IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

ORNGE

and

UNIFOR, Local 2002

(Bill 124 Wage Re-opener)

Before:	William Kaplan Sole Arbitrator
For ORNGE:	John Saunders Hicks Morley Barristers & Solicitors
For UNIFOR:	Kelly-Anne Orr National Representative UNIFOR

The matters in dispute proceeded to a hearing by Zoom on January 30, 2023.

Introduction

On September 27, 2021, I issued a consent award. It provided:

Wage Re-opener

In the event that Bill 124 is repealed, amended or rendered inoperative, up to 5 years from date of ratification/arbitration the parties agree that the wages will be and include retroactive adjustments:

August 1, 2020 an additional 1%

August 1, 2021 an additional 1%

August 1, 2022 an additional 1%

As is well known, Bill 124, *Protecting a Sustainable Public Sector for Future Generations Act, 2019*, was, to borrow the language of the consent award, "rendered inoperative." After it was, the union came back before me seeking the retroactive adjustments provided for in the Wage Re-opener. The employer noted that the Bill 124 decision was under appeal, and in those circumstances it made sense to await the final judgment of the courts before making any payments. It offered to pay interest on any payments should the government appeal prove unsuccessful. It also took the position that it would not be good for labour relations if the employer had to eventually claw back payments should the appeal go the government's way.

The union disagreed. It pointed out that the award said what it said, inflation was rampant, employees needed their money and they needed it now. The union asked for a direction to the employer that it pay the awarded amounts forthwith.

Decision

Having carefully considered the submissions of the parties, I am of the view that the award must be enforced now. It is highly prescriptive (and it embodies an agreement reached by the parties). It says that if a certain event happens – Bill 124 is rendered inoperative – certain payments will follow. It is true enough that the constitutional decision is under appeal, but significantly no stay has been sought. Moreover, should the lower court decision be overturned, there would be nothing stopping the employer from recouping this overpayment (and salary and premium overpayments are regularly recovered).

Any objective balancing of interests favours the employees who should not have to await the eventual judgment of the courts when adjustment mechanisms do exist, are normative and, most important of all, when their collective agreement contains a provision that embodies their specific memorialized agreement about what would happen should a certain event occur. Agreements reached between the parties must be enforced absent truly exceptional circumstances not present here. The employer is therefore directed to make the re-opener payments to all current and former employees within thirty days of today's date.

Conclusion

At the request of the parties, I continue to remain seized with respect to the implementation of this award.

DATED at Toronto this 1st day of February 2023.

"William Kaplan"

William Kaplan, Sole Arbitrator