPS and federal benefits coverage), and the employee should not accrue credits during this period other than as set out in the ESA. The ESA already provides that seniority and length of service credits continue to accumulate during the leave. Accordingly, the Employer's view is that no further changes to the collective agreement are required.
Union Leave **(Paragraphs 198-203)**	198. The Union proposes to amend Appendix COR20, which deals with Provincial Health and Safety committee. The changes, set out below, constitute a reflection of the parties' current practices, as well as housekeeping changes. 2.1.2 (b) MCSCS SOLGEN Committee Union co-chair will have approved full-time off and the Union Community Representative will have approved half full-time off. Additional time off requests for the MCSCS Union	• The Employer's position is that there should be no increase to the time off for Union duties currently provided for in the collective agreement for the SOLGEN and MCCSS Union Community Representatives under Appendix COR20. The Employer also disputes OPSEU/SEFPO's statements in paragraphs 198 and 199 that its proposal reflects the current practices and that there is joint recognition that the SOLGEN Community Representative role has evolved into a full-time role. o First, the Employer would like to distinguish between the current practices with respect to the SOLGEN and MCCSS representatives. OPSEU/SEFPO's proposal language seeks to increase the Union leave under Appendix COR20 for the SOLGEN Union Community Representatives from half-time off, to full-time off. In

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	Community Representative will be considered by the Employer on a case-by-case basis. The MCYS MCCSS Committee Union co-chair will have approved full-time off. The MCYS MCCSS Union Community Representative will have an approved minimum of thirty-six and a quarter (36 ¼) hours biweekly time off, and additional time off will be considered by the Employer on a case-by-case basis. This time off will be a leave of absence without loss of pay or credits and considered a duty assignment and the time off will be paid by the Employer. Expenses incurred by the Committees' Union co-chairs will be paid for by the Union. 199. The Union has proposed changes to the language applicable to the SolGen Union Community Representative on the Provincial Joint Health and Safety Committee under COR20; the proposal is consistent with the parties' current practices – in place for approximately the past ten years – and joint recognition that this role has evolved into a full-time role. 201. This change to the collective agreement reflects the reality of the Community Representative's demanding role on the Committee, which includes the oversight of hundreds of workplaces (including 121 Probation and Parole offices and over 100 reporting centres); reviewing Ministry and/or Union health and safety training initiatives; receiving and reviewing all newly-issued health and safety directives; acting as a resource to local workplace committees and representatives; receiving and reviewing accident/occupational illness statistics; and reviewing occupational health and safety and WSIB investigation reports. Moreover, the Employer recognizes the importance of this role and regularly proposes that disputed or new workplace matters should be referred to the Community Representative for review and oversight.	addition, although OPSEU/SEFPO does not highlight this as a change in the collective agreement language, OPSEU/SEFPO's proposed language also appears to seek an increase to the union leave for the MCCSS Union Community Representatives, from a minimum of 36.25 hours off monthly, to a minimum of 36.25 hours bi-weekly. While the Employer has discretionarily provided additional time off for the SOLGEN Union Community Representative, this is not the case for the MCCSS Union Community Representatives who receive 36.25 hours off monthly in respect of these duties, in accordance with the current collective agreement entitlement. ○ With respect to OPSEU/SEFPO's characterization in paragraphs 201-202 of the current practice of providing the SOLGEN Union Community Representatives with full time off (instead of half), the Employer's rationale for providing the extra 50% time off differs from OPSEU/SEFPO's. The extra 50% is solely connected to the work of the Community Safety Health and Safety Working Group (CSHSWG), which is a working group established by the Community Safety (CS) Assistant Deputy Minister (ADM) in 2016. The Employer's position is the CSHSWG is not a subcommittee of Provincial Joint Occupational Health and Safety Committee. It exists at the direction of the CS ADM and can be ceased at the Employer's direction. It should also be noted that this working group is not currently meeting regularly, although it has not officially disassembled and there is ongoing work within the working groups mandate in that there are outstanding policy revisions that the working group will be consulted on. Accordingly, the Employer does not agree with OPSEU/SEFPO's characterization that there is joint recognition that this role has evolved into a full-time role and with OPSEU/SEFPO's proposal to enshrine the current practice into the Collective Agreement. • In response to paragraph 203, the Employer's position is that the current Union leave provisions in the collective agreement are both generous and sufficient for Union members to participate in the respective Committees. Further, the Union leave provisions were improved as recently as 2019 under the Kaplan Interest Arbitration Award which made orders in this respect, and the Employer sees no need to make further improvements since this short period of time.

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	202. The Community Representative is also a member of the Community Services Health and Safety Working Group, the Occupational Stress and Injury Subcommittee, and the Training and Development Subcommittee, and is involved in a number of ongoing Health and Safety Initiatives, necessitating a significant amount of preparatory work in advance of meeting with the Employer. 203. The position is far too significant and important to both parties to be limited to half-time, and the collective agreement should reflect that long-standing reality	
Compensating Time Off (CTO) **(Paragraphs 204-211)**	205. The Union propose two significant changes: first, to increase the total number of hours which may be accumulated in a year from 60 to 100. This is based on an earlier agreement between the parties, outside of the collective agreement, which granted an additional 40 hours of accumulation, on top of the 60 provided for in the collective agreement.192 This agreement expired effective December 31, 2021. However, the Employer has continued to honour the expired letter by providing the additional 40 hours on an ongoing basis since then. 210. Finally, this proposal is consistent with the Union's established comparators, including both OPPA Uniform and OPPA Civilian, and the Union's Federal Correctional colleagues, all of whom can bank an unlimited number of overtime hours.196 OPPA uniform and civilian members can carry over 40 hours into the following year, whereas Federal correctional workers – like the Union's members – have any time left in their banks paid out at the end of the calendar year. 211. The Union's proposal is normative and reasonable and should be awarded.	• In paragraph 205, OPSEU/SEFPO indicates that the Employer continued to honour the expired letter by providing the additional 40 hours on an ongoing basis. To clarify, the Employer chose to continue to provide employees the ability to accumulate 40 hours due to the ongoing collective bargaining and to minimize disruption to the bargaining unit until bargaining was complete. Upon the completion of bargaining, the Employer will be moving forward with the notice letter to eliminate the additional 40 hours outside the collective agreement. However, the Employer can discern that since the Union has raised the issue of Compensating Time Off for the last three rounds of collective bargaining, including this one, this is a priority for OPSEU/SEFPO. The Employer would note that the Union's CTO proposal regarding 40 hours, which should remain outside the collective agreement, is very much linked to the Employer's FXT shift scheduling proposal - the two proposals go together. • In paragraph 210 and 211 OPSEU/SEFPO suggests that their proposal is consistent with the Correctional Bargaining Unit's comparators, including the OPPA Uniform and Civilian bargaining units and Federal Correctional system and that the proposal is normative. The Employer's position is that the OPPA and Federal Correctional system are not relevant comparators. • Additionally, over the course of several years, the trend has been to move towards eliminating or reducing other kinds of similar banks to promote greater wellness and ability to take time off. • In response to paragraph 211, the current practice of allowing an employee's CTO bank to be continually replenished throughout the year results in excessive amounts of compensating time being accumulated and used on an ongoing basis leading to operational issues and increased overtime. Accordingly, the Employer's urges the arbitrator to consider the Employer's proposal in respect of CTO in its interest arbitration brief.

