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OUR FILE NO. 30149-000 CWN

January 11, 2018

By facsimile: (780) 422-0970

Alberta Labour Relations Board
501, 10808 - 99 Avenue
Edmonton, AB T5K 0G5

Attention: Ms. Tannis Brown,
Director of Settlement

Dear Madam:

POSTED	
<i>ES-00005</i>	
File No.	Support Doc. No.
<i>01/18/17</i>	<i>AM</i>
Date	Posted By

Re: An application brought by the Alberta Union of Provincial Employees affecting Capital Care Group Inc. -- Board File No. ES-00005

Introduction

As the Board is aware, I act for Capital Care Group Inc., operating as CapitalCare ("the Employer") in this matter. Please accept this letter as an amendment to the response and cross-application of the Employer submitted to the Board in this proceeding on December 18, 2017, or alternatively as a fresh application by the Employer related to the ongoing essential services agreement negotiations underway between the Employer and the Alberta Union of Provincial Employees ("AUPE").

The Employer applies pursuant to Sections 95.4(4) and 95.42(2) of the *Labour Relations Code*, R.S.A. 2000, c. L-1 ("the Code") to have the Essential Services Commissioner declare that AUPE has failed to "negotiate in good faith and make every reasonable effort to enter into an essential services agreement", and to provide further directives to address the union's conduct and facilitate concluding an essential services agreement between the parties.

In ongoing essential services negotiations AUPE has refused to acknowledge that requirements arising from health care statutes and regulations applicable to the

Employer's operation of approved hospitals, nursing homes and supportive living facilities must still be adhered to in the event of a labour dispute, and must be accommodated within provisions of an essential services agreement.

AUPE's stance of refusing to recognize legislative requirements as forming part of a framework of an essential services agreement is impeding negotiation of an essential services agreement. This application raises a broad legislative interpretive issue, not unique to this Employer and union, with respect to which the Commissioner's guidance is sought in order to facilitate a successful conclusion to essential services agreement talks between the parties.

Contacts

Contacts for CapitalCare for purposes of this proceeding remain as follows:

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Particulars of Amended or Fresh Employer Application

1. The Employer and AUPE are bargaining an essential services agreement for a bargaining unit of auxiliary nursing care employees.
2. On September 25, 2017 the Essential Services Commissioner issued a decision (*Alberta Union of Provincial Employees v. Capital Care Group Inc.* [2017] Alta. L.R.B.R. LD-082) appointing Lyle Kanee, Q.C. as an Umpire to resolve the essential services negotiations with the parties, and making further directions to facilitate talks.
3. The parties exchanged comprehensive written proposals for an essential services agreement in November, 2017.
4. One of the Employer's proposals contemplates the parties acknowledging that their essential services agreement is subject to requirements arising from health care statutes and regulations applicable to the Employer's operation of approved hospitals, nursing homes and supportive living facilities, and that these legislative requirements must still be adhered to in the event of a labour dispute.
5. Representatives of the parties have met with the Umpire on December 8, 2017 and January 10, 2018 to continue essential services agreement negotiations.

6. In the negotiations to date, AUPE has refused to entertain any term being included in an essential services agreement to recognize the obligations of the Employer to provide services to residents and patients in accordance with applicable legislative requirements.
7. AUPE's refusal in negotiations to address the need for an essential services agreement to accommodate requirements arising from health care statutes and regulations applicable to the Employer's operations is proving a significant impediment to concluding an essential services agreement. The Umpire identified this impasse as a concern at the last meeting of the parties.
8. The impasse between the parties on this point raises a broader issue of interpretation concerning the interplay between essential services provisions in the *Code* and provisions found in other provincial legislation regulating the undertaking of the Employer and other health care services providers. The Umpire has expressed the view to the parties in bargaining that this broad, threshold interpretive issue is better addressed by the Essential Services Commissioner, as opposed to being dealt with by an Umpire in the first instance in the context of a discrete negotiation between one employer and one union.
9. The parties will be scheduling a further bargaining meeting, expected to take place in February.

Relief Requested

The Employer requests that the Commissioner, in response to the Employer's amended cross-application or fresh application herein, exercise authority pursuant to Sections 95.4(5) and 95.42 of the *Code* and:

- a) declare AUPE to have contravened section 95.4(4) of the *Code*;
- b) direct the union to immediately and hereafter comply with section 95.4(2) of the *Code*, to "negotiate in good faith and make every reasonable effort to enter into an essential services agreement";
- c) issue an interpretative decision and declaration to facilitate essential services negotiations, by confirming that essential services provisions of the *Code* do not supersede, suspend or override requirements arising from health care statutes and regulations applicable to the Employer's operation of approved hospitals, nursing homes and supportive living facilities, confirming that these other legislative requirements must still be adhered to in the event of a labour dispute, and confirming that provisions of an essential services agreement must accommodate the Employer's ability to meet these other legislative requirements; and,

- d) direct AUPE to continue to meet with the Umpire and the Employer, to engage in rational and informed discussion of requirements arising from health care statutes and regulations applicable to the Employer's operations, and address how these requirements will continue to be adhered to under an essential services agreement in the event of a labour dispute.

We will await the Commissioner's further direction.

Yours truly,

NEUMAN THOMPSON



CRAIG W. NEUMAN, Q.C.

cc AUPE
Attention: Carl Soderstrom and Charie Langlois-Klassen (by email)

CapitalCare
Attention: Elgie Demchuk and Ian Caldwell (by email)