AND IN THE MATTER OF THE *LABOUR RELATIONS CODE*,
RSA 2000, c L-1, AS AMENDED

AND IN THE MATTER OF COLLECTIVE AGREEMENT FINAL OFFER SELECTION
ARBITRATION PROCEEDINGS

BETWEEN:

SOBEYS CAPITAL INCORPORATED

Employer

-and-

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 401

Union

Arbitrator:	Mia Norrie
Appearing for the Employer:	Damon Bailey & Rebecca Silverberg- Counsel Mike Venton – General Manager FreshCo
Appearing for the Union:	Gordon Nekolaichuk & Michelle Westgeest – Counsel Chris O'Halloran - Executive

Hearing held virtually on December 29 & 30, 2020

Interest Arbitration

This is an interest arbitration process as agreed by the parties, Sobeys Capital Incorporated ("Sobeys" or the "Employer") and United Food and Commercial Workers Union, Local 401 ("UFCW" or the "Union") to determine the terms of a first agreement for Alberta FreshCo stores ("FreshCo").

The parties agreed to my appointment and the terms of this voluntary final offer selection process pursuant to Letters of Understanding under the Provincial Safeway Retail and Northern and Southern Meats and Deli Collective Agreements as between Sobeys (Safeway Operations) and the Union (collectively the "Safeway Agreements").

The Letter of Understandings language is as follows:

> In the event Sobeys Capital Inc. (Safeway Operations) decides to convert existing stores to operate under an alternate banner, that are different in size or type of operation from its conventional stores, the Employer will enter into negotiations with the Union to develop a separate Collective Agreement that is appropriate for the type of business contemplated. This Agreement must be concluded within three (3) months from the date of announcement. Should a dispute arise as to the terms of the Collective Bargaining Agreement, the items in dispute shall be referred to an agreed upon arbitrator to conduct a final offer selection process in accordance with the provisions… [Arbitration] no later than four (4) months after the date of the announcement. The final offer selection decision will be effective no later than five (5) months after the date of the announcement.

Background

Parties

Sobeys is the second largest food retailer in Canada with over 1500 stores operating under a variety of banners (Sobeys, Safeway, IGA, Foodland, FreshCo, Chalo FreshCo Thrifty Foods, Farm Boy and Lawton Drugs as well as more than 350 retail fuel locations). It operates stores in all ten provinces.

Prior to November 2013, U.S. based grocery retailer Safeway Inc. ran its Canadian grocery store operations as Canada Safeway Limited. In June 2013, Sobeys announced the purchase of Safeway's Canadian operations. Sobeys Capital Incorporated now owns and operates the Safeway banner grocery stores located in the Province of Alberta (the "Safeway Stores").

The United Food and Commercial Workers Canada Union, Local No 401 is the certified or voluntarily recognized bargaining agent for all employees of Safeway Stores across Alberta, one Sobeys store in Calgary and one IGA in Banff. In addition to about 8000 Sobeys employees, the Union represents about 22,000 workers employed in the retail grocery industry and in other industries throughout the Province.

Other than the Calgary Sobeys store, the Union has no other bargaining rights for the employees working in the Employer's Sobeys banner stores in Alberta (the "Sobeys Stores").

On January 13, 2017, the Union served notice to commence collective bargaining with the Employer for the Safeway stores and bargaining commenced in early 2019. The parties were unable to achieve an agreement and on March 31, 2020 they entered into mediation. I was appointed as mediator in that matter. After an initial failure to achieve a settlement which resulted in a strike vote that supported the Union's position, the parties returned to mediation on July 20 and on August 10, 2020 the Union ratified the Mediator's Recommendations to settle the renewal of the Safeway Agreements.

Background on the Discount Grocery Trend and FreshCo

The Employer called one witness, Mr. Mike Venton, the Sobeys General Manager responsible for the discount format, FreshCo to provide evidence on the changing grocery retail market and the increase in "discount" grocers. Mr. Venton had previously been a Vice President at Loblaws responsible for the No-Frills chain.

The Employer's evidence is that there has been a loss of market share from full-service grocery stores to discount grocery retailers who are staffed by non-union employees or unionized employees working pursuant to "discount" collective agreements. The Employer provided evidence that this rise in discount grocery retailers has led to a decrease in Safeway's market share in Alberta and that the discount market is showing strong growth. The Employer's evidence was that it has been adapting its business model to meet this challenge.

The Employer's evidence was that there is a national trend of consumers spending patterns shifting to discount options and differentiating between full-service retailers and discount or warehouse retailers, such as No-Frills or Costco. In response the Employer started the FreshCo banner to enter into the discount grocery segment of the market. It started the roll-out in Ontario approximately 10 years ago and then made the decision to move into Western Canada four years ago.

On December 13, 2017, Sobeys parent company, Empire Company Limited announced its discount banner strategy for Western Canada which included the plan to convert approximately 25% of its Safeway and Sobeys full-service stores in Alberta to its discount banner FreshCo over the next five years.

The Employer provided information on the difference between a discount grocery retailer and a full-service store. Most notably the discount stores offer a limited variety of products and services which cater to a consumer who is willing to trade service and variety of products on offer for lower prices. Full-service stores provide a greater variety of goods and customer services, notably in departments such as meat, fish, deli, bakery, and customer service desks that are not present in a discount retailer. The discount model relies on fewer employees and higher productivity based on sales per labour hour.

The Employer stated that they remain committed to the Safeway banner in Alberta and during this last round of negotiations it committed to the Union an investment of $200 million in capital to the Safeway stores in the Province. This was part of the consideration for the discussion with the Union regarding the need for a discount banner and a competitive collective agreement.

As the announcement of the new discount banner occurred during the period of negotiations with the Union in Alberta, the Employer identified that one of its primary bargaining objectives was to secure an agreement to facilitate the conversion of existing full-service Safeway Stores into their discount banner FreshCo stores. This agreement would critically need to ensure that the average total wage costs to sales would in the range of 6% to 7.5% to ensure a required rate of return to meet the benchmarks established by the company. This analysis to demonstrate that a conversion is economically viable. The Employer's evidence was if one of the targeted Safeway Stores did not meet these benchmarks it may be closed. It was in this context that the parties agreed on terms for the conversion (the "Conversion Agreement") of Safeway stores to FreshCos particularly for the protection of Safeway employees who would be impacted by a conversion.

Some of the terms of the Conversion Agreement included in part: the ability of the Employer to determine full-time and part-time staffing levels; employee options at the time of a conversion which included severance provisions to a maximum of $57,000, a buy down for employees who moved to the FreshCo terms of employment up to $40,000; the requirement that 25% of the vacancies would protect the terms of current employees who stayed on; the ability for senior employees to bump into other Safeway Stores; and seniority recognition. The Employer asserted that these terms were negotiated with the Union to ensure that an appropriate collective agreement at FreshCo was achieved that recognized the discount model and that model would have dramatically lower wages and benefits. The parties agreed to language that stated specifically they would "develop a separate Collective Agreement that is appropriate for the type of business contemplated."

As part of the Safeway negotiation process Sobeys agreed to voluntarily recognize the Union as the sole bargaining agent for all FreshCo stores, including the conversion of any non-union Sobeys locations and newly constructed FreshCo locations. The Employer asserted that this agreement was based on the understanding with the Union that each FreshCo location would be an individual bargaining unit and the parties would negotiate a first collective agreement that would form the standard terms and conditions in effect for the Alberta FreshCo stores.

Prior to this arbitration, the Employer had announced the opening of three FreshCo locations; two in Edmonton and one in Grande Prairie. None of these locations was a conversion of a Safeway, however since this Hearing and prior to this decision, the Employer has further announced the conversion of six Safeway stores to its FreshCo banner. Four of these locations are in Edmonton and two are in Calgary.

The Employer has stated that their criteria for considering a store for conversion is whether the store in question is currently unprofitable, whether their sales are flat or declining, if they are in neighbourhoods where market research has identified that consumers are price conscious and the neighbourhoods are seen to be able to support a retail food store under the discount banner.

The parties entered into negotiations for this first agreement in November 2020 and while they were able to achieve agreement on most items (attached as Appendix A to this award), there were a number of items that remained outstanding that are the subject of this arbitration and have been submitted under the terms of the final offer selection process.

The Union called one witness, Mr. Chris O'Halloran, the Executive Director of UFCW Local 401 who provided evidence as to the bargaining history and the foundation for the Union's final offer position. While most of the background provided by the Employer was not disputed by the Union, Mr. O'Halloran testified that the Union disputed that the agreement on conversion language contemplated a lower wage scale. His evidence was that the reduced wage costs would come from the elimination of the over-ranged scales in the Safeway Agreements that would not be carried over to FreshCo. Further, it was his evidence that the Union had already made a number of significant concessions, such as the vendor stocking and the use of third-party kiosks and had not agreed to either the wage structure separating full-time and part-time as part of the deal.

Criteria for Selection

Review of the Relevant Law

There was very little difference between the parties on the general principles of interest arbitration and the relevant law to be considered. I will identify these principles as laid out by the parties in argument.

Employer

The Employer relied upon the following authorities:

Newport Harbour Care Centre Partnership and AUPE, Local 48, Re, 2012 CarswellAlta 2156 (Sims); *Athabasca University and Athabasca University Faculty Assn., Re*, 2003 CarswellAlta 2453 (Sims); *Calgary (City) v International Assn. of Fire Fighters, Local 255 (Calgary Fire Fighters Assn.)(Collective Agreement Grievance)*, [2014] AGAA No 15 (Sims); *Honeywell Ltd. and Unifor, Local 636, Re,* 2016 CanLII 19769 (Anderson); *Lucerne Foods Co and UFCW, Local 373A, Re*, 1999 Carswell Alta 2124 (Tettensor); *Agrium Advance Technologies Inc. v. CEP*, 2011 CarswellOnt 12334 (Burkett); *Living Waters Catholic Regional Division No. 42 and AUPE, Local 71, Re,* 2015 CarswellAlta 170 (P.A. Smith); *Carewest and AUPE, Re*, 2013 CarswellAlta 1982 (P.A. Smith); *ATA v Intermediate Staff Assn.,* 2011 CarswellAlta 1304 (Sims); *Arrow Transportation Systems Inc., Quesnel Division v. Teamsters Local Union 213 (Collective Agreement Grievance),* 2009 CarswellBC 4057 (Ready); *Ontario Lottery Gaming Corp and PSAC (Final Offer Selection), Re*, 2017 CarswellOnt 21546 (Burkett); *Vantage Foods BC and UFCW, Local 2000, Re*, 2005 Carswell BC 4041 (Hope); *Sobeys West Inc. and United Food and Commercial Workers, Local 247* (McPhillips)(Unreported)(22 Aug 2019)

The Employer argued the relevant factors for consideration in a voluntary interest arbitration should be consistent with those used for compulsory arbitration boards and that the concepts of replication and comparability are well known and applicable to a final offer selection process.

The Employer cited Arbitrator Hope in *Beacon Hill Lodges, supra,* (at 304 – 305) to support the concept that this process is neither subjective or speculative but instead, an arbitrator is expected to look to "objective data from which conclusions are drawn with respect to the terms and conditions of employment prevailing in the relevant labour market for work similar to the work in issue."

The replication approach attempts to simulate what agreement the parties may have reached based on a "market test which consists of assessing collective agreements in relationships in which similar work is performed in similar market conditions."

The Employer underlined that a leading consideration in attempting replication "is the selection of comparable collective agreements" which serve as the baseline from which to consider proposals and as a result the next comparable agreements are those negotiated by "similar placed parties for a similar timeframe in a similar industry." *Honeywell, supra* at para. 27. The Employer also argued that as interest arbitration is considered an inherently conservative process, breakthroughs are to be avoided.

It highlighted the approach to be taken with respect to first collective agreements which is laid out in *Agrium Advance Technologies, supra*, at para 4 as follows:

> "We have read the authority cited to us with respect to the criteria to be applied in first contract arbitration. Suffice it to say that the objective, as we see it, is to fashion an award that reflects what the parties could reasonably have anticipated in bargaining for a first collective agreement, taking into account the particular requirements of the business. Although first collective agreements ought not to be "breakthrough" agreements, they also ought not to be substandard relative to the industry in which the business finds itself. By fashioning an agreement that reflects both the embryonic stage of the collective bargaining relationship and the reality of collective bargaining within the industry, an arbitration board places the relationship on a footing from which it can develop into a viable partnership. That is our intention here."

The Employer argued that the result of this Hearing should be fair and reasonable and that this is achieved by weighing the economic and social climate and the market conditions as well as the merit of the individual proposals. It also highlighted that in the final offer selection process this is to be considered as a package deal and the totality of the proposals needs to be considered.

It concluded its argument by emphasizing that in a final offer selection process the arbitrator must choose one of two tabled positions in its entirety, with no authority to modify either position to shape a compromise. Therefore "the selector must choose the position that best replicates what the parties would most likely have negotiated had free collective bargaining been pursued to its conclusion" as stated by Arbitrator Burkett in *Ontario Lottery Gaming Corp, supra*, at para 2.

The Union

The Union relied upon the following authorities:
Lucerne Foods Ltd and United Food and Commercial Workers, Local 373A (Wage Rate Grievance), [1999] AGAA No 39 (Tettensor); *Aeroguard Inc v United Steelworkers*, [2009] AGAA No 3 (Sims); *Bruce Power LP v Society of Energy Professionals* (2004), 126 LAC (4th) 144 (Burkett); *Nanaimo Golf and Country Club v Unite Here, Local 40 (Final Offer Selection (Grievance)*, [2016] BCCAAA No 36 (Brown); *Yarrow Lodge Ltd (Re)*, [1993] BCLRBD No 463; *Thrupp Manor Assn v Hospital Employees' Union*, [2000] BCCAAA No 439 (Blasina); *Assn of University of New Brunswick Teachers v University of New Brunswick (Collective Agreement Grievance)*, [2011] AGAA No 16 (Sims); *1468678 Ontario Ltd (cob Centre and McCullogh FreshCo)*, [2016] OLRD No 1896; *1468678 Ontario Ltd (cob Centre and McCullogh FreshCo)*, [2016] OLRD No 4205; *1783409 Ontario Inc (cob Twin Pines FreshCo)*, [2012] OLRD No 2260; *1783409 Ontario Inc (cob Twin Pines FreshCo)*, [2012] OLRD No 3413; *Whitby FreshCo 350 Brock St Whitby*, [2012] OLRD No 3588; *Espanola Frescho*, [2011] OLRD No 1751; *Labour Relations Code*, RSA

2000, c L-1, s 26.1 (excerpt); *Cascade Aerospace Inc and Unifor, Local 114 (Article 210) (Re)* (2015), 124 CLAS 195 (Lanyon); *Gateway Casinos GP Inc (Re)*, [2007] Alta LRBR 112; *Calco Club (Re)*, [1992] ALRBD No 77; *St Luke's Place v Ontario Nurses' Assn (Collective Agreement Grievance)*, [2017] OLAA No 306 (Sheehan); *Sudbury Mine, Mill & Smelter Workers Union v Falconbridge Nickel Mines Ltd.* (1969), 20 LAC 45 (Weiler); Brown & Beatty, *Canadian Labour Arbitration*, 4th ed. (Toronto: Thomson Reuters, loose leaf, 2020-), para 8:1100 (excerpt)

The Union agreed that the arbitral approach to collective agreement interest arbitration is well defined and as a result, it only underscored what it identified as the key principles for consideration in this case.

While its approach did not differ in substance from the Employer, Union counsel placed emphasis on those principles that they felt best supported their argument, such as the fact that replication is primarily achieved through comparability (*Aeroguard Inc, supra* at para 11) and that collective agreements governing similarly situated employees, performing "work in the same industry and geographic area" are a strong indicator of what parties would have achieved in collective bargaining (*Crane Canada Inc., supra,* p. 9).

The Union concurred that the comparison of the respective proposals before me are to be made on a total compensation basis and highlighted that this must take into account the various trade-offs that form the complete package (*Colchester South Police Association, supra* as cited in *Aeroguard*, *supra*, para 12.). As well it declared support for the principle that in the final offer selection process the arbitrator in must be guided by the principles of replication and comparability (*Nanaimo Golf and Country Club, supra*, at para 50-51).

The Union emphasized that the financial well-being of the employer is a relevant consideration to be taken into account by the arbitrator as per *Bruce Power LP, supra*.

In addition, the Union also reviewed those considerations that are specific to first contract arbitration. While it conceded that this is a first agreement between these parties, it argued that because of the Union's mature bargaining relationship with the Employer at Safeway and the fact that the FreshCo agreement flows from that relationship this is more of a hybrid. Having said the, the principles that the Union focused on relating to first agreement arbitration are that the terms should be internally consistent, promote equity among employees and are "sufficiently attractive" to support employees' choice to have union representation while not including breakthrough or innovative clauses or substandard wages or benefits (*Yarrow Lodge (Re), supra*, at paras 145, 150, 166)

Analysis – The Relevant Law

While there are no specific statutory provisions in the *Alberta Labour Relations Code* that apply to a voluntary interest arbitration, it is appropriate to use the criteria that are applicable to a compulsory interest arbitration under s. 101 of the *Labour Relations Code* (Alberta),RSA 2000, c L-1. The parties agree on the basic principles however it is worth laying out the key elements as they apply to my decision.

The guiding principle applied by interest arbitrators is replication, which is to seek "to replicate the settlement the parties would have achieved had they been able to do so through free collective bargaining".

Arbitrator Smith in the case of *Living Waters Catholic Regional Division No. 42 and AUPE*, adopts this approach and at para. 10 states with respect to replication that:

> "in such exercise the goal is to achieve a fair and reasonable result which is a function of the economic and social climate as much as it is a weighing of the merits of individual proposals. In that regard, the reasonableness and fairness of each proposal within a package of proposals by a party is not determinative of whether that proposal should be accepted as it is the reasonableness of the overall result which must be assessed as collective bargaining in a process of compromise."

Arbitrator Smith further emphasizes that while there may be several important criteria for consideration, the most important is comparability. At para. 11 she describes comparability as "comparing the proposals made by the parties to those which have been freely negotiated between similarly situated Union and employers within the same industry and within the same or similar locations." Consideration should also be given to the state of the economy and the labour market, the cost of living, and internal and external comparators.

Additionally, the replication exercise is not intended to be a subjective or speculative process, nor is it a scientific one as articulated by Arbitrator Sims in *Newport Harbour,*

> "Interest arbitration is not a scientific process. There is no magic formula. A party advancing a particular position carries the onus of presenting cogent evidence to support that position. This does not equate to an issue-by-issue approach where benefits are awarded because they seem individually attractive and well supported. Collective bargaining involves choices between desirable benefits and agreements are settled on a package basis". As Ontario Chief Justice Winkler has noted: "…*we should have regard to the total compensation package rather than viewing each of the elements in isolation*.""

A further consideration in the case before me is the fact that this is a first agreement and although in 2017 Division 14.1 - First Contract Arbitration, was added to the *Code* (ss 92.2 to 92.4) there is little guidance in either the legislative framework or applicable jurisprudence in the Province due to the recency of its addition. Therefore, guidance must be sought by looking to other jurisdictions where legislation related to first contract arbitration has been in place for some time.

The Union cited *Yarrow Lodge, supra,* as the guiding case for policy considerations in first contract arbitration and I concur. The principles laid out in *Yarrow Lodge* and affirmed in cases cited are as follows:

> "…arbitrators will determine on a case-by-case basis what should be contained in specific first collective agreements. In attempting to arrive at the actual terms and conditions of a first contract, arbitrators usually employ two framework principles: the 'replication' principle, and what is 'fair and reasonable in the circumstances'."(p.32).

The panel in *Yarrow Lodge, supra,* affirm the assessment criteria laid out in the case of *London Drugs Ltd.,* BCLRB No. 30/74 [1974] 1 CLRBR 140 and at page 33 the panel lays out its own guidance as to what criteria should be applied when determining terms and conditions of employment, much of which has been identified by the parties in argument:

> a. A first collective agreement should not contain breakthrough or innovative clauses; nor as a general rule shall such agreements be either status quo or an industry standard agreement.
> b. Arbitrators should employ objective criteria, such as comparable terms and conditions paid to similar employees performing similar work.
> c. There must be internal consistency and equity amongst employees.
> d. The financial state of the employer, if sufficient evidence is placed before the arbitrator, is a critical factor.
> e. The economic and market conditions of the sector or industry in which the employer competes must be considered.