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Probation Officers' Allowance (POA) **(Paragraphs 212-219)**	213. Probation Officers in the Correctional bargaining unit have extremely demanding workloads, and numerous surveys have indicated a strong need for greater work/life balance to ensure that the parties are meeting service delivery expectations and to mitigate risks of burnout, fatigue, and other occupational stress injuries. 214. The Employer and the Union jointly completed an Occupational Stress and Injury Survey in 2018 and the responses were revealing. 83.7% of the respondents were Probation and Parole Officers in the bargaining unit – and they reported working an average of 6.8 hours of overtime worked per month. Over 44% of respondents indicated that they worked extra hours with no additional pay "often" or "most days." Most respondents had an assigned caseload of between 50 and 79 offenders, and overwhelmingly indicated that they "disagreed" or "strongly disagreed" that the organization had adequate staffing levels. The reported health outcomes of this situation were troubling but unsurprising: over 70% of respondents indicated that they had considered leaving their job because it is negatively affecting their physical and/or mental health, and over 30% reported taking a leave of greater than one week from their job in the last two years because of stress or health-related reasons. 215. Between 2006 and 2016, approximately half of all adults on probation in Canada were located in Ontario. As of 2011, Ontario Probation and Parole Officers had the highest average case load per officer of any province in the country – and in the intervening years there is no indication that this has changed. In fact, the seven-day entitlement to Probation Officers' Allowance was established in March of 2009, when demands on Probation Officers were significantly less than they are today. Factors which have increased the overtime and workload demands on Probation Officers in recent years include geographical changes to caseload distribution in the Youth Justice Division, requiring significantly greater travel expectations; new	• The Employer disagrees with OPSEU/SEFPO's characterization that the current POA entitlement is inadequate compensation for the additional and flexible hours worked by Probation Officers (POs). The Employer's position is that the current POA entitlements provide adequate compensation for the hours worked by POAs and an across the board increase to entitlements would be unfounded. There is no evidence to suggest that the current entitlement of seven days annually is inadequate to compensate for the additional hours worked. • Further, the Employer's position has been to maintain or, where appropriate, reduce annual carryover limits for various credits in line with what the Employer has been doing with OPS bargaining agents over the years. In addition, OPSEU/SEFPO has sought pay out for unused POA days. In a recent collective agreement for the OPPA Uniform Officers, the ability to have vacation paid time off was eliminated. The Union's proposal would result in the Correctional Bargaining Unit having entitlements that other groups in the OPS do not have, is contrary to the direction the Employer has been going in, and would result in increased costs for the Employer to maintain the current level of service delivery. • In paragraphs 213 and 216, OPSEU/SEFPO points to workload pressures and work/life balance concerns among POs to support its proposal which the Employer refutes as outlined below. Further, this is contrary to OPSEU/SEFPO's proposal that an employee shall have the option to have any of their earned POA Leave paid out. The Employer's position is that it is counter-intuitive to replace time off (which is important from a health and wellness and work/life balance standpoint) with paying out these days with cash. Further, OPSEU/SEFPO's proposal would create new additional costs for the Employer in paying out accumulated allowance to employees rather than providing it as paid time off. • In paragraph 214, OPSEU/SEFPO indicates that some employee respondents in an Occupational Stress an Injury Survey in 2018 indicated that they worked extra hours with no additional pay. It should be noted that the evidence OPSEU/SEFPO presents is based on employee self-reports rather than tracked data. The POA days allowance is given in recognition of the additional and flexible hours worked by Probation Officers. Therefore, it is the Employer's position that employees are in fact fairly compensated for additional and flexible hours worked, which is provided in the form of POA days. • In paragraph 215, OPSEU/SEFPO asserts that as of 2011, "Ontario Probation and Parole Officers had the highest average case load per officer of any province in the country – and in the intervening years there is no indication that this has changed." OPSEU/SEFPO does not provide a source for these claims and based on a jurisdictional scan led by the Heads of Corrections committee in 2015, this is not the case. Out of nine provinces and territories which responded at the time (not including Alberta, British Columbia or Saskatchewan for which data was not provided),

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	requirements to complete psychometric assessments; added requirements of Pre-Sentence Reports; increased program requirements, requiring the facilitation of programs in addition to caseload duties; and an offender population with increasingly complex needs, requiring the delivery of additional services including Cognitive Behavioural Therapy-based services via Core Correctional Practices. 216. Appendix COR3 already entitles Probation Officers to an "allowance", in the form of paid days off, in recognition of the additional and flexible hours that they work. The Union is seeking to increase the leave entitlement from seven to ten days per calendar year, with a corresponding increase to the accumulation entitlement, and with a new option for such accumulated time to be paid out. An increase from seven to ten days, with a corresponding increase to the accumulation entitlement, would recognize and fairly compensate for the significantly increased workload demands of Probation Officers; enhance work-life balance; promote employee physical and mental health through additional time away from work; and help to reduce employee burnout, time off, and turnover. An increase of three days to the Probation Officers' Allowance would also eliminate the need for employees to apply for additional Probation Officers' Allowance Leave, and eliminate the accompanying grievances which could flow from any denial of the same (as occurred in 2015, and resulted in a settlement which provided employees with their requested days), conserving resources for both parties and avoiding an adversarial process.	average caseload numbers per officer were similar across many of the jurisdictions, with Ontario caseloads falling somewhere in the middle. • With respect to OPSEU/SEFPO's claim in paragraph 215 that geographical changes to caseload distribution in the Youth Justice Division have increased workload demands, the Employer refutes this point. While the Employer has assigned PPOs in SOLGEN and POs in the Youth Justice Division in MCCSS to cases outside of their normal work location, the additional travel time has been considered and is accounted for as part of an employee's workload. In addition, the Employer provides fleet vehicles and meals/expenses as needed when POs are assigned to cases outside of their normal work location. • Further, it is important to highlight that Appendix COR3 already provides managers discretion to grant additional paid time off on a case-by-case basis. Managers can use their discretion to provide additional time off in cases where it is warranted under the existing provisions of Appendix COR3.

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Correctional Supervisor Wage Grid **(Paragraphs 220-230)**	222. There was no consultation or negotiation with the Union over the compensation for the Correctional Supervisor classification. In fact, at a joint meeting, on October 7, 2022, the Employer announced the creation of the new classification and introduced a nine-step wage grid that had been fully and finally approved by Cabinet and would not be subject to amendment. 223. A subsequent meeting between OPSEU/SEFPO and the Employer was held on October 31, 2022. The Union raised issue with the nine-step wage grid and the Employer remained firm that there would be no negotiations over the grid as it had already received Cabinet approval. Despite being engaged in collective bargaining for a year, no discussions occurred at the bargaining table at all. 224. The Employer unilaterally introduced and rolled out the Correctional Supervisor Grid in a series of memos released to the Union's membership on November 2, 2022.201 On page 6 of the "Q-A Document for Impacted Sergeant Group," the Employer set out its wage grid 225. On December 14, 2022, the Union wrote to the Employer reviewing its concerns with the Employer's unilateral reorganization. Among those concerns were the introduction of the nine-step grid. The Union wrote: The Ministry's 9-step wage grid was not negotiated with the Union. A 9-step grid is not the norm in the bargaining unit and has never been negotiated with the Union. The grid that was announced also overlaps the CO1, CO2 and CO3 wage grids, and is not appropriate for the position description developed by the Ministry. We expect that this grid will interfere with the Ministry's stated intentions to provide greater developmental opportunities and create defined career pathways into leadership.	• In paragraph 223 OPSEU/SEFPO states that they raised issue with the nine-step wage grid and the Employer remained that there would be no negotiations on the item. In paragraph 224 OPSEU/SEFPO continues that the Employer unilaterally introduced and rolled out the Correctional Supervisor Wage Grid. It should be noted that the Employer has the sole authority to establish salary grids for new positions. Further, in response to paragraph 222 contrary to the Union's assertion that OPSEU/SEFPO was not consulted, numerous consultations were held between the Employer and OPSEU/SEFPO before the Employer proceeded. The salary grid was determined based on the salary range of the M07 position as it was to be eliminated. The Employer converted the minimum and maximums of the M07 and established steps using those minimums and maximums. • Further, in paragraph 225 OPSEU/SEFPO reiterates that the Employer performed a unilateral reorganization. In response, again, the Employer has the sole authority to determine the salary range of new positions as outlined in MBC 33 directive: Upon creation of the class of position, the salary range for public servants appointed to a position in the class set out in Schedule 1 shall be as set out in Schedule 2 and thereafter, the salary range is determined and implemented by collective agreement between Management Board of Cabinet and the Ontario Public Service Employees Union (Correctional Bargaining Unit). • The Ontario Public Service Employees Union v The Crown in Right of Ontario as represented by HR Ontario and Ontario Clean Water Agency (ON LRB), 2015 CanLII 55317, decision confirms Employer's ability to set salary ranges for newly established classifications. • OPSEU/SEFPO took the position that OCWA could not establish new classifications or set pay rates for these new classifications. The OLRB dismissed the complaint as a no prima facie as Article 1.4 of the OPSEU/SEFPO collective agreement stated "Where the Employer establishes a new classification or creates a new position within an existing class, the Employer shall provide the Union with a copy of the class standard and/or position description, including bargaining unit status (if applicable), at the relevant MERC." • OPSEU/SEFPO also states in paragraph 225 that a 9 step grid in not the norm in the bargaining unit. The Employer wishes to clarify that with the 9 step grid, the first three (3) steps in the pay scale as it provides junior employees with a pay step that is equivalent to their years of experience. Most successful candidates moving from the CO2 classification to the Correctional Supervisor role will likely be at the maximum of the CO2 pay step resulting in the application of Article 7 which will take them to a pay step seven of nine: $39.37*1.03 (promotional increase) = $40.55. Closest step is step nine at $42.17.

