

IN THE MATTER OF AN ARBITRATION

BETWEEN:

EXTENDICARE LYNDE CREEK RETIREMENT RESIDENCE
("Employer")

and

UNITED FOOD & COMMERCIAL WORKERS CANADA, LOCAL 175
("Union")

AND IN RESPECT OF A POLICY GRIEVANCE

Stephen Raymond Arbitrator

Appearances for the Employer:

John Bruce Counsel
Norman Quesnel Vice-President, Labour & Employee Relations
Mansi Mehrotra Labour Relations Advisor

Appearances for the Union:

Kendall Yamagishi Counsel, UFCW, Local 175 & 633
Sandra Ashcroft Director, UFCW, Local 175 & 633
Ayesha Jabbar Union Representative, UFCW, Local 175 & 633

A hearing was held via Zoom on April 1, 2022.

AWARD

1. I was appointed as an arbitrator by the parties. This case concerns a union policy grievance. The arbitration hearing proceeded by Zoom on April 1, 2022 and an expedited decision was requested. There is no issue in respect of my jurisdiction.
2. In brief, the Employer is a retirement home, regulated by the *Retirement Homes Act, 2010*, and its employees provide care and other services to often frail and vulnerable residents. What is in issue in this grievance is the Employer's *COVID-19 Immunization Policy* ("Policy") which was announced by the Employer on or about August 26, 2021 and was effective as of October 12, 2021 and continues to be in effect as of the date of this hearing.
3. Among various other COVID-19 related measures and requirements, the Policy requires all newly hired employees to be fully vaccinated as a condition of employment, and it requires all existing employees effective from October 12, 2021 onwards to be fully immunized/vaccinated (subject to any applicable accommodation requirements under the *Human Rights Code*). The Policy, as revised by the Employer, requires all employees, in order to be "fully immunized" or "fully vaccinated" to receive all booster vaccinations that are recommended by Health Canada from time to time and in future. Employees who are not fully vaccinated in compliance with the Policy are placed on a unpaid leave of absence and if they persist in not being fully vaccinated "may

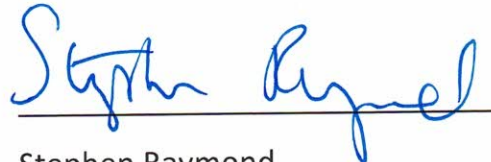
be subject to additional corrective action up to and including termination of employment". The Employer agrees that any such additional corrective action or termination of an employee's employment under the Policy will be subject to review according to the just cause standard under the Collective Agreement.

4. Both parties provided submissions, evidence and authorities which I have fully considered. In the interest of receiving a timely decision, the parties have requested that I issue a bottom line award. As well, the parties requested that I consider the reasonableness and lawfulness of the Policy in the context of the Ontario Government and other public health authorities recently reducing or eliminating various vaccination and other COVID-19 related requirements for staff, contractors and visitors in the context of retirements homes, long-term care homes and, more generally, other facilities and venues.
5. Having carefully considered the evidence, arguments and authorities, it is my view that the Policy has been and remains a reasonable workplace rule, consistent with the Collective Agreement, the *Occupational Health and Safety Act*, *Retirement Homes Act*, 2010 and the related regulations and requirements, and the relevant authorities. More specifically, this is my view even in the context of the Ontario Government and other public health authorities recently reducing or eliminating various vaccination and other COVID-19 related

requirements for staff, contractors and visitors in the context of retirements homes, long-term care homes and, more generally, other facilities and venues.

6. This is also my view respecting the vaccination requirements of the Policy irrespective of whether or not the Employer is choosing at any given time to conduct rapid antigen or PCR testing. Further, “fully immunized” or “fully vaccinated” under the Policy, as revised by the Employer, means receiving all booster vaccinations recommended by health authorities now, or in future, and, in my view, this requirement that staff receive these booster vaccinations also has been and remains a reasonable workplace rule, consistent with the Collective Agreement, the *Occupational Health and Safety Act*, *Retirement Homes Act*, 2010 and the related regulations and requirements, and the relevant authorities.
7. Finally, as agreed by the parties, I find that any additional corrective action or termination of employment that may be issued in future by the Employer to an individual employee who is not fully vaccinated in compliance with the Policy will be subject to review according to the just cause standard under the Collective Agreement.

Dated at Toronto, this 4th day of April, 2022.



Stephen Raymond