Yarrow Lodge instructs that the contract should neither reflect a "status quo" nor a "standard agreement" and should be determined on a case-by-case basis. To do this, it relies on the dual framework principles of "replication" and what is "fair and reasonable in the circumstances."

It describes replication, which "is to replicate or construct a collective agreement that reflects as nearly as possible the agreement that conventional bargaining between the parties would have produced had they themselves, been successful in concluding a collective agreement. This approach seeks to put both parties in the same position they would have been had there been no breakdown in negotiations."

Replication in a first agreement is balanced with the notion of "fair and reasonable in the circumstances," which requires the arbitrator to assess objective criteria to evaluate what is appropriate in a first agreement.

The first agreement in establishing a long-term bargaining relationship between the parties needs to provide for "fundamental collective agreement rights" such as: layoff; union security; grievance procedure language; as well as being sensitive to the sector or industry in which the agreement is to operate. The overlay of this is the general rule that the agreement must be realistic having consideration for the economic realities of the employer and the industry and be sufficiently attractive to employees in order to foster the process of collective bargaining (*Yarrow Lodge* at p. 32).

Analysis – Replication

Replication is what would the parties have agreed to in free collective bargaining and is not subjective. I find that there are a number of critical factors in my considerations. The first and most compelling of these is the context and background of the FreshCo negotiations. This first contract arises out of Safeway negotiations and the Conversion Agreement reached between the parties. The Conversion Agreement included several concessions on the part of the Employer and advantages to both the Union and their members at Safeway that demonstrate to me that the parties understood that the framework of the FreshCo agreement was to provide terms significantly different than the Safeway Agreements and by extension the Real Canadian Superstore ("RCSS") agreements.

Safeway bargaining between these parties is a relevant and significant consideration in my deliberations here. In August 2020 the parties achieved a settlement after a number of years of contentious negotiations and the issue of FreshCo formed an important, if not critical, component during both the negotiation and the subsequent mediation. The generous provisions of the Conversion Agreement protecting Safeway employees who were being disrupted by a conversion of a Safeway store were the result of hard bargaining by the Union and its success in this should be recognized.

The circumstances of the Conversion Agreement negotiation was such that the Employer agreed to significant concessions and most persuasively for me, a generous buy down for Safeway employees who choose not to take a severance and are ineligible to either bump into another Safeway Store or are amongst those who are able to maintain their Safeway wages and benefit levels while working at FreshCo. The cost of these provisions to the Employer is significant and can only be based on the parties being fully aware that the rates of pay and conditions of employment at a FreshCo would not be comparable to the terms of employment under the Safeway contract. If the wages and monetary terms of the final contract were going to be similar to the terms of the Safeway Agreements, or RCSS agreement for that matter, the Employer is unlikely to have been as generous or the Union as effective in driving hard won protections.

The Union witness Mr. O'Halloran testified that prior to the settlement of the Safeway Agreements in August 2020, the Union was aware of the FreshCo contracts in place between the UFCW locals in the Western Provinces and the Employer. The Union could not have argued it was naïve to either the structure or the wage treatment of employees under those contracts. It was with this knowledge that it entered the final negotiation of the FreshCo Conversion Agreement with the Employer and there is no evidence that it stipulated that in fact, it would not agree to similar provisions in Alberta.

It seems disingenuous for the Union to now argue it would never have agreed to these terms and that the Employer should not expect the same structure for the collective agreement in Alberta. It was clear at the time the deal was struck what the expectations of the Employer were and that key elements of the Employer's proposal, such as the two-tiered wage scales were fundamental consideration for the Conversion Agreement. I find this particularly problematic given the parties further negotiated the voluntary recognition of the Union at all Sobey's conversions and new locations, both of which are significant benefits to the Union.

Mr. O'Halloran stated that the Union would not have agreed to similar contract terms in Alberta to those agreed to in other provinces and specifically that their local would never agree to treating full-time and part-time employees differently by negotiating separate wage bands as this is discriminatory.

I do not accept as compelling the argument that because the Union would not agree to these terms therefore it can not be replication. The exercise of examining replication is that it is not a subjective test and whether one party would or would not agree is not relevant. Presumably they are at interest arbitration as they did not agree. What does inform in applying the principle of replication is determining on objective criteria, what the parties would have negotiated having consideration for the totality of the circumstances. As is referenced in the cases cited by both parties, the analysis is not subjective but an examination of all factors, inclusive of comparability and replication to determine the appropriate settlement of the issues before me.

Analysis – First Agreement Principles

This is a first agreement between these parties as it relates to this new business operation, FreshCo, therefore the principles of first agreement arbitration need to be applied. While the Union conceded this is technically a first agreement, it argued that this is more a hybrid and these principles should not be adopted completely due to the long-standing relationship between the parties.

In respect of the Union's position, I find that this is a new banner operating on a different business model and in 2017, during the Safeway negotiations and the crafting of the terms of the Conversion Agreement the Union agreed to negotiate a FreshCo agreement with "appropriate" terms and conditions for the new business model. As a result, the principles of a first agreement arbitration must factor into my determinations.

One of the principles in first contract arbitration is that employees naturally expect improvements when they have exercised the choice of unionization, often after a hard-fought battle to unionize. The circumstances before me are unique as this agreement is the a result of the Employer's agreement to voluntarily recognize the Union for all converted and newly constructed stores under the FreshCo banner. As a result, there are no employees who organized for a union and therefore have none of the traditional expectations of a newly formed unionized workforce. The Union argued that the employees from the converted Safeway Stores would have expectations as to the contract imposed on them. I do not find this a compelling argument because of the Union's efforts and success at negotiating protections for employees who move from a Safeway to a FreshCo.

The Union argued that there have been attempts at decertification in other provinces for FreshCo locations operating under similar terms and conditions as the Employer's proposal. The Union did not provide any specific evidence as to the drivers of the decertification efforts in those cases and it is impossible to for me to conclude what may have been behind the dissatisfaction of the members who sought decertification, mush less attribute it directly to the Employer's final offer.

Another principle relating to first agreements is that they should not create windfalls for either side. They should consider the market conditions and acknowledge the range of terms and conditions that exist with similarly placed unions and employers in similar industry and similar conditions.

First agreements are also not intended to reflect the terms and conditions of a mature collective agreement that has been enhanced and negotiated over time. They should specifically not represent an "industry standard" or "norms" which is the argument that the Union appeared to be making. First agreements are, among other things, a base from which both parties can build on into the future.

The consideration for a first agreement is always for the total package and not isolated to specific terms and conditions. Deciding a first agreement on isolated or specific terms and conditions would reasonably result in a "cherry-picking" approach that would raise the terms beyond what would be appropriate in a first agreement.

Finally, the principle of what is fair and reasonable in the circumstances must apply when assessing the terms and conditions of the two final offers presented by the parties. As stated above, this includes sensitivity to the sector or industry in which the agreement is to operate balanced with the terms and conditions contained in the first agreement provisions and reviewed through the lens of the selection criteria as outlined above.

Comparators

The Employer

The Employer argued that when relying on the replication approach, the determination of appropriate comparators involves assessing collective agreements in relationships in which similar work is performed in similar market conditions, which includes the consideration of consistency between different bargaining units of the same employer and cited the case of *Sobey's West Inc, supra* at pp 26 – 27;

> A final consideration is the need to ensure consistency between different bargaining units within the same employer: *Vancouver (City) Police Board, supra.* In that case Arbitrator Lanyon stated the following, at para. 59:
>
> > The general principles of replication, and a conservative approach to interest arbitration, work towards the same end in these circumstances. A significant goal of interest arbitration, in the circumstances before this arbitration board, must be the pattern of settlements between different bargaining units of the same employer. No bargaining unit can be permitted to employ interest arbitration by using the settlements of other bargaining units as a floor or a springboard to greater wages and benefits. This would have the adverse effect of undermining freely negotiated collective agreements …. There are exceptions: for example, and this is not meant to be exhaustive, a pattern settlement that does not address the fact that, on any comparative basis, a group of employees have fallen significantly behind the normative range; and second, the duties and/or responsibilities of a group of employees has significantly changed. But

> there must remain a high onus on any party that wants to employ interest arbitration as a vehicle to carve out an exception to a pattern settlement that is the result of a freely negotiated collective agreement.

The Employer urges that a comparable, must in fact, be comparable. As this is the first collective agreement for FreshCo and there are no other unionized discount grocers in Alberta, one must look to the agreements in British Columbia, Manitoba, and Saskatchewan to determine the appropriate framework for settlement.

The Employer highlighted the difference between what they described as three general categories of grocery operators: discount - such as No Frills or FreshCo; full-service - such as Safeway, Save-on or Sobeys; and food and general merchandise - such as Walmart or RCSS. While the RCSS operation is considered a discount grocer by some market analysts, such as AC Neilson, and does compete on price, the Employer argued that it is not an appropriate comparator for FreshCo as RCSS uses a very different model.

The RCSS stores differ from a discount model in the following ways: the RCSS stores are a considerably larger format (150,000 square feet in an RCSS versus 30,000 square feet for a discount grocer); they carry a greater variety of product (50,000 to 120,000 SKUs in an RCSS versus 7,000 to 10,000 SKUS in a discount grocer); and RCSS stores have traditional grocery services such as customer service, deli, seafood, meat and bakery departments, all of which are absent from a discount banner store.

The Employer further contended that RCSS is a Loblaws company and Loblaws has its own discount banner, No-Frills, which has a significant presence in the Province. No-Frills is a true discount grocery operation as they have a smaller footprint, carry a limited variety of products with very little general merchandise and provide less service than at an RCSS. No-Frills operate in the same trading areas as RCSS. It can be deduced that Loblaws does not see No-Frills as comparable to an RCSS, but a different model of operation addressing a different segment of consumers. The Employer argued that there is no reason to draw the conclusion that RCSS and FreshCo should be comparable if RCSS appreciates the difference. It is No-Frills that is the actual comparator.

The Employer also discussed the difference in the business model in that RCSS competes on price in a quite different way than a true discount operator. RCSS does so by maximizing the store's footprint and selling maximal amount of goods which creates greater efficiencies. As a result, RCSS can afford to pay higher wages and benefits versus a discount operator that averages only 6% to 7.5% of total sales. By comparison Safeway is 17.41% of wage costs to total sales (exclusive of pharmacy and fuel) as at the end of Q2 2020. While the Employer did not have the average wage costs for an RCSS it extrapolated that it would be somewhere between Safeway and the discount target.

The Employer argued that the Conversion Agreement with the Union is a key factor in assessing comparability as the agreement was that when an existing store was to be converted, the parties would negotiate a separate collective agreement that is appropriate for the type of business contemplated. The business contemplated is a discount store and not a conversion to a RCSS model store. As a result, the collective agreement must be suitable for that type of business – a discount store.

Additionally, in each of the three Western provinces where FreshCo agreements have been negotiated or interest arbitrators have determined the outcome there are both RCSS and No-Frills locations. In those situations, RCSS was not identified as a comparator by the parties or at interest arbitration. In each of those provinces, it was No-Frills that was the relevant comparator.

The Employer's position was that even if RCSS were to be a comparator, the existing Alberta agreements were negotiated before 2013 and are currently expired. The Employers position is that the social, political and economic climate has significantly changed since those agreements were bargained and it is not possible to determine how the current climate may impact what would be freely negotiated as a result. The Employer also asserted that the RCSS agreements have similar if not identical terms to the Safeway Agreements and if those terms were considered to be appropriate comparators, why would a separate agreement be necessary?

The Union

The Union argued that the most appropriate comparators are the Safeway and RCSS agreements that are negotiated by the Union.

Its rationale is that as this agreement flows directly from the parties' Safeway Agreements, which provide the relevant context and are a stepping off point. The Union submitted that while the FreshCo agreement may be something less than the Safeway Agreement, it should have some consistency with the historical bargain between the parties and be reflective of what these parties would have negotiated.

The Union further asserted that in addition to the Safeway Agreements, the RCSS Agreement is an indicator of what the parties would have achieved in free collective bargaining as it is the same Union covering similarly situated employees, performing the same work, in a similar market and the same geographic location. It conceded that although RCSS is a full-service grocer, unlike Safeway, it is not a high-end grocer as it operates in a discount market. As such RCSS considers FreshCo a primary competitor.

The Union provided a number of other potential Alberta comparators such as Sobeys (Forest Lawn IGA), the Banff IGA, The Grocery People Ltd. and the Real Canadian Wholesale Club, which it argued applies to grocery store employees employed in the discount grocery market.

The Union argued that the FreshCo agreements from other provinces are not appropriate comparators as they do not apply to similarly situated employees preforming "work in the same industry and geographic area". As such these agreements are of little assistance in illuminating what these parties would have agreed to had they concluded an agreement through collective bargaining in Alberta. The Union took the position that the Alberta economy would drive the economics of this deal and that it is inappropriate to look to other jurisdictions. Further it noted that the circumstances of those agreements, either negotiated or imposed, were prior to the pandemic which is a quite different context as Sobeys is now on a strong financial footing based on their recent financial reports.

The Union asserted that the FreshCo agreements that the Employer put forward as appropriate comparators are not sufficiently attractive to support employees' choice to have a union as their bargaining agent. The reasoning is that the comparators are void of collective agreement benefits that organized workplaces typically enjoy and as a result there have been numerous revocation applications affecting FreshCo stores.

The Union also raised the issue that those Safeway employees who end up working at a FreshCo will have expectations regarding the terms and conditions of their new agreement as a result of their experience working under the Safeway Agreements.

Finally, the Union submitted that the FreshCo agreements in the other Western Provinces do not align with the economic realities and unduly advantage the Employer at the expense of employees and therefore are windfall agreements that are overly employer sided. The Union cited as evidence of their position, the Employer's own description in the Annual Reports of the conversions being "overwhelmingly successful" and as "meeting or exceeding" its expectations and financial targets. The Union's position is that these achievements are off the backs of its employees.

In conclusion, the Union argued that the key comparators should be Safeway and RCSS collective agreements and to a lesser extent the other Alberta grocery agreement entered as exhibits to these proceedings.

Analysis - Comparators

Replication relies on establishing what others have negotiated in similar circumstances and this concept relies on comparability as providing the objective framework to assess the parties' respective positions. The most relevant comparators are those that are negotiated by similarly placed parties for a similar time frame and in a similar industry and within the same or similar conditions. Depending on the cases this assessment has also included similar locations, however that is not universally consistent.

None of these factors are absolute and one must consider the specific circumstances to find appropriate comparators and not merely extract only the ones most favourable to either parties' position. In most cases it is not possible to extract exact comparators as each set of negotiations results in compromises and trade-offs that are not apparent over the history of the agreement which is why other first agreements in similar industries are the most helpful.

It is comparability that most separates the party's positions in this case. I note that this should not be limited by geography. It should also involve an assessment of the type of grocery operations, the players and the context in which negotiations occurred must be considered.

The Employer provided considerable evidence as to the difference between the types of grocery operations while the Union argued that "grocery work is grocery work" and so there should be no difference in the pay rates of employees doing the same work from the Safeway or RCSS agreements.

While an ideal comparator for our purposes would be an Alberta settlement in the discount grocery universe, it does not exist. Several factors go into what makes a collective agreement comparable such as size of operation, industry, sector, classifications of work, and geography. However, where there are limited to no comparable collective agreements in a particular market or geography it can be appropriate to also examine non-union groups in the same or similar industry.

We do not have evidence of the terms and conditions of employment for No-Frills Alberta, however if we did, they would have been a relevant consideration. It is not unreasonable for the Employer to rely on the fact that their direct competitor is non-union and therefore not bound by collective agreement language or restrictions.

I would note that as the conditions that resulted in the negotiation of this FreshCo agreement in Alberta is the same as in all of the Western Provinces. It is the same economic realities and industry backdrop that gave rise to the Employer's move into the discount segment of the market and result in what are arguably similar conditions. I do not take the references in the arbitration decisions to dictate that an employer can not or should not contemplate agreements from other Provinces if in all other ways an agreement would be an appropriate comparator. This is particularly relevant when it is the same Employer and Union, as is the case here although I recognize that these are different locals of the UFCW. As long as specific consideration is made for the Alberta market, there is no barrier to consideration of a comparable agreements from another province.

I am not persuaded that the Union's position on comparators stands the test of scrutiny as they offered no specific response to the Employer's evidence on the differences in the business models except to insist that RCSS is a discount grocer so the appropriate comparator. It did not address the issue of how the No-Frills grocery operations related to the RCSS grocery operations and the differentiation in discount operations generally. On this I accept the Employer's distinction as to the difference between RCSS and a discount grocer.

What is most troubling about the Union's assertion that Safeway and RCSS are appropriate comparators is that it negotiated the protection for Safeway employees impacted by the possible conversions with the understanding that the FreshCo agreement would be dramatically different than the Safeway Agreements, otherwise why would the Employer have agreed to the concessions they did?

What is most compelling is that Loblaw's clearly sees a distinction between the RCSS model, and a discount model as is evidenced by the fact that it established the No-Frills banner to compete in the same neighbourhoods and regions as the RCSS. To my mind this reinforces that the direct discount competitor is No-Frills not RCSS. I accept Mr. O'Halloran's evidence that RCSS sees FreshCo as a competitor, as this is supported by the Employer's evidence that all of the grocery retailers in Alberta are competing for consumer dollars and those that compete on price will be sensitive to any new player in the market. RCSS's reaction to FreshCo may identify it as a competitor, but that does not establish it is an appropriate comparator.

With respect to the evidence regarding No-Frills in Alberta, it was Mr. O'Halloran's evidence that he did not recall the Employer raising No-Frills during the discussions with the Union but acknowledged that they are a non-union competitor. In fact, his evidence was that Loblaw's had offered the Union voluntary recognition for the No-Frills stores in Alberta, but the Union turned it down as the proffered terms were not appealing due to "substandard" wages. This is evidence that the Union clearly understands that the discount grocer is a different retail arrangement than the RCSS model and that to operate in this segment of the market a discount collective agreement is seen as required by the Employer.

Further, the Union asserted that the RCSS agreements are the appropriate comparators, but also claimed that the Safeway Agreements establish the "norms" and represent the "historical bargain" between the parties. The Union referred to Safeway as a "high-end" grocery operation and while I am not sure that phrase was in evidence or was defined it identified that the Union sees a difference in the operations. Yet despite this difference in the business models of Safeway and RCSS, it is clear that each has historically impacted the other at the bargaining table. The Union's collective agreements with both companies currently have remarkably similar terms and conditions as a result.

In his evidence Mr. O'Halloran acknowledged that the RCSS and Safeway agreements leverage off each other at the bargaining table and have historically either followed along or relied upon concessions to meet or match terms ever since RCSS entered the Province in the late 80's. While I recognize that the Union relies upon the definition of RCSS as a discount grocer based on the AC Nielsen data provided by the Employer, I accept the Employer's description of it as a discount model that is structured very differently than the FreshCo model. The size of the store, the inclusion of general merchandise, the full serve departments and wide range of product choice are significantly different at an RCSS than the FreshCo model.

However, even if I accepted that the RCSS agreement is a comparator, their collective agreement is a mature agreement that is the result of decades of negotiations and improvements. As such it should be examined critically as to which terms may be appropriate for a first agreement and the agreements should not form the basis for a settlement of the FreshCo agreement. Therefore, even if I accepted the Union's premise that "grocery is grocery" and the work and the business are the same, it would still not be appropriate to include the same terms and conditions in the FreshCo agreement that exist in the more mature RCSS agreement.

Currently there is not a unionized discount grocer in Alberta to use as a comparator and as stated previously, we do not have the 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.

The Union argued that their proposal contains many of the “normative clauses” seen in grocery retail agreements. I would note that this language implies that I should be influenced by an industry standard which is not consistent with the jurisprudence. The Union further argued that since their final offer and the Agreed Terms represent some reductions in the terms provided for in the RCSS and Safeway agreements that should be sufficient to represent a first agreement for FreshCo. This is not how I interpret the assessment of comparability based on the relevant law.

