



NEUMAN THOMPSON

Labour & Employment Law on Behalf of Employers

ALRB MAR 6 2018 PM 2:37

301, 550 - 91 Street S.W.
Edmonton, AB T6X 0V1

Telephone 780.482.7645
Fax 780.488.0026

CRAIG W. NEUMAN, Q.C.
CNEUMAN@NEUMANTHOMPSON.COM
DIRECT LINE: 780-733-6556

ASSISTANT: LAVERN MILES
LAVERN@NEUMANTHOMPSON.COM
DIRECT LINE: 780-733-6550

WWW.NEUMANTHOMPSON.COM

OUR FILE NO. 30149-000 CWN

POSTED	
ES-00005	
File No.	Support Doc No.
03/06/18	
Date	Posted By

March 6, 2018

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

Via Facsimile: 780-422-0970

Attention: Ms. Tannis Brown,
Director of Settlement

Dear Madam:

Re: Applications by the Alberta Union of Provincial Employees and Capital Care Group Inc. – Board File No. ES-00005

Introduction

I write on behalf of Capital Care Group Inc., operating as CapitalCare ("the Employer"), in response to the February 20, 2018 letter to the Board from counsel for the Alberta Union of Provincial Employees ("AUPE").

Scope of the Employer's Cross-Application

First, the Employer wishes to re-state and clarify, to the extent there is any genuine misapprehension on the part of AUPE, the scope of the Employer's cross-application.

In its cross-application the Employer seeks to have the Commissioner exercise authority pursuant to Sections 95.4(5) and 95.42 of the *Labour Relations Code* to:

- (a) declare AUPE to have contravened section 95.4(4) of the *Code* by reason of its persistent refusal in essential services negotiations to address inclusion of provisions in an essential services agreement ("ESA") that comport with mandatory requirements of health care legislation affecting operations of the Employer;
- (b) direct the union to comply with section 95.4(2) of the *Code*, to "negotiate in good faith and make every reasonable effort to enter into an [ESA]";

**NEUMAN THOMPSON**

Labour & Employment Law on Behalf of Employers

2

(c) issue an interpretative decision 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 legislation applicable to the Employer's operation of approved hospitals, nursing homes and supportive living facilities, confirming that these legislative requirements still apply in the event of a labour dispute, and confirming that provisions of an ESA must accommodate the Employer's ability to meet these 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 applicable health care legislation, and address how these requirements will continue to be adhered to under an ESA in the event of a labour dispute.

Further Particulars of Employer Application

Second, without intending to derogate from the full scope of the cross-application as framed by the Employer, the Employer offers the following further particulars to identify aspects of governing health care legislation applicable to its operations that it maintains should properly be taken into account in prescribing essential services requirements in an ESA:

1. The provisions of the *Continuing Care Health Service Standards* ("CCHSS"), promulgated pursuant to legislative authority found in the *Nursing Homes General Regulation* under the *Nursing Homes Act*, the *Co-ordinated Home Care Program Regulation* under the *Public Health Act* and a Ministerial Directive under the *Regional Health Authorities Act*, including requirements of the CCHSS found in section 1 (assessing residents and clients, developing, maintaining and adhering to care plans), section 11 (infection prevention and control, cleaning of the client care environment, cleaning, disinfecting and sterilization of medical devices), section 12 (medication administration), section 14 (oral care assistance and bathing frequency) and section 16 (client restraints and supportive client interventions to provide meaningful activities, social interaction, assessment and management of pain, assistance with toileting and re-positioning).

2. The provisions of the *Nursing Homes Operation Regulation*, promulgated pursuant to legislative authority found in the *Nursing Homes Act*, including requirements found in section 5 (requirement to admit residents to available beds), section 12 (required nursing home staff), section 14 (required nursing and personal services staff), section 15 (food services), section 16 (life enrichment services) and section 23 (maintaining nursing home in safe and hygienic manner).

3. The provisions of the *Long-Term Care Accommodation Standards* promulgated pursuant to legislative authority found in the *Nursing Homes General Regulation* under the *Nursing Homes Act*, including requirements found in Standard 2 (safety requirements), Standard 3 (maintenance requirements), Standard 4 (environmental requirements), Standard 7 (bedding), Standard 8 (laundry services), Standard 12 (social and leisure activities), Standard 13 (nutritional requirements), Standard 14 (menu requirements), Standard 15 (cleaning requirements), Standard 16 (continuation of services), Standard 18 (resident safety and security) and Standard 21 (water temperature).

**NEUMAN THOMPSON**

Labour & Employment Law on Behalf of Employers

3

4. The provisions of the *Supportive Living Accommodation Standards* promulgated pursuant to legislative authority found in the *Supportive Living Accommodation Licensing Regulation* under the *Supportive Living Accommodation Licensing Act*, including requirements found in Standard 2 (safety requirements), Standard 3 (maintenance requirements), Standard 4 (environmental requirements), Standard 7 (bedding), Standard 8 (laundry services), Standard 12 (social and leisure activities), Standard 13 (nutritional requirements), Standard 14 (menu requirements), Standard 15 (cleaning requirements), Standard 16 (continuation of services), Standard 18 (resident safety and security) and Standard 21 (water temperature).

5. The provisions of the *Protection for Persons in Care Act*, including requirements found in section 10 (duty to protect clients from emotional and physical abuse and neglect, and to maintain a reasonable level of safety for the client).

Conclusion

The foregoing particulars are not intended to be an exhaustive list of applicable health care legislative requirements that may be relevant to consider in fashioning an ESA. The position of the Employer remains that it is appropriate, and indeed preferable, to include a general provision, among other general provisions being negotiated in the "framework terms" of an ESA between the parties, to reinforce a basic, shared understanding of the parties, and to assist an umpire or other decision-maker tasked with adjudicating any future dispute under an ESA, regarding the continuing application of health care legislative requirements to be met as part of providing essential services during a labour dispute.

Legislative requirements can change. Issues may arise in the course of a labour dispute concerning the specific application of these legislative requirements, which may not all be capable of being identified and addressed before a dispute begins. The Employer's position is that its ESA with AUPE should contain a mechanism to address legislative changes and real-time impacts of a labour dispute affecting the Employer's ability to meet mandatory legal obligations to provide care for vulnerable residents and clients.

The Employer thanks the Board for this further opportunity to comment on its cross-application.

Yours truly,

NEUMAN THOMPSON

A handwritten signature in black ink, appearing to read "Craig W. Neuman".

CRAIG W. NEUMAN, Q.C.

cc AUPE
Attention: Cherie Langlois-Klassen (by email)

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