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		• Notwithstanding the above, the Employer notes there would be no organizational impact in current practice as a consequence if this proposal was accepted by this arbitrator.
Pension Improvement: Factor 85 **(Paragraphs 231-249)**	232. The Union proposes that the pension amendments be effective for the third year of the parties' collective agreement, January 1, 2024. 233. The Union is seeking improvements to the pension plan to bring it into line with all of its established comparators. Currently, Ontario correctional employees have a "Factor 90" retirement plan, which permits them to retire on an unreduced pension when their age plus their years (and part years) of service total at least 90 years. The Union is seeking an amendment to its members' pension entitlements to allow members to retire on an unreduced pension upon achieving "Factor 85." This improvement would allow members to retire 2.5 years earlier than the current Factor 90 and has long been a priority bargaining proposal for OPSEU members in the Correctional bargaining unit. 234. This leaves Ontario as the lone outlier with a retirement factor greater than "Factor 85" in Canadian Corrections. Factor 85 retirement eligibility is normative in Corrections. Without this improvement, Ontario Corrections would remain an outlier on pension eligibility with Factor 90. 235. This Employer granted Factor 85 to the OPP Civilian Division. This was achieved in an arbitrated decision (April 26, 2019) with the assistance of Arbitrator Kaplan. The Union is aware that this decision resulted in the OPP Civilian Division receiving less than the OPP Uniformed Division in terms of a general wage increase over the 3-year life of the collective agreement.	• In paragraph 233 OPSEU/SEFPO states that its Factor 85 proposal is in line with all of its established comparators. The Employer disputes this statement. OPSEU/SEFPO has identified each province and jurisdiction, and the OPP in Ontario. Each of these have not been identified as key comparators, and moreover, OPSEU/SEFPO does not reference other key comparators in the OPS such as the OPSEU/SEFPO Unified Bargaining Unit, and other similar bargaining agents in the OPS such as AMAPCEO and PEGO which have equivalent early retirement provisions to the existing provisions for the OPSEU/SEFPO Correctional Bargaining Unit. Notwithstanding, the OPPA uniform members have an unreduced factor of 50/30 (minimum age of 50 with 30 years of service) while OPSEU/SEFPO's chart refers to Factor 80 which is incorrect. • It is the Employer's position that the OPSEU/SEFPO Pension Plan does not form part of the collective agreement. The parties to the collective agreement are both sophisticated entities and had the parties intended the OPSEU/SEFPO Pension Plan to be part of the collective agreement they would have explicitly stated such in the collective agreement. Any amendment to the Plan requires the agreement of the Plan sponsors in writing. The parties appear before an arbitrator in their role as the Employer and Union, not in their capacity as joint sponsors of the pension plan. Therefore, this arbitrator does not have jurisdiction to make a binding decision that results in an amendment to the OPSEU/SEFPO Pension Plan. • Based on current retirement trends and considering the increase in contribution rates for both members and the Employer that would be required to implement Factor 85, Factor 85 is a costly entitlement that would be of minimal benefit to the bargaining unit. In addition, implementing Factor 85 for the Correctional Bargaining Unit may lead other OPS bargaining agents to pursue similar arrangements which would have significant cost, staffing and other implications for the Employer. • In paragraph 232, OPSEU/SEFPO proposes that significant pension amendments be effective January 1, 2024. It would not be possible to implement these changes by the proposed effective date. Further, changes to retirement factors cannot be implemented retroactively as it is not possible for an employee to retire retroactively.

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	236. Factor 85 is not a 'Breakthrough" improvement. The Parties have long considered and negotiated various pension improvements and early retirement factors, as evidenced by Factor 90 and 80/20, and previous surplus Factor 80, in the collective agreement.Absent these negotiated improvements, the normal retirement age for Corrections members would be 65 years of age. 237. This proposal is normative across the Canadian correctional landscape, and even as against this Employer, the Correctional bargaining unit's relevant comparator freely negotiated the same pension improvement proposed here more than four years ago, in early 2019. 238. Set out in the chart below are the years of service and/or factor (combined age and years of service) at which correctional employees, along with uniform and civilian members of the OPP, across Canada are entitled to retire with an unreduced pension.	• In paragraph 233, OPSEU/SEFPO indicates that the introduction of Factor 85 would allow members to retire 2.5 years earlier, however there are other factors that must be considered in assessing the potential benefit of Factor 85. This includes: how many employees would reach Factor 85 before they could retire under another provision (i.e., 60/20 or age 65)? Would eligible employees take advantage of the full 2.5 years of earlier unreduced pension retirement? Information previously provided by OPTrust indicates that members retire on average roughly two years after being eligible for their earliest unreduced pension date. It is important to be aware that for almost all employees, the most significant factors determining timing of retirement are financial considerations. The amount of pension to be received by the retiree is perhaps the most important of these factors. Currently, the average employee works for an additional 2 years after reaching their earliest unreduced pension date. Working the additional two years allows the employee to accrue an additional 4% accrual toward their pension and, of course, earn full salary for the additional two years. If the same average employee were to retire 2.5 years prior to their current unreduced pension date, that employee would forego 4.5 years at full salary (while collecting pension during the 4.5 years) and retire with 9% lower accrual pension amount upon retirement (4.5 years times 2% annual accrual). It is likely that the uptake on a Factor 85 would be very low considering the huge financial impact to retiring upon reaching Factor 85. • The pension provisions for the OPP Civilian Bargaining Unit were not achieved in an arbitrated decision as OPSEU/SEFPO sets out in paragraph 235. There is no authority under the Ontario Provincial Police Collective Bargaining Act (OPPCBA) for an arbitrator to award pension changes. The parties reached this agreement separately, and it does not form part of the collective agreement. In the OPPA Civilian case, TBS is the sole plan sponsor and not a joint plan sponsor as in the case of OPSEU/SEFPO Corrections. In paragraph 234 and 237, OPSEU/SEFPO states that Ontario is the lone outlier with a retirement factor greater than Factor 85 in Canadian Corrections and that this proposal is normative across the Canadian correctional landscape. These statements are not accurate. The chart under paragraph 238 in which OPSEU/SEFPO illustrates the pension provisions of the organizations it examined demonstrate that OPSEU/SEFPO has confused a pension factor (i.e., a pension provision based on an employee's age plus years of service) with a minimum requirement (i.e., where an employee has to have a minimum age and/or minimum years of service) which qualify an employee early unreduced pension. For example, OPSEU/SEFPO indicates that Quebec and OPP Uniform have a Factor 80, whereas for both the minimum requirement is that employees need to be at least age 50 with at least 30 years of service. This is not the same as Factor 80. For example, an employee that is 55 years of age with 25 years of service (which would qualify an employee for an early unreduced pension under Factor 80) would not qualify for an early unreduced pension under the Quebec and OPP Uniform schemes cited by OPSEU/SEFPO, as they would not have attained the

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		minimum service length of 30 years required by those plans. Manitoba, Nova Scotia, Nunavut and PEI also do not have the pension factor provision that OPSEU/SEFPO has indicated. By OPSEU/SEFPO's interpretation, the Correctional Bargaining Unit pension plan would already have a Factor 80 since the existing 60/20 provision would equal 80 points. • The Employer disagrees with OPSEU/SEFPO's characterization in paragraph 236 that Factor 85 is not a breakthrough improvement and normative. OPSEU/SEFPO has selectively chosen comparators and not included key comparators in the OPS. The Employer's view is that the current employee unreduced early retirement entitlements of Factor 90 and Factor 60/20 are both generous and reasonable, applicable to the entire plan membership and already funded. • The Employer disagrees with OPSEU/SEFPO's characterization that Factor 85 is an answer to a dangerous, stressful and difficult working environment. In general, benefits such as LTIP, WSIB and insured benefits, etc. and other more proactive health and safety-related programs/initiatives would be used to address such issues rather than through enhancing pension provisions. • OPSEU/SEFPO's proposal is also in conflict with OPSEU/SEFPO's previous assertions around staffing shortages and issues with attraction and retention of staff, since Factor 85 would further exacerbate such issues if they did exist. The Employer disagrees with OPSEU/SEFPO's statement that the cost of the pension improvements is $9.1M and equates to approximately 1% salary increase. The Employer estimates that the introduction of Factor 85 would result in an ongoing annual cost to the Employer of $14.3M factoring in the additional 1.6% pension contribution (applied to those on active payroll, LTIP, termination payments, etc.) and OPSEU/SEFPO's salary-related proposals (ATBs, special adjustment, clinical experience credit, etc.). • Based on current retirement trends and considering the increase in contribution rates for both members and the Employer that would be required to implement Factor 85, Factor 85 is a costly entitlement that would be of minimal benefit to the Correctional Bargaining Unit. In fact, the Employer and every employee would be required to each pay on a permanent basis an additional 1.6% contribution amount. Employees who are relatively new to the plan would be required to pay the higher contribution for decades even though some employees would be able to take advantage of the Factor 85 even after only contributing a fraction of the cost as they might be close to a Factor 85 at this point in their careers. It is also important to note that since the average age of hire into the plan is more than 30 years old, many employees would not see much benefit in retiring under Factor 85. In addition, implementing Factor 85 for the Correctional Bargaining Unit may lead other OPS bargaining agents to pursue similar arrangements which would have significant cost, staffing and other implications for the Employer.

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		• Further, it should be noted that the cost calculations are point in time and based on current demographic and economic assumptions, and can increase if there are changes to these factors. If Factor 85 were implemented, it would be difficult to remove if costs were to increase in the future.
Benefits Improvements **(Paragraphs 250-279)**	**a) Mental Health Proposal** 255. The Union also proposes increases to the coverage available in two respects. First, the Union seeks to remove the $40 per half-hour session cap for covered mental health care professionals for all employees and dependents; and second, to increase the annual maximum for psychologists from $1,400 to $10,000 for all employees, and from $1,400 to $2,500 for dependents. 258. Of course, the annual cap creates similar barriers to treatment, even if there was a change to the per visit cap. An annual limit of $1,400 with the current cap gives member's access to a maximum of 17.5 sessions in a year, but as the per visit cap rises or is lifted, the number of appointments covered decreases. The Union proposes to increase the annual limit to $10,000 per member, and $2,500 for dependents. 260. This barrier to care must be addressed, so that Correctional workers can access the care that both the Employer and the Union know that they need because of their job. 261. Eliminating the per visit cap, and addressing the annual cap, are also entirely normative. This Employer and the OPPA have negotiated unlimited psychological coverage – with no per visit and no annual cap, fully funded by the Employer. In addition, they have introduced an "Integrated Mental Health Program" designed to provide "timely access to confidential, effective, and safe mental health support and services." The concierge service provided to all members of the OPPA uniform and civilian bargaining units is not being sought by OPSEU/SEFPO for our members – nor is the Union seeking the full elimination of all per visit and annual caps. However,	• **OPSEU/SEFPO's proposals seek entitlements that are not consistent with the Unified Bargaining Unit.** **a) Mental Health Proposal** • The Employer refers to its interest arbitration brief in respect of its proposal regarding psychological service entitlement enhancements. • In response to the Union's paragraph 261, the Employer wishes to clarify that the unlimited psychological services coverage was awarded in an interest arbitration decision as opposed to being negotiated. Further, the integrated mental health program was announced by the government not as a result of collective bargaining and it was in response to a series of tragic events at the OPP at the time. **b) Paramedical Coverage Proposal** • The Employer does not agree with the Union's proposal but is amenable to increasing the paramedical reimbursement per visit, consistent with changes reached during the current round of collective bargaining with the Unified Bargaining Unit. As it would be both costly and administratively burdensome to implement retroactively, the Employer would be seeking a go-forward effective date: o Proposed OPSEU/SEFPO Corrections: Paramedical service increase to $35 per visit/annual maximum of $1200 remains (January 1, 2024). o OPSEU/SEFPO Unified: Paramedical service increase to $30 per visit (effective January 1, 2023)/annual maximum of $1200 remains and increase to $35 per visit (effective January 1, 2024)/annual maximum of $1200 remains. **c) Vision Care Proposal** • The Union's proposal exceeds entitlements provided to the other OPS bargaining groups - particularly, the Unified Bargaining Unit (there is also a permeability agreement between the two OPSEU/SEFPO bargaining units) and therefore the Employer is not amenable. It would be very costly if this were to be extended to all OPS bargaining groups. **d) Co-insurance for Dental Care**

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	our members suffer from recurring and severe exposure to trauma and have high risk of negative mental health outcomes and every study draws a direct line from correctional work to detrimental mental health outcomes. **b) Paramedical Coverage Proposal** 264. The Union proposes to amend the collective agreement to provide reimbursement from $25 to $50 per session for physiotherapists, chiropractor and massage therapy, and increase paramedical reimbursement from $25 to $35 per session. 265. The current cap of $25 per session has been in place and unchanged since at least 2002. While costs for services have skyrocketed in the last two decades, our members have had their ability to access care increasingly constrained. These caps are not normative nor reasonable. **c) Vision Care Proposal** 272. The Union proposes to increase the vision care coverage maximum from $340 to $400 per person every twenty-four-month period. This proposal represents a minimal cost to the Employer. This proposal is consistent with the Union's comparators and should be awarded. **d) Co-insurance for Dental Care** 275. The Union proposes to amend the co-insurance reimbursement for dental care from 85% to 90%. This is consistent with comparators, whereby federal employees engaged in correctional work have 90%	• The Union's proposal exceeds entitlements provided to the other OPS bargaining groups - particularly, the Unified Bargaining Unit (there is also a permeability agreement between the two OPSEU/SEFPO bargaining units) and therefore the Employer is not amenable. It would be very costly if this were to be extended to all OPS bargaining groups. **e) Semi-Private Hospital Accommodation** • The Union's proposal exceeds entitlements provided to the other OPS bargaining groups - particularly, the Unified Bargaining Unit (there is also a permeability agreement between the two OPSEU/SEFPO bargaining units) and therefore the Employer is not amenable. It would be very costly if this were to be extended to all OPS bargaining groups. **f) Benefits Booklet** • In response to the Union's proposal to update the benefits booklet, the Joint Insurance Benefits Review Committee is the appropriate forum for review and discussion. The Employer will be working with OPSEU/SEFPO at JIBRC (as has been done historically) to collaborate to bring the employee-facing benefit guides up to date. Accordingly, the Employer's view is that the Union's proposal should actually have been withdrawn.

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	co-insurance, and most police employees have access to 100% co-insurance **e) Semi-Private Hospital Accommodation** 276. The Union proposes to remove the $120 per day maximum for semi-private hospital accommodation to address the spiraling costs of accessing this benefit. The current $120 maximum was last negotiated in 2002 and represents an outdated cost of semi-private hospital accommodation, which is generally well in excess of $200 per day. **f) Benefits Booklet** 278. Finally, the Union proposes that updated benefits booklets be provided to all members within 180 days of the date of ratification or award, as the last update was completed a full decade ago, in 2013.	
General Wage Increases **(Paragraphs 280-313)**	**14. – GENERAL WAGE INCREASES** **Union Proposal** 280. The Union is proposing across the board wage increases in each year of the collective agreement, as follows: **January 1, 2022: 6.8%** **January 1, 2023: 5.0%** **January 1, 2024: 4.0%** **Union Submissions** 281. It is beyond dispute that this collective agreement covers a period marked by exceptional and persistent inflation, which has	• In this section, the Employer does not agree with the Union's characterization. The Employer disputes OPSEU/SEFPO's assertion set out in paragraph 281 that the inflation has "dramatically affected employee spending power". It is the Employer's view that notwithstanding inflationary pressures members of the Correctional Bargaining Unit continue to remain well paid. • Having said that, the Employer recognizes that any arbitrated wage settlement that might be ordered will need to be made on a gradual basis. OPSEU/SEFPO's assertion that "extraordinary economic circumstances present" make it "appropriate to consider wages set in bargaining relationships not normally applicable to these parties" (paragraph 284) is both unrealistic and without any explanation. • The Employer has provided compelling reasons, backed by facts and bargaining history, that the appropriate wage settlement for the arbitrator to consider is that of the still to be established final Unified Bargaining Unit wage settlement. The two bargaining units have had the same or very similar across the board wage settlements for more than 30 years dating back to 1992.

Issue	OPSEU/SEFPO Paragraph Reference	Employer's Reply
	dramatically affected employee spending power. This reality has already been acknowledged by numerous interest arbitrators. 282. It is similarly beyond dispute that when wages fail to keep up with inflation, workers fall behind. Absent material advancements in the years covered by this collective agreement, real wages for the Union's members have been and will continue to be significantly eroded relative to the cost of daily living, including for essentials such as food and shelter. 283. Consequently, as described in detail below, there is now a broad and established pattern of collective bargaining settlements and awards incorporating significant inflationary wage adjustments for the period covered by this collective agreement. As Arbitrator Kaplan recently observed, addressing inflation in settlements and awards has become normative. 284. The Union acknowledges that the settlements and awards canvassed below do not all emanate from traditional comparators to the Correctional bargaining unit. However, given the extraordinary economic conditions at present, the Union submits that it is entirely appropriate to consider wages set in bargaining relationships not normally applicable to these parties. This was precisely the approach recently taken by Arbitrator Kaplan in *Participating Hospitals v CUPE/OCHU & SEIU (Bill 124 Reopener)*, adopting prior decisions by Arbitrators Weiler and Gray in similarly extraordinary circumstances: > In summary, the Weiler Board held that the appropriate standard for decisions inthis sphere should be drawn from external collective bargaining between sophisticated union and management negotiators whose bargains are shaped by real economic forces: "The parameters of change in the Hospital system as a whole must be drawn from and be	• In almost all situations the Correctional Bargaining Unit has reached the same or similar ATB settlements at the same time as the Unified Bargaining Unit or, in some situations, after the Unified Bargaining Unit has reached a tentative settlement, as described in great detail in the Employer's October 2, 2023 Arbitration brief. This relationship between the two units becomes even more significant in terms of this arbitration because the OPSEU/SEFPO Unified Bargaining Unit retains the right to strike while the Correctional Bargaining Unit now has interest arbitration and no longer has the right to free collective bargaining. • So instead of trying to create an artificial link with another entity as OPSEU/SEFPO suggests in paragraphs 288 to 304, the Employer points the arbitrator toward the real world linkage between these two OPSEU/SEFPO bargaining units. The fact that the Unified Bargaining Unit wage settlement has not yet been finalized should not be a reason to disrupt the long- established relationship between the two large units that have the same employer, continued free movement between the bargaining units through a permeability agreement and very similar collective agreement structures, and collective agreement language. • There is no deadline to establish a wage settlement for the Correctional Bargaining Unit. It is most important that the across the board adjustments for the two bargaining units be the same. • In paragraph 305 OPSEU/SEFPO asserts that up until 2021 the Correctional bargaining unit had been "the target of several cost containment measures in the name of government restraint" and as a result "the Crown has retained significant cost-savings out of the pockets of the Union's members". It is important to note that there were no legislative impediments to greater increases than the Union was able to achieve during those years.

Issue	OPSEU/SEFPO Paragraph Reference	Employer's Reply
	compatible with the external world of collective bargaining in the Province" (at 6). Adopting this exact approach, we agree with both the Gray Board – acting at the behest of the Participating Hospitals and with Arbitrator Weiler and many others – that in extraordinary circumstances it is entirely appropriate to look at settlements from sectors not normally considered. ***A. Bargained Wage Settlements*** 285. It is trite law that interest arbitration attempts to replicate the result that would most likely have occurred had the parties freely bargained their collective agreement. 286. Interest arbitrators have repeatedly recognized that the best evidence available to replicate free collective bargaining are the settlements negotiated between other parties, under similar market conditions, where there is the right to strike or lockout. Indeed, in two recent awards, Arbitrator Kaplan described freely bargained outcomes in the energy sector and the federal public service as "the touchstone" for achieving replication in the current economic circumstances: It is our view that freely bargained outcomes are the touchstone – and in the federal sphere were achieved after relatively lengthy strikes. We conclude that these voluntarily negotiated outcomes covering so many employees in the public and quasi-public sector are the best comparator for setting compensation in the current circumstances. Our job, as noted above, is to replicate free collective bargaining, and to ensure that the parties end up no better and no worse than if their right to strike and lockout had not been curtailed. 287. The Union submits that Arbitrator Kaplan's comments – and the settlements he references, along with the freely negotiated Unifor and	

Issue	OPSEU/SEFPO Paragraph Reference	Employer's Reply
	Ford Canada agreement (barely ratified on September 24, 2023) – apply with equal force to the bargaining between these parties. **1. The PWU-OPG Settlement** 288. The Power Workers Union and Ontario Power Generation settled their 2022-2024 agreement through free collective bargaining. 227 Those parties negotiated the following wage increases: April 1, 2022 4.75% April 1, 2023 3.5% 289. In addition, the parties agreed that all active employees would receive a signing bonus of $2,500 upon ratification of the agreement, and a further bonus payment of $2,500 on April 1, 2023. The agreement contained several other significant compensation improvements, including health benefit and other allowance improvements, a special case wage adjustment, an increase to the minimum premium payment for emergency overtime, increased vacation for Term employees, and a new voluntary separation package of up to 120 weeks' severance. 290. The Union submits that the PWU-OPG settlement provides highly persuasive evidence informing the replication analysis for the current parties for the years 2022 and 2023. 291. First, the PWU-OPG settlement was reached in a sophisticated labour relationship, in the same extreme inflationary economy, but where free bargaining was permitted to continue in a strike-lockout regime. Indeed, in February 2023, members of the PWU voted overwhelmingly in favour of a strike. In the face of that strike mandate, OPG returned to the bargaining table and, in March 2023, agreed to the compensation terms summarized above.228 These are	

Issue	OPSEU/SEFPO Paragraph Reference	Employer's Reply
	precisely the free bargaining conditions which interest arbitration seeks to replicate. 292. Further, the Crown authorized the compensation terms reached in the PWU-OPG settlement. OPG is a Crown corporation, wholly owned by the government of Ontario. OPG obtained its collective bargaining mandate directly from Treasury Board. In applying the replication principle, negotiated outcomes with the same employer are the very best evidence of free collective bargaining. The fact that OPSEU's bargaining partner – the Crown – authorized the PWU-OPG settlement renders it exceptionally relevant to the replication analysis in the present case. **2. The Federal Public Service Settlements** 293. Following relatively lengthy strikes, the Public Service Alliance of Canada negotiated agreements covering more than 120,000 Federal government employees and, separately through its Union of Taxation Employees, more than 35,000 employees of the Canada Revenue Agency. The Federal public service settlements include the following wage increases (with effective dates differing across the various worker groups): June 21, 2021 1.5% June 21, 2022 4.75% June 21, 2023 3.5% June 21, 2024 2.25% 294. Notably, the first and final years of these settlements cover partial years and, on that basis, provide for only partial wage increases.	

Issue	OPSEU/SEFPO Paragraph Reference	Employer's Reply
	295. In addition, the Federal public service settlements included a one-time signing bonus of $2,500. PSAC also made gains on one of their key bargaining priorities – remote work. 296. Similar to the PWU-OPG settlement, PSAC and the Federal government / CRA reached negotiated settlements after bargaining in the face of extraordinary inflation and with recourse to the economic sanction of a strike. In this case, however, PSAC actually exercised its right to strike. The strike commenced on April 19, 2023 and lasted until May 1, 2023 for employees of the Federal government, and until May 3, 2023 for employees of the CRA. **3. The Unifor and Ford Canada Settlement** 297. Unifor and Ford Canada settled their September 25, 2023 – September 20, 2026 collective agreement through free collective bargaining. Those parties negotiated the following wage increases: September 25, 2023 10% September 25, 2024 2% September 25, 2025 3% 298. In addition, all employees received a COLA fold-in to their base wage of $1.21, with quarterly COLA adjustments starting in late 2024. The agreement contained special adjustments for the skilled trades in the amount of 2.75% on September 25, 2023, and 2.5% on September 25, 2025. Several other significant compensation improvements were also part of the agreement, including significant pension improvements for Unifor members who had been part of a defined contribution pension plan. The parties also compressed their wage grid from an eight year progression to a four year progression and agreed that all active employees would receive a one-time bonus of $10,000 upon ratification of the agreement. Improved paid time off, improvements to the health and welfare benefits, and job security and guaranteed investments were all features of the agreement, along	

Issue	OPSEU/SEFPO Paragraph Reference	Employer's Reply
	with significant investments in equity and diversity, mental health, workplace health and safety initiatives. 299. The 2023-2024 increase of at least 10% + $1.21 per hour in the first year – and 20-25% over the three years of the agreement demonstrates that unions and employers are continuing to take significant steps to address the real wage decreases that workers have been experiencing. ***B. Arbitrated Wages*** 300. Several other public sector parties have had their wages for the years covered by this collective agreement adjudicated at interest arbitration. The Union has identified the following awards as especially relevant to the present case: **Parties** / **Award** / **2022** / **2023** / **2024** CUPE/OCHU & SEIU and Participating Hospitals / Initial award: November 3, 2022235 Reopener: June 13, 2023236 / 4.75% / 3.5% / x ONA and Participating Hospitals / July 20, 2023237 / x / 3.5% / 3% OPSEU and Participating Hospitals / Initial award: July 7, 2022238 Reopener: August 3, 2023239 / 4.75% / 3.5% / 3%	

Issue	OPSEU/SEFPO Paragraph Reference	Employer's Reply

OPG and Society of United Professionals	Initial award: December 3, 2021;240 Reopener: May 8, 2023241	4%	3.25%	x	
Parties	**Award**	**2022**	**2023**	**2024**	
IESO and Society of United Professionals	Initial awards: December 31, 2021242 and January 16, 2023243 Reopener: July 10, 2023244	4%	3.25%	2.75%*	

301. All the above awards were rendered well into 2023, at a time when extraordinary inflationary increases were not only baked into the economy, but also had come to be reflected in the wage settlements freely negotiated in other bargaining relationships. That is vital context for the application of the replication principle in the above awards and, similarly, in the present case.

302. The Union anticipates that the Employer may also point to reopener awards issued for the 2020-2021 and 2022 wages of ONA and Participating Hospitals. Arbitrator Stout ordered increases of

Issue	OPSEU/SEFPO Paragraph Reference	Employer's Reply
	1.75% in 2020 and 2% in 2021, while Arbitrator Gedalof ordered an increase of 3% in 2022. 303. The Union submits that the wage increases ordered in the Stout and Gedalof reopener awards are essentially irrelevant to the present exercise. The Stout Reopener set ONA wage increases for 2020 and 2021, years which are not at issue between these parties. More fundamentally, however, neither the Stout nor the Gedalof awards grapple at all with the corrosive impact of spiraling inflation on wages (not to mention the RN recruitment and retention crisis in Ontario's hospitals). As Arbitrator Kaplan observed in *Participating Hospitals v CUPE/OCHU & SEIU (Bill 124 Reopener)*, time constraints were at issue in both cases, and ONA maintained its original, modest wage requests notwithstanding dramatic and profound changes to the economic landscape. ONA received the increases it requested, along with other improvements. It is impossible to know what underlay those modest asks, but the resulting awards are not helpful in setting wages for the Correctional bargaining unit given the current economic landscape. 304. Indeed, the Stout and Gedalof reopener awards have previously been found to be unpersuasive for the purpose of applying the replication principle in the current inflationary economy. The Union submits that the same is true in the present case. ***C. Application to the Correctional Bargaining Unit* 1. Historic Employer Wage Controls and Erosion** 305. The members the Correctional bargaining unit (previously under OPSEU's Central collective agreement) have been the target of several cost containment measures in the name of government financial restraint. As a result, over the years, the Crown has retained significant cost-savings out of the pockets of the Union's members.	