As a result, I find that the best comparators and the most relevant for my considerations are the first agreements for FreshCo between this Employer and this Union, recognizing that these are different UFCW Locals in the each of the Western Provinces. These agreements were entered into or imposed in the same exact circumstances as here in Alberta. They were the result of the conversion of unprofitable Safeway stores where the competitor Loblaws, already had a presence with both RCSS and the No-Frills banner and were the result of either direct bargaining or an arbitration to settle the terms of a first agreement. I cannot imagine why these would not be appropriate comparators and I did not find the Union’s arguments as to why I should not consider them as such, to be persuasive. I do note that the economics in Alberta and considerations such as, the higher minimum wage, need to be factored into the deliberations of comparators but there is otherwise little else that separates those agreements for consideration.
The Union argued that in a first agreement employees would expect enhancements for their terms and conditions as a recognition for unionizing, I do not find this to be applicable here. This is a voluntary recognition of the Union and as there are no FreshCo stores yet open and at the time of this award no employees we are not dealing with a situation where employees certified at the workplace with expectations of improvements in terms and conditions in place prior to the recognition of the Union. As a result, I do not find that this factor to be of meaningful assistance in determining comparators.

Further, I do not believe that it is relevant to consider the former Safeway employees who decide to stay on after their store is converted to a FreshCo as “expecting” the benefits of unionization. The terms of the Conversion Agreement were negotiated by their Union and are quite generous. The Safeway employees will know the terms upon which they will exercise their choices to either stay and work under their previous Safeway terms or accept a buydown, or alternatively to avail themselves of the options they may be eligible for if they choose not to work at the FreshCo under the new terms, such as transfer to another Safeway location or severance. It is clear from a review of the agreed items that combined with either of the final offers will be an improvement over non-union conditions that are likely in place for the No-Frills operation. These terms should be consistent with a first agreement.

As a result of the above, I find the FreshCo and No-Frills agreements in the Western Provinces to be the best comparators for determining the terms of the Alberta FreshCo settlement, having consideration for the impact of local economic conditions and their impact on terms.

Economic Conditions

The Employer

The Employer provided data on the economic circumstances in Alberta as a relevant criterion for consideration when assessing replication. Its evidence highlighted economic impacts of the collapse of the oil sector in 2015 up to the COVID-19 pandemic and their impact on the overall economy in Alberta. The Government of Alberta forecast is that despite a slight economic rebound there will not be a recovery to 2019 levels until 2023, meanwhile GDP will continue to contract, and unemployment is forecast to stay as high as 11%.

The Employer also provide general information on its financial position. Sobeys acquired Safeway in 2012 and at that time Safeway's sales were already trending down due to increased competition and as a result there had been very little investment in the operation from the US. Sobeys purchased the business primarily for the store locations and since then has focused on a multi-pronged strategy to address the shift in consumer spending habits toward the discount grocery market.

The Employer did not provide detailed financial information about its stores at arbitration and had not done so during negotiations. It was concerned that there was a real risk that the Union would not keep this information confidential. The Employer did stipulate that as of August 2019, 48 of the Alberta Safeway stores were unprofitable, seven stores were breaking even and only 19 locations were profitable. The Employer emphasized that it is not feasible to continue to operate unprofitable stores indefinitely and the only viable option in keeping the stores open is to convert them to the FreshCo banner which includes a suitable or appropriate cost structure in light of the model. This model is intended to compete directly with existing discount grocery stores, such as No-Frills.

The Employer provided considerable evidence at the Hearing as to the grocery retail industry in Alberta, the rationale behind its decision to enter into the discount market, the key differences in the types of grocery retail operation as well as detailing the process and rationale for determining when or how a Safeway may be converted to a FreshCo. The Employer provided a description of the financial benchmarks it would use in its conversion analysis of which the most critical are labour costs translated as a ratio of total sales to labour hours, and what the differences are between the full-service, hybrid and discount models.

The Union

The Union has advanced the position that the economic realities which may have been in play prior to the pandemic are no longer relevant as a result of the growth in the Employer's earnings as a result of the change in consumer spending during the pandemic. It relied on the 2020 Annual Report of Empire Company Limited which details the profits generated in this year and attributes the success in 2020 to the employees who have worked unbelievably hard during a very challenging year. The Annual Report reflects record profits largely driven by the pandemic, however the Union argued that even before the pandemic in 2019 Sobeys reported "strong consistent cash flow generation", almost $1 billion more in sales over the previous fiscal year and a 9% increase in quarterly dividends.

Throughout its presentation and argument, the Union suggested that the Employer can afford to pay the higher wages due to its strong financial position and that regardless of what Sobeys achieved in other FreshCo agreements, Sobeys can not reasonably expect to continue to rake in profits at the expense of its grocery store heroes. The Union also suggested that the Employer did not present evidence to suggest that the stores would be "unprofitable" by using the Union's wage rates or that they would be if the Employer's final offer was selected.

Analysis – Economic Considerations

Regardless of the most recent economic pressures in the Province of Alberta and the impact positively or negatively of COVID-19 on its operation, I accept that the Employer was moving into the discount grocery market as part of a multi-pronged strategy.

One can see the evolution occurring nationally. It clearly sees an opportunity to enter a market segment that it is not in currently. The Employer presented evidence that the decision as to what the scale of this move will be is directly related to the fact that there are Safeway Stores that are not profitable. The Employer stated that non-profitable stores would be reviewed as to whether they will continue to operate under the discount banner or not at all. I do note that the move into the discount segment in Alberta by the competitor Loblaws under the No-Frills banner predates this move by the Employer.

The state of the economy while relevant is not a primary factor in my consideration as the Employer's position on the move into the discount grocery segment as part of a national strategy and is driven by a trend in consumer spending habits. There is no question about the poor economic situation Alberta finds itself in and we are clearly no longer a national leader with respect to the economy, even while we enjoy a $15 minimum wage. What is relevant is the consideration for the maintaining of jobs and the opportunity for employment in the Province.

While there is clear evidence that there has been an increase in revenue for the Employer as a result of COVID-19 this does not affect whether or how the Employer decided to enter into the discount segment of the grocery retail market. This increase in grocery spending due to the pandemic may be transitory or they may demonstrate a long-term change in patterns, however there is no way to assess this and I do not find this to be an appropriate consideration in setting the terms or conditions of a sustainable first collective agreement between the parties.

The Union looks to the success of the Employer based on its Annual Reports and extrapolates from them that that Employer can afford the Union's final offer due to their strong financial position. The Union has criticized the Employer's failure to produce detailed financial data and argued this failure should be held against them. I agree that their financial well-being is a relevant consideration and regardless of the reasons, I do note that the Employer has failed to provide detailed financial data that would normally form the basis for its proposals and that is generally seen as a key element for consideration in a first agreement interest arbitration. While more detailed information may have been of assistance, in this case I do not find their failure to disclose is an impediment to determining what is fair and reasonable in the circumstances.

I do note that this is a situation where FreshCo is a new banner and as there are no stores currently operating in the Province the only detailed financials would have been from Safeway. I believe Safeway's financials would be of limited assistance, except to potentially establish whether specific Safeway stores were or were not profitable or whether there was justification to convert them or not. Whether Safeway does or does not choose to convert stores is not relevant to my determination, except to consider the impact that store closures may have on the replication. The success or not of the Safeway banner or specific stores is therefore not within the scope of my review. Instead, I can look to the principles of comparability, replication and what is fair and reasonable considering the market in setting the terms of the agreement.

One of the elements for consideration in *Yarrow Lodge* is "The economic and market conditions of the sector or industry in which the employer competes must be considered." And in this regard the Employer provided cogent and persuasive data on this point.

The Employer highlighted how the determination would be made as to which of the unprofitable Safeway stores would be converted to a FreshCo or simply shuttered. Its evidence was that the determination would be to review the feasibility and financial viability of the conversion based on a variety of financial projections, the most important of which are the labour costs.

The Employer did not argue that its position at arbitration is based on an inability to pay. Instead, it argued that the business model of a discount grocer requires an "appropriate agreement" having consideration for the market. In this case it is reasonable to rely on comparators and replication in light of the business model and the data. As this was not advanced as an inability to pay argument, the need for detailed financial data is not as critical.

The Union was not persuasive in convincing me why the Employer should pay more than the competitors or comparable rates and how the financial data should have been applied. When evaluating the context of the negotiations as highlighted above, it was clear that the Union understood the business case for the discount model as they entered into negotiations for the conversion and recognition of the Union as opposed to resisting it.

The Union suggested in argument that the Employer had not established that the stores would be unprofitable without the wage rates and technically that may be true, but I find instead the Employer did establish the business case for converting a store or closing it is based on economic benchmarks, which reasonably include the average wage costs to sales.

I accept that the discount grocery business model is different and that the Union is fully aware of that as well. Their argument that the Employer should be penalized for the success of their business model in other provinces and have the potential to meet their financial objectives curtailed as a result of their success is not part of the consideration of what is fair and reasonable. The idea that an arbitrator, in assessing the parties' final offers, should look to limit the potential for future profit certainly has not been identified in any of the jurisprudence provided by either party as an appropriate consideration. It also is relevant that the arbitrator is not to substitute their own "notions of social justice and fairness"

for “market and economic realities” as the Union appears to be asking for (see *Newport Harbour, supra*, at para 10).

The Employer’s argument that the financial benchmarks and labour costs will be relevant when making the determination as to whether it chooses to either convert a store or close it is reasonable and factors into the determination as to how the economics should weigh into my determination. The fact that stores may be closed and ultimately jobs either lost or not created at a time when the economy is struggling in the Province can and should be a concern for the Union and be considered when determining the overall cost and reasonableness of the settlement.

As noted in the cases cited by the parties, there exists an obligation on the parties advancing a position to provide cogent data that supports their proposal and is dependent on the circumstances. There is no specific requirement as to the type of evidence or financial data required, and instead is on a case-by-case basis as to what is appropriate, and I find the Employer has satisfied the requirement to provide the type of market and financial support necessary to satisfy my need for objective criteria.

Additional Submissions of the Parties

The Union provided a submission after the hearing and prior to this award being finalized that identified on January 25, 2021, the Employer announced the conversion of six Safeway stores to its FreshCo banner. They asserted that this was relevant to my determination in the following ways:

a. That the stores where being opened proximate to RCSS locations in that five of them are 4.5 kilometres or less from a RCSS and this establishes that that the RCSS is the appropriate comparator and,
b. That the decision regarding the conversion of the stores is evidence that the Union’s final offer selection is not an impediment to the conversion of stores. It argued that Sobeys’ evidence was that, if the Union’s final offer was to be accepted it would affect whether Sobeys would move forward with the conversions and that there was no evidence provided by the Employer as to how its offer would impede or affect FreshCo achieving its cost per labour hour.

The Employer did respond to this submission and argued that the goal in this arbitration is to look to comparators and objective criteria and not subjective statements and predictions.

It acknowledged that while there is no dispute that in FreshCo competing for a share of the discount market, RCSS is one of the retailers in that space. However, FreshCo is operating on a different model and to be competitive requires a discount labour model. Further it indicated that most of the trade areas best suited to a discount store are already developed and as the Employer is late to the game, RCSS and No-Frills both already exist in those geographical areas.

The Employer responded to the Union’s assertion that its final offer is not an “impediment” to the FreshCo initiative. It denied that the fact it announced six conversions of Safeway locations is evidence that the Union’s offer would not prevent any conversions. The Employer noted that prior to this Hearing three FreshCos had already been announced before any of the agreement details were finalized. Instead, the Employer argued that it is more about whether the conversion of stores is feasible or whether they would be closed completely which will be dependent on the outcome of this award. It

further indicated that the decision and the timing of the announcement was to provide appropriate notice, however the decision on these announced conversions is not irreversible if the outcome of the arbitration is such that the labour costs mean they no longer meet their financial benchmarks.

With respect to the additional submissions, I do not find the location of the newly announced stores as being located near to the RCSS locations as determinative of who the appropriate comparators are. As dealt with earlier in this award, I acknowledge that the grocery retail industry in the Province is competitive and while all the retailers may be competitors in the industry, that does not mean that they are automatically comparators.

Further, as the conversions announced on January 25 were all of existing Safeway locations which were in proximity to an RCSS location already, this does not necessarily imply a strategic move by the Employer to specifically take on RCSS. With respect to location, the Employer clearly identified that these Safeway Stores were candidates for conversion to a FreshCo based on their criteria. I take nothing else from the announcement and the Union did not provide additional evidence to support their statements on this issue. I do not accept that the announcement regarding the conversions in question is evidence of RCSS being the appropriate comparator in this matter.

In respect of the second element put forward by the Union in relation to the announcement of these conversions, specifically; that the Employer's decision to convert these stores is evidence that the Union's final offer is therefore not an impediment to Sobeys converting Safeway Stores to the FreshCo banner, I find flawed.

It is flawed because the Union did not present any evidence as to counter the Employer's description of the assessment process and decision making regarding the conversion of these stores and without evidence its suggestion boils down to assumptions. As a result, I am afraid I cannot draw the same conclusion that the conversion of the six stores is evidence that the Employer is therefore able to afford the Union's final offer.

I do note that the Union incorrectly stated that the Employer's evidence was that if the Union final offer was accepted it may affect whether Sobeys would move forward with the FreshCo initiative. The Employer witness: Mr. Venton, testified that the financial considerations, which critically include the labour costs, would apply to the decision-making process for each location. I understood his evidence to be that; higher costs would affect the scope of the conversions and impact the decision as to whether or not to close a store, not that if the Union final offer was selected that they would not move forward with a conversion. I also note that the Employer has responded that the decision to convert a store, even on the six stores just announced, is not irreversible. Consequently, I do not accept that the Employer's announcement to convert the six identified stores establishes that the Union's final offer is reasonable or appropriate.

I have considered the Union's additional submissions and do not find that they influence the decision before me.

Terms of Final Offer Proposal - Discussion and Rationale
As a majority of the terms of the first agreement have been agreed between the parties and are attached to this award as Appendix A, I will turn my attention to the items that are unresolved having consideration for the criteria as outlined above. While I will outline the individual proposals of the parties, in the final analysis however I will decide on the final offer that represents the best total package, having consideration for respective positions of the parties and the agreed items.

Article 3 Union Establishment.
The Union is proposing a provision that allows the Union to conduct new member orientations to staff, individually or in groups, while the members are on shift.

> *3.01(d) Shop Stewards and/or Union Representatives will be allowed to introduce themselves to new employees on shift after receiving permission from the Store Manager, or their designate, of which permission will not be unreasonably withheld. Such time will not exceed fifteen (15) minutes and shall not unduly interfere with the employee's regular duties. The meeting shall take place in the conference/community/lunchroom of the store at which the employees are employed. Employer Officials, Managers and anyone excluded from the bargaining unit shall not be present at this meeting.*
>
> *Upon request to the Store Manager, or their designate, a Shop Steward shall receive a list of all new employees covered by the Collective Agreement.*
>
> *It is understood that orientations may be done in groups when a new store isopened. Following the first three (3) months of a store opening, new member orientations shall be scheduled with two weeks' notice within the first month of employment.*

The Union argued that this proposal is a core issue for the Union to support voice and visibility in the workplace and is essential to engage its members and fulfill its role as the employees' bargaining agent. It stated that the Safeway and RCSS agreements contain a 30-minute introduction provision and that the proposed 15-minute period for the orientation is consistent with, but lesser than, those agreements as a result of it being a first agreement. The Union further argued that similar provisions are contained in some FreshCo agreements. It asserted that it would not give up this provision because of the changes in legislation in Alberta which may impact in the representation of the Union in the workplace and that as they would not agree to it, the Employer could not reasonably expect to achieve a collective agreement without this provision.

The Employer does not have a proposal on this provision, however it objected to its inclusion in the FreshCo agreement as being inappropriate in that it requires the Employer to schedule new member orientations and coordinate with the Union. The Employer felt this was cumbersome, that it is a breakthrough in that it is not found in any other provincial agreement or in any FreshCo comparator. Even in Safeway Agreements it only provides that an orientation may occur and the Union is responsible for making appropriate arrangements. The Employer argued this is an administrative complexity and to have new staff attend new member orientation on a paid basis is prohibitive as it amounts to 30 minutes per orientation and given the new hires at store start up this is unreasonable.

I do not find the Union's proposal for this Article to be onerous or unreasonable and while it is not found in other FreshCo agreements, it is not breakthrough in so far as it is a common provision in many agreements that ensure the representation and profile of the Union.

Article 13.19 – Hours of Work
The Employer is proposing the following provision:

> *13.19 The normal work week for full-time employees shall consist of forty (40) hours per week on the basis of five (5) eight (8) hour shifts.*

The Employer argued that I do not have jurisdiction to accept the Union's proposed guarantee of full-time positions as the Letter of Understanding regarding the "Conversion of a Store to FreshCo" expressly states that the "Employer shall have the exclusive right to determine the full-time and part-time staffing level for the FreshCo location at the time of conversion." It is the Employer's position that an express agreement already made between the parties can not be altered at arbitration and is a "fatal flaw" in the Union's proposal that makes it impossible for me to accept the Union's final offer.

Notwithstanding, the Letter of Understanding it argued that the idea of a full-time guarantee is not supported by the comparators and is not appropriate at the time of a business opening when the Employer needs time to evaluate the needs of the business.

The Union is proposing the following provision which includes the guarantee of at least three full-time bargaining unit positions in each FreshCo location:

> *13.19 - Guarantee of Full-Time Staff*
>
> *(a) The Employer agrees that it will at all times during the term of the Collective Agreement employ three (3) full-time Employees who will be bargaining unit members and who shall be covered by the Collective Agreement held between the parties.*
>
> *(b) The normal work week for full-time employees shall consist of forty (40) hours per week on the basis of five (5) eight (8) hour shifts.*

The Union took the position that they never agreed not to negotiate for additional terms when they agreed to the Conversion Agreement. Further, the proposal for three full-time jobs is substantially less than the 12% to 30% employee complements that exist in the Safeway and RCSS collective agreements even if the percentages are applied to the smaller store size of approximately 60 employees. The Union relies on its history of negotiating full-time protections and stipulated that this was a less robust provision and consistent with a first agreement as a result. It argued that there is a FreshCo agreement in Ontario that has a guarantee such as they are proposing here.

I will not address the Employer's argument that this provision is a fatal flaw with respect to the Union's final offer in light of my ultimate conclusion, however I will note that this is a deviation from what was agreed between the parties which provides the Employer the exclusive right to determine staffing levels.

Article 14: Meal and Rest Periods
The Employer is proposing the following provisions:

14.01 Employees working a shift of seven (7) or more hours shall be entitled to an unpaid meal period. Meal periods shall be thirty (30) minutes in duration.

14.02 Employees shall receive one (1) paid fifteen (15) minute rest period for each four (4) hours worked (i.e., work eight (8) hours and receive two (2) paid fifteen (15) minute rest periods).

14.03 An employee working a shift of more than five (5) hours, but less than seven (7) hours is entitled an additional fifteen (15) minute unpaid rest period to be taken in conjunction with their paid fifteen (15) minute rest period. By mutual agreement with the Store Manager/Owner these fifteen (15) minute rest periods may be taken non-consecutively.

14.04 When an employee works in excess of three (3) hours over-time in which there is no meal period, the employee shall be entitled to receive a paid rest period of fifteen (15) minutes.

The Employer identified that the parties are separated on this proposal by the difference in Article 14.03, which applies to part-time employees who work a shift of between five and seven hours in length. The Employer proposed that an additional 15-minute unpaid break being offered in their language is consistent with the comparators and to require an additional 15-minute paid break in these circumstances would add significant costs and put the Employer at a competitive disadvantage as it relates to the non-union competitor No-Frills who will likely only be providing unpaid breaks in accordance with the *Employment Standards Code.*

The Union is proposing the following provisions:

14.01 Employees working a shift of seven (7) or more hours shall be entitled to an unpaid meal period. Meal periods shall be thirty (30) minutes in duration.

14.02 Employees shall receive one (1) paid fifteen (15) minute rest period for each four (4) hours worked (i.e., work eight (8) hours and receive two (2) paid fifteen (15) minute rest periods).

14.03 An employee working a shift of more than five (5) hours, but less than seven (7) hours is entitled to an additional fifteen (15) minute paid rest period. By mutual agreement with the Store Manager/Owner these fifteen (15) minute rest periods may be taken in conjunction with each other.

14.04 When an employee works in excess of three (3) hours over-time in which there is no meal period, the employee shall be entitled to receive a paid rest period of fifteen (15) minutes.

The Union concurs that the parties are in substantial agreement on this Article, however the difference of the 15-minute additional paid rest is consistent with the Alberta comparators as they define them and none of these allow for an employer to unilaterally combine them. The Union emphasized that the rest periods are important for employee health and well being and while the Union has not proposed onerous rest scheduling provisions it would not agree to the language as proposed by the Employer. It

referred to the combining of rest periods as “not the norm” as it could result in employees not receiving rest until well into their shift.

On this proposal I do not find that the Union’s position supported by the comparators and while I concur that rest periods are important and employers should not unilaterally require them to be combined in situations where this would delay an employee’s rest period on a shift, the additional 15-minute paid break is a monetary item not appropriate in a first agreement.

Article 16 – General Holidays

The Employer is proposing language that recognizes the nine General Holidays listed in s. 25 of the Employment Standards Code as follows:

16.01 The following shall be recognized as General Holidays:

- *New Years Day*
- *Alberta Family Day*
- *Good Friday*
- *Victoria Day*
- *Canada Day*
- *Labour Day*
- *Thanksgiving Day*
- *Remembrance Day*
- *Christmas Day*

The Employer submitted that its proposal is consistent with comparable collective agreements as all of the FreshCo and No-Frills agreements restrict their General Holidays to those provided for in provincial legislation. The Employer argued that to allow the additional of Heritage Day would add significant costs and put them at a disadvantage to the non-union competitor, No-Frills.

The Union is proposing to include Heritage Day (1st Monday in August) as a General Holiday.
The Union took the position that the recognition of 10 General Holidays with the addition of Heritage Day is still less than the Safeway, RCSS and other Alberta comparator agreements which number 11. It also asserted that 10 days is consistent with the FreshCo agreements in British Columbia and Saskatchewan.

I agree that in light of the number of days provided for in the comparator collective agreements the addition of Heritage Day would not be unreasonable in the circumstances.

Article 17 – Vacations

The Employer is proposing the following vacation language:

18.01 Annual vacation entitlement for full time employees will be based on years of continuous full-time employment with the Employer since their most recent date of hire and will be as follows:

Full-time employees shall accumulate vacation entitlement and vacation pay as follows:

Employees who have been employed by the Employer for less than (1) year shall be paid vacation as outlined in the Employment Standards Code (Alberta).
Full-time employees who have been employed for more than one (1) year but less than five (5) years - two (2) weeks' vacation pay, except that vacation pay for any full-time employee off work for (1) month or more in a calendar year shall be based on four percent (4%) of their annual wages as defined in the Employment Standards Code (Alberta) in the immediately preceding calendar year.
Full-time employees who have been employed for more than five (5) years but less than ten (10) years– three (3) weeks' vacation with pay, except that vacation pay for any full-time employee off work for one (1) month or more in a calendar year shall be based on six percent (6%) of their annual wages as defined in the Employment Standards Code (Alberta) in the immediately preceding calendar year.
Full-time employees who have been employed for more than ten (10) years– four (4) weeks' vacation with pay, except that vacation pay for any full-time employee off work for one (1) month or more in a calendar year shall be based on eight percent (8%) of their annual wages as defined in the Employment Standards Code (Alberta) in the immediately preceding calendar year.

18.02 Weekly vacation entitlement for full-time employees who have not been off work for one (1) month or more in a calendar year shall be the greater of the employee's regular weekly rate of pay (i.e. 40 hours x their base hourly rate) or two (2%) of their annual wages as defined in the Employment Standards Code (Alberta) in the immediately preceding calendar year.

18.03 When a General Holiday occurs during a full-time employee's vacation, an extra day's vacation pay will be paid if the holiday is one for which the employee would have received pay had they been working.

18.04 *All full-time employees' vacation entitlement must be taken in that vacation year and shall not be carried over to the next vacation year. Vacation pay shall be paid to the employee when the employee goes on vacation.*

18.05 Part-time

(a) Part-time employees shall receive vacation pay based on years of continuous employment with the Employer since his/her most recent date of hire as follows:

(i) Part-time employees who have been employer by the Employer for less than one (1) year shall be paid vacation as outlined in the Employment Standards Code (Alberta).

(ii) Part-time employees who have been employed more than one (1) year and less than five (5) years - four percent (4%) of their annual wages as outlined in the Employment Standards Code (Alberta).

(iii)Part-time employees who have been employed more than five (5) years and less than ten (10) years - six percent (6%) of their annual wages as outlined in the Employment Standards Code (Alberta).

(iv) Part-time employees who have been employed more than ten (10) years - eight percent (8%) of their annual wages as outlined in the Employment Standards Code (Alberta).

(b) All part-time employees shall have vacation pay paid bi-weekly in the pay period it is earned.

(c) Upon written request, part-time employees will be provided time off without pay for vacation purposes, in accordance with the conditions outlined in the Employment Standards Code (Alberta), to a maximum of three (3) weeks unless otherwise mutually agreed between the Employer and the employee.

(d) Part-time employees who become full-time employees shall not be paid vacation pay twice for the same time period.

18.06 In scheduling vacations, the Employer will consider the proper and efficient operation of the business.

The employer shall post on the notice board a suitable form for full-time employees to indicate their preferred vacation dates in accordance with their seniority. This form shall be posted by the Employer no later than March 1st of the calendar year and must be completed by employees prior to April 15th.

The Employer will then determine the vacation schedule. Vacation determination will be based on the requirements and efficiency of operations and will take into consideration employee preferences and seniority as indicated on the form prior to April 30th.

The vacation schedule will be posted by May 1st and will remain posted throughout the vacation period and employee vacations will not be changed unless mutually agreed to between the Employer and the employee.

Employees will be granted a maximum of two (2) weeks' vacation between May 1st and September 30th, unless otherwise mutually agreed between the Employer and the employee.

18.07 Requests for vacation shall not be unreasonably denied.

The Employer identified that the major differences between the parties with respect to paid vacation are: the Employer's proposal distinguishes between full-time and part-time employee vacation entitlement wherein full-time employees achieve a maximum of four paid weeks after 10 years employment and while part-time employees accrue pay at the same rate, they are only entitled to three unpaid weeks off; and the Employer's proposal contemplates that most full-time employees weekly

vacation pay is calculated as the greater of their normal weekly wage (40 hours x base rate of pay) or two percent of their previous years wages. The Union proposal is for equivalent vacation leave (paid for full-time and unpaid for part-time) as well as equivalent vacation pay for both categories of employees.

The Employer also identified that it believes there is an internal inconsistency in the Union's language with respect to the calculation of vacation pay. The language references that it is to be based on a percentage of "gross earnings" which is broader than wages as it includes overtime, vacation and General Holiday pay and then in the same article it states that vacation entitlement is paid at the "employee's regular rate of pay" which would be exclusive of any overtime or other premiums. The Employer argued this is a fatal flaw to the Union's proposal as it creates uncertainty in how vacation entitlement is to be calculated. The Employer's proposal provides that vacation pay for part-time is calculated as a percentage of their "wages" which is clear.

The Employer's proposal also provides for the scenario when a full-time employee is absent for more than one month in a calendar year, which it stipulated is a common provision even in the Safeway Agreements, however the Union's proposal fails to address this contingency.

The Employer's proposal also does not entitle part-time employees to participate in the formal vacation planning process but instead they schedule time off in consultation with store management and the requests shall not be unreasonably denied. This will alleviate the administrative complexity associated with scheduling part-time vacation, especially when it argued that many part-time are disinclined to schedule vacation far in advance or in some cases at all given the nature of their work.

The Employer argued that their proposal strikes a reasonable balance as compared to the FreshCo and No-Frills agreements In the case of part-time vacation leave it is better in that it provides three weeks instead of two. As well those with 10 years or more service receive an additional two percent vacation pay. Further, the Employer asserted that its proposal could potentially secure more vacation pay than the Union's proposal in some circumstances.

The Union is making the following proposal with respect to vacation:

> *18.01 Annual vacation entitlement for employees will be based on years of continuous employment with the Employer since their most recent date of hire.*
>
> *Full-time employees shall accumulate vacation entitlement and vacation pay and part-time employees will have the opportunity to schedule time off without pay and accumulate vacation pay as follows:*

Length of Service	*Vacation Entitlement*	*% of Gross Earnings*
1 year or more	*2 weeks of vacation*	*4%*
5 years or more	*3 weeks of vacation*	*6%*
10 years or more	*4 weeks of vacation*	*8%*

Employees employed by the Employer for less than one (1) year shall be paid vacation as outlined in the Employment Standards Code (Alberta).
Vacation entitlement will be paid at the employee's regular rate of pay.

18.02 When a General Holiday occurs during a full-time employee's vacation, an extra day's vacation pay will be paid if the holiday is one for which the employee would have received pay had they been working.

18.03

a) Full-time

All vacation entitlement must be taken in that vacation year and shall not be carried over to the next vacation year. Vacation pay shall be paid to the employee when the employee goes on vacation.

b) Part-time

All part-time employees shall have vacation pay paid bi-weekly in the pay period it is earned.
Part-time employees who become full-time employees shall not be paid vacation pay twice for the same time period.

18.04 In scheduling vacations, the Employer will consider the proper and efficient operation of the business.
The Employer shall post on the notice board a suitable form for employees to indicate their preferred vacation dates in accordance with their seniority. This form shall be posted by the Employer no later than March 1st of the calendar year and must be completed by employees prior to April 15th. Full-time employees will select their vacation weeks before part-time select theirs.
The Employer will then determine the vacation schedule. Vacation determination will be based on the requirements and efficiency of operations and will take into consideration employee preferences and seniority as indicated on the form prior to April 30th.
The vacation schedule will be posted by May 1st and will remain posted throughout the vacation period and employee vacations will not be changed unless mutually agreed to between the Employer and the employee.
Employees will be granted a maximum of two (2) weeks' vacation between May 1st and September 30th, unless otherwise mutually agreed between the Employer and the employee.

18.05 Requests for vacation shall not be unreasonably denied.

The Union proposal is for equivalent vacation leave (paid for full-time and unpaid for part-time) at four weeks and to include part-time in the vacation scheduling process. The Union asserted that the Employer's proposal is not in keeping with the *Employment Standards Code* which entitles employees to take the vacation they earn and that including the part-time in vacation scheduling is the "norm in grocery agreements".

I recognize the Employer's concerns with the Union's proposal to be administratively cumbersome and unnecessary as part-time employees in their experience do not access vacation the same way as full-time employees, however I do not find the Union's proposal unreasonable in light of the comparators.

I do find that there are internal inconsistencies in the language proposed by the Union that may have caused me pause, however I am not sure I see this as a "fatal flaw" as described by the Employer. In light of my final conclusion, I do not need to decide this issue. I do note that the Employer's proposal does not deny the employees time off for vacation as was suggested by the Union, it simply limits the unpaid time off and allows for more flexibility in managing vacation requests.

Article 19 – Benefits and Pension

The Employer is proposing the following benefits language noting (that there is agreement regarding the pension plan provisions):

19.01 The Employer agrees to make available to eligible full-time and part-time employees its Health and Welfare program subject to and in accordance with the Group Insurance program as may be revised from time to time by the Employer or the insurer and as administered by the insurer. The Employer's responsibility under this Article is limited to making the Health and Welfare program plan available to eligible employees in accordance with the Employer's group insurance program. It is expressly acknowledged that the Employer has no liability for the failure or refusal of the insurance carrier(s) to honour a claim or to pay benefits to an employee and no such action on the part of the insurance carrier shall be attributable to the Employer or constitute a breach of this Agreement by the Employer. Under no circumstances will the Employer be responsible for paying any benefits under the benefits plan or in any way relating to this Article and in all respects the benefits shall be administered in accordance with the rules and regulations of the plan or plans obtained by the Employer, said plan or plans not forming part of this Agreement and not being subject to the grievance procedure or arbitration.

The Employer's proposal would afford all FreshCo employees the option of participating in the Sobeys Franchise Benefit Plan, which is a flexible benefit plan that provides a core level benefit and the ability to select enhancements based on their needs.

The employees would pay for coverage through payroll deductions and store owners may contribute Flex Dollars if they choose to. Currently Sobeys has recommended that franchisees contribute enough Flex Dollars to cover half of the premium costs for an Enhanced level of coverage for a full-time employee which covers the following:

- Eligible prescription drugs: 80% (no deductible)
- Hospital (in province): 100% semi-private room

- Professional services (e.g. chiropractors, psychologists, etc.): 80% up to $800 per covered person per year
- Vision care: exams, eyeglasses and contact lenses covered up to $150 every 24 consecutive months (every 12 months if under age 21)
- Out of country emergency care: 100%
- Basic and major dental services: 100% for the first $200 of eligible expenses and 60% thereafter (maximum benefit of $1500 per plan per year
- Long Term Disability: 55% of the first $3,000 of monthly earnings and 45% to the remainder (maximum benefit of $10,000 per month

This language is contained in all of the Western Canadian FreshCo agreements and provides coverage at the employee's choosing.

The Employer stated that the Union was opposed to this language, the Union proposal is not suitable for a discount store operation as the cost totals $0.64 per hour for all hours worked is too "rich", is consistent with a conventional grocery store and is a significant cost item not being incurred by the non-union competitor No-Frills. Further, the Employer took the position that the Union proposal is in fact comparable to what Safeway provides and over three of the next five years the part-time benefit contributions would be $0.09 higher than Safeway and the dental contributions would be $0.03 higher than currently being paid by either Safeway or RCSS.

The Employer argued that the Union trusteed plans are economically inefficient as the Employer must pay for all hours when many of the employees are not concerned about benefits due to the nature of the work. This has resulted in significant surpluses in the trusteed plans and is a cost that is not reasonable in comparison with other priorities. Further, the Employer also stated that the Union plans also have significant gaps in coverage, such as no provision for STD and LTD.

The Union is proposing the following benefits language:
19.01

a) The Employer agrees to make a contribution to the UFCW – Canada Safeway Limited Part-Time Employee Benefit Trust Fund [Alberta] of nineteen ($0.19) cents per hour to a maximum of $7.60 per employee per week, for each straight time hour of actual work, including sick pay, vacation and Statutory Holidays, if applicable, to a maximum of the basic work week in respect to all employees in the bargaining unit.

The UFCW – Canada Safeway Limited Part-Time Employee Benefit Trust Fund [Alberta] shall be controlled by a Board of Trustees established in accordance with the Agreement and Declaration of Trust.

b) The Employer agrees to make a dental contribution to the UFCW Local 401 Dental Care Trust Fund of forty-six ($0.46) cents per hour to a maximum of $18.40 per employee per week, for each straight time hour of actual work, including sick pay, vacation and Statutory Holidays, if applicable, to a maximum of the basic work week in respect to all employees in the bargaining unit.

The UFCW Local 401 Dental Care Trust Fund shall be controlled by a Board of Trustees established in accordance with the Agreement and Declaration of Trust.

c) *Contributions made for hours, as described in 19.01 (a) or (b), in any month or agreed upon period, shall be forwarded by the Employer to the Trust in care of the Administrator of the Trust, PBAS, not later than three(3) weeks following the close of the Employer's accounting period, whether it is on a monthly or a four (4) or five (5) week basis, accompanied by a statement of the names of the employees and contributions made on their behalf.*

The Union proposed that the Employer contribute to two of the Unions benefit trusts, namely the UFCW Local 401 Dental Trust Fund of Alberta at $0.46 per hour and the Safeway Part-Time Employee Benefit Trust Fund at $0.19 per hour.

Its argument was that employee benefits are a key component of compensation and that with respect to this proposal the Union described these as a modest group benefit contribution as opposed to the Employer who has proposed no employer paid benefits. It is the Union's position that the Employer can afford it as it is in a "strong financial position."

The contributions to the trusteed plans are made for part-time employees under the Safeway and RCSS agreements and in those agreements, there are additional monetary benefits those members enjoy that are not included in the Union's proposals here. The Union asserted that other Alberta grocery employees enjoy at least some level of benefit, yet the Employer's final offer proposal's lack of benefits is inconsistent with the first agreement principle that terms are to be sufficiently attractive to support unionization as well as the principles of replication and comparability.

This is not a modest benefits proposal as described by the Union as it will result in a $0.64 cent an hour cost for all hours worked. This amounts to approximately 4.2% increase in costs based on the start rate of $15.00 which will be a majority of employees working in the stores at opening. While I agree that employee benefits are a key compensation component, the Union's proposal is inconsistent with the comparators and would result in costs to the Employer in excess of those paid by RCSS and Safeway during periods of the agreement. The fact that mature agreements negotiated over decades contain benefit provisions is appropriate, to apply the same provisions to a first agreement would not be.

Further this proposal is of questionable benefit to the employees in question, particularly during the initial opening period of a store when there is high turnover and a limited number who would be eligible for the benefits under the Union's plan.

I recognize and commend the Union's drive to ensure that their employees are protected, and that there is a meaningful benefit plan provided, however in these circumstances it is not appropriate for the first agreement. The fact that it would in fact be higher costs here than at Safeway or RCSS is problematic and even more concerning is that the evidence of the Union witness is that the plans are not "healthy". The premiums paid by both Safeway and RCSS are the result of years of negotiations and

improvements, and so even if I accepted, these agreements are comparators, which I do not, these premiums would not be sustainable for an Employer to have to pay in a first agreement, much less in a discount labour contract.

The fact that the Employer has a Sobeys flexible benefits plan in place that all employees may access, albeit at their cost, does provide the option for coverage and includes LTD coverage that the Union's proposal does not. The Employer's plan is consistent with the comparators.

Article 22 – Discipline and Discharge

The Employer is proposing the following language for inclusion:

22.01 *No employee who has completed their probationary period shall be discharged or disciplined except for just cause.*

22.02 *When an employee's work performance or conduct is such that it may or does lead to discipline or discharge and is the subject of a discussion or meeting between the employee and the Employer, the Shop Steward shall be present. In the event that a Shop Steward is unavailable, the employee shall choose another employee on the premises, to be present at said interview.*

22.03 *An employee who wishes to be unrepresented during one of the situations above, may only do so after consultation with a Shop Steward or Union Representative.*
A copy of all formal notices of discipline (i.e., written warnings, suspensions and discharges) shall be given to the Union Office and to the Shop Steward.

The Employer proposal stated that its proposal differs from the Union's in three key ways: one, in situations where there is no steward available for a disciplinary interview the Union would require the Employer to contact the Union representative and give them reasonable notice to attend a meeting; two it requires the Employer to inform the steward about the nature of the interview in advance; and finally it contemplates a 24 month sunset clause for discipline.

The Employer argued that the requirement to contact the Union representative is unduly cumbersome and has the potential to delay interviews that may need to be undertaken immediately and is not consistent with the comparator agreements which contemplate a shop steward being immediately substituted with another store employee. It also objected to the "reasonable notice" provision as it may be able to be subjectively interpreted and creates an element of uncertainty, versus the Employer's language which it argued is clear.

While the Saskatchewan FreshCo agreement does contain the requirement to "brief" the steward in advance, that is an outlier according to the Employer and was a carryover from the Safeway agreements in Saskatchewan. No other Western Canadian FreshCo agreement contains a similar provision. The Employer further asserted that the language is not clear as to what exactly is meant by the term "nature" which has the potential to create greater ambiguity and to give notice in advance could potentially jeopardize the interview.

The Employer's final argument regarding the 24-month sunset clause is that while it is found in the Safeway contract, neither this language nor this concept is found in the comparator agreements and further it is not necessary to include due to the discretion on considering progressive discipline as is applied by grievance arbitrators.

The Union is proposing language as follows:

22.01 No employee who has completed their probationary period shall be discharged or disciplined except for just and sufficient cause.

22.02 When an employee's work performance or conduct is such that it may or does lead to discipline or discharge and is the subject of a discussion or meeting between the employee and the Employer, the Union Steward shall be present.

In the event that a Steward is not available at the time, the Employer shall attempt to contact the store's Union Representative and advise them that a disciplinary meeting will be held and provide the Union Representative with a reasonable amount of time to attend at the store for the meeting.

In the event that the Union Representative is unavailable, the employee shall choose another employee on the premises, to be present at said interview.

22.03 An employee who wishes to be unrepresented during one of the situations above, may only do so after consultation with a Shop Steward or Union Representative.

22.04 The Shop Steward or Union Representative will be informed of the nature of the interview in advance.

22.05 A copy of all formal notices of discipline (i.e. written warnings, suspensions, and discharges) shall be given to the Union Office and to the Shop Steward.

22.06 Discipline notices which predate twenty-four (24) months of continuous discipline free service shall be removed from an employee's file and are not to be used in disciplinary proceedings.

The Union noted its proposal is not unusual as the notice to the Union representative has been achieved in other agreements based on a 12-hour notice requirement in Safeway and RCSS agreements. It also submitted that the selection of another employee when a steward is not available can not be imposed at arbitration as the Labour Relations Board has observed in *Gateway Casinos Gp Inc., supra*, (at paras 32, 35) that is "for the Union, not the Employer, to determine what level of representation is appropriate for its members, and how or by whom it should be delivered". It also argued that as this clause lessens representation rights it can not form part of the final offer selection and can not be taken to impasse. Therefore, the Union asserted that it necessitates that I reject the Employer's offer and accept the Union's.

The Employer's objection to the Union's language is that it has the potential to unnecessarily delay an interview to have to give notice to get a Union Representative when a steward is not available, potentially jeopardize an interview by letting the steward know the "nature" of the interview and that the 24-hour sunset clause is unnecessary. While I would not characterize the Union's proposal to be unreasonable and there is some support in the comparators for aspects of the Union's language, with respect to the representation at a meeting or interview the Employer's language is consistent with the comparators.

I do not agree with the Union's argument that this language can not be reasonably imposed at interest arbitration as it in no way operates to place a restraint on the Union representatives. The Employer's proposal is distinguishable from the circumstances in *Gateway Casinos, supra,* and *Calco Club, supra,* as in those cases either the Employer was attempting to restrict or impede the representatives of the Union from exercising their legitimate role in the workplace or denying employees the right to representation. In the Employer's proposal the role of the Union is recognized, and the employee is entitled to the representation during meetings and interviews that may give rise to discipline.

It is the Union that determines that the shop steward is the representative in these circumstances even in their own proposal with the Union representative as a backup. Even if an argument could be made that the proposal amounted to a restriction on the Union representatives, it is not unreasonable in the circumstances. When serious incidents occur, such as Occupational Health and Safety matters, to delay the investigation while attempting to contact a Union representative may be extremely problematic. This proposal in no way as the Employer is not placing any restrictions upon the Union nor is it depriving employees of representation rights. This language is not a Code violation as was the case in *Nanaimo Golf, supra*, and while it is unlikely this provision would go to impasse, I do not see that it could not and therefore it does not necessitate my rejection of the Employer's final offer as a result.

Wages
The Employer is proposing the following wage language:

Minimum Rates of Pay for Full-time Employees

	Current	***April 1, 2022***	***April 1, 2023***	***April 1, 2024***
Start	*15.00*	*15.00*	*15.00*	*15.00*
6 months	*15.10*	*15.10*	*15.10*	*15.10*
12 months	*15.20*	*15.20*	*15.20*	*15.20*
18 months	*15.30*	*15.30*	*15.30*	*15.30*
24 months	*15.40*	*15.40*	*15.40*	*15.40*
30 months	*16.00*	*16.00*	*16.00*	*16.00*
36 months		*16.50*	*16.50*	*16.50*

42 months			*17.50*	*17.50*
48 months				*18.00*

Temporary Assignments

Where an employee is assigned to perform the majority of the duties of a position not set out in the Collective Agreement then the employee so assigned shall receive their own rate of pay plus a premium of one ($1.00) dollar per hour for each hour worked. For clarity the majority of duties means half the duties or more. It is understood that this provision shall apply for temporary assignments of more than three (3) days in a calendar week. Temporary assignments when filled will be filled by seniority provided the senior employee has the qualifications and the ability to perform the work.

Promotions from Part-time to Full-time

For wage progression purposes only, part-time employees who are promoted to full-time, will be given the greater of their part-time rate or the rate which their full- time seniority credit gives them, and they shall proceed from that point in the full- time wage progression. The full-time seniority credit is calculated based on six (6) months equaling 1,040 hours worked.
In the event that a promotion to full-time results in an employee being on an "off-scale" rate within the full time scale, it is understood that the employee will still have to acquire the appropriate service to advance on the existing full-time wage progression.

Minimum Rates of Pay for Part-time Employees

Amount of Service	***Pay***
0-300 hours	*Minimum Wage (MW)*
301-650 hours	*MW + $0.05*
650 – 1300 hours	*MW + $0.10*
1301-1950 hours	*MW + $0.15*
1951 – 2600 hours	*MW + $0.20*
2601 – 3250 hours	*MW + $0.25*
3251-3900 hours	*MW + $0.35*
3901 - 4500 hours	*MW + $0.40*
4501 - 5200 hours	*MW + $0.50*

5201 - 6500 hours	*MW + $0.60*
Over 6501 hours	*MW + $0.70*

All part-time employees who are top rated shall receive the following off scale wage increases:

Effective the first full pay week following the 1st Anniversary – twenty- five (25¢) cents per hour

Effective the first full pay week following the 2nd Anniversary –twenty- five (25¢) cents per hour

Effective the first full pay week following the 3rd Anniversary –twenty- five (25¢) cents per hour

Incentives

The parties agree that the provisions outlined above do not prevent the implementation of additional premiums or other incentives as determined by the Employer from time to time.

Where the Employer determines it is necessary to hire at a rate greater than the rate posted above due to labour market conditions, the newly hired employees will be credited with the corresponding number of career hours to their assigned rate but such hours will note be used for determining seniority or any other entitlement under this Agreement.

Prior to the implementation of any additional premium or other incentives, the Employer shall advise the Union. Upon request of the Union, the Employer shall meet with the Union to discuss the additional premiums or other incentives prior to the implementation.

Part-Time Premium

Notwithstanding anything to the contrary contained in Article 13.20, in the event that a part time employee works for more than thirty-two (32) hours in a given week for circumstances other than those outlined below, they shall be paid a bonus of one dollar and fifty cents ($1.50) per hour for all such hours worked in excess of thirty-two (32).

- *Where a full-time employee is absent due to illness, accident, jury duty or bereavement;*

- *To cover for vacations for full-time employees;*

- *Where a full-time employee is on a leave of absence;*
- *From December 15th to January 3rd;*
- *From June 1st to Labour Day; or*
- *During seasonally busy periods (e.g. Thanksgiving, Easter).*

Part-time night shift employees who are scheduled to work more than thirty-two (32) in a week for circumstances other than those outlined above will receive a premium of one dollar and twenty- five cents ($1.25) per hour for all hours worked in the week. Night shift employees are defined as employees who work exclusively night shift within a given week.

The Employer's proposal is for separate wage scales for full-time and part-time employees.

The full-time scale is based on an employee's length of service with regular increases every six months resulting in full-time employees reaching the top step of $18.00 per hour within 48 months. The part-time scale is a 6,501-hour scale indexed to Provincial minimum wage which is currently $15.00 per hour. The increments are a series of $0.05 and $010 increments until they reach top step of $0.70 above minimum wage. Once they reach top step part-time employees are eligible for a $0.25 increase on each anniversary date as an off-scale increase. As a result, a part-time employee may reach $16.45 per hour by the end of the contract on the assumption minimum wage remains the same.

The Union's proposal is for one scale based on 10,000 hours for full-time and part-time employees that starts at $15.00 with 500-hour increments moves to a top rate of $18.95 per hour in the first year of the contract. Additionally, it proposes a $0.65 per year in the anniversary date of the collective agreement to a final top rate of $20.90 per hour.

The Employer argued that this wage proposal is part of the full monetary package which already includes several agreed items such as pension, night crew premium paid leave, and Education and Training fund contributions. It stipulated that some of these can be found in the FreshCo comparators, but not all of them, so the inclusion of all of the monetary items must be factored into the wage proposal as the Union has already secured more favourable terms than the other agreements provide for. It also asserted that it is highly unlikely that No-Frills in Alberta is providing any of these benefits to its employees.

Further the Employer argued that the wage structure with separate scales for full-time and part-time is consistent with the comparators and if they were required to pay the same rates of pay as proposed by the Union then the labour costs would exceed the low wage model required to be competitive in the discount grocery format. The Employer confirmed that it believes the BC FreshCo agreements are the closest comparators with respect to a determination of wages as the Alberta and BC minimum wage is quite close as it is currently $14.60 per hour in BC.

The Employer highlighted that the "Minimum Wage Plus" structure found in the BC FreshCo Agreements was adopted from the BC No-Frills Agreement and is reflective of the higher minimum wage in the province so would be suitable for Alberta as well. Having said that the Employer stipulated that the Employer's part-time wage proposal is more generous by $0.10 than the BC FreshCo Agreements that top out at minimum wage plus $0.60. This $0.10 would apply to more employees as a majority of the employees work part-time, so it offsets the lower top rate for full-time in the Employer's offer.

The Employer argued that the Union's wage scale is not supported by any of the comparators and is not appropriate to a discount store agreement as it would quickly inflate the cost of the part-time workforce. To pay the rates suggested by the Union, the Employer stated that they would not be able to compete on price, particularly with the non-union competitor No-Frills. It also stated that the Union's proposed wage scale is comparable to Safeway and RCSS. The Employer noted that between 6,000 and 9,500 hours the wage scale is identical to the current RCSS and old Safeway scales. As well the proposed top rate would be the same as the old Safeway agreement and current RCSS terms and between 7,000 and 9,500 hours the scale is identical to the new Safeway wage scale.

The Employer argued that these rates would be inconsistent with the conversion language agreed to between the parties that allows employees to take a buy down allowance from the Employer when they are slotted into the new FreshCo scale at the closest rate of pay to their Safeway rate of pay.

The buydown was intended to compensate employees for the loss of future earnings. These buy downs range from $10,000 for part-time to $40,000 for full-time and are substantial. Under the Union proposal employees from Safeway will continue to earn comparable rates of pay at FreshCo that they were earning at Safeway, so the employees would receive a windfall, and the Employer will incur significant costs. According to the Employer, the ability to reduce the wage costs at the time of conversion to a discount model is a key component to being competitive and was the basis for the concessions provided to the Union related to the conversion to FreshCo..

The Union is proposing the following wage scales and

The following wage scale shall be the minimum rates of pay for all employees on ratification:

Hours Worked	**Rate**
0	$15.00
500	$15.07
1000	$15.14
1500	$15.21
2000	$15.28
2500	$15.35
3000	$15.42
3500	$15.49
4000	$15.56
4500	$15.63
5000	$15.70
5500	$15.77

6000	$15.85
6500	$16.20
7000	$16.55
7500	$16.90
8000	$17.25
8500	$17.60
9000	$17.95
9500	$18.30
10000+	$18.95

On the 1st anniversary of the Collective Agreement, the top rate will increase $0.65 to $19.60.

On the 2nd anniversary of the Collective Agreement, the top rate will increase $0.65 to $20.25.

On the 3rd anniversary of the Collective Agreement, the top rate will increase $0.65 to $20.90.

The Union submitted that it recognizes that FreshCo is a discount banner and as such argued that it has not sought numerous monetary items that are contained in the other Alberta collective agreements in this industry. For those monetary items that have been agreed between the parties or form components of the final offer, they are lesser benefits than those contained in the Safeway, RCSS and other Alberta grocery agreements.

The Union argued that in the Agreed Items and the final offer they have already conceded on provisions such as: reduced overtime eligibility and pay; reduced rest entitlements; fewer General Holidays with more restrictive eligibility and reduced holiday pay; no penalty for notice of scheduling change; reduced call in pay and no minimum hours requirements; reduced vacation entitlement and pay; fewer and less generous leave provisions; fewer and reduced premiums; no sick leave; no WCB top-up; substantially reduced benefits; and no credit for previous experience.

In addition, the Union argued that the Agreed Items and this proposal have substantial differences in the non-monetary provisions between the agreed items and the final offer proposals in comparison to the Alberta agreements they assert are the appropriate comparators and this is evidence of the recognition that this is a first agreement.

As well, the Union argued that it is seeking wages that are lower than Safeway wages in the equivalent classification and excluding the top rate and rates affected by minimum wage increases. The Union noted that the rates they have proposed are only equivalent to the RCSS rates negotiated in 2013 nearly eight years ago and only reaching parity with RCSS top rate in 2024 at the earliest. They provided the following scale for comparison purposes:

Wage Comparison: UFCW FreshCo Proposal, Safeway, and Superstore					
Hours	**Safeway 2020[2]**	**FreshCo Proposal**	**Wage Difference**	**Superstore 2017[3]**	**Wage Difference**
0-499	15.00	15.00	0.00	15.00	-
500-999	15.10	15.07	-0.03	15.00	-
1000-1499	15.20	15.14	-0.06	15.00	-
1500-1999	15.30	15.21	-0.09	15.00	-
2000-2499	15.40	15.28	-0.12	15.00	-
2500-2999	15.50	15.35	-0.15	15.00	-
3000-3499	15.60	15.42	-0.18	15.00	-
3500-3999	15.70	15.49	-0.21	15.00	-
4000-4499	15.80	15.56	-0.24	15.00	-
4500-4999	15.90	15.63	-0.27	15.00	-
5000-5499	16.00	15.70	-0.30	15.15	-
5500-5999	16.10	15.77	-0.33	15.50	-
6000-6499	16.20	15.85	-0.35	15.85	0.00
6500-6999	16.30	16.20	-0.10	16.20	0.00
7000-7499	16.55	16.55	0.00	16.55	0.00
7500-7999	16.90	16.90	0.00	16.90	0.00
8000-8499	17.25	17.25	0.00	17.25	0.00
8500-8999	17.60	17.60	0.00	17.60	0.00
9000-9499	17.95	17.95	0.00	17.95	0.00
9500-9999	18.30	18.30	0.00	18.30	0.00
10000+	21.21	18.95	-2.26	20.90	-1.95

The Union also provided the following comparison of the FreshCo rates from BC and Saskatchewan to the Safeway rates in those regions to demonstrate that its proposal is reasonable:

Wage Comparison: FreshCo and Safeway rates for Full-Time and Part-Time Employees (British Columbia)							
Full-Time Increments	Safeway[4]	FreshCo[5]	Wage Difference	**Part-Time Increments**	Safeway[6]	FreshCo[7]	Wage Difference
Start	14.60	14.60	0.00	Start	14.60	14.60	0.00
6 months	14.60	14.65	0.05	3 months	14.60	14.65	0.05
12 months	14.60	14.70	0.10	6 months	14.60	14.70	0.10
18 months	14.60	14.75	0.15	9 months	14.60	14.75	0.15
24 months	14.60	15.25	0.65	12 months	14.60	14.80	0.20
30 months	14.60	15.25	0.65	15 months	14.60	14.85	0.25
36 months	14.60	15.25	0.65	18 months	14.60	14.90	0.30
42 months	14.60	15.25	0.65	24 months	14.60	15.00	0.40
48 months	14.60	15.25	0.65	36 months	14.60	15.10	0.50
Top Rate	20.00[8]	15.25	-4.75[9]	42 months	14.60	15.20	0.60

	Top Rate	20.00[10]	15.20	-4.80

Wage Comparison: FreshCo and Safeway scales for Full-Time and Part-Time Employees (Saskatchewan)							
Full-Time Increments	Safeway[11]	FreshCo[12]	Wage Difference	Part-Time Increments	Safeway[13]	FreshCo[14]	Wage Difference
Start	11.45	11.45	0.00	0-300	11.45	11.45	0.00
6 months	11.65	11.50	-0.15	301-650	11.45	11.50	0.00
12 months	11.85	11.55	-0.30	650-1300	11.65	11.55	0.00
18 months	12.05	11.60	-0.45	1301-1950	11.75	11.60	0.05
24 months	12.25	12.00	-0.25	1951-2600	11.85	11.65	0.00
30 months	12.50	13.00	-0.50	2601-3250	11.95	11.70	0.00
36 months	13.80	16.05	2.25	3251-3900	12.15	11.75	0.00
				3901-4550	12.25	12.00	-0.12
				4501-5200	12.35	12.25	-0.03
				5201-5850	12.50	12.50	0.00
				5851-6500	12.80	12.75	-0.05
				6501+	13.80	13.60	-0.20

The Union advanced the argument that the single wage grid is internally consistent and provides equality amongst employees so should be preferred over the Employer's proposal of a two-tiered wage system that pays different rates for the same work. This two-tiered system may be consistent with the FreshCo agreements in the other provinces, but the Union argued it is not within the Alberta context. It submitted that this wage structure is not something that the Employer could reasonably expect to achieve in Alberta and here it would amount to a breakthrough clause which should not be imposed by interest arbitration.

The Union acknowledged that they have agreed to two-tiered structures that grandfather senior employees when reductions to wage rates are negotiated, however this is differentiated from the part-time and full-time structure which would have the employees performing the same work being paid differently and the Union would never agree to this.

I would note that Mr. O'Halloran acknowledged under cross examination that the UFCW Local 401 has recently negotiated a collective agreement with the Employer that does contain a two-tiered full-time and part-time wage grid, the Sobeys West Inc Calgary Refrigerated Warehouse Agreement. Mr. O'Halloran stated that this was not a true two-tiered scheme as the employees were paid the same up to the 4501 hour level at which time part-time employees top out and the progression continues for full-time employees.

Finally, the Union submitted that according to the principles of first contract arbitration there must be "equity amongst employees" and a wage structure should only differentiate in regard to the qualifications, the nature of their work and the responsibilities they assume (see *Yarrow Lodge, supra,* para 169)

The Union cited Arbitrator Weiler in *Sudbury Mine, Mill & Smelter Workers Union v Falconbridge Nickel Mines Ltd* (1969), 20 LAC 45, that the whole point of a wage structure "is to create uniformity and equality in payments for the same kind of work" and "[i]t is simply unfair for two employees who are doing the same kind of work, perhaps even working together, to be paid substantially different rates". Relying on this, the Union argued that I can not impose a two-tiered wage scale that differentiates between part-time and full-time employees.

In argument the Union stated that I should consider that this is not a four year agreement, but it is in fact a seven year agreement in force until 2027 to accommodate the opening of new locations and therefore the consideration of the appropriate terms is even more critical as the parties will have to live with this result for many years.

There are a number of issues to be addressed in the wage scale proposals.

I will start by stating that for obvious reasons this is the most significant monetary proposal and factors heavily into in my assessment. I will start with the Union's objection to the two-tiered wage scales that divide part-time and full-time employees. Their initial argument is that it would never agree to this and the Employer could not reasonably expect the Union to agree as this structure does not exist in Alberta so it should not be considered as replicating what the parties would have agreed to. This is not how replication works and in fact there was evidence at arbitration that in at least one agreement the Union has agreed to a two-tiered structure.

Further the Union argued that this is a breakthrough clause which can not be imposed by interest arbitration. I disagree, not only is there evidence that it is not a breakthrough for the Union, but it is exactly the pattern set in the comparators. Comparators the Union was fully aware of in August 2020 when it finalized its agreement with the Employer regarding the conversion of Safeway Stores to the FreshCo banner and understood the structure of the agreement the Employer was looking for as "appropriate for the type of business contemplated." For the purposes of this clause this is not a breakthrough in the discount grocery agreements that are the comparators here.

The Union also argued that the division of part-time and full-time employees into two separate wage bands is inconsistent with one of the principles of first contract arbitration which is that there is to be equity amongst employees and that a wage structure that differentiates among employees who are performing the same work and being different rates is unfair and can not be imposed by an arbitrator as a result. Again, I disagree. Collective agreements in general and these parties, differentiate regularly between the rights and entitlements of full-time versus part-time employees. These differences may be in the form of job protection or scheduling rights, or as is proposed here in monetary provisions, such as vacation or General Holiday pay. What is often the argument when there are differences in terms and conditions is that the full-time staff in grocery operations often have more responsibility due to their being on site and working more consistent hours which often will impact their duties.

The issue of equity does not mean equality. Equality is everyone being provided the same benefit or opportunity, while equity is to be free from bias or favoritism and recognizes that each group or individual has different circumstances which may be addressed differently. What is contemplated in the decisions as I read them is that there should be no discrimination in the application of the wage scales, for example if the part-time were all female and the full-time were all male this would result in a discriminatory application of the element of compensation and should not be considered at interest arbitration.

The Union in arguing its case did acknowledge that they have negotiated two-tiered wage scales that are based on hire date that in effect grandparent senior employees when new or reduced rates are negotiated. It differentiated this scenario from the Employer's proposal of separate full-time and part-time wage scales. I am not sure I follow the logic as this is still a circumstance where employees doing exactly the same work are compensated at different rates of pay, which is the Union's objection to the Employer's proposal. It is an open question as to whether this approach has a discriminatory effect on younger workers as a result. That is not the issue before me, however I do note the inconsistency in the Union's argument.

I also note that the two FreshCo and UFCW first agreement arbitration cases in BC provided for the two-tiered wage schedule as proposed here and there was no challenge from the Union, nor commentary from the arbitrators to whether the wage scales were inconsistent with the principles of first contract arbitration.

Another area of concern is that the Union's proposed wage rates are very close to the current Safeway and RCSS collective agreement wage rates. The Employer's evidence is that this is not consistent with its clear understanding when the parties negotiated options for employees impacted by a conversion to a FreshCo. The Union countered that they did not necessarily agree that the rates should be lower, but that the entire monetary package would be lower and that it is. The Employer's argument is the most credible as the negotiation of those terms, particularly the generous buy-down provisions, could only have been predicated on the understanding that the wage rates and structure of the agreement would be significantly different than the Safeway and RCSS agreements.

As for the duration of the agreement, the term is not a matter before me and while I appreciate the Union's argument that the terms imposed by this process will be in place for an extended period before they are up for renewal, that was agreed between the parties and a risk that must have been contemplated prior to the exchange of final offers. I am not persuaded that this should influence my assessment of the appropriate first contract terms.

Having consideration for the above noted factors I find the Employer's wage proposal consistent with the comparators.

Letter of Understanding – Sick Leave

The Employer is proposing the following Letter of Understanding to address the sick entitlement for full-time employees:

> *Full-time employees shall be entitled to three (3) sick days per calendar year, accumulated on the basis of one-half (1/2) day every two (2) months. Employees shall have the opportunity to utilize these hours by the end of the following calendar year. Paid sick days will be based on the employee's previous thirteen (13) week average hours worked.*

The Employer stated that this provision is consistent with the relevant comparable collective agreements in all of the Western Canadian FreshCo Agreements, with the exception of Manitoba, and is intended to round out the benefit offering and help with the attraction and retention of full-time staff.

The Union does not have a proposal on this provision.

Decision

The difference between the parties is significant. The question before me is which of the two final offers replicates most closely what the parties would have agreed to in free collective bargaining and is fair and reasonable in light of the market and industry. The task is to balance the market sector the agreement is to operate in with the terms and conditions that are appropriate for a first agreement.

While the Union argued here that the Employer can and should pay based on their review of the Empire group's Annual Report, it clearly had already accepted the business case for the discount brand and negotiated the terms of the Safeway conversion language on this basis. It is not my job to evaluate whether the Employer should or should not maintain their Safeway stores, or whether there is a sound business base in the province to convert existing stores, nor is curtailing the profits of the Employer a consideration in determining the terms of a first agreement. I heard detailed evidence from the Employer on the market and industry and I am persuaded that there is sufficient economic data, based on what is reasonable having consideration for the circumstances upon which to set the terms of a new agreement.

As this decision is to be based on replication and comparators and as outlined in more detail previously in this award, I have determined that the best and most appropriate comparators are the FreshCo collective agreements in place between the Employer and the UFCW.

I would note that I do not accept the Union's argument that the Safeway and RCSS agreements are the jumping off point for the FreshCo contract and by their agreeing to reduce some of the provisions contained therein it makes it an appropriate first agreement. I also do not accept that the Safeway agreement is reflective of the "historical bargain" between the parties and should be reflected in the FreshCo agreement. A first agreement should not be an industry standard agreement and instead should be reflective of the sector and the comparators appropriate to assess replication.

The Union's premise that the Employer's final offer is "void of collective bargaining agreement provisions that organized workplaces typically enjoy" and "is almost unrecognizable as a collectively bargained agreement" is inaccurate and misleading. It is true that it is not as robust when compared to the more mature Alberta agreements in this sector. However, the "fundamental collective agreement rights" of a first agreement are present as defined in *Yarrow Lodge*, at para 162:

> "A significant element of the first collective agreement legislation is the goal of establishing a long-term collective bargaining relationship. It is the fundamental collective agreement rights, such as just cause provisions, a fair and accessible grievance procedure, adequate seniority and promotion clauses, layoff and recall rights, union security clauses (the statutory minimum being a union shop), which are critical in the establishment of the goals of collective bargaining and which underlie the values of voice, dignity and security. In our view, arbitrators in this province have long recognized this fact. The focus of first collective agreements should be on establishing these rights in preference to other issues. Further, the type of provisions to be incorporated should be sensitive to the sector or industry in which the first collective agreement is to operate."

First agreements form the basis for the future relationship and negotiations between the parties and while I respect that this situation is unique in that there is a longstanding labour relationship between the parties, it does not significantly alter the consideration of the elements of a first agreement. A first agreement should provide a foundation of rights and protections that are neither substandard, and my assessment of the total package is that regardless of whose final offer is accepted it is not substandard, nor should it be based on an industry standard. The Union used the term "norms" throughout its argument, and this implied that I am to use the hard-fought provisions achieved over decades to establish the foundation for this first agreement which suggests an industry standard which is not appropriate here.

Both sides bargained long and hard during both the Safeway and FreshCo negotiations to ensure the rights of impacted employees, the recognition of the Union and the sustainability of the new discount venture in order to prevent store closures and protection of and even expansion of union jobs in the Province. In fact, in reviewing the totality of the items agreed to between the parties during negotiations, I would note that many of the terms as outlined in Appendix A already exceed what may be expected in a first agreement and while this is clearly based on the historic and long-standing relationship between the parties, it does form part of the consideration of the total package.

As Arbitrator Sims observed in *Newport Harbour, supra* (at para 11)

> "A party advancing a particular position carries the onus of presenting cogent evidence to support that position. This does not equate to an issue by issue approach where benefits are awarded because they seem individually attractive and well supported. Collective bargaining involves choices between desirable benefits, and agreements are settled on a package basis."

This is even more true in a final offer selection process. While in my review there are several of the Union's provisions that I felt may be appropriate for inclusion, the fact is I am forced to choose between the two offers before me. Had I conducted an issue-by-issue analysis I would likely have landed on a different outcome, but that is not the decision before me.

The most significant differences between the final offers are the monetary elements, particularly wages and benefits and these most factored into my decision making. The combination of the market and economic forces, the considerable costs and capital outlay to the Employer, the background of the agreement considering the concessions the Union achieved in the Safeway negotiations, the risk of potential closure of Safeway locations; and the comparator agreements all provide a context for review with respect to the final offers.

As is noted earlier in the award, this is not a scientific process and the reasonableness or fairness of each proposal within a package of proposals is not determinative, instead it is the reasonableness of the overall result that is at issue.

Conclusion

Weighing all of the factors outlined in the preceding sections of this award, I believe that the Employer's proposal is the offer that most replicates what the parties would achieve in free collective bargaining. I am not persuaded by the Union's argument that it would not have agreed to these terms as establishing replication. It was the beneficiary of considerable concessions that were well earned and fought for on behalf of their Safeway membership, as well as the expansion of the voluntary recognition of the Union beyond just the conversion of existing Safeway's and in my mind are attempting to "have their cake and eat it too" on the specific proposals contained in their offer.

I therefore select the Employer's final offer and so award. I attach the Agreed Items as Appendix A and the Employer's Final Offer as Appendix B. I reserve jurisdiction to resolve any matters related to the terms of this agreement. I would like to thank the parties for their thorough submissions and presentations.

SIGNED, DATED AND ISSUED at Edmonton, Alberta on February 1, 2021

Mia Norrie
Arbitrator

APPENDIX A

AGREED TO ITEMS IN COLLECTIVE BARGAINING

BETWEEN:

SOBEYS CAPITAL INCORPORATED (FRESHCO)

AND:

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 401

The parties met in negotiations on November 23, 24, 25, 30, December 1, 2, 3, 4, 16, and 17 and agreed on the following articles in the collective agreement, subject to final agreement and a ratification process.

Agreed to December 4, 2020

ARTICLE 1 – PURPOSE

The purpose of this Agreement is to establish harmonious and mutually satisfactory relations between the Employer and its employees; to provide an orderly procedure for the prompt and equitable disposition of complaints and grievances which may arise from time to time; and to establish and maintain conditions which will promote the efficient and productive operation of the Employer, positive customer and employee relations, the safety and welfare of employees and the security of Employer property and prevent waste and unnecessary expense.

Agreed to December 18, 2020

ARTICLE 2 – RECOGNITION

2.01 The Employer recognizes the United Food and Commercial Workers Canada Union, Local No. 401 as the sole collective bargaining agency for all employees of **[**Insert Employer Name] d.b.a. "(Location) FreshCo/Chalo FreshCo" employed at (insert physical address)**]**, save and except Store Owner/Manager, Assistant Store Manager, Administrator, part-time Administrator, Department Managers and persons above these ranks.

2.02 The Pharmacy Department shall be excluded from this Collective Agreement.

ARTICLE 3 – UNION ESTABLISHMENT

3.01

(a) It is agreed that all employees covered by this Agreement shall become and remain members of the Union in good standing as a condition of employment.

(b) New employees shall make application for membership in the Union at the time of their hiring and shall become and remain members of the Union in good standing, as a condition of employment. The employer agrees that it will inform all new employees prior to or at the time of hiring of the Union security provisions of the agreement. The Employer agrees to have the membership application forms, dues and initiation fee deduction forms signed by the employees at the time of hiring.

(c) Form Letter

The Employer agrees to provide each new employee at the time of employment with a form letter, outlining to the employee their responsibilities in regard to Union membership; and to provide the Union, in writing, with the name and address of each employee to whom the letter was presented along with the employee's date of hire. The Union shall bear the expense of printing the letter, the contents of which to be such that it is acceptable to the Employer.

(d) In Dispute

(e) The Employer or designate will, during the first three (3) weeks of each individual's employment, make known to the new employee the names and work locations of union stewards in the store.

3.02

(a) The Employer shall as a condition of employment, deduct from the wages of each employee, upon proper authorization from the employee affected, any initiation fees, weekly dues, and assessments as authorized by the Union. Such dues shall be remitted to the Union prior to the 15th day of the month following the month in which such deductions are made. The Employer shall provide dues information to the union in an electronic format acceptable to both parties.

(b) Deduction statements shall be documented by location, containing the full name of the employee and their starting date and social insurance number. The Employer agrees to record the annual Union Dues deductions for each employee on their T-4 Form.

3.03 In the event that such weekly Dues are changed during the term of the

Agreement, such changes must be given to the Employer by notice, properly authorized by Union officials, and shall become effective within one (1) month following the date the notice is received.

The Union and the Employer agree to meet and address any issue or concerns regarding this article, that may come from changes in Government legislation.

3.04 The Employer will supply a report to the Union containing the following information on a mutually agreed data processing medium following the close of the Employer's four (4) or five (5) week accounting period:

(i) Full Name;
(ii) Employee number;
(iii) Status (Full-Time, Part-Time, Active, Inactive);
(iv) Classification;
(v) Store Number;
(vi) Social Insurance Number;
(vii) Date of Birth;
(viii) Date of Hire;
(ix) Union Seniority Date;
(x) Vacation Date
(xi) Termination Date and reason for termination;
(xii) Home Address (including City and Postal Code);
(xiii) Phone Number;
(xv) Current Rate of Pay;
(xvi) Hours worked in the period;
(xvii) Career hours in current classification;
(xviii) Union Dues Deducted for the Period;
(xix) Initiation Fees Deducted for the Period; and
(xx) Education and Training Fund Hours.

3.05 The Employer agrees to display the official Union decal of the United Food and Commercial Workers Union, Local 401 in a location where it can be seen by customers.

Agreed to December 4, 2020

ARTICLE 4 – UNION REPRESENTATION

4.01 The Union shall have the right to appoint Shop Stewards.

4.02 The Employer agrees to allow steward(s) and/or other union member(s) selected by the Union time off to attend activities authorized by the Union subject to the Employer's ability to accommodate such leave. Ten (10) days advance notice will be provided, and the Employer agrees that such leaves will not be unreasonably denied.

4.03 Authorized representatives of the Union shall be entitled to visit any store

covered by this Agreement for the purpose of observing working conditions, interviewing members, and ensuring that the terms of this Agreement are being implemented.

During a store visit, a Union representative can visit and stay in the lunchroom while the store is open.

4.04 The Employer agrees to allow unpaid time off to three (3) employees to meet with the Employer to negotiate the renewal of this Agreement.

4.05 The Employer acknowledges that UFCW Local 401 chooses to provide WCB Advocacy for its members.

4.06 Bulletin Boards

Lockable bulletin boards will be supplied by the Union and will be placed in an area of the store as mutually agreed. The Employer will be allowed to make a copy of the key to the bulletin board at their expense. It is understood that these bulletin boards are the property of the Union and shall be for their exclusive use. The Union will be responsible for all maintenance and repair of the bulletin board.

Bulletins authorized by the Union concerning the following may be posted by a person so authorized by the Union:

A. Notice of Meetings and/or Events
B. Benefit Plan information
C. Pension Plan information
D. Safety information
E. Education and Training Course Information

Any other bulletins may only be posted by mutual agreement between the Union and the Employer.

4.07 Member Request for Copy

If the employee requests, the Employer agrees to provide employees with a copy of any policy(s), procedure(s) or document(s) that the employee is required to sign as soon as possible.

4.08 Schedules

Outside working hours and following reasonable notification to the Store Manager or person in charge of the store, a Shop Steward or Union Representative will be allowed to make copies of the schedules and remove the copies from the store. The Union agrees to deal with the copied schedules in a confidential manner.

The Employer shall retain a copy of the work schedule for a period of one year.

4.09 Union Office

Provided the operational needs of the store can be met, The Employer agrees to grant time off, without pay and without discrimination, to a maximum of one (1)

employee for Union Leave as designated by the Union. Such Leave shall be for a maximum of one (1) year to serve in an official capacity with the Union. As much notice as possible shall be provided.

4.10 Union Leave (Education and Conferences)

The Union will give the Employer a minimum of two (2) weeks' notice. No request will be unreasonably withheld. The Employer agrees to pay employees for the following Union Leaves requested in writing by the Union and bill the Union accordingly for the wage and benefit cost. Employees on Union Leave of absence shall be credited for seniority based on what they would have received had they been at work. Time on Union Leaves shall be considered as time worked for all purposes under this Agreement.

Agreed to November 30, 2020

ARTICLE 5 – NO DISCRIMINATION

The Employer and the Union agree that there shall be no discrimination with respect to any Employee by reason of race, colour, ancestry, place of origin, religious beliefs, gender, gender identity, gender expression, age, physical disability, mental disability, marital status, family status, source of income, sexual orientation, or membership in a trade union, as defined in *The Alberta Human Rights Act*.

Agreed to December 2, 2020

ARTICLE 6 – NO STRIKE OR LOCKOUT

There shall be no strikes or lockouts during the term of this Agreement, as per the Alberta Labour Relations Code.

Agreed to December 4, 2020

ARTICLE 7 – GRIEVANCE PROCEDURE

7.01 Any complaint, disagreement, or difference of opinion between the Employer, the Union or the employees covered by this Agreement, which concerns the interpretation, application, operation or alleged violation of the terms and provisions of this Agreement, shall be considered as a grievance.

7.02 In any payroll grievance regarding hours worked by an employee and the amount paid to an employee, the Employer shall promptly supply such information in respect to the six (6) months immediately prior to the request. If information for a longer period is required, the normal process of the Grievance Procedure shall apply.

The Union shall not use the foregoing provision to request information that does not pertain to a specific grievance of an employee.

7.03 Any employee, the Union or the Employer may present a grievance. Any grievance which is not presented within twenty-one (21) calendar days following the event giving rise to such grievance, or fourteen (14) calendar days from the last day worked when related to a discharge grievance, shall be forfeited, and waived by the aggrieved party.

7.04 All grievances shall be submitted in writing by the Union or Employer.

7.05 The procedure for adjustment of grievances and disputes by an employee shall be as follows:

Step 1 By discussion between the Shop Steward and/or Union Representative (with or without the aggrieved employee or employees present at their option) and the Store Manager/Owner. The Store Manager/Owner shall make a decision on the matter within seven (7) working days and advise the Union and if agreement is not reached, then, the parties must advise each other if they intend to proceed to Step 2 within fourteen (14) days of the Step 1 decision:

Step 2 The employee shall report their complaint to the Union Labour Relations Officer, who will take the matter up with the Store Manager/Owner who shall make a decision on the matter within twenty-one (21) days. If a satisfactory settlement cannot be reached then, upon request of either party, within twenty one (21)

days of receiving the decision from the Store Manager/Owner the matter shall be referred to Arbitration in accordance with Article 8.

Time limits may be extended by mutual agreement with written confirmation.

Agreed to November 24, 2020

ARTICLE 8 – ARBITRATION

8.01 All grievances that cannot be settled by the Representative of the Employer and the Union in accordance with Article 7 may be submitted to a single arbitrator as set out below.

8.02 The single arbitrator shall be mutually agreed upon by the Union and the Employer. In the event that a single arbitrator cannot be mutually agreed upon, then
application for appointment of an arbitrator shall be made to the Director of Mediation Services for the Province of Alberta.

8.03 The arbitrator shall not be vested with the power to change, alter, or modify any of the terms of this Agreement.

8.04 No person shall serve as an arbitrator if they are involved or directly interested in the grievance.

8.05 The decisions of the arbitrator shall be binding and enforceable to all parties.

8.06 It is agreed that the expenses of the arbitrator shall be borne equally by both the Union and the Employer.

Agreed to December 16, 2020

ARTICLE 9 – HEALTH AND SAFETY

The Employer, the Union and the employees mutually agree to co-operate in maintaining and improving safe working conditions in accordance with the Occupational Health and Safety Act (Alberta). The Employer has the responsibility for ensuring that safe conditions prevail within the workplace, to take appropriate and effective measures, both preventive and corrective, to protect the health and safety of employees, in accordance with the Act.

The employees agree to cooperate with the Employer in maintaining and improving safe working conditions and good housekeeping of the store and in caring
for equipment, machinery, and property.

9.01 Health and Safety Committee

The employer shall establish a Joint Work Site Health and Safety Committee in accordance with the Occupational Health and Safety Act.

The Joint Health and Safety Committee (JHSC) shall consist of two (2) employer representatives and two (2) unionized employees to be appointed by the Union or elected by the membership and shall hold their positions for a term not less than one (1) year and may continue until a successor is elected or appointed. In addition, one (1) alternate may be appointed by the union and one (1) by the Employer.

The Employer will ensure that all representatives on the JHSC are provided and receive training with respect to the duties, functions, and responsibilities of the committee in accordance with applicable legislation.

All time spent in Employer-approved training and participating in the duties and functions of the Joint Work Site Health Committee during their scheduled shift will be paid as if they had been working regular duties.

If an employee is not scheduled to work when a Safety Committee meeting is held, attendance will be voluntary. Any employee who voluntarily attends a Safety Committee meeting will be paid at the straight time rate and further, those hours paid will not result in the payment of overtime elsewhere in the day or week. In addition, there will be no minimum call-in payable pursuant to Article 13.08 for those employees who decide to attend a Safety Meeting on a voluntary basis.

The meetings will be held monthly at the store or otherwise mutually agreed location. When urgent health and safety issues arise between the monthly meetings and are presented to the Employer or the Union, the Employer will respond to the issue, or will convene a Health and Safety Committee meeting.

The chairing of meetings will be rotated among the co-chairs (one (1) from the Employer representatives and one (1) from the employee representatives) on an alternating basis and the minutes shall be posted in the store.

Meeting minutes shall be posted in the store, and within fourteen (14) calendar days of the meeting, shall be forwarded to the Union Office by the Committee Co-Chair.

The co-chairs shall alternate in serving as chair at the meeting of the JHSC and shall participate in all decisions of the committee.

It will be the responsibility of the JHSC to establish rules and procedures in accordance with the OHS Act (Alberta).

9.02 Maintenance of Adequate Heating Facilities

The Employer agrees to maintain adequate heating facilities in each store. Furthermore, the Employer shall follow the guidelines for temperature control, including absolute minimum and maximum temperatures as required by applicable legislation.

9.03 Work Loads

If an employee believes the amount of work they are required to perform is excessive over what is required from the rest of the staff and it will result in an occupational accident or occupational injury to themselves, the disagreement shall be referred to Article 7 of this Agreement.

9.04 First Aid Training

Employees' first aid training courses will be paid for by the Employer and scheduled on a paid workday.

9.05 First Aid Kits

First Aid Kits shall be provided and maintained in the store.

9.06 Water Bottles

Cashiers shall be allowed to have an Employer approved water bottle at their locations provided the bottle is stored out of public sight and the employee exercises common courtesy with customers when consuming water.

For all other employees, bottles are not to be present on the sales floor when the store is open and are only permitted in designated areas that do not compromise Food Safety practices.

9.07 Notice of Injury

In the event an employee is injured due to an event arising out of, and in the course of employment, if medically possible, the injured employee will be promptly assisted by Management and fill out a notice of injury form. A copy of said form shall be provided to the injured employee immediately following the report of the incident. The notice of injury form will be in compliance with the Workers' Compensation Act (Alberta).

9.08 Payment of Shift When an Employee is Injured During the Shift

The Employer agrees to pay any employee injured during a shift for the balance of the employee's scheduled shift.

9.09 Ergonomic Hazards

The Employer recognizes the importance of eliminating or reducing ergonomic hazards in the workplace to improve workers' wellbeing and to prevent injuries.

9.10 Anti-Fatigue Mats

The parties recognize the need for effective anti-fatigue mats to be placed at the check-stands and all other appropriate locations. When the Union or the employee raises an issue with a store regarding the supply of anti-fatigue mats, the Employer agrees to meet with the Union to discuss and resolve issues.

Agreed to December 18, 2020

9.11 UFCW Health, Safety and Education Training Fund

The Employer agrees to contribute six cents ($0.06) per hour for every hour worked by members of the UFCW Local 401 to the United Food and Commercial Workers, Local 401 Health, Safety, Education and Training Fund. Employer contributions shall increase by an additional one cent ($0.01) per hour each year thereafter on the last Sunday of the year until the expiry date of the collective agreement or the total contribution reaches a maximum of fourteen cents ($0.14) per hour.

ARTICLE 10 – GENERAL

Agreed to December 2, 2020

10.01 Restrooms, lunchroom, and a secure place (lockers) for personal items shall be provided.

10.02 Should the Employer decide to create any new job classification(s) during the term of this Agreement, the Employer will set the rate of pay for such classification(s) following consultation with the Union. Should the wage rate set by the Employer not be agreeable to the Union, the Union may file a grievance in accordance with Article 7 and submit the matter to arbitration in accordance with Article 8.

Agreed to November 24, 2020

10.03 Product Demonstrations

(a) If product demonstrations or tasting events are held, the Representatives of suppliers or firms specializing in this area or non-bargaining unit event staff hired by the Employer are authorized to handle the merchandise being demonstrated or tasted and to hand out samples.

(b) The Representatives demonstrating their products may verify their product codes and remove any shelved merchandise that is expired or damaged.

10.04 The Sobeys Representatives (Specialists, Managers, Director Operations, and others) may carry out all work related to their duties.

10.05 In the event that the Store is renovated or remodelled or that changes are made to the inventory or Store layout, no restriction shall be placed on the work carried out by the Representatives of Suppliers or firms specializing in this area.

10.06 Vendor Stocking

(a) The Representatives of Companies that supply baked goods (breads and cakes), dairy, soft drinks and water, chips/salty snacks and similar-type products, nuts and candies, non-food products, natural products or other direct delivery products, may move their product throughout the Store and place it on or remove it from the shelves.

(b) The Representatives of Suppliers may set up seasonal displays or special displays.

10.07 The Representatives of a Catering Service may prepare their recipes and cook the products intended for the Prepared Foods Department.

10.08 Cleaning of the Store and its equipment as well as the general repairs performed in the Store and on its equipment may be carried out by persons excluded from the bargaining unit.

10.09 It is recognized that the Employer may decide from time to time to engage Service-providers on an ongoing basis to operate kiosks or provide services within the Employer's stores. These Providers may in some cases provide services in the store, such as fresh-meat or fresh-fish counters that were formerly provided by employees of FreshCo; in other cases the services may be new to the store entirely.

It is understood that in all cases employees provided by the Service-providers to operate these kiosks or provide services in the store are not, either directly or indirectly, employees of FreshCo, and are not covered by the FreshCo collective Agreement.

Agreed to November 25, 2020

ARTICLE 11 – LEAVES OF ABSENCE

11.01 Personal Leave

(a) Leave of absence without pay and without benefits for legitimate reasons may be granted to employees with at least one (1) year of service with the Employer at the discretion of management and subject to the requirements and efficiency of operations. Length of such leave will not exceed four (4) consecutive weeks.

(b) An employee requesting an unpaid personal leave of absence must make such request in writing to the Store Owner/Manager at least sixty (60) calendar days in advance of the commencement date of the requested leave. Such application will be given full consideration, and not unreasonably denied.

11.02 The Employer shall grant leaves of absence without pay, in accordance with the provisions of *The Employment Standards Code (Alberta).*

The Employment Standards Code currently contains the following leaves:

(a) Critical Illness Leave
(b) Long Term Illness and Injury Leave

(c) Citizen Ceremony Leave

(d) Death or Disappearance of Child Leave

(e) Compassionate Care Leave

(f) Personal and family responsibility leave

(g) COVID-19 leave

(h) Reservist leave

(i) Domestic Violence Leave
The Employer recognizes that employees sometimes face situations of violence or abuse in their personal lives and when notified, will take reasonable steps to accommodate absences or performance issues arising directly from situations of violence or abuse that occur in the context of close personal relationships. Should an accommodation become necessary, the parties will meet to discuss appropriate steps.

11.03 Bereavement Leave

(a) Full-time employees shall be granted time off from work, with pay, to a maximum of three (3) scheduled work days, in the event of death in the immediate family.

(b) After twelve (12) months of employment, part-time employees shall be granted time off from work, with pay, to a maximum of three (3) scheduled work days, in

the event of death in the immediate family. The compensation shall be at the average hours worked during the preceding four (4) weeks.

(c) The term "immediate family" shall mean spouse, parent, parent-in-law, child, brother or sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law, grandparents, common law spouse, stepparents, stepchild and grandchild. One (1) day off, with pay, will be granted to an employee in the event of the death of their aunt or uncle.

(d) Employees shall not be required to attend the funeral in order to receive bereavement leave however, such leave must be taken in conjunction with the death, or related memorial service unless otherwise mutually agreed, and not unreasonably denied.

(e) Common law or adult interdependent partner and same sex spouses are to be recognized by the Company for the provisions of this article.

(f) In addition to the foregoing, an employee shall be entitled to any unpaid leave they are eligible for under Employment Standards legislation including bereavement leave for a person the employee is not related to but considers to be like a close relative.

11.04 Jury Duty

(a) When a full-time employee is summoned, and reports, for jury duty, they will be paid their regular hourly rate of pay for the number of hours they were scheduled to work during the period they serve as a juror, to a maximum of ten (10) shifts, less the amount they are paid to serve as a juror, provided that the employee immediately reports to work if the employee is excused from jury duty for the rest of the day or days, notifies the Employer of the date on which they will be released from jury duty immediately after such information is provided to the employee and reports for work on their first scheduled shift immediately following their release. Such compensation shall not be considered as payment for time worked.

(b) The claim of an employee shall be verified by presentation of the cheque from the Court; however, no payments shall be made for any hour for which the employee received compensation from the Employer for any other reason.

(c) An employee appearing as a witness to a court proceeding on behalf of the Employer will be paid a minimum of three (3) hours at their regular hourly rate of pay, and such compensation shall not be considered as payment for time worked.

(d) The employee's scheduled day off will not be changed as a result of attending court on the Employer's behalf.

11.05 Maternity and Parental Leave

Maternity Leave

In accordance with the provisions of *The Employment Standards Code (Alberta*), employees shall be entitled to maternity leave of not more than sixteen (16) weeks starting at any time during the twelve (12) weeks immediately before the estimated date of delivery.

A pregnant employee whose pregnancy ends other than as a result of a live birth within sixteen (16) weeks of the estimated due date is entitled to maternity leave under this provision.

An employee who takes maternity leave must take a period of leave of at least 6 weeks immediately following the date of delivery, unless by mutual agreement between the employee and the Employer and provided a medical certificate indicates that resumption of work will not endanger her health.

Parental Leave

In accordance with the provisions of *The Employment Standards Code (Alberta*), Employees shall be entitled to:

Parental leave of not more than sixty-two (62) weeks within a seventy-eight (78) week period after the child's birth, or in the case of an adoptive parent, after the child is placed with the adoptive parent for the purpose of adoption.

If employees are parents of the same child, Parental Leave may be taken wholly by one of the employees or shared by the employees. In such circumstances, the Employer may, at its discretion, grant Parental Leave to one or both employee(s) at the same time if so requested.

11.06 Military Leave

An employee who is a member of the Canadian Armed Forces, including the Primary Reserve, and who is part of an operational deployment will, upon two (2) weeks notice, where possible, be granted a leave of absence without loss of seniority. Employees may be required to provide documentation to support the leave request.

Agreed on November 30, 2020

ARTICLE 12 – SENIORITY

12.01 Seniority for each full-time employee is based upon the length of continuous full-time employment with the Employer in the store since the employee's most recent date of hire.

Seniority for a part-time employee is based upon the length of continuous employment with the Employer in the store since the employee's most recent date of hire.

It is agreed that employees will continue to acquire and exercise seniority on a departmental basis within the bargaining unit, except in the event of lay-off and re-employment, in which case employees shall exercise seniority on a storewide bargaining unit basis.

In all matters full-time employees will be deemed senior to part-time employees.

The name and number of departments may be changed by the Employer from time to time after providing employees and the Union thirty (30) days' notice.

Due to business needs, full-time employees may be required to temporarily perform work outside of their department from time to time.

12.02 Seniority is the principle of granting preference to employees for promotions, demotions, lay-offs in accordance with an employee's bargaining unit seniority, but only when an employee has the merit, fitness and ability necessary to fill the normal requirements of the job.

12.03 Seniority lists for employees shall be sent to the Union by the Employer quarterly beginning on January 1st of each year and shall include home address, email address, phone number, starting date, seniority date, department and social insurance number separated into full and part-time, in an electronic format acceptable to both parties.

12.04 Promotions

Promotions and vacancies shall be filled on the basis of seniority, providing the senior employee has the merit, fitness and ability to perform the work. The Company agrees to act in good faith and further agrees not to discriminate in any manner.

(a) Anyone promoted to a non-union management position subsequent to conversion will maintain bargaining unit seniority for eighteen (18) months following the promotion after which time the employee shall have no bargaining unit seniority.

(b) Persons outside the bargaining unit returning to the bargaining unit shall return to a position no higher than their former position in the bargaining unit.

(c) Persons returning to or entering the bargaining unit, shall not cause the demotion of employees within the bargaining unit.

12.05 Seniority Credits

The Employer agrees to recognize the accumulation of the seniority of an employee who is absent from work due to sickness, accident, pregnancy/parental leave as defined within the *Employment Standards Code (Alberta)* upon his return to work.

12.06 Vacancies

In the event of a vacancy occurring for any full-time bargaining unit position employees covered under this Agreement shall be filled based on seniority, providing the senior employee has the merit, fitness and ability to perform the work required. The Company agrees to act in good faith and further agrees not to discriminate in any manner.

When a vacancy occurs in a full-time job, such vacancy shall be posted and remain posted for fourteen (14) calendar days on the Union Bulletin Board. Two (2) copies of all vacancies to be posted shall be given to the union steward or in their absence, union representative (to post one if he chooses in addition to the one posted by the Employer) at the time of the Posting.

The Employer further commits to meet with each employee who submits a resume and is not successful to review how the employee(s) may improve their qualifications to be better suited for such position in the future.

12.07 Lay-off and Re-employment

(a) Lay-off and re-employment shall be based on bargaining unit seniority, providing the senior employee has the merit, fitness and ability to perform the work required. The Company agrees to act in good faith and further agrees not to discriminate in any manner.

(b) Full-time employees who are laid off from full-time employment shall if they so desire, be placed on the part-time seniority list based on the length of their accumulated full-time and if applicable, part-time service with the Employer and shall be given preference for available part-time work in so far as that length of service entitles them.

Such employee shall be eligible for vacation entitlement based on that length of service.

(c) Full-time employees who voluntarily terminate from full-time employment shall be placed on the part-time seniority list based on the length of their accumulated full-time and if applicable part-time service with the Employer and shall be given preference for available

part-time work in so far as that length of service entitles them.

Such employee shall be eligible for vacation entitlement based on that length of service.

12.08 Notice or Pay in Lieu

Employees with more than thirteen (13) weeks service but less than two (2) years service at a store will be given one (1) weeks notice of lay-off or one (1) week's pay in lieu of notice.

Employees with more than two (2) years service but less than four (4) years' service at a store will be given two (2) weeks notice of lay-off or two (2) weeks' pay in lieu of notice.

Employees with more than four (4) years but less than six (6) years of service will be given four (4) weeks' notice or four (4) weeks pay in lieu of notice.

Employees with more than six (6) years but less than eight (8) years of service will be given five (5) weeks' notice or five (5) weeks pay in lieu of notice.

Employees with more than eight (8) years but less than ten (10) years of service will be given six (6) weeks' notice or six (6) weeks pay in lieu of notice.

Employees with more than ten (10) years' service will be given eight (8) weeks' notice of lay-off or eight weeks' pay in lieu of notice.

For clarity this provision is not in addition to the *Employment Standards Code (Alberta)*.

Agreed December 16, 2020 – All highlighted and strikethrough articles will proceed to FOS

ARTICLE 13 – HOURS OF WORK, SCHEDULING AND OVERTIME

13.01 The following paragraphs and sections are intended to define the normal hours of work as may be scheduled by the Employer and shall not be construed as a guarantee of or a limitation upon the hours of work per day or per week or days of work per week.

13.02 There will be a minimum of ten (10) hours between the time an employee concludes one (1) shift and commences the next shift.

13.03 The Employer shall provide a time recording device in the store by which an employee shall record hours worked as required by the Employer at the beginning and at the end of any work shift and at the beginning and at the end of any meal period during that work shift. Employees shall not punch in until they

are in proper work attire and ready to work.

13.04 Employees shall be at their respective workstations ready to begin work at the time their shift starts and except for the time spent away from work for lunch periods and rest periods, employees shall not quit work until the time their shift ends.

13.05 A work schedule for the employees in the bargaining unit shall be posted by Wednesday noon for the following week.

13.06 All overtime must be authorized by the Store Owner/Manager or their designate.

13.07 The Union and employees agrees that the requirements and efficiency of operations of the Employer will require overtime work periodically and that the employees will co-operate fully in this matter. As part of this:

> Overtime shall be offered to employees at work in the department in which the overtime is required in order of seniority, providing the employee possesses the qualifications, experience, skill, and ability to efficiently perform the required work. If there are insufficient volunteers to perform the required overtime, then the Employer reserves the right to require employees to work the unscheduled overtime which will be assigned on a reverse seniority basis to the most junior employees immediately available to perform the overtime work who possess the qualifications, experience, skill and ability to efficiently perform the required work.

Scheduled overtime shall be offered by seniority within the department.

Article 13.08 Agreed December 18, 2020

13.08 When an employee is required to report for work and there is no work available for the employee in their regular classification, the employee will be given three (3) hours work in some other classification or three (3) hours pay at their regular hourly rate, unless the employee was previously notified by the Employer not to report to work.

In all other cases, at least twenty-four hours (24) notice of any change must be given**.**

It shall be the Employer's responsibility to notify all employees affected by a change in their schedule.

13.09 The Employer agrees that no employee shall work split shifts unless mutually agreed to between the Employer and the employee.

13.11 The Employer agrees to schedule part-time employees by seniority provided they have the merit, fitness, ability and that they are available to work during the hours that are required by the Employer. Preference in the available weekly hours of work shall be given to senior part-time employees within their department, insofar

as this is consistent with their availability.

13.13 Overtime will be paid at the rate of one and one half times (1 ½ X) their regular hourly rate for all hours worked in excess of eight (8) hours in a day or forty (40) hours in the week.

13.14 Payment of wages shall be paid on a bi-weekly basis by direct deposit. In the event the Employer changes its pay cycles, it will notify the Union at least two (2) months in advance of such changes being made.

13.15 Employees designated as Night Crew will receive a premium of seventy-five (75¢) cents per hour. Night Crew will be scheduled between 8:00pm and 9:00am. For clarity, a Night Crew employee's entire shift will fall between these hours.

13.16 An employee designated by the Employer to lead the Night Crew shall receive an additional premium of seventy-five (75¢) cents per hour.

13.17 Any non-night crew employee who works beyond 11:00 p.m. shall be paid a seventy-five (75¢) cents per hour premium for all hours worked from 11:00 p.m. onward. The premium does not apply to employees who commence their work shift from 5:00 a.m. and onward the next day.

13.18 The Employer may call employees in to attend a staff meeting up to two (2) hours duration not more than four (4) times per calendar year. The Employer agrees that attendance at such meetings shall be voluntary. For clarity, employees will be compensated at their regular rate of pay for time spent in the meeting. In such cases, the minimum call-in would not apply.

13.19 In Dispute

Article 13.20 Agreed December 18, 2020

13.20 The normal work week for part-time employees shall not be more than thirty-two (32) hours per week. Part-time employees may work in excess of thirty-two (32) hours per week at the Store Owner/Manager's discretion based on the requirements and efficiency of operations.

13.21 Part-Time Availability

Part-time employees will be required to declare their availability upon being hired.

Any part-time employee can change their availability up to four (4X) times per year by obtaining a new Availability Form from their Store Manager and submitting it prior to the following effective dates:

(a) The first Sunday in September (with a two (2) week leeway before and after);

(b) Three (3) other times in the calendar year.

Changes in availability must be submitted two (2) weeks prior to the Sunday of the week of the effective date of the change.

Part-time employees will be required to work according to their most recent declaration of availability. In addition to the above, Employees may increase their availability between November 15th and the end of the year.

A part-time employee who fails to provide the Employer with a completed Availability Form prior to the above dates will be scheduled according to their previous Availability Form.

The Employer shall allow the Union to review and photocopy completed Availability Forms at store level upon request.

13.22 R.T.O.'s (Request for Time Off)

Employees who have a specific request for time off shall inform the Employer in writing of the specific days that they are requesting by the previous Wednesday prior to the schedule being posted. If the request is denied, the employee will be informed as soon as reasonably practical following the decision being made.

13.23 Minimum Availability

a) All part-time employees must be available to work for a minimum amount of time per week. This period includes at least two (2) evenings as of five o'clock (5:00 p.m.) until closing of the department on Wednesdays, Thursdays or Fridays as well as totally available on Saturdays and Sundays.

   Notwithstanding the foregoing, part-time employees who are students and who are unavailable for the minimum amount of time indicated in the previous paragraph must be available Saturday and Sunday, provided that this does not violate The Employment Standards Code (Alberta).

b) Occasional Request for Saturday Sunday Off
   The Employer agrees that an employee may request the occasional Saturday and/or Sunday off. The Employer will consider the request with regard to the number of prior requests, other employee requests and the business requirements. It is acknowledged by all parties that Saturdays are in most cases the busiest day of the week and as such full-time employees are generally required to work on this day.

   In accordance with the above language employees requesting a Saturday off prior to commencing vacation on a Sunday will be granted their request subject to the above specified considerations.

ARTICLE 14 – MEAL AND REST PERIODS

This Article is in Dispute

Agreed on December 4, 2020

ARTICLE 15 – CLOTHING AND APPAREL

15.01 Shirts

Where the employer requires an employee to wear a uniform shirt, they shall supply new hires one (1) shirt at time of hire.

Every September, or earlier if required, all employees who are required by the Employer to wear a uniform shall upon request, receive one (1) additional shirt as long as the employee remains actively employed. Employees are required to maintain their shirts in a clean and presentable condition. Shirts will be available in appropriate sizes.

15.02 Clothing

If an employee is uncomfortably cold due to working area temperature, they shall be allowed to dress accordingly, subject to the dress code. In the event the store is uncomfortably warm due to a malfunction in the cooling and ventilation system, employees will be given additional opportunities to drink water as required.

15.03 Safety Shoes

All part-time employees with a minimum of two (2) years of service that are required by the Employer to purchase and use safety footwear will be reimbursed thirty ($30) dollars upon presentation of a receipt.

Full-time employees will be entitled to reimbursement of thirty ($30) dollars twice during the life of this Collective Agreement upon presentation of a receipt. Safety shoes must be entirely black in colour and must be Canadian Standards Approved (CSA).

15.04 Special Clothing

Special clothing such as parkas are to be supplied and maintained by the Employer where required as determined by the Employer. The Employer will maintain an employee shared supply of clean, cold temperature apparel as follows: coats, gloves, and hats.

Agreed on November 30, 2020 to article 16.02 to 16.07, Article 16.01 in dispute.

