

IN THE MATTER OF THE ONTARIO *LABOUR RELATIONS ACT, 1995*

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

WALKER EXHAUSTS

- The Employer

-and-

UNITED STEELWORKERS OF AMERICA, LOCAL 2894

- The Union

AND IN THE MATTER OF a Union policy grievance regarding pensions

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

Jamie Knight

- Counsel

Irene Farmer

- HR Administrator

On behalf of the Union:

David Hilker

- Staff Representative

David High

- President Local 2894

Gary Kennedy

- Chief Steward

Kevin Baker

- Vice President Local 2894

Lee Corriea

- Committeeperson

Mike O'Brien

- Committeeperson

Pat Duggan

- Committeeperson

Ed Stuart

- Committeeperson

Hearing held March 15, 2001 in Kitchener, Ontario.

AWARD

I. INTRODUCTION

Under the existing pension arrangements additional monthly payments, called bridge benefits, are paid to those employees who are 60 years old, have 30 years of service and take early retirement. The parties disagreed on whether those bridge benefits are extended to employees who retire under a new provision allowing for early retirