IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 401

("UFCW LOCAL 401")

-AND-

SOBEYS CAPITAL INCORPORATED

("SAFEWAY OPERATIONS")

WAGE-RE OPENER

BRIEF OF UFCW LOCAL 401

Harold F. Caley

Barrister/Solicitor

caleyh@haroldcaley.com

Sukhmani Virdi

Barrister/Solicitor – CaleyWray

virdis@caleywray.com

PART 1: INTRODUCTION

The present interest arbitration arises from identical letters of understanding ("LOUs") in three collective agreements between UFCW Local 401 and Sobeys Capital Incorporated (Safeway Operations), all three of which have a term of August 10, 2020 to August 9, 2025. For reference, the collective agreements are as follows:

Safeway Retail Tab 1
Safeway Northern Meats and Deli Tab 2
Safeway Southern Meats and Deli Tab 3

The LOUs all include wage reopener language, providing the parties the opportunity to renegotiate changes to rates of pay during the life of the collective agreements.

For context, and as discussed further below, when the parties were last bargaining in 2020, the landscape was rife with significant uncertainties and inflation was virtually non-existent.

Like much of the world, the parties were thrust in throes of the COVID-19 pandemic. The level of fear and precaution during this time cannot be forgotten. Face masks and hand sanitizer were impossible to acquire, and activities such as grocery shopping went from commonplace to an exercise in tactic, strategy and survival.

Safeway workers were at the center of this all. They were quickly designated as essential and kept in their very public-facing role while public health officials urged people to remain at home and maintain social distancing.

Compounded with this atmosphere of worry were the economic concerns on the horizon. Disruptions to supply chains and an immobilisation of the economy sparked rumours of deflation.

Safeway employees continued working, and they continued working despite threats of legislative reform designed to erode their bargaining rights and ability to participate in lawful association activities.

Contrary to the experiences of Safeway employees, Sobeys and its parent company, Empire, have enjoyed financial success, and profits throughout and following the pandemic. There is no doubt with respect to Sobeys's strong financial health.

Safeway employees continue to be essential, and they deserve to be compensated with a wage that allows them to shop at the very grocery stores in which they work.

PART 2: BACKGROUND

(a) UFCW Local 401 – The Bargaining Agent.

UFCW Local 401 is one of Canada's largest private sector locals, consisting of approximately 32,000 members, primarily in the retail food sales and production industries.

Local 401 represents the hardworking employees of dozens of grocery stores across Alberta, owned by both Sobeys and its related companies, and otherwise.

(b) The Employees

There are approximately 6,334 Safeway employees in sixty-three (63) Safeway stores; and the part time employees greatly outnumber the full-time employees in each store.

Of those employees, approximately 34% are full-time, and approximately 59% are at the top rate of the wage grid. A Wage Grid that increases the top rates serves as a retention strategy for the employees at the lower levels of the Wage Grid.

These workers are loyal, committed, long-service workers. 18% of all employees have been Sobeys employees over twenty (20) years. As discussed further below, these figures do not include Sobeys's employees who opted for severance packages as Sobeys converts existing Safeway stores to FreshCo. stores.

These workers are unique in many ways. They cannot work from home, regularly interact with the public, are the face of Safeway and worked throughout the pandemic. These employees are still essential.

Sobeys' characterized its workforce as heroes and highlighted its employees' contributions in its Annual Report 2020 – Tab 4 a as follows:

> In a year of unprecedented challenge, our frontline teammates worked tirelessly as essential service providers to help families across Canada put food on their tables throughout the COVID-19 pandemic. Times of crisis test the limits of a team. As our team worked around the clock to establish a new normal in our stores, we learned that we are stronger and more capable than we ever imagined. We could not be prouder of our teammates' passion, dedication and resilience.[1]

[1] Empire Company Limited, "Our Heroes: Annual Report 2020," Tab 4a at p 1.

For completeness we have provided the 2021 and 2022 Annual Reports and the information available for 2023 as Tabs 4 b, c and d. These Reports disclose that the company is in very good financial state and paint a good course for the future.

These workers continue to provide essential labour during the heights of the pandemic and thereafter, in the face of customer abuse, and during a time of substantial uncertainty.

(c) Survey Results

To monitor the pulse of its membership, Local 401 has conducted surveys with a particular focus on the growing concerns of customer abuse and retail tension.

In a 2022 survey conducted by the Local, 75% of bargaining unit respondents agreed that customers had become ruder. A staggering 92% of respondents agreed that life had gotten harder. The full results of the survey are included at Tab 5.

(d) The Employer

Safeway is a chain of full-service grocery stores and a division of Sobeys Capital Incorporated. Sobeys is the second largest food retailer in Canada with over 1500 stores operating under a number of different banners as well as 350 retail fuel locations. These banners include Sobeys, Safeway, FreshCo., IGA, Foodland & Co-Op, Thrifty Foods and Voilà. These banners include both discount grocery stores, as well as full-service grocery stores.

(e) Bargaining History

The prior collective agreements between these two parties expired on March 18, 2017. From 2017 to March 31, 2020, the parties attended forty-four (44) bargaining dates. Concurrent to these bargaining efforts, on December 13, 2017, Sobeys announced that it would be converting a number of Safeway and Sobeys full-service stores in Alberta to its discount banner, FreshCo. Approximately 25% of the full-service stores would be converted to the discount stores over the next five (5) years.

Accordingly, while the parties bargained the renewal of the Safeway's collective agreements, they were also bargaining a first collective agreement for the recently announced, FreshCo. stores. The first collective agreement was ultimately decided by way of interest arbitration before Arbitrator Mia Norrie on December 22, 2020, Tab 6, (the "FreshCo. Award").

In March 2020, the Government of Alberta declared a state of public health emergency due to the COVID-19 pandemic. As many grocery employers did, Sobeys topped up wage rates by $2/hour from March 8, 2020, providing its employees with "hero pay."

On March 31, 2020, in accordance with of the *Labour Relations Code,* Mediator Mia Norrie was appointed to assist the parties in negotiating a renewal of the Safeway's' collective agreements.

The parties met sixteen (16) times between April 7 and June 10. On June 10, 2020, the Union requested that the Mediator "book out from the process." Three days later, on June 13, 2020, Safeway ended the "hero pay" premium.

Local 401 held a strike vote of its bargaining membership, which voted in favour of a strike. Safeway also put itself in a legal lockout position.

Notwithstanding the support of its membership to commence a legal strike action, Local 401 continued bargaining with Safeway in an attempt to reach an agreement. Ultimately, the parties reverted back to the Mediator, who issued her recommendations on July 20, 2020, Tab 7.

PART 3: THE MEDIATOR'S RECOMMENDATIONS

14. TERM AND PAY

Term: Amend all three Collective Agreements to reflect an expiry date of five (5) years from the ratification of these agreements.

A) Signing Bonus

All active employees on the payroll of the Employer hired prior to the date of ratification shall receive a two (2%) percent lump sum payment less statutory deductions based on all regular hours worked or paid at the rate earned between March 19, 2017, until the Saturday following the date of ratification.

This amount shall be paid to all active employees within thirty (30) days from the date of ratification.

The words "on the payroll of the Employer" shall include all employees who are currently on vacation, authorized leave of absence, sick leave, injury leave, Short Term Disability, Long Term Disability, Workers' Compensation, maternity or parental leave. Employees on a bona fide leave shall receive their signing bonus upon their return to work.

B) Wage Increases

All active top rate or over-scale employees on the payroll of the Employer hired prior to the date of ratification shall receive one and one half (1.5%) percent wage increase effective the Sunday following ratification.

C) Lump Sum Payments

a. 1% lump sum payment, less statutory deductions, for all hours worked or paid in the 52 weeks prior to August 6, 2021, for all active top rated or over-scale employees;
b. 1% lump sum payment, less statutory deductions, for all hours worked or paid in the 52 weeks prior to August 6, 2022, for all active top rated or over-scale employees;

The lump sum payments shall be paid within thirty (30) calendar days from the dates set out above.

The words "on the payroll of the Employer" shall include all employees who are currently on vacation, authorized leave of absence, sick leave, injury leave, Short Term Disability, Long Term Disability, Workers' Compensation, maternity or parental leave. Employees on a bona fide leave shall receive their signing bonus upon their return to work.

D) Final Offer Selection Arbitration

A Final Offer Selection Arbitration process will be used to determine top rate/overscale wage adjustments or lump sum payments for the final 2 contract years.

The Mediator also recommended that the Parties include as an LOU the following reopener language:

<u>Wage Reopener</u>

The Union and Employer agree as follows:

1. Within six (6) months immediately preceding August 6th, 2023, either party may give notice to the other party to negotiate changes to the top rated and over-scale wage rates, lump sum payments to top rated or over-scale employees, or no change at all in the current Collective Agreement. These changes will not be in effect prior to August 6th, 2023.

2. If the parties are unable to agree on what if any top rated or over-scale wage rates changes are to occur, the parties shall resolve their dispute through final offer selection interest arbitration for a binding settlement.

3. The parties will agree to the appointment of the interest arbitrator.

4. Each party shall formulate their own final offer, which shall include the items previously agreed to in their negotiations.

5. The final offer selection arbitrator shall hear submissions from each of the Parties and then select one of the final offers. The final offer selection arbitrator shall take into consideration the economic and competitive climate of the Employer's business, and the interests raised in 2020 bargaining.

6. The final offer selection arbitrator shall not have the power to change the expiration date of this Collective Agreement which is (insert date).

In accordance with recently passed legislative amendments to the *Labour Relations Code,* RSA 2000, the Union undertook another strike vote of its membership. This time the ballot options for its members were as follows:

1. I accept the contract offer of settlement.
2. I reject the contract offer of settlement and I authorize the Union to commence strike action. I personally commit to picketing for as long as it may be necessary.