Issue	OPSEU/SEFPO Paragraph Reference	Employer's Reply
	[See table on page 127 of OPSEU/SEFPO brief] ▼ POs received a 1% special wage increase ▯ All bargaining unit members received a 1.4% lump sum payment ▯ POs received a 2% special adjustment; all other bargaining unit members received a 3% adjustment ▯ COs and YSOs received a special adjustment of 1.75% ▯ POs and Nurses received a special adjustment of 1% 306. Notably, bargaining for the 2009 to 2012 collective agreement was done prior to the recession, and the negotiated wage increases did not reflect the economic context that emerged after that settlement was reached. Nevertheless, the Crown then bargained for 0% general wage increases in 2013 and 2014. In the 2015-2017 round of bargaining, the Crown continued to assert a "net zero" mandate, and various cost containments measures. The negotiated settlement included a number of concessions, a salary progression freeze for 2016 and 2017, a 1.4% lump sum payment effective January 1, 2016 and, for the first time since 2012, an across-the-board wage increase of 1.4% effective January 1, 2017. In the subsequent round, increases of less totalling less than 2% were ordered in each year of the 2018-2021 collective agreement. 307. The meagre wage improvements afforded to correctional employees over the last decade have been accompanied by actual and substantial losses in spending power due to increases in the cost of living. As described in detail above, and as has been recognized in virtually every recent interest arbitration award, inflation has increased dramatically since 2021. [See table on page 128 of OPSEU/SEFPO brief]. 310. Significant wage increases are amply supported by the comparator data. As set out above, the PWU-OPG settlement (which	

Issue	OPSEU/SEFPO Paragraph Reference	Employer's Reply
	was authorized by the Crown), the PSAC- Federal Treasury Board settlement, the PSAC (UTE)-CRA, and the Unifor-Ford Canada settlement demonstrate a pattern of inflationary wage adjustments, accounting for current market forces. That pattern has now been picked up and replicated in numerous interest arbitration decisions. Those various settlements and awards provided for average increases of 4.54% in 2022 and 3.44% in 2023. 311. Significant wage increases are also consistent with the unique circumstances of the Correctional bargaining unit. As described above, the Union's members perform vital work under extremely adverse conditions in exchange for wages which have been virtually stagnant for the last decade. It is no wonder that, in the current circumstances, Ontario's correctional facilities are chronically and dangerously understaffed. 312. The Union's proposed wage increases are therefore reasonable, consistent with established market patterns, and would ensure that members of the Correctional bargaining unit do not lose further spending power relative to increasing inflation. The Union is seeking a 6.8% increase in 2022, which is commensurate with the annual average increase to the Consumer Price Index for that year. In 2023, the Union's proposed increase of 5% represents a modest increase above Canada's average year-over-year CPI increase to date. **2023** — **CPI year-over-year increase** January 5.9% February 5.2% March 4.3% April 4.4% May 3.4% June 2.8% July 3.3%	

<table>
<tr><th>Issue</th><th>OPSEU/SEFPO Paragraph Reference</th><th>Employer's Reply</th></tr>
<tr><td></td><td>August 4%
Average 4.2%

313. The data is more limited for 2024; the PSAC settlements provide only for a partial year increase (2.25%), and the IESO and Society award for that year (2.75%) is subject to a cost-of-living allowance escalator. The Union submits that it is reasonable to infer that the actual 2024 wage increases for those parties will exceed 3%, likely by a significant margin. In the circumstances, the Union's proposed increase of 4.0% is reasonable and should be ordered.</td><td></td></tr>
<tr><td>Special Wage Adjustments

(Paragraphs 314-375)</td><td>314. The Union submits that before general wage increases can be considered, "catch-up" or special wage increases are necessary and appropriate given the well-recognized gap between the wage rates of employees in the Correctional bargaining unit and their accepted comparators. In particular, the Union is seeking wage parity for the following employee groups:
<table>
<tr><th>Classification Name</th><th>Classifications Included</th><th>Number of Employees</th><th>Catch Up Required</th></tr>
<tr><td>Correctional Officer and Youth Worker Class Series</td><td>Correctional Officer 1-3
Correctional Supervisor
Youth Worker</td><td>5020</td><td>9.0%</td></tr>
<tr><td>Probation Officer Class Series</td><td>Probation Officer 1-3</td><td>1121</td><td>7.5%</td></tr>
<tr><td>Nursing Class Series</td><td>Registered Practical Nurse 1-4
Nurse 1-3, General (including G24 Salary Note)</td><td>597</td><td>19.5%</td></tr>
</table></td><td>

Overall, in response to this section, it is the Employer's position that none of the comparators identified by OPSEU/SEFPO in paragraphs 315 to 375 are appropriate comparators for the purpose of this interest arbitration.
As described in the Employer's October 2, 2023 interest arbitration brief, there is a clear bargaining pattern over a period of more than 24 years in an environment off freely negotiated settlements by the OPSEU/SEFPO Correctional Bargaining Unit where wage differentials between the OPSEU/SEFPO -identified federal comparators and the OPSEU/SEFPO -asserted comparator positions grew in favour of the federal positions. As the salary differences grew, OPSEU/SEFPO did not engage in strike action to achieve parity with these purported "comparator" positions. Rather, OPSEU/SEFPO seemed unaware (or disregarded) what was occurring at the federal level with respect to salaries of federal positions that the Union now claims as comparators. Over those years, OPSEU/SEFPO (which, at the time, had the right to strike) chose to accept low and in some years zero percent increases, which eventually led to the current differentials.
As set out in paragraph 323 OPSEU/SEFPO continues to compare Ontario CO2s and Federal CX2s, apparently continuing to rely on the Joint Committee Report on Federal Correctional Officers 2000 to assert that the Federal CX2 positions and the Ontario CO2 positions perform the same duties. It is important to note that with respect to Knowledge and Skills, the Federal CX-1 was rated at 122 points while the Federal CX-2 position was rated at 140 points because they must balance "case management responsibilities with their security duties" as set out on page 27 of the 2000 Report.
It remains the Employer's response that if this arbitrator chooses to select a federal comparator, then the appropriate comparator is the CX1, since approximately 96% of Ontario CO2s do not perform any case management whatsoever, so if they were classified as federal employees they would most likely be classified as

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Issue	OPSEU/SEFPO Paragraph Reference				Employer's Reply
		Mental Health Nurse Nurse Practitioner			CX1s. The Employer continues to maintain that the most appropriate comparator for the Ontario Correctional Officer 2 (CO2) is the Alberta Correctional Peace Officer 2 (CPO2). The duties and responsibilities of the Ontario CO2 and the Alberta CPO2 match very closely and the profiles of the inmate populations that they supervise also closely match, being between 70% and 80% remanded prisoners. • With respect to Ontario police comparator references asserted by the Union also set out in paragraph 323 , as the Employer has noted above, Arbitrator Burkett points out in his 2016 decision that: "reliance upon the 1978 Shapiro Report recommending that correctional officer salaries be brought to within $1,000 of OPP salaries ($3,500 adjusted for inflation) is of no assistance in determining the tie-point in circumstances where, in the 38 years since, the parties have ignored the 1978 specific tie-point recommendation in their salary negotiations". • In addition, as set out in great detail earlier in this rebuttal respecting the Union's asserted comparison between Ontario correctional officers and Ontario police it continues to be the Employer's position that there are huge fundamental differences between the two jobs and simply referring to a reference in an arbitration decision that is now 45 years old does not establish any cause to use Ontario police officers as a comparator for correctional officers in OPSEU/SEFPO. • So for decades during free collective bargaining OPSEU/SEFPO appeared to overlook salaries at the federal government and in Ontario policing during negotiations but now having entered the interest arbitration regime OPSEU/SEFPO expects the arbitrator to do through "catch-up" adjustments (paragraph 322) what they couldn't or wouldn't do when they had the means and tools to achieve parity through free collective bargaining. • To again summarize the Employer's position rebutting the Union's position set out in paragraphs 330 to 332 of OPSEU/SEFPO's brief, comparison of the federal jurisdiction across the Correctional Bargaining Unit is not appropriate for four reasons: (1) the parties' bargaining history shows a clearly established pattern of consistent across-the-board increases between the Unified Bargaining Unit and Correctional Bargaining Unit, not the federal jurisdiction; (2) the Federal CX-2s' duties and responsibilities are not comparable to the duties of an overwhelming majority of Ontario CO2s; (3) total compensation does not support a "catchup" increase award for Ontario CO2s; and (4) generally, a "catch-up" increase is not justifiable. • The Ontario Correctional Officer 2 is most comparable to the Alberta Correctional Peace Officer 2. • The Federal Parole Officer classifications are not valid comparators for Ontario Probation Officers as the Union alleges in paragraphs 333 to 336 of OPSEU/SEFPO's brief. The Federal Parole Officer is a poor fit as a comparator for the Ontario PPO for a number of reasons which include:
	Rehabilitation Officer Class Series	Rehabilitation Officer 1-2	119	31.0%	
	Recreation Officer Class Series	Recreation Officer 1-3	98	17.0%	
	Psychology Series	Psychometrist 1-2 Psychologist 1-3	16	21.5%	
	Maintenance and Trades	Maintenance Electrician Maintenance Electrician, Foreman/Woman Facilities Mechanic/Facilities Technician 1-3A Facilities Mechanic/Facilities Technician Foreman/Woman Maintenance Carpenter Maintenance Carpenter, Foreman/Woman Maintenance Plumber	125	15.5%	

