IN THE MATTER OF AN ARBITRATION

BETWEEN:

CSH ROYAL OAK LONG TERM CARE

(“the “Employer”)

-AND-

UNIFOR AND ITS LOCAL 2458

(the “Union”)

AND IN THE MATTER OF AN APPOINTMENT PURSUANT TO SECTION 48 OF THE LABOUR RELATIONS ACT WITH RESPECT TO A WAGE REOPENER

ARBITRATOR	**ROBERT J. HERMAN**

<u>APPEARANCES</u>

FOR THE UNION	**COREY VERMEY** **DARLENE PROUSE** **BRUCE DICKIE** **APRIL DUPUIS** **MIKE KISCH** **CAROL ZIMMERMAN** **KEN DUROCHER**
FOR THE EMPLOYER	**RYAN WOOD** **NICOLE DESJARDINS** **STACEY VAILLANCOURT**

THIS MATTER WAS HEARD IN WINDSOR ON JANUARY 13, 2016

AWARD

1. The Union, Unifor and its Local 2458, represents the employees at two long-term care homes, CSH Royal Oak Long Term Care ("Royal Oak") and Leamington Court, both of which are owned and/or operated by Chartwell Senior Housing REIT. The Union filed two separate applications under Section 48 of the *Labour Relations Act, 1995* (the "Act") that requested that the Ministry of Labour (the "Ministry") appoint an arbitrator pursuant to Section 48 to deal with wage reopener provisions in the collective agreements in force at each facility. I was accordingly appointed by the Ministry pursuant to Section 48, in a separate appointment for each facility. On consent, the two matters were heard together.

2. In a prior Award, I concluded that I had jurisdiction to determine the wage reopener.

3. The expired Collective Agreement was a negotiated first collective agreement and was not determined through interest arbitration. It ran from May 1, 2013 to April 30, 2015. Schedule "A" of the Collective Agreement sets out the employee classifications and wage rates, and below them it reads "Note May 1, 2014 there will be a wage reopener." The instant Award deals with this wage reopener.

4. The Union argues that as of May 1, 2014 there should be an adjustment of $0.25 per hour for RPN's, $0.50 per hour for PSW's and $1.50 per hour for all DHL's (Dietary, Housekeeping and Laundry Aides), and that there should then be a general

wage increase of 1.5% across-the-board for all classifications. The Employer argues that there should be a wage freeze.

5. I have taken into account the factors or criteria set out in *HLDAA.*

6. The rates at Royal Oak are materially below average rates for similar classifications at other long-term care facilities represented by the Union and by other unions, including facilities in the same geographic region of the province. The Employer argues that the relatively recently negotiated settlement for the Leamington Retirement Home between the same parties indicates what the parties would have negotiated here had they been able to resolve the matter in dispute, and that based on the principle of replication, the parameters of that settlement ought to be applied here. The settlement for the Leamington Retirement Home, though, was for a retirement home and not a long-term care facility, even though physically part of the same facility as the Leamington Long-Term Care Home (“Leamington LTC”). Generally speaking, comparators are of more relevance when they arise in the same type of facility. As well, the parties themselves have treated the retirement home sector differently than the long-term care sector, as they negotiated materially different wage rates for the Leamington Retirement Home, as they did for Leamington LTC and Royal Oak. I am not, therefore, prepared to accept that the single settlement at the Leamington Retirement Home establishes a pattern to be applied at Royal Oak.

7. The comparators justify adjustments in the rates of DHL’s, PSW’s, and RPN’s. The amount of the adjustments must take account of the total costs of awarded increases, including a general wage increase. Movement towards average wage rates in

a sector will customarily be a progression over time. There shall be a wage increase of $0.30 per hour to all DHL's, of $0.25 per hour to all PSW's, and of $0.20 per hour to all RPN's, retroactive to and effective as of May 1, 2014. These adjustments are to take place prior to the general wage increase awarded below.

8. The prevailing pattern of general wage increases in this sector for 2014 has been 1.5%. Accordingly, there shall as well be a general wage increase of 1.5% for all classifications, also retroactive to and effective as of May 1, 2014.

9. Retroactive payments shall be made to all current employees within four full pay periods of the date of this Award. Former employees who worked during the period in question shall be contacted by the Employer at their last known address on record with the Employer, within two full pay periods of the date of this Award, to advise them of their entitlement to retroactivity, including the time limits for making any such claim. Former employees will have a period of two full pay periods after the date of the notice to claim such retroactivity, and if they fail to make a claim within that period, they shall not be entitled to any retroactivity. Payment to former employees who are entitled to retroactive payments shall be made within four full pay periods of receipt of the claim.

10. I remain seized for any matters arising from the referral to arbitration or this Award.

Dated at Toronto this 4th day of February, 2016

R Herman

Robert J. Herman - Arbitrator