Ultimately, Local 401 members voted in favour of accepting the Mediator's recommendations. It cannot be forgotten the pressures people felt during the summer of 2020. Although grocery stores were deemed essential, many of the Union's members quickly became the sole earner in their household as other industries, the non-essential, were shut down with no end in sight.

Safeway was well aware of these concerns throughout bargaining in 2020 sending out to its employees an update on bargaining that unambiguously prioritized operating as an essential business over bargaining Tab 8. The update stated:

> While we returned to the table as planned, we couldn't help but acknowledge the strain that the bargaining process was placing on our stores and retail teammates, during a time of already increased pressure.
>
> Since this global crisis began, employee and customer safety has been our number one priority. Our frontline teammates are serving Canadian families during a time of great anxiety. Our distribution centres are working around the clock, and our back-office operations are laser-focused on supporting our stores.
>
> We know that this terrible crisis has also impacted our frontline teams. While bargaining last week, we noticed the increased stress bargaining was adding to our strong culture at Safeway. During this time of crisis, we have made the difficult decision to temporarily step away from the bargaining table to continue focusing on the safety of our teammates and our customers. Alberta needs us. Canada needs us.
>
> It is very important that bargaining positions are not confused with COVID-19 concerns. We need to continue focusing 100% of our efforts on operating as an essential service at a time when our communities need us more than ever. We have been at the bargaining table for over a year now and unfortunately, due to this crisis, we need a little more time. We look forward to getting back to the table to have proactive discussions in May as planned. We need to stand together now, more than ever before. Our teammates have been doing an incredible job serving Canadians during these unprecedented times and we are so thankful for their efforts. Alberta families can rest assured knowing that together, we're here to support them.

Compounded with the threats of back to work legislation, concerns of deflation and the fundamental uncertainty of what was to come, Local 401 members understandably voted to accept the Mediator's recommendations.

As such, the parties agreed and included the above language as an LOU, revising only the expiration date of the collective agreements.

PART 4: INTERESTS RAISED BY THE UNION IN 2020 BARGINGING

As outlined in the LOUs governing this wage reopener process, the Arbitrator is required to take into account the interests raised in the 2020 round of bargaining.

The initial Union Proposals dated March 4, 2019, are found at Tab 9 and at page 92 the Wage Proposal is as follows:

> The Union wishes to evaluate all wages, premiums, bonuses and other forms of remuneration in the Collective Agreements with a view to achieving the following goals:
>
> - The establishment of new, compressed and sensible wage progressions.
> - The establishment of new start, mid-range, and top rates that reward people for their work in a manner consistent with the contemporary value system.
> - That value system demands that the parties consider the new minimum living wage as a starting point for dialogue. Policy makers have called the minimum wage a minimum for a reason. Fair bargaining demands that we think of $15 as a minimum, and obviously, seniority and service, and job responsibility must be rewarded over and above that.
> - Labour market conditions are starting to change and the attraction and retention of the best labour will be critical to ensure the success of the enterprise, and wages ought to reflect that in order for the Employer ... to be bound. In this context, the Union would like to discuss a longevity bonus system.
> - Some equitable adjustments are necessary to ensure employees are rewarded commensurate with their skills and responsibility and in a fair manner relative to others (e.g. Journeyman Baker).
> - Wage increases ought to be considered in light of the rising and changing cost of living.
> - Wage increases ought to be considered in light of the historical reality that wages, when adjusted for inflation, have stayed relatively stagnant for many years.
> - The Company should recognize that higher Union wages at Safeway were present when the Company was very successful, and it is only through the mismanagement of the takeover by Sobeys that the Company's problems have emerged. In other words, wages are not the independent variable. The Company has been, and was, successful with wages higher than those paid by outfits like Walmart, non-union Sobeys stores, and other non-union retailers.
> - Unionized employees are not insensitive to the Employer's challenges, but with respect, we suggest there is a myriad of ways the company can find to rebound without a simplistic, panic-based approach wherein wages are attacked.

In accordance with the LOU, on February 22, 2023, the Union sent Safeway notice to negotiate. Tab 10.

On March 10, 2023, Safeway responded indicating it would only negotiate for top-rated and overscale employees. Tab 11.

PART 5: SUBMISSIONS OF UFCW LOCAL 401 ON BEHALF OF MEMBERS

The following constitutes the submissions of Local 401 on behalf of its members and Safeway employees in support of the relief requested in this arbitration.

Local 401 will object to any unsourced data contained in the Safeway Brief. Any data cited must be supported by sufficient particulars to allow the Arbitrator and Local 401 to adequately assess the quality of information provided. If Safeway is relying on poor economic circumstances Local 401 requires the production of audited financial statements and all other relevant financial information. This is a matter of procedural fairness.[2]

It bears emphasizing that the parties have treated the wages in the wage grid as a minimum rate of pay. The collective agreements provide for incentives over and above the wage grid and Safeway has recently offered rates over the wage grid in Lloydminster and Canmore in December 2022 Tabs 12 and 13.

As we have seen from the above LOU the parties have provided factors that the Arbitrator is to take into consideration.

Strictly speaking, you are to consider the following:

> Economic and competitive nature of the Employer's business.
>
> The establishment of new start, mid-range and **top rates** that reward people for their work in a manner consistent with contemporary value systems.
>
> Some equitable adjustments are necessary to ensure employees are rewarded commensurate with their skills and responsibility and in a fair manner relative to others (e.g. Journeywan Baker) NB this rate is $24.88.
>
> Wage increases ought to be considered in light of the rising and changing cost of living.
>
> Wage increases ought to be considered in light of the historical reality that wages, when adjusted for inflation, have stayed relatively stagnant for many years.

We will also review the other criteria that arbitrators normally consider when deciding on the terms and provisions of a collective agreement under a regime where interest arbitraton is mandatory. This informs on 'cost of living' and 'stagnant wages'.

Typically, in a voluntary interest arbitration the Arbitrator will consider the principle of replication; that is, to 'replicate the settlement the parties would have achieved had they been able to do so through free and good faith collective bargaining".

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[2] *Forestview Retirement Residence v United Food and Commercial Workers Local 175* 2021 CanLII 102682 (Gedalof)

Arbitrators have commented that consideration should also be given to the unique facts of the particular case and to the state of the economy and the labour market, the cost of living, and internal and external comparators.

In the FreshCo. Award, which was a award for a first collective agreement you accepted the position of the employer that within the grocery industry the best comparator was the first agreements for FreshCo. and NoFrills between the employer and the UFCW Locals in the Western Provinces' also 'having consideration for the impact of local economic conditions and their impact on terms." (page 18)

In other words your task in the FreshCo. case was much different than your task in this case.

You will no doubt recall that the employer relied on the changed policitial and economic climate since the agreements relied upon by the union were bargained.(page 14).

You also referred to comparators and stated the following at page 17:

> "Currently there is not a unionized discount grocer in Alberta to use asa comparator and as stated previously, we do not have ther terms of employment for the No-Frills stores in Alberta. I also do not accept that the other grocery retail agreements provided by the Union are comparators as they are not discount grocers. They are either full-service stores, such as the IGA locations or are warehouse stores, the Grocery People and Real Canadian Wholesale Club and as such are of only limited assistance in assessing the parties' final offers."

In the end you appear to have adopted a test of "what is fair and reasonable in the circumstances".

In the 2022 Annual Report the company discloses that in 2018 the company announced plans to expand its FeshCo discount format to Western Canada with expectations of covnverting up to 25% of the 255 Safeway and Sobey's full-service format stores in Western Canada to the FreshCo banner. The company opened three FreshCo locations in Alberta during the fourth quarter of fiscal 2022, for a total of 12 new stores in Alberta. Four stores are expected to open in Alberta in fiscal 2023. Page 15.

PART 6: THE ECONOMIC AND COMPETITIVE CLIMATE AND INTERESTS RAISED IN COLLECTIVE BARGAINING

We have created a number of different subheadings for review and discussion.

In addition to the Reports of the experts hired by the Union which have been filed as separate documents. I will refer to these on the understanding that you have had the chance to review the documents.

The Report of Kevin Grier makes reference to the Competition Bureau Report of June 27, 2023, where the Bureau states: "Canada's grocery industry is concentrated" and that the largest grocery chains tower over Canada's grocery industry. There are only five large chains that operate in Canada; one being Sobeys.

This factor is then tied to profits by the Competition Bureau where the report states:

> "We saw Canada's largest grocers' food gross margins generally increase by a modest yet meaningful amount over the past five years…The fact that Canada's largest grocers have generally been able to increase these margins – however modestly – is a sign that there is room for more competition in Canada's grocery industry." (page 5)

While the whole Report is instructive the summary on states:

> "The data reveals that Canadian supermarkets experienced above average returns in 2020-2021. This is consistent with the sales, pricing and costing data presented in previous sections. Official STC data is not yet available for 2022. Based on those same sales, pricing and costing data in previous sections, it is likely that 2022 profits and margins returned to more normal levels."

While the industry as a whole may return to more normal levels the Annual Reports of the Company demonstrate a superior position as it shows sustained profitability over the years. See Annual Reports in Tab 4 and Part 6 subsection (g) of the Union Brief showing continued increases to net earnings.

In considering the different subheadings you are also governed by the unique circumstances of each case; something that we have stressed in our opening remarks.

(a) <u>The Unique facts of this case</u>

2019/2020 was a period of disinflation where the approach to wage increases was justifiably cautious.

In recognizing this you as Mediator recommended an initial 1.5% wage increase, which was above the increase in inflation, followed by 2 years of lump sums.

Given the 5-year term and the economic uncertainty about the future you recommended a wage re-opener in the final 2 years for a specified group of employees.

The final 2 years follow a three-year period when the only increase in the wage rates was 1.5% in 2020.

The wage re-opener has limited impact – it only affects a segment of the employees in the bargaining unit; many of whom are part time.

During the period of the collective agreements the economic times changed significantly not only in terms of rising inflation/rising cost of living but significant increases in the rates of interest.

Significant wage erosion.

For the first time that I am aware of a new factor has arisen – the significant increases in the interest rates.

COVID – declared a pandemic in March 2020; and the impact on the employees and the work stress that started and continues today.

Changed and more stressful working conditions for the employees.

Employees finally acknowledged as 'essential' as 'heroes' – removing the stigma of being undervalued and recognizing the significant contribution of these grocery store employees.

(b) Replication

As you aware, a principle in normal interest arbitration proceedings is that of replication. That is, arbitrators should look to award which most closely approximates the result which would have been reached by the parties.

In *Extendicare and CAW,* Arbitrator Kaplan, KC, described the principle in replication in interest arbitration as follows:

> … [C]areful attention has also been paid to replication, and by that I meant the requirement that boards of interest arbitration attempt to replicate the results which would have occurred if the collective bargaining process had not been interrupted by interest arbitration. What interest arbitrators attempt to achieve is a result that approximates, as closely as possible, what the parties would have accomplished by way of free collective bargaining.[3]

Arbitrator Sims, KC, made similar comments in *Newport Harbour Care Centre Partnership and AUPE*:[4]

> Interest arbitration customarily seeks to replicate the settlement the parties would have achieved, had they been able to do so, through free collective bargaining.[5]

He also cited his earlier decision in *Northern Alberta Institute of Technology and AUPE* for the proposition that "(w)hat is fair and reasonable overall is itself a function of the economic and social climate as much as it is a weighing, in isolation, of the merits of individual proposals."[6]

(c) Wage Reopeners

This case is the only wage re-opener that we are aware of in Alberta so in this sense it is unique keeping in mind that it provides the total compensation that will be awarded in the final two years of the collective agreements.

The arbitral jurisprudence is consistent with respect to the purpose of wage re-opener provisions. Parties include such provisions in their collective agreements in order to allow

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[3] *Extendicare v CAW Local 302* 2012 CanLII 58551 (Kaplan).
[4] *Newport Harbour Care Centre Partnership v AUPE Local 048* 2012 CanLII 97616 (Sims) ["*Newport Harbour*"].
[5] *Newport Harbour, supra* at para 10.
[6] *Newport Harbour, supra* at para 12.

them to address during the life of the collective agreement future events not yet crystallized.

In the Mediator's Recommendations, you recognized that during bargaining, there was significant uncertainty with respect to the long-term impacts of COVID-19. Although grocery stores were considered an essential service, there were serious concerns that the Canadian economy would plunge into a state of deflation.[7] Safeway's concerns about profitability and sustainability of the Safeway banner were clearly highlighted in your Recommendations.

It was from this bargaining context that you ultimately recommended, and the parties accepted, the above-noted wage re-opener language.

(d) Economic Context

The core principle of replication in normal interest arbitrations comes with the heavy caveat that parties negotiating in different circumstances and different economic times will have changed priorities and different perceptions as to what is reasonable than what existed when the collective agreement was first negotiated.

This is particularly the case where parties, such as the ones in the instant matter, agreed to wage reopener language in order to later address present uncertainties in market conditions.

Our expert Reports had much to say about the economic context. The Report of Dr. Jim Stanford spends time discussing the 'nominal wage' and the 'real wage'. First, his comment at page 5:

> "If nominal wages do not keep pace with inflation, then the real purchasing power of wages declines over time."

And at page 7:

> "The erosion of real wages accelerated significantly in the second and third years of the contract."

And at page 11:

> "To achieve the goal of returning real wages back to their level in the final year of the contract year to this collective agreement (2019-2020) substantial increases will be required in base wage rates. If the goal is pursued through lump sum payments, those increments will need to be both substantial and continuing (since

[7] Pete Evans, "Inflation rate fell to -0.4% in May as COVID-19 continued to wallop Canada's economy," CBC News, Posted: June 17, 2020, online: https://www.cbc.ca/news/business/inflation-may-canada-1.5615362.

> one-time lump sum payments do not improve compensation on a substantial basis unless they are repeated in subsequent years)"

And at page 12:

> "As indicated in Table 6, wages would need to increase by 13.49% in August 2023, to restore average real wages over the 2023-2024 contract year to the same level that prevailed in the contract year before the agreement was implemented in 2020. Wages would need to increase by another 2% in August 2024, to keep pace with expected inflation (now back to the Bank of Canada target rate) and retain that same 2019-2020 average level of real wages over the final year of the contract.
>
> For purposes of simplicity and financial planning for the employer, it might be more convenient to smooth the wage increment in the last two years of the contract, into two equal steps. In that case, wages would need to be increased by a compound rate of 7.59% in each of those last two years, in order to average real wages over the final year of the collective agreement to be equal to their starting point at the time the agreement was implemented."

Also refer to the conclusions on pages 15 and 16 of the Report.

In Ontario, many collective agreements, as well as interest arbitration awards, included wage reopener language in the event wage restraint legislation, commonly referred to as Bill 124," was declared unconstitutional. In November 2022, Bill 124 was struck down, and several parties have returned to bargaining, and in some cases, returned to boards of interest arbitration.

Against this background, Arbitrator Kaplan, KC, issued his very recent and important award in *Participating Hospitals and CUPE/OCHU and SEIU*[8] in which he was required to award wage increases pursuant to wage reopener language. Arbitrator Kaplan, KC, commented on the approach of an earlier interest arbitration award chaired by Arbitrator Gray, which was also issued in the context of a wage reopener:

> It would have been wilful blindness for the Gray Board to refuse to consider the dramatically change economic context and settlements and awards from all sectors that reflected what was actually occurring especially the freely bargained outcomes. It is factually and legally significant that in fashioning its award, the Gray Board looked at absolutely everything: it examined, as set out above, settlements beyond health care including the Ontario and federal governments, teachers, municipal police, the OPP, fire fighters, LCBO, municipalities and energy. We agree with this approach

[8] *Participating Hospitals and CUPE/OCHU and SEIU* 2023 CanLII 50888 (Kaplan) ["*Participating Hospitals*"].

> given the equally dramatic and profound changes to the economic landscape.[9]

Arbitrator Kaplan, KC, continued:

> 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 nor normally considered. Having done so, we find that the best evidence of free collective bargaining is the OPG and PWU settlement – authorized by Ontario's Treasury Board – and the recent settlements between the Government of Canada and PSAC covering 155,000 core public servants and employees of the Canada Revenue Agency. For whatever reason, including possibly happenstance, in terms of the numbers, these settlements – again freely negotiated in strike/lockout regimes – are identical.
>
> In OPG and PWU, wage increases of 4.75% and 3.5% were agreed upon for 2022 and 2023, along with signing bonuses of $2,500 in each year, along with a number of other significant compensation improvements. In the federal government PSAC settlement, the parties agreed on the exact same percentage general wage increases for 2022 and 2023, along with a $2,500 signing bonus, and some other (more modest) compensation improvements. These two settlements are extremely instructive and have informed our view of how to best replicate free collective bargaining in this reopener. These settlements are among the best evidence available of free collective bargaining in a high and sustained inflation environment. They fall far short of what the unions have requested – and they do not fully immunize against inflation – but our job is to replicate what the parties would have done in free collective bargaining because we follow free collective bargaining.[10]

Historically, interest arbitrators (and indeed employers) have taken the cost of living (or inflation or economic circumstances) when determining general wage increases.

In the 1970/80s when inflation reared its head in a significant fashion (as it has now) "cost of living/inflation/economic circumstances" was always taken into consideration by Arbitrators including <u>G. Adams</u>, <u>P. Weiler</u>, <u>K. Burkett</u> and <u>O. Gray</u>. We can provide the specific cases of these arbitrators if requested.

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[9] *Participating Hospitals, supra* at page 28.

[10] *Participating Hospitals, supra* at page 31.

In 2006 and 2010 Arbitrators W. Winkler and M. Teplitsky also considered the impact of the increase in the cost of living on wages in cases involving staff at the *University of Toronto* at 2006 LAC 4th 193 (Winkler) and 2010 LAC 4th 58 (Teplitsky).

At paragraph 27 Arbitrator Teplitsky stated:

> "With other improvements, I am awarding the overall total compensation for the two years is over 5%. This **is more than sufficient for CPI protection** and somewhat above the average overall increases in the public and private sectors."