ARTICLE 16 – GENERAL HOLIDAYS

16.01 **In Dispute.**

16.02 In order for an employee to receive holiday pay they must work their entire last scheduled shift immediately preceding the holiday and their entire first scheduled shift immediately following the holiday, except where the employee is absent due to bona fide illness or accident.

16.03 If an employee is required to work on any of the holidays set out in Section 16.01 above, they shall receive one and one half (1 ½ X) times their regular rate for all hours worked.

16.04 There shall be a fair rotation of shifts scheduled on General Holidays.

16.05 On weeks in which one (1) holiday as listed in Article 16.01 occurs, the work week will be reduced by eight (8) hours for full-time employees.

16.06 Holiday pay for eligible full-time employees will be computed on the basis of eight (8) hours per holiday.

16.07 For all matters relating to general holiday eligibility and pay for part-time employees, the Alberta Employment Standards Code shall apply.

Agreed on November 30, 2020

ARTICLE 17 – PROBATION

17.01 An employee shall be considered a probationary employee until they have worked three hundred fifty (350) hours of active regular duty. It is expressly understood by both parties that during the probationary period an employee shall be considered as being an employee on a trial basis and may be discharged at any time at the sole discretion of the Employer for any reason at the sole discretion of the Employer, provided such reason is not contrary to The Alberta Human Rights Act, and such discharge shall not be the subject of a grievance and/or arbitration pursuant to this Agreement.

ARTICLE 18 – VACATION

This Article is in Dispute

Agreed December 17,2020

ARTICLE 19 – HEALTH WELFARE AND PENSION

19.01 **In Dispute.**

19.02 Pension Plan

The Employer agrees to make available to eligible employees its Employee Pension Plan, subject to and in accordance with the terms of that plan (including the employer matching component) as implemented by the Employer and as

may be amended from time to time by the Employer. In all respects the plan or plans shall be administered in accordance with the rules and regulations of the plan or plans implemented by the Employer.

Agreed on December 4, 2020

ARTICLE 20 – MANAGEMENT RIGHTS

20.01 The Union recognizes and agrees that except as specifically abridged or modified by this Agreement, all rights, powers, and authority to manage the Employer
and direct the working force are retained solely and exclusively by the Employer.

20.02 The Union agrees that the Employer has the exclusive right and power to manage its business, to direct the working forces and to suspend, discharge or discipline employees for just and sufficient cause, to hire, promote, demote, transfer or lay off employees, to establish and maintain reasonable rules and regulations covering the operation of the stores, provided however, that any exercise of these rights and powers in conflict with any of the provisions of this Agreement shall be subject to the provisions of the grievance procedure as set out herein.

20.03 The Employer shall exercise its functions in a manner consistent with the Expressed provisions of this Agreement and any alleged inconsistency may be dealt with as is hereinafter provided in Article 7 [Grievance Procedure].

20.04 The Employer not exercising any right hereby reserved to it or its not exercising any such right in a particular way shall not be deemed a waiver of any right or preclude the Employer from exercising the right in some other way in the future, except as such right may be specifically, unequivocally and expressly limited by the terms of this Agreement.

20.05 An employee shall lose their seniority and shall be terminated from the employ of the Employer if they:

(a) voluntarily leaves the employment of the Employer;

(b) is discharged for cause;

(c) is absent from work for more than three (3) working days without prior notification (except in rare and exceptional circumstances) to the Employer;

(d) is absent from work due to sickness or disability for more than three (3) days and fails upon return to work to produce a certificate when

requested from a medical practitioner verifying such absence and substantiating the reason for such absence;

(e) fails to return to work after a recall from lay-off within seven (7) days after the delivery of notice of recall by registered mail;

(f) fails to return to work upon the conclusion of a leave of absence unless their failure to return is for reasonable cause;

(g) is not recalled to work when laid off due to lack of work, theirname shall be retained on the seniority list for six (6) month period or the length of their seniority, whichever is the lesser, but in no event, less than six (6) months period.

(h) use an approved leave of absence for reasons other than those specified.

Agreed on December 4, 2020

ARTICLE 21 – EMPLOYEE RIGHTS

The Employer recognizes the vital role that employees play in the success of the business. Without restricting the generality of the foregoing, the Employer agrees that all employees shall have the following rights:

- The right to a healthy and safe work environment;
- The right to be free from discrimination, intimidation, and harassment;
- The right to be informed of all workplace rights, obligations, policies, and rules;
- The right to all statutory benefits, rights, and privileges;
- The right to be treated with dignity and respect in all circumstances.

ARTICLE 22 – DISCIPLINE AND DISCHARGE

This Article is in Dispute

Agreed on December 4, 2020

ARTICLE 23 – STORE CLOSURE

23.01 The Union and Employer will meet following the announcement of a store closure to discuss potential options for employees.

23.02 Enhanced Severance

In the event of a permanent discontinuance of the operations of a store covered by this Collective Agreement the affected employees will receive severance in the amount of one and one half (1 1/2 X) times their normal weekly earnings multiplied by their completed years of service to a maximum of fifty thousand ($50,000)

dollars in the case of a full-time employee and fifteen thousand ($15,000) in the case of a part-time employee. This payment is deemed to be inclusive of any severance payments or pay in lieu of notice required by law and any obligations under the collective agreement.

Employees will generally be expected to remain in their employment up until the closure of the location. Special individual consideration for early departure may be made subject to the Employer's ability to continue the normal operation of the store.

Notwithstanding the above paragraph Article 12.08 [Notice Provision] of the Collective Agreement shall apply.

Enhanced severance shall not be payable to employees who secure employment with another retailer within Sobeys Capital Incorporated provided that all the following conditions are met:

1. The employee's status as a full-time is maintained
2. The employee's rate of pay is maintained or improved
3. The employee's years of service are recognized for vacation purposes

Agreed on December 18, 2020

ARTICLE 24 – EXPIRATION AND RENEWAL

24.01 This Agreement shall come into effect on [insert date of opening of FreshCo] and shall remain in effect up to and including (insert date four years later [this expiration date shall not be later than January 31, 2027]).

24.02 A party wishing to revise or terminate this Agreement shall notify the other party in writing not less than sixty (60) days and not more than one hundred and twenty (120) days prior to the expiry date hereof and on delivery of such notice the parties shall, within thirty (30) days or such later time as may be mutually agreed, commence negotiations. During the period of such negotiations, this Agreement shall remain in full force and effect. If notice is not given as above, this Agreement shall automatically be renewed from year to year thereafter unless notice is given in accordance with this Article.

WAGES

This Article is in Dispute

LETTERS OF UNDERSTANDING

Agreed on December 4, 2020

LOU #1 RETURN TO WORK PROTOCOL

The Employer agrees to notify the Union of the time, date and location of any meeting held with an employee regarding a permanent workplace accommodation. The Union representative or designate may attend such meeting

Agreed to December 16, 2020

LOU #2 MEAT DEPARTMENT

In the event a location or locations implement a conventional meat department operated by the Employer during the term of this agreement, then the Employer and the Union will meet to discuss such implementation i.e. rates of pay, department seniority and classifications.

For clarity, a conventional meat department is one that requires the expertise of a meat cutter for the purpose of cutting and trimming meat in a manner that it can be overwrapped, weighed, and priced in preparation for sale to the customer.

LOU #3 FRESHCO CONVERSION LANGUAGE

Pursuant to **LOU 26 (Retail and South Meats) and LOU 29 (North Meats)** of the Safeway/UFCW 401 province wide collective agreements, former Safeway employees who have elected to take the top 25% option and work at the converted FreshCo location, will be allowed to maintain their Safeway economic terms as follows:

- Hourly rate of pay and career hours
- Health and Welfare benefits
- Dental benefits
- Vacation entitlement
- Seniority date
- Pension (to be determined by the parties)

while accepting the remainder of the terms in the FreshCo Agreement.

It is understood that this letter of understanding does not apply to employees who terminate their employment and are subsequently rehired, after the opening of a converted store.

Agreed to December 18, 2020

LOU #4 PHARMACY EMPLOYEES

This letter confirms that any pharmacy department located in a FreshCo in Alberta will be covered by the Safeway Provincewide Collective Agreement with UFCW 401. As a result, Pharmacy Assistants and Registered Pharmacy Technicians in these departments will be

a part of the Safeway bargaining unit. This letter will apply to FreshCo stores that have converted from a Safeway along with any other FreshCo stores that open with a pharmacy.

Agreed to December 18, 2020

Add New Letter of Intent outside of the collective agreement:

UFCW 401 hereby agrees that it will not make any application to the Alberta Labour Relations Board for a common employer declaration under section 47 of the Labour Relations Code (or any replacement to section 47 of the Labour Relations Code) against Sobeys or any individual FreshCo franchisees until April 30, 2024.

APPENDIX B
COMPANY FINAL OFFER FOR FRESHCO/CHALO FRESHCO COLLECTIVE AGREEMENT

BETWEEN:

SOBEYS CAPITAL INCORPORATED
(the "Company")

- and –

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 401
(the "Union")

(collectively, the "Parties")

THIS FINAL OFFER is presented in respect of a final offer selection arbitration scheduled December 29 and 30, 2020 before Arbitrator Mia Norrie.

SAVE FOR AND EXCEPT the terms already agreed to as and between the Parties, which have been provided to Arbitrator Mia Norrie for incorporation into the Award, the Company proposes this package final offer proposal of the outstanding issues in dispute:

1. **Article 3: Union Establishment**

   Outstanding Company Position: None

2. **Article 13: Hours of Work**

   Outstanding Company Position:

   13.19 The normal work week for full-time employees shall consist of forty (40) hours per week on the basis of five (5) eight (8) hour shifts.

3. **Article 14: Meal and Rest Periods**

   Outstanding Company Position:

   14.01 Employees working a shift of seven (7) or more hours shall be entitled to an unpaid meal period. Meal periods shall be thirty (30) minutes in duration.

14.02 Employees shall receive one (1) paid fifteen (15) minute rest period for each four (4) hours worked (i.e., work eight (8) hours and receive two (2) paid fifteen (15) minute rest periods).

14.03 An employee working a shift of more than five (5) hours, but less than seven (7) hours is entitled an additional fifteen (15) minute unpaid rest period to be taken in conjunction with their paid fifteen (15) minute rest period. By mutual agreement with the Store Manager/Owner these fifteen (15) minute rest periods may be taken non-consecutively.

14.04 When an employee works in excess of three (3) hours over-time in which there is no meal period, the employee shall be entitled to receive a paid rest period of fifteen (15) minutes.

4. <u>Article 16: General Holidays</u>

Outstanding Company Position:

16.01 The following shall be recognized as General Holidays:

- New Years Day
- Alberta Family Day
- Good Friday
- Victoria Day
- Canada Day
- Labour Day
- Thanksgiving Day
- Remembrance Day
- Christmas Day

5. <u>Article 18: Vacation</u>

New Position:

18.01 Annual vacation entitlement for full time employees will be based on years of continuous full-time employment with the Employer since their most recent date of hire and will be as follows:

Full-time employees shall accumulate vacation entitlement and vacation pay as follows:

Employees who have been employed by the Employer for less than (1) year shall be paid vacation as outlined in the Employment Standards Code (Alberta).

Full-time employees who have been employed for more than one (1) year but less than five (5) years - two (2) weeks' vacation pay, except that vacation pay for any full-time employee off work for (1) month or more in a calendar year shall be based on four percent (4%) of their annual wages as defined in the Employment Standards Code (Alberta) in the immediately preceding calendar year.

Full-time employees who have been employed for more than five (5*)* years but less than ten (10) years– three (3) weeks' vacation with pay, except that vacation pay for any full-time employee off work for one (1) month or more in a calendar year shall be based on six percent (6%) of their annual wages as defined in the Employment Standards Code (Alberta) in the immediately preceding calendar year.

Full-time employees who have been employed for more than ten (10) years– four (4) weeks' vacation with pay, except that vacation pay for any full-time employee off work for one (1) month or more in a calendar year shall be based on eight percent (8%) of their annual wages as defined in the Employment Standards Code (Alberta) in the immediately preceding calendar year.

18.04 Weekly vacation entitlement for full-time employees who have not been off work for one (1) month or more in a calendar year shall be the greater of the employee's regular weekly rate of pay (i.e. 40 hours x their base hourly rate) or two (2%) of their annual wages as defined in the Employment Standards Code (Alberta) in the immediately preceding calendar year.

18.03 When a General Holiday occurs during *a* full-time employee's vacation, an extra day's vacation pay will be paid if the holiday is one for which the employee would have received pay had they been working.

18.04 All full-time employees' vacation entitlement must be taken in that vacation year and shall not be carried over to the next vacation year. Vacation pay shall be paid to the employee when the employee goes on vacation.

18.05 Part-time

(a) Part-time employees shall receive vacation pay based on years of continuous employment with the Employer since his/her most recent date of hire as follows:

(i) Part-time employees who have been employer by the Employer for less than one (1) year shall be paid vacation as outlined in the Employment Standards Code (Alberta).

(ii) Part-time employees who have been employed more than one (1) year and less than five (5) years - four percent (4%)

of their annual wages as outlined in the Employment Standards Code (Alberta).

(iii) Part-time employees who have been employed more than five (5) years and less than ten (10) years - six percent (6%) of their annual wages as outlined in the Employment Standards Code (Alberta).

(iv) Part-time employees who have been employed more than ten (10) years - eight percent (8%) of their annual wages as outlined in the Employment Standards Code (Alberta).

(b) All part-time employees shall have vacation pay paid bi-weekly in the pay period it is earned.

(c) Upon written request, part-time employees will be provided time off without pay for vacation purposes, in accordance with the conditions outlined in the Employment Standards Code (Alberta), to a maximum of three (3) weeks unless otherwise mutually agreed between the Employer and the employee.

(d) Part-time employees who become full-time employees shall not be paid vacation pay twice for the same time period.

18.06 In scheduling vacations, the Employer will consider the proper and efficient operation of the business.

The employer shall post on the notice board a suitable form for full-time employees to indicate their preferred vacation dates in accordance with their seniority. This form shall be posted by the Employer no later than March 1st of the calendar year and must be completed by employees prior to April 15th**.**

The Employer will then determine the vacation schedule. Vacation determination will be based on the requirements and efficiency of operations and will take into consideration employee preferences and seniority as indicated on the form prior to April 30th.

The vacation schedule will be posted by May 1st and will remain posted throughout the vacation period and employee vacations will not be changed unless mutually agreed to between the Employer and the employee.

Employees will be granted a maximum of two (2) weeks' vacation between May 1st and September 30th, unless otherwise mutually agreed between the Employer and the employee.

18.07 Requests for vacation shall not be unreasonably denied.

6. Article 19: Benefits and Pension

New Position:

19.01 The Employer agrees to make available to eligible full-time and part-time employees its Health and Welfare program subject to and in accordance with the Group Insurance program as may be revised from time to time by the Employer or the insurer and as administered by the insurer. The Employer's responsibility under this Article is limited to making the Health and Welfare program plan available to eligible employees in accordance with the Employer's group insurance program. It is expressly acknowledged that the Employer has no liability for the failure or refusal of the insurance carrier(s) to honour a claim or to pay benefits to an employee and no such action on the part of the insurance carrier shall be attributable to the Employer or constitute a breach of this Agreement by the Employer. Under no circumstances will the Employer be responsible for paying any benefits under the benefits plan or in any way relating to this Article and in all respects the benefits shall be administered in accordance with the rules and regulations of the plan or plans obtained by the Employer, said plan or plans not forming part of this Agreement and not being subject to the grievance procedure or arbitration.

7. Article 22: Discipline and Discharge

Outstanding Company Position:

22.01 No employee who has completed their probationary period shall be discharged or disciplined except for just cause.

22.02 When an employee's work performance or conduct is such that it may or does lead to discipline or discharge and is the subject of a discussion or meeting between the employee and the Employer, the Shop Steward shall be present. In the event that a Shop Steward is unavailable, the employee shall choose another employee on the premises, to be present at said interview.

22.03 An employee who wishes to be unrepresented during one of the situations above, may only do so after consultation with a Shop Steward or Union Representative.

22.04 A copy of all formal notices of discipline (i.e., written warnings, suspensions and discharges) shall be given to the Union Office and to the Shop Steward.

8. Wages

New Position:

Minimum Rates of Pay for Full-time Employees

	Current	April 1, 2022	April 1, 2023	April 1, 2024
Start	15.00	15.00	15.00	15.00
6 months	15.10	15.10	15.10	15.10
12 months	15.20	15.20	15.20	15.20
18 months	15.30	15.30	15.30	15.30
24 months	15.40	15.40	15.40	15.40
30 months	16.00	16.00	16.00	16.00
36 months		16.50	16.50	16.50
42 months			17.50	17.50
48 months				18.00

Temporary Assignments

Where an employee is assigned to perform the majority of the duties of a position not set out in the Collective Agreement then the employee so assigned shall receive their own rate of pay plus a premium of one ($1.00) dollar per hour for each hour worked. For clarity the majority of duties means half the duties or more. It is understood that this provision shall apply for temporary assignments of more than three (3) days in a calendar week. Temporary assignments when filled will be filled by seniority provided the senior employee has the qualifications and the ability to perform the work.

Promotions from Part-time to Full-time

For wage progression purposes only, part-time employees who are promoted to full-time, will be given the greater of their part-time rate or the rate which their full-time seniority credit gives them, and they shall proceed from that point in the full-time wage progression. The full-time seniority credit is calculated based on six (6) months equaling 1,040 hours worked.

In the event that a promotion to full-time results in an employee being on an “off-scale” rate within the full time scale, it is understood that the employee will still

have to acquire the appropriate service to advance on the existing full-time wage progression.

Minimum Rates of Pay for Part-time Employees

Amount of Service	Pay
0-300 hours	Minimum Wage (MW)
301-650 hours	MW + $0.05
650 – 1300 hours	MW + $0.10
1301-1950 hours	MW + $0.15
1951 – 2600 hours	MW + $0.20
2601 – 3250 hours	MW + $0.25
3251-3900 hours	MW + $0.35
3901 - 4500 hours	MW + $0.40
4501 - 5200 hours	MW + $0.50
5201 - 6500 hours	MW + $0.60
Over 6501 hours	MW + $0.70

All part-time employees who are top rated shall receive the following off scale wage increases:

Effective the first full pay week following the 1st Anniversary – twenty-five (25¢) cents per hour

Effective the first full pay week following the 2nd Anniversary –twenty-five (25¢) cents per hour

Effective the first full pay week following the 3rd Anniversary –twenty-five (25¢) cents per hour

Incentives

The parties agree that the provisions outlined above do not prevent the implementation of additional premiums or other incentives as determined by the Employer from time to time.

Where the Employer determines it is necessary to hire at a rate greater than the rate posted above due to labour market conditions, the newly hired employees will be credited with the corresponding number of career hours to their assigned rate but

such hours will note be used for determining seniority or any other entitlement under this Agreement.

Prior to the implementation of any additional premium or other incentives, the Employer shall advise the Union. Upon request of the Union, the Employer shall meet with the Union to discuss the additional premiums or other incentives prior to the implementation.

Part-Time Premium

Notwithstanding anything to the contrary contained in Article 13.20, in the event that a part time employee works for more than thirty-two (32) hours in a given week for circumstances other than those outlined below, they shall be paid a bonus of one dollar and fifty cents ($1.50) per hour for all such hours worked in excess of thirty-two (32).

(a) Where a full-time employee is absent due to illness, accident, jury duty or bereavement;

(b) To cover for vacations for full-time employees;

(c) Where a full-time employee is on a leave of absence;

(d) From December 15th to January 3rd;

(e) From June 1st to Labour Day; or

(f) During seasonally busy periods (e.g. Thanksgiving, Easter).

Part-time night shift employees who are scheduled to work more than thirty-two (32) in a week for circumstances other than those outlined above will receive a premium of one dollar and twenty- five cents ($1.25) per hour for all hours worked in the week. Night shift employees are defined as employees who work exclusively night shift within a given week.

[*left intentionally blank*]

9. **Letter of Understanding X:**

New Position:

Sick Leave

Full-time employees shall be entitled to three (3) sick days per calendar year, accumulated on the basis of one-half (1/2) day every two (2) months. Employees shall have the opportunity to utilize these hours by the end of the following calendar year. Paid sick days will be based on the employee's previous thirteen (13) week average hours worked.

DATED AT CALGARY, ALBERTA, THIS 22 DAY OF DECEMBER, 2020.