Issue	OPSEU/SEFPO Paragraph Reference	Employer's Reply
	Maintenance Plumber, Foreman/Woman Maintenance Welder Food Services — Helper, Food Service Cook 1-3 — 250 — 13.0% Food Services (10OFS-14OFS) Social Worker — Social Worker 1-2 Social Work Supervisor 1-2 — 140 — 12.5% Pharmacy — 16 Pharmacy Pharmacy Technician 1-2 — 17 — 7.0% **Union Submissions** ***A. The Decision-Making Framework*** 315. It is well-established that, in appropriate cases, interest arbitrators will award special catch-up wage adjustments to correct demonstrated inequities between similarly situated employees. 316. The case for catch-up depends entirely upon a comparative salary analysis as between the employees and their appropriate comparator classifications. In this regard, the analysis differs materially from the approach taken in interest arbitration to set salary increases. That approach requires the arbitrator to replicate the settlement that the parties would have negotiated in a free collective bargaining environment in light of the parties' history, their relative	○ Federal Parole Officers do not supervise probationers while the caseload of Ontario PPOs is almost exclusively probationers. ○ The individuals that the Federal Parole Officer supervises have all received sentences of 2 years or more which correlates with an individual being convicted of a more serious crime while Ontario PPOs generally supervise individuals who have committed less serious crimes, be it probationary supervision or parole supervision. • The most appropriate comparator for the Probation Officer 2 is the Alberta Correctional Service Worker 2. • For the Nurse classifications ONA Hospital Nurses are not appropriate comparators as alleged by the Union paragraphs 337 to 344 of OPSEU/SEFPO's brief. If the arbitrator chooses to award a special adjustment to the Correctional Nurse classifications it would be the Employer's position that any Special Adjustment amount combined with any Across the Board increases to the Nurse classifications should result in a wage rate that is less than that received by ONA Hospital Nurses to distinguish that while some work is similar, there are also differences in the work. • For other Correctional Bargaining Unit positions, the appropriate comparators are Unified Bargaining Unit positions, not the comparators that the Union has set out in paragraphs 345 to 375 of OPSEU/SEFPO's brief. The great majority of these positions were recently transferred from the Unified Bargaining Unit into the Correctional Bargaining Unit on January 1, 2018, so many of the positions exist in both bargaining units so the idea of looking outside the Unified Bargaining Unit for comparators is both unrealistic and impractical. • Up until 2002, the civilian employees at the OPP were members of the OPSEU/SEFPO Unified Bargaining Unit. After legislative changes allowed those OPSEU/SEFPO OPP members to elect to join the OPPA as a separate bargaining unit represented by the OPPA those former OPSEU/SEFPO members began to bargain as OPPA members effective 2002 and at the same time have access to interest arbitration instead of the right to strike. • Up until 2001 salaries of the OPP civilians and those of their counterparts in the rest of the Unified Bargaining Unit were the same for employees performing the same or similar work. Effective 2002 the salaries began to differ with the difference in favour of the civilians represented by the OPPA over their former Unified colleagues. The differential has grown such that, at present, OPPA civilians earn significantly more than their Unified Bargaining Unit counterparts who perform the same or similar work. • Since 1992, and even before, both the Unified Bargaining Unit and the Correctional Bargaining Unit have made job security a cornerstone of their collective bargaining and, accordingly, their collective agreements. Consequently, when the two bargaining units were separated through legislation in January of 2018 such that both had standalone

Issue	OPSEU/SEFPO Paragraph Reference	Employer's Reply
	positions, and market norms. Instead, when asked to award catch-up, the arbitrator must consider the wage rates of appropriate comparators and consider, as a matter of fairness and equity, to what extent the affected employees have fallen behind. 317. In his previous award between these parties, Arbitrator Burkett recognized the important distinction between the replication and "catch-up" analyses: The results of free collective bargaining govern public sector interest arbitration as it applies to across-the-board economic determination. This is the replication principle. However, special adjustment determination, as here, requires a comparative salary analysis as between the classification(s) that is at issue and relevant comparator classifications (that may be either internal or external). The purpose is to determine if the classification at issue is underpaid relative to the comparator classifications such that a special adjustment, distinct and apart from any across-the-board salary increase, is warranted. While the replication principle drives the across-the-board analysis, it is of little assistance in determining whether a specific classification warrants special treatment distinct and apart from the salary treatment accorded the bargaining unit generally or in this case the Ontario Public Service generally.	collective agreements, the parties signed a permeability agreement which allowed for continued movement of members of both bargaining units between the bargaining units in a number of areas, including for the purpose of job security. It is important to note that the Correctional Bargaining Unit has experienced facility closures, restructuring and modernization on an ongoing basis since the Perth Jail closed in 1994. The impact on OPSEU/SEFPO members has been significant with respect to job security. • What would have resulted from some of the restructuring (in some situations, hundreds of involuntary job losses) was largely mitigated through the ability to move employees between ministries and between bargaining units in order to retain their employment. Allowing the former Unified Bargaining Unit positions (now in the Correctional Bargaining Unit) and the current Unified Bargaining Unit positions to begin to have unequal salaries for performing the same or similar work will likely disrupt (or, in the long term, destroy) the intended purpose of the permeability agreement, which allows for the movement between the bargaining units - particularly in job security situations. • OPSEU/SEFPO has pointed to various federal positions as comparators for different OPSEU/SEFPO represented positions in addition to correctional officers, probation and parole officers and nurses. For example, in addition to an across the board increase of 15.8% over the contract OPSEU/SEFPO seeks a catch-up amount of 31% for Rehabilitation Officer 2 positions. This increase of nearly 50% (46.8% - non-compounded) sought by the Union is puzzling as this arbitrator's April 1, 2019 decision did not see fit to order this position any special adjustment amount or even a lump sum as some other positions received through the award. The question arises as to what event has occurred or what has changed with respect to this position since April 1, 2019 that would support such a massive increase. The Employer's attraction and retention records certainly do not support the Union's proposal. In fact, there have been an average of 48 applications received in competitions which have been completed over the past two fiscal years, which is compelling evidence that the Employer does not have issues staffing these positions. Notwithstanding the above, it would be difficult to justify to Ontario taxpayers why a position that has no attraction or retention issues whatsoever should garner a nearly 50% salary increase over the 3 year period of this contract. • Similar questions arise with respect to OPSEU/SEFPO demands for increases over 3 years for the following positions set out in paragraphs 345 to 375 (3-year total percentage increase sought by OPSEU/SEFPO including ATBs and special adjustment shown inside brackets): Recreation Officers (32.8%), Psychiatrists and Psychologists (37.3%), Maintenance (31.3%), Cooks/Food Service (28.8%), Social Workers (28.3%) and Pharmacy Techs (22.8%). OPSEU/SEFPO has provided no justification for these significant increases or pointed to any recruitment or retention issues.