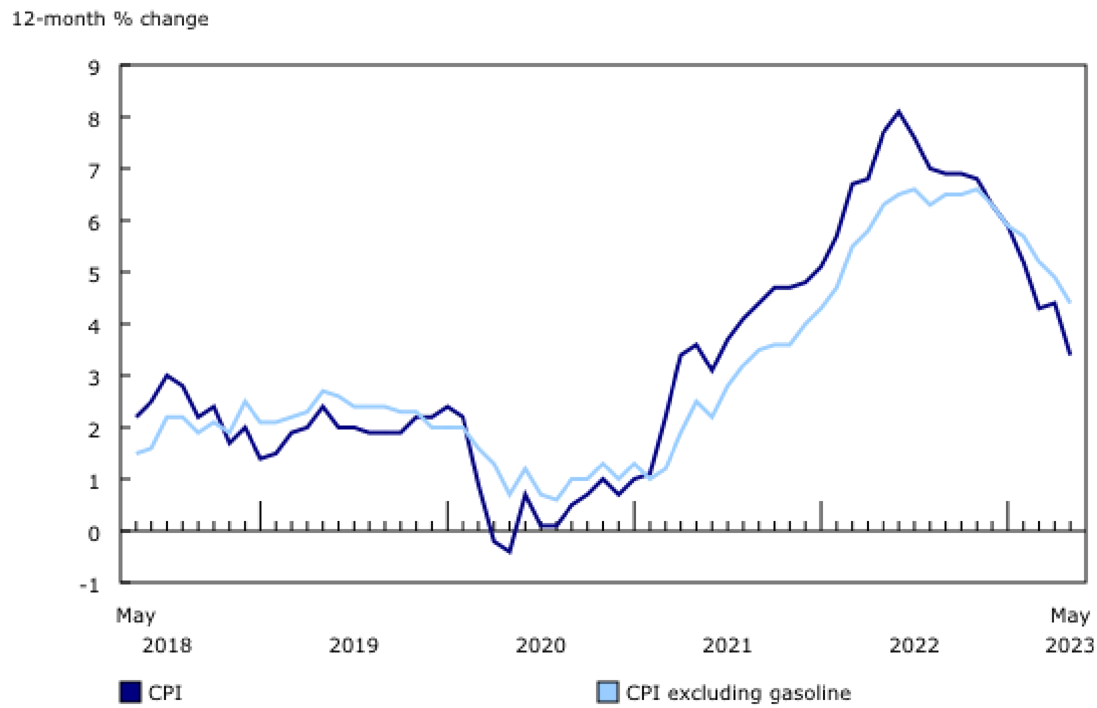
In his 2000 award between the Northern Alberta Institute of Technology and NAIT Staff Association,[11] Arbitrator Sims, KC, listed various considerations for interest arbitrators including "the cost of living, inflation and similar economic indicators that impact on the institution and the employees," as well as "the general economic conditions in the province and the forecast for those conditions over the period when the agreement will operate."[12]

Since the 2020 mediation and ratification of the collective agreements, all of Canada has experienced a generational high in the rate of inflation. Over the past two years, the cost of goods and services have risen rapidly, eroding the purchasing power of the Canadian dollar and making life less affordable to Canadians.

At the time of the Mediator's recommendations, Canada was experiencing a period of **disinflation, with the inflation rate declining to 0.72% for the year 2020.**[13]

However, since that time and during the first two years of the collective agreements, inflation reached a forty-year high, with the Consumer Price Index hitting 8.1%.[14]

[11] *Northern Alberta Institute of Technology and NAIT Academic Staff Association* 2000 CanLII 29211 (Sims) ["*Northern Alberta*"].
[12] *Northern Alberta, supra* at page 2.
[13] Statistics Canada, "Consumer Price Index: Annual Review, 2020," Released January 20, 2021, Online: https://www150.statcan.gc.ca/n1/daily-quotidien/210120/dq210120b-eng.htm.
[14] Statistics Canada, "12-month change in the Consumer Price Index (CPI) and CPI excluding gasoline," Modified: June 27, 2023, Online: https://www150.statcan.gc.ca/n1/daily-quotidien/230627/cg-a001-png-eng.htm.



Although CPI inflation has started to stabilize, much of the decline is the result of falling energy prices,[15] although gas prices are expected to increase.[16] Notably, the Bank of Canada has highlighted that "inflation for food purchased from stores remains elevated, staying just above 10%."[17]

Local 401 members are not sheltered from these increases to food purchases. To the contrary, with increased food prices and stagnant and eroding wages, Local 401 members are feeling economic pressures as both worker and consumer.

The Bank of Canada's target rate of inflation has historically been to maintain CPI at 2%.[18] In order to reduce inflation, the Bank of Canada has raised interest rates, making it more expensive for ordinary households to get by. The current rate of interest is 5.0%[19], with further increases expected on the horizon.[20]

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[15] Bank of Canada, "Monetary Policy Report – April 2023," Published: April 12, 2023, Online: https://www.bankofcanada.ca/wp-content/uploads/2023/04/mpr-2023-04-12.pdf at page 10 ["April 2023 Monetary Report"]

[16] Michael Franklin, "Gas prices won't be record breaking, but they will be high this summer," CTV News Calgary, Published: March 28, 2023, Online: https://calgary.ctvnews.ca/gas-prices-won-t-be-record-breaking-but-they-will-be-high-this-summer-1.6333136.

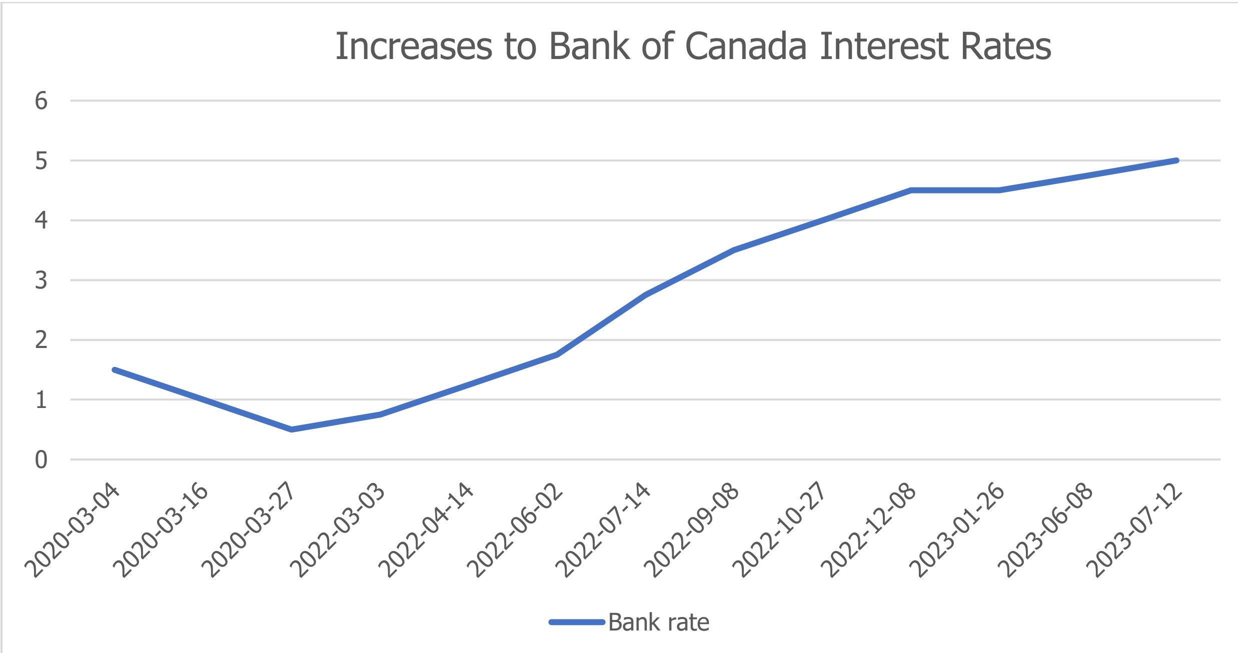
[17] April 2023 Monetary Report, *supra* at page 10.

[18] April 2023 Monetary Report, *supra* at page 1.

[19] Bank of Canada, "Policy Interest Rate," Online: https://www.bankofcanada.ca/core-functions/monetary-policy/key-interest-rate//

[20] Jenna Benchetrit, "Bank of Canada raises its key interest rate to 5%," CBC News, Posted: July 12, 2023, Online: https://www.cbc.ca/news/business/bank-of-canada-july-meeting-1.6904330.

As demonstrated in the chart below,[21] these increases to the rate of interest have been steadfast over the past two years, with an average increase of 2.75%.



Employees are impacted by these increases to interest rates through prime interest rates applicable to mortgages, credit cards, personal and auto loans. From August 2020 to July 2023, the prime rate of interest has increased from 2.45% to 6.95%, a staggering 183% increase.[22]

Since the parties last bargained in 2020, the unique and unprecedented economic conditions have compounded the impact of inflationary increases and rising costs of living, thereby eroding the real wages of Local 401 members.

Although the rate of inflation is starting to stabilize, there is no immediate and correlating decline in the cost of food and services. Notwithstanding the recent decreases to the rate of inflation, which appear to be largely driven by downward impact of energy prices, food costs continue to increase,[23] and it is more jarring when the CPI is divided into its constituent parts and the key commodities are singled out:

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[21] Figures pulled from Bank of Canada, "Policy Interest Rate," Online: https://www.bankofcanada.ca/core-functions/monetary-policy/key-interest-rate/.
[22] Bank of Canada, "Daily Digest," Online: https://www.bankofcanada.ca/rates/daily-digest/.
[23] Statistics Canada, "Consumer Price Index, May 2023," Released: June 27, 2023, Online: https://www.bankofcanada.ca/rates/daily-digest/.

COMMODITY[24]	Alberta CPI May 2022	Alberta CPI in May 2023	Percentage Increase
FOOD			
Meat	185.4	198.1	6.9%
Milk	193.9	209.5	8.0%
Butter	195.4	222.5	13.9%
Bread – Bakery Products	182.9	211.9	15.9%
Fresh Fruits and Vegetables	163.6	176.8	8.1%
SHELTER			
Rented Accommodation	137.1	141.8	3.4%
Owned Accommodation	199.7	213.5	6.9%
Utilities – Water, Fuel and Electricity	236.8	237	0.1%
TRANSPORTATION			
Gasoline	254.7	219.2	-13.9%
Public Transportation	188.6	185.0	-1.9%

Moreover, experts continue to expect steady increases to food costs, with a total increase in prices to land between 5 to 7%.[25]

Recently, the Federal Government has recognized the plight of the worker in the recent budget when it announced a GST credit to alleviate the rising costs of food,[26] emphasizing that even the employees cannot afford to shop at Safeway without being given a significant wage increase.

What is demonstrably clear from the foregoing is that these parties are not negotiating from the same positions as they were during the last round of bargaining. In accordance with the above discussed arbitral treatment of inflation and CPI, as well as the requirement as outlined in the parties' LOU, we ask the Arbitrator to consider these significant economic factors when considering the Union's position for the general wage increases to be awarded for 2023 and 2024.

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[24] Government of Alberta, "Consumer Price Index," Updated: June 27, 2023, Online: https://economicdashboard.alberta.ca/dashboard/consumer-price-index/.

[25] Canada's Food Price Report, "13th Edition: Canada's Food Price Report 2023," Online: https://cdn.dal.ca/content/dam/dalhousie/pdf/sites/agri-food/Canada's%20Food%20Price%20Report%202023_Digital.pdf at page 6.

[26] Canada Revenue Agency, "GST/HST Credit," Modified: July 4, 2023, Online: https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/rc4210/gst-hst-credit.html#Naotcp.

In light of the rising rate of inflation even pensions have increased, the Alberta Pensions Services Corporation made the following announcement:

> Effective January 2023, a 3.72 per cent cost-of-living adjustment (COLA) increase will be applied to the base pension amount for retirees of the Local Authorities Pension Plan, the Management Employees Pension Plan, and the Special Forces Pension Plan.[27]
>
> Effective January 1 of each year pensions under the Canada Pension Plan are adjusted for the increase in the in the cost of living measured by the Consumer Price Index (all items index) reported by Statistics Canada.
>
> Canada pension plan payments went up by 6.5% January 2023 and the OAS payments went up by 4.8% as of July 2022.

(e) UFCW Local 401 Collective Agreements

We draw your attention to two UFCW Local 401 collective agreements. However, in the case before you, UFCW Local 401 and Safeway have historically set the pattern for the rest of the retail grocery sector. The wage re-opener allows for this pattern to continue to be set.

This is a unique time for negotiations in the retail grocery sector, with the confluence of a pandemic, record high inflation, high interest rates and unprecedented parliamentary investigation into the rising cost of groceries. We have emphasized the uniqueness of the plight of the grocery store workers at Safeway.

The Calgary Warehouse Agreement involves the same parties but was negotiated in the second half of 2022 – at which point the Bank of Canada made clear it had underestimated the permanence of inflationary trends (Tab 14). The Calgary Agreement was ratified in January 2023; and it is now July 2023 when the full impact of the effect of the economy on the grocery store employees can be measured as found in the Expert Report of Dr. Jim Stanford.

The Calgary Warehouse Agreement involves warehouse workers and provided for a GWI of 4% in 2023 and 3% in 2024 and it forms part of the same supply chain, the end of which sees Safeway workers as the face of the company to the general public. The grocery workers are the goodwill ambassadors of the company on a daily basis and for the reasons expressed in this Brief are seeking greater wage increases.

[27] Alberta Pension Services, "2023 Cost-of-Living Adjustments," online: https://www.apsc.ca/news/Cost_of_Living_2023.jsp.

However, as discussed, the Safeway grocery employees, for many reasons are asserting the unique features of this case for greater wage increases than the warehouse workers. Some of these features are: the above factors surrounding these mediated collective agreements; the only wage increase of 1.5% in the first 3 year period of the collective agreements; the changing economic times in terms of cost of living and interest rate increases; the limited application of the wage re-opener increases – only a segment of the bargaining unit with many of the employees being part time; and that the grocery employees were and are the face (the goodwill) of the company during a highly politicized pandemic (and still are) and have borne the brunt of customer ire amidst skyrocketing prices with only lump sum wage increases. Safeway employees have been required to police masking policies, ensure social distancing and suffer customer abuse. Grocery employees are the front-line goodwill of this company. These members deserve to be adequately compensated.

To the extent Safeway may refer to the UFCW Local 401 and Real Canadian Super Store ("Super Store") collective agreement, we submit the following. Superstore is a store owned by Loblaws. The Union and Superstore entered into a Memorandum of Settlement on October 16, 2021, which provided the following monetary items:

- Effective date of ratification, 1.5% increase
- October 2022, lump sum 1% increase
- October 2023, lump sum 1% increase
- October 2024, 1.5% increase (or binding arbitration)
- October 2025, 2% increase (or binding arbitration)

Superstore is a very different operation than the Safeway brand and the SuperStore shopper is different from the Safeway shopper.

Superstore with up to 150,000 square feet has a huge general merchandise section in each store selling everything from appliances to sporting goods; Safeway is fundamentally a food store. Superstore has an extensive line of clothing under the brand name Joe Fresh; again, unlike Safeway. Joe Fresh is Josephine Mimran of Club Monaco fame. Superstore in Alberta is known to be Loblaws discount brand. Safeway is broadly known to be a higher-end store particularly now that many of the stores have been converted to the discount FreshCo. stores.

At Superstore customers pack their own product and cashiers are required to meet something called 'ring time' which measures the speed at which they ring items through the till. At Safeway there is significant customer interaction at the check-out stand where cashiers and courtesy clerks will pack the groceries and take them to the customers car – in other words the emphasis is on safe and full service.

Superstore has cut back on the concept of full-service bakeries and meat departments and are emphasizing pre-packaged products more.

The typical 50,000 to 70,000 square foot Safeway store provides a friendly environment for the older middle class and upper middle-class customers typical of Safeway.

A view of the two different operations will clearly show that Safeway and Superstore are distinct operations each service their own customer base. In Alberta Superstore is the Loblaws discount brand.

Shopping at Superstore and shopping at Safeway are profoundly different experiences – taking a view would clearly demonstrate the differences.

The Union rejects Superstore as relevant comparator to Safeway. See Tab 15.

In addition, since October 2021, there is no question that there has been a persistent increase to the cost of living and increases in the rates of interest. The Union's agreement with Superstore does not reflect the bargaining realities of this current wage reopener in July 2023.

(f) External Comparators

While no significant awards in the last two years have determined the appropriate annual increases in the retail grocery sector, awards in other sectors offer some insight.

However, we have just leaned of a recent settlement with Save-On-Foods/Overwaitea in BC where the wage increases demonstrate the trend in a company agreeing to increases in the wage rates of the employees. The wage increases are: 5%/3%/2%/2%. Tab 16.

The awards and settlements demonstrate in clear terms the extent to which the Final Offer of the company falls far short of the mark.

In Alberta alone, unions in the private sector have secured general wage increases of 3.73% in 2023 and 3.07% in 2024.[28] The significance of these numbers is underscored when considering general wage increases for unionized groups in the private sector prior to 2023 and 2024.

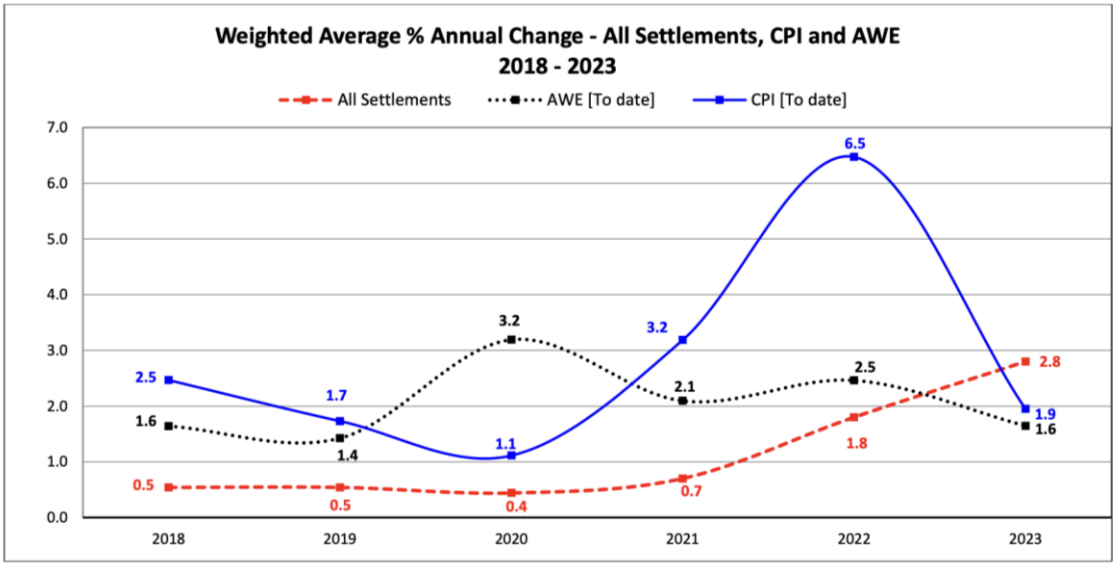
In 2021, the general wage increase was 1% and in 2022, the general wage increase was 2.69% in the private sector. Although, it is unclear from the available sources *when* these settlements were made and/or ratified, these figures are illustrative of the wage increase trends within the province.

Further, the Union is only seeking improvements to wages in this reopener. Many, if not all, of the comparator's agreements include general wage increases as part of an

[28] Government of Alberta, "Bargaining Update: June 2023," Online: https://open.alberta.ca/dataset/21e6b765-9e4b-4d88-872c-09950d04210c/resource/1abc0ed2-0bcd-4cef-b137-4627f0d446d5/download/jet-bargaining-update-2023-06.pdf at page 20.

improvement to total compensation. The figures do not demonstrate the totality of the monetary increases, which are likely to be greater than the general wage increases alone.

As demonstrated in the chart below, CPI has gone up drastically since the onset of the COVID-19 pandemic. Unsurprisingly, there has been a delayed reaction to the increasing rate of inflation. General wage increases did not meaningfully reflect the changes to inflation until 2022.



For much of 2021 and 2022, the Bank of Canada remained insistent that inflationary trends were not expected to last long. It was not until July 2022 that the Bank of Canada revised its CPI projections, reflecting "more persistent and broad-based inflationary pressures than previously estimated" – Tab 17, Bank of Canada, Monetary Policy Report, July 2022 at page 20.

In its July 2022 Monetary Policy Report, the Bank of Canada predicted at that time inflation would remain at 7.2% in 2022, 4.6% in 2023 and 2.3% in 2024 -Bank of Canada, Monetary Policy Report, July 2022 at page 3:

> Consumer price index (CPI) inflation is anticipated to be substantially higher than projected in April. The outlook for CPI inflation have been revised up by almost 2 percentage points to 7.2% in 2022, by 1.8 percentage points to 4.6% in 2023, and by 0.2 percentage points to 2.3% in 2024. These revisions mainly reflect more persistent and broad-based inflationary pressures than previously estimated."

And at page 26:

> The Bank of Canada, like other central banks, has underpredicted inflation since 2021.

Once it was clear that high CPI inflation was not a temporary phenomenon, the cost of living became critical for many groups in bargaining. Unions across all industries sought wage increases that were not only commensurate with the increased cost of living, but to **also** compensate their members for the erosion of their real wages in the years immediately prior.

In Alberta, unions in the private sector secured wage increases as follows:

Year	Weighted Average % Annual Change	Alberta CPI %
2019	1.02	1.7
2020	1.34	1.1
2021	1.0	3.2
2022	2.69	6.5
2023	3.73	--
2024	3.01	--

However, many of these settlements were negotiated and ratified prior to the crystallization of inflationary pressures. In that regard, these figures are not determinative as to how these two parties would have freely bargained in light of the economic context.

In 2023, unions in Alberta have ratified settlements resulting in general wage increases of 4.09% effective 2023 and 2.74% effective 2024. Dissecting these numbers further and distinguishing between public and private sector groups, available data reveals that in 2023 private sector unions have ratified settlements resulting in general wage increases of 4.62% in 2023 and 2.86% in 2024.[29]

What is clear is that parties in Alberta's private sector continue to freely bargain wage increases on an upward trajectory, notwithstanding the recent stagnation of the inflationary rate in the province.

This trend is not exclusive to Alberta. In Ontario, private sector unions have secured wage increases as follows[30]:

[29] Union calculations based on available data from Alberta Collective Bargaining.
[30]Union calculations based on available data from Ontario's Ministry of Labour database: https://www.lrs.labour.gov.on.ca/VAViewer/?reportSBIP=SBIP%3A%2F%2FMETASERVER%2FSh

Year	General Wage Increase	Ontario CPI%
2019	2.2	1.9
2020	1.7	0.6
2021	2.0	3.5
2022	4.0	6.8
2023	3.9	--

Looking at Ontario more closely workers have negotiated general wage increases above normative and traditional patterns. Under the *Hospital Labour Disputes Arbitration Act* ("*HLDAA*"), interest arbitrators are required to take into account the "economic situation in Ontario and in the municipality where the hospital is located." Over the past year, *HLDAA* awards have repeatedly referred to the increase in CPI as supporting wage increases beyond normative patterns in the healthcare industry.

In the fall of 2022, Arbitrator Stout released his interest arbitration award pursuant to *HLDAA* between the Service Employees' International Union, Local 1 Canada and Participating Nursing Homes.[31] This agreement is often referred to as the "Central Award" in long-term care. Over the past number of years, the Central Award has seen, on the average, general wage increases of 1.5% in each year. In 2022, in light of the economic state and recent trends in collective bargaining, Arbitrator Stout awarded general wage increases of 3% - effectively doubling the prevailing rate of wage increases in this sector. In addition to other monetary benefits that raised the total compensation of the award.

Arbitrator Stout's award is not an anomaly; rather, it is representative of a larger shift in interest arbitration awards pursuant to *HLDAA.* A fulsome list of other awards can be found at Tab 18.

These awards demonstrate an unequivocal break from the normative pattern that has suppressed wages in the healthcare industry in Ontario for decades.

ared%20Data%2FSAS%20Visual%20Analytics%2FPublic%2FLASR%2FCollective%20Bargaining%20Highlights(Report)&page=vi492432

[31] *Participating Nursing Homes v Service Employees' International Union Local 1 Canada,* 2022 CanLII 90597 (Stout).

At the federal level, unions have secured the following general wage increases in addition to other monetary increases:

- VIA Rail and Unifor Collective Agreements 1,2, and 3 - Shopcraft and On-Board Service Employees – 5.5% for 2022, 3.5% for 2023 and 2.5% for 2024 (ratified August 2, 2022)[32]

- Canadian Pacific Railway Company and Teamsters Canada Rail Conference – 3.5% for 2022 and 3.5% for 2023 (awarded, August 15, 2022)[33]

- Canadian National Railway Company and Teamsters Canada Rail Conference – 3.25% for 2022 and 3.25% for 2023 (ratified, May 26, 2023)[34]

- Canadian National Railway and IBEW Systems Council No. 11 – 3% for January 1, 2022, 2023 and 2024 (awarded October 11, 2022)[35]

- Canadian National Railway and Teamsters Canada Rail Conference for Traffic Controllers 3% for January 1, 2023 and 2024 plus $1,000.00 signing bonus Edmonton December 2022.[36]

- Treasury Board of Canada and Public Service Alliance of Canada – 1.5% for 2021, 4.75% for 2022, 3.5% for 2023 and 2.25% for 2024[37] (ratified June 16, 2023)[38]

- Canadian National Railway Company and Unifor Council 4000 January 1, 2023 - 3.25% and January 1, 2024 3% plus .50 cents market adjustment and $1,500.00 lump sum payment – (ratified, April 28, 2023)[39]

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[32] Unifor, "Unifor members at VIA Rail ratify collective agreement," Published: August 2, 2022, Online: https://www.unifor.org/news/all-news/unifor-members-rail-ratify-collective-agreement.

[33] *Canadian Pacific Railway v Teamsters Canada Rail Conference (Train and Engine Employees)* 2022 CanLII 73151 (Kaplan).

[34] Teamsters Canada, "CN Workers Ratify Agreement," Published: May 26, 2023, Online: https://teamsters.ca/blog/2023/05/26/cn-workers-ratify-agreement/.

[35] *Canadian National Railway v IBEW Systems Council No. 11* 2022 CanLII 93013 (Kaplan).

[36] CN, "Union Representing Rail Traffic Controllers Ratifies New Agreement," Published January 3, 2023, Online: https://www.cn.ca/en/news/2023/01/union-representing-rail-traffic-controllers-ratifies-new-agreeme/.

[37] Public Service Alliance of Canada, "Summary of PA group tentative agreement," Published: May 6, 2023, Online: https://psacunion.ca/summary-pa-group-tentative-agreement/.

[38] Public Service Alliance of Canada, "PA members ratify new agreement with Treasury Board," June 16, 2023, Online: https://psacunion.ca/pa-members-ratify-new-agreement-treasury-board.

[39] CN, "Unifor Ratifies CN Collective Agreements," Published May 1, 2023, Online: https://www.cn.ca/en/news/2023/05/unifor-ratifies-cn-collective-agreements/.

- WestJet, An Alberta Partnership and Air Line Pilots Association, International – 15.5% for 2023, 8.5% for 2024, 8.5% for 2025 and 8.5% for 2026 (ratified June 9, 2023)[40]

- L3 Technologies and the IAM Final Offer Selection Award of James Hayes dated September 23rd 2022 with wage increases of 5%/3%/2.85% and 2.85% over the 4 years.[41]

It bears emphasizing that notwithstanding the interprovincial operations of both Canadian Pacific Railway Company, and WestJet, An Alberta Partnership, both companies are headquartered in Calgary, Alberta.

(g) Safeway's Financial Position

As outlined in the Mediator's Recommendations, Safeway was concerned about its financial position in light of the early pandemic economy. Safeway also expressed concerns about the profitability and sustainability of Safeway.

Sobeys has been a highly profitable enterprise in the years prior to the start of the pandemic. Over the last three years, it has become remarkably apparent that Safeway exceeded its projected financial outcomes. Since 2019, Sobeys and its parent company, Empire have continuously seen financial success when reviewing year over year figures.[42]

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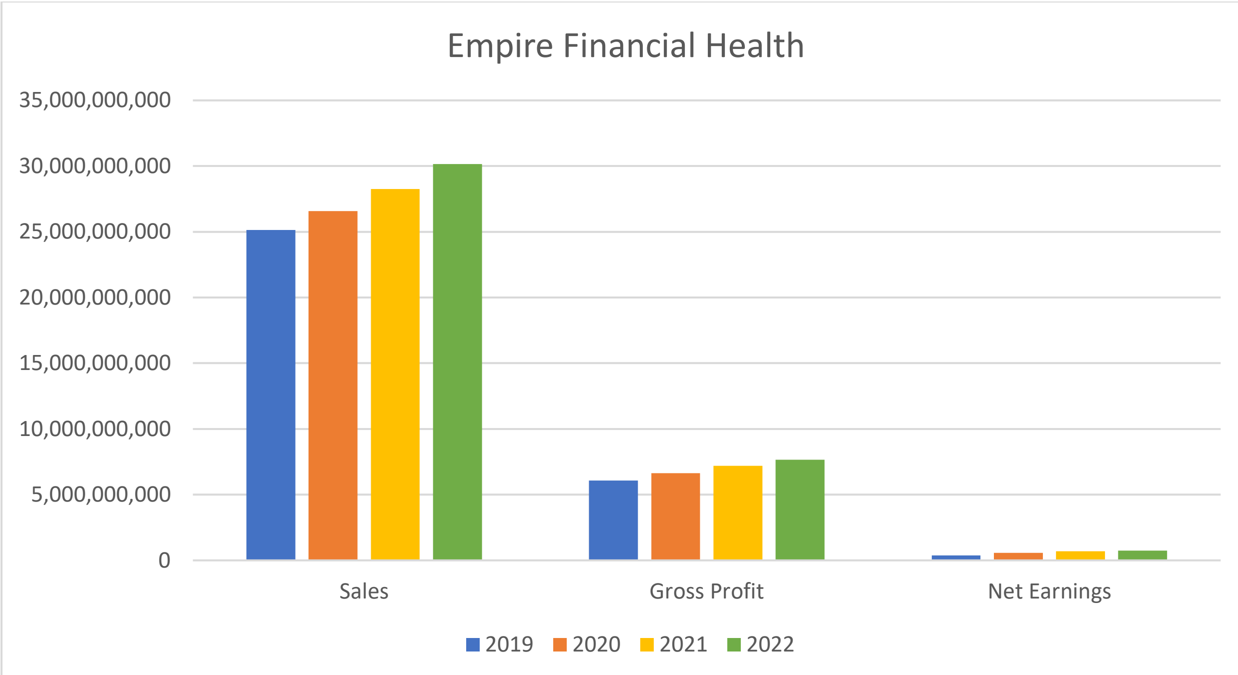
[40] WestJet, "WestJet Group and ALPA agreement ratified," Published: June 9, 2023, Online: https://www.westjet.com/en-ca/news/2023/westjet-group-and-alpa-agreement-ratified--.

[41] *L3 Technologies Mas Inc. v International Association of Machinists and Aerospace Workers Local 717 Turbo* 2022 CanLII 86323 (Hayes) [Note: this was a final offer selection].

[42] Union calculations based on data available in Annual Reports at Tabs 4a-c.



From 2019 to 2022, Empire enjoyed a 19.97% increase from its 2019 to its 2022 sales. Notwithstanding the increases to various supply chain costs that have factored into the increase in dollar sales, Empire saw a much greater increase with respect to its net earnings. From 2019 to 2022, Empire's net earnings went from $387,300,000 to $745,800,000 – effectively **doubling** its profitability.

This financial success also resulted in a notable increase to the dividend per share received by each of Empire's shareholders. In 2019, the dividend per share was $0.44. By 2022, it had increased to $0.60, an increase of 36.4%. On June 22, 2023, Empire announced that it was increasing the dividend per share again, this time by 10.6%.[43]

While shareholder dividends are not the equivalent of earned wages, nor are shareholders performing the same work as the bargaining unit, it is helpful for the Arbitrator to get a sense of Safeway's ability to pay and to the extent to which its purse can withstand general wage increases.

Empire's financial success throughout the pandemic has not gone unnoticed.

In an unprecedented Parliamentary Investigation, Empire and its few competitors in the grocery food industry, were summonsed to appear and to testify as to the exponential increases to food price inflation. The Parliamentary Standing Committee on Agriculture

[43] Ghada Alsharif, "Sobeys parent company Empire reports profit up from a year ago, raises dividend," The Toronto Star, Published: June 22, 2023, Online: https://www.thestar.com/business/2023/06/22/sobeys-and-farm-boy-parent-company-empire-reports-q4-profit-up-from-a-year-ago-raises-dividend.html.

passed a motion to specifically investigate the extra level of profit that grocery giants, including Empire, enjoyed throughout and coming out of the COVID-19 pandemic.[44]

It is also notable that in twelve (12) month period prior to the onset of the COVID-19 pandemic, the stock value of Empire ranged from $27.22 per share to $36.91 a share.[45] Since March 2020, the value of Empire stocks has climbed, hitting a five (5) year high in March 2022 at $45.20 per share. This is the equivalent to a 66% increase to its share.

This is further significant when considering that Empire stocks have remained relatively stable in the past six (6) months, ranging from $33.50 to $38.30. It is demonstrably clear that notwithstanding the parliamentary investigation, Empire enjoys continuing investor confidence, and its associated financial prosperity.

The concerns that Safeway may have had in the 2020 round of bargaining with respect to its future financial prosperity and economic stability have certainly been obliterated in the face of sustained profitability throughout the pandemic.

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[44] CBC News, "Investigation to provide answers about 'greedflation' from grocery giants, Northern Ontario MP says," Published: October 18, 2022, Online: https://www.cbc.ca/news/canada/sudbury/angus-opposition-motion-food-prices-1.6620310.

[45] Data from: TMX Group, "Empire Company Limited Non-Voting Class A Shares," Online: https://money.tmx.com/advanced-chart/EMP.A.

(h) Market Conditions and Competitiveness

In preparation for this round of bargaining, and the present wage re-opener, Local 401 conducted a price comparison of certain staple food items from across different grocery stores in Calgary and the surrounding area. These food items included:

- Heinz Ketchup
- Kraft Dinner
- Heinz Beans Mol & Pork
- Ocean Tuna
- Catelli Spaghetti
- Kraft Smooth Peanut Butter
- Apple Juice Boxes
- Special K Protein Bars
- 6pk Scotties Paper Towel
- Honey Nut Cheerios
- Campbells Tomato Soup
- Premium Plus Crackers
- Colgate Toothpaste
- Diapers
- Head & Shoulders Shampoo

The prices were collected from the same sampling of stores, including No Frills, Superstore, FreshCo., Safeway (Canmore), Banff IGA, FL Sobeys, Safeway, Co-Op and Shoppers Drug Mart.

When looking at a year over year comparison of price increases,[46] it is demonstrably clear that Safeway, and other Empire-owned banners, have raised prices far greater than the Loblaw counterparts.

These results are consistent with other price comparison activities conducted by news outlets, which have found Safeway prices to be the highest in Alberta.[47]

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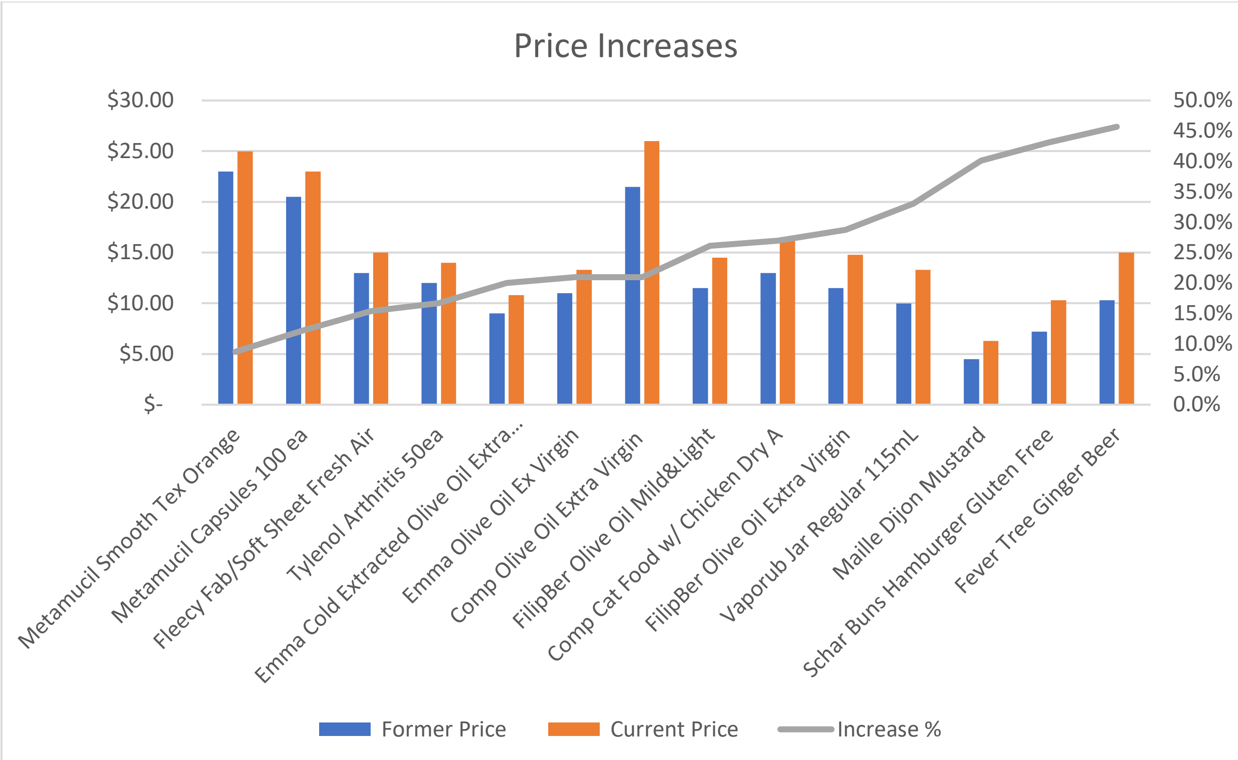
[46] Prices were collected from all stores in the same week at random both in the spring of 2022 and the spring of 2023. Price sampling includes sale prices. Where there were no prices for a particular food staple either in 2022 or 2023, the price available in the alternate year was used as a placeholder estimate.

[47] Sarah Offin, "Apples to apples: Which Alberta grocery store is the cheapest?" Global News, Published: April 6, 2023, Online:https://globalnews.ca/news/9608480/which-calgary-grocery-store-cheapest/.

The Empire-owned stores increased prices at an average rate of 31.2%, whereas the Loblaws-owned stores increased prices at an average rate of 10.9%.

The rate of price increase to food products is a phenomenon with which Local 401 members are intimately familiar. Not only are they purchasing these food products as consumers, but they are also the ones responsible for marking the price changes.

These price changes continue and show no end in sight to slowing down. In May 2023, Local 401 had its members track sticker changes they were asked to mark in Safeway stores. As demonstrated by the chart below, the selected products increased in price by an average of 25.61%. Metamucil Smooth Tex Orange had the lowest price increase of 8.70% but Fever Tree Ginger Beer had a price increase of 45.68% - almost a staggering 50% increase in price.



More egregiously, the recent wave of wildfires and smoke cascading across the province prompted Safeway to engage in another round of price increases – this time, targeting products to alleviate the effects of declining air quality due to smoke.

On June 12, 2023, Safeway marked up prices for products including eye drops and sinus gels. In this latest round of price hikes, products increased in price at an average of 28.55%, ranging from 9.1% to 71.53%.

As outlined above, Sobeys has enjoyed and continues to enjoy financial success since the parties last met in bargaining. Its profitability has increased, and it continues to foster sustained investor confidence.

It is incontrovertible that Sobeys's financial footing has drastically improved since 2020. Its ability to meet Local 401's position on wages in this interest arbitration have not been undermined; to the contrary, its ability has been greatly strengthened.

PART 7: LAST BUT NOT LEAST LET'S DISCUSS THE EMPLOYEES

It is the dedication, commitment and resilience of Local 401 members that helped thrust Safeway to the next echelon of financial prosperity in the face of a global pandemic.

These members deserve not to have their wages further eroded by generational inflation and deserve wages that allow them to shop for food in the very stores they work.

While many of these considerations are addressed above in our submissions with respect to the economic climate and Safeway's financial positioning, it is critical to take into account the changes to the duties and working conditions of Local 401 members since the last round of bargaining.

In the Union's proposal, it sought adjustments to remuneration to ensure employees were compensated in a manner commensurate with their skills and responsibilities.

For all Safeway employees, their responsibilities were significantly expanded when they became the face of Safeway on the front lines of being an essential retailer. In a politically divisive environment, it became incumbent on these hardworking, loyal and long-service employees to enforce masking requirements in Safeway's grocery stores.

We have provided a number of articles from the news services to further demonstrate the factors facing these employees at Tab 19.

Also consider the following:

> -the wages are relatively low with no wage increases for the last 2 years resulting in wage erosion;
>
> -COVID imposed a direct impact on employees during the pandemic and that continues to linger today. The short term and long-term effect of COVID cannot be ignored. Not only is there long-COVID but masks are still being worn in grocery stores, restaurants etc. and calls for another booster in the fall. In other words, in an environment where many strangers pass each other on a daily basis the COVID concern remains. This remains a new and unique risk for grocery workers;

-anxiety among the employees also exists with the uncertainty of conversion to FreshCo. stores;

-the resulting ‘anger’ of customers weighs on the mental and physical health of the employees;

-often the stores are short staffed resulting in greater work for those in the stores;

-monthly expenses of the employees not only continue but have increased during this period while wages have remained stagnant;

-the resulting stress among the employees and the customers, the increase in job demands and job performance have created a different job than the one that existed in 2020- simply stated it is harder;

-the general public is aware of the new concept of ‘greed inflation’ and customers constantly complain to staff about the apparent greed of Safeway in terms of the price increases;

-a wage rate only increases when it exceeds the impact of the increase in the cost of living; otherwise, the real wages erode; and

-cost of living increases and increases in interest rates both directly impact the employee’s financial security.

Prior to Sobeys’s 2019 purchase of Safeway, the company placed a tremendous emphasis on strong customer service and good customer relationships. As many of the bargaining unit members who continue to at Safeway stores are long-service employees, they continue to adhere to this central core value.

Since the parties’ last round of bargaining, this customer-focused approach has shifted into two distinct, yet complementary experiences and demonstrate a significant expansion of duties for employees at Safeway stores.

The experiences on the ground floor are strikingly clear. Since the pandemic, Safeway was a safe space for its customers, but at expense of the health and well-being of its employees.

In the early days of the pandemic, there were several news stories about the treatment of grocery store employees when confronted with maskless customers.[48] In the province of Alberta, masking was required in grocery stores and while Safeway preached a non-confrontational approach to customers refusing to wear masks, it did not alleviate the anxiety and fear for employees facing the public on the store floor.

Even once COVID-related concerns tempered, challenges with customers did not subside. With generational rates of inflation, everyone was affected by the rising cost of living.

The increase to prices has also raised concerns of loss prevention, requiring Safeway to pay for undercover loss prevention officers.

In some instances, the surveillance of potential shoplifters has only escalated tensions in the workplace.

In fact, the concern of violence in Safeway stores has become so prevalent that Safeway has now implemented a new code – "Code 99" – that employees are required to use where there is potential for violence. In June 2023, an employee in the Wesmount store was physically struck by a shopper.

These are the newfound realities of Safeway employees. Since the parties last round of bargaining, they have had to address the challenges with the pandemic, unruly customers, exponential increases in prices and an erosion of their real wages.

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[48] See for example:

Tim Kalinowski, "Store clerk calmly handles maskless customer," Lethbridge Herald, Published: February 5, 2021, Online: https://lethbridgeherald.com/news/lethbridge-news/2021/02/05/store-clerk-calmly-handles-maskless-customer/

Post Media News, "Calgary shopper convicted of assaulting Costco employees, officer over mask enforcement," Calgary Herald, Published: November 5, 2021, Online: https://calgaryherald.com/news/crime/calgary-shopper-convicted-of-assaulting-costco-employees-officer-over-mask-enforcement

CBC News, "B.C. woman found guilty of assault after coughing at grocery store employee in early days of pandemic," Published: April 25, 2023, Online: https://www.cbc.ca/news/canada/british-columbia/campbell-river-covid-cougher-1.6821422.

PART 8: THE FINAL OFFERS

In selecting which of the parties' final offer to award, we are confident that the Arbitrator will not lose sight of the context in which these employees work and live and the unique factors that are prevalent in this case.

The Alberta Living Wage Network (the "ALWN") calculates the hourly wage an inhabitant of select cities must earn in order to maintain "a modest standard of living." A copy of the ALWN's 2022 report is at Tab 20. In Calgary, the living wage for 2022 was $22.40. In 2021, the Calgary living wage was $18.60 – reflecting an increase of over 20% in just one year.[49] A living wage is a floor and not a ceiling.

Assuming an average wage of $21.00 per hour the Union offer:

Is below the effect of the increase in the cost of living over the years.

Offers some relief to the increase in interest rates.

Follows on the heels of two years with no general wage increases.

Is in line with the $2.00 hero pay to all employees.

It amounts to a wage rate of $23.15 – a very moderate wage rate.

Is limited to a group of employees in the bargaining unit; not all employees; and many of the workers are part time.

Is the only economic benefit to the employees in the final two years of the Collective Agreement.

Taking into consideration the wage and benefit increases in the comparators following on the heels of normal wage increases is a moderate ask for the employees.

Approximately 40% of employees receive no wage or other economic increases in the final two years of the Collective Agreement.

Is a recruitment and retention strategy for all employees.

It is well past the time that undervaluing the work of the grocery store employees is acceptable – this is the time to recognize that we all rely on the grocery store

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[49] Alberta Living Wage Network, "Archived Calculations," Online: https://www.livingwagealberta.ca/reports.

employees to provide what we all essentially need to survive – these workers are essential.

Is closely aligned with the criteria covered in this Brief.

Assuming an average wage rate of $21.00 the Company offer:

In the first year is an increase of .32 cents.

In the second year is an increase of .43 cents.

The resulting wage rate is only $21.75 well below a wage rate that provides a modest standard of living and does not adequately compensate the employees for the significant wage erosion.

During the first three years of the collective agreements there has only been a 1.5% increase in the wage rates.

While lump sum payments have a superficial attraction, unlike increases to the actual wage rates, they have only an immediate impact and no lasting impact.

The Company Final Offer does not satisfy any of the criteria of the interests of the Union raised in 2020 bargaining; and further does not come close to satisfying **any** of the criteria set out in this Brief.

The report from The Conference Board of Canada in our respectful view does not offer any support for the Final Offer position of the Company. It is a very general Report dealing mainly with oil and gas that provides no justification for the position of the Company.

Indeed, at page 14 of the Report confirms that 'Food price inflation has been an important contributor to overall inflation in Canada having a disproportionate impact on lower income households, who typically spend a greater portion of their income on food purchased from stores."

And at page 6

"Last year per employee wages did post a strong 3.9 per cent gain, in part to counter the erosion in incomes caused by inflation. Still, growth in per employee wages was below inflation in 2022 and we expect the same situation will transpire this year. In 2024 and 2025, growth in per employee wages are forecast to align with inflation in the province as inflation abates to the Bank of Canada's target."

Unfortunately, the Bank of Canada just raised interest rates to 5% and Governor Tiff Macklem stated the following:

> "Two per cent inflation is still far away'.
>
> "The central bank doesn't see inflation reaching its target of two percent until the middle of 2025"
>
> "Macklem said he expects the consumer price index, which measures inflation to grow at around three per cent for the next year before gradually declining to target".
>
> "Macklem acknowledges that higher interest rates are likely hurting many Canadian households.
>
> "Some households have cut back on spending because inflation and higher interest rates have eaten into their budgets, and some are being severely squeezed."
>
> "If the economy sees any upward surprises, inflation could even move back up".

As a final comment the cases we have referenced above make reference to the impact of the cost of living on employees; however, for the first time that I am aware of, you will also have to take into consideration the significant increases in the interest rates and how this has negatively impacted the budgets of the grocery store employees; that is, once again the cost of living.

PART 9: CONCLUSION

Your mandate is to consider the listed factors in the LOUs outlined above.

However even if you were to consider the normative factors in interest arbitrations the position of UFCW Local 401 is supportable based on the above submissions. These employees did not receive wage increases in neither 2021 nor 2022, only 1% lump sum payments, despite Alberta CPI being at 3.2% in 2021 and 6.5% in 2022. The final offer of the Union is not only in line with the 'hero pay' to the employees but is more moderate; is provided to a smaller group of employees, many of whom are part time; and is spread out over two years.

At the end of the day, based on a wage rate of $21.00, the choice is between a wage rate of $23.15 or $21.75 – we urge you to award the Union Final Offer.

UFCW Local 401 makes the following final offer:

> Effective August 7, 2023 – 5% GWIs for all employees covered by the LOUs
>
> Effective August 11, 2024 – 5% GWIs for all employees covered by the LOUs
>
> We request that the Arbitrator remain seized with respect to the interpretation and implementation of the FOS Award.
>
> ALL OF WHICH IS RESPECFULLY SUBMITTED THIS 17th day of July 2023

Thomas Hesse, President
UFCW Local 401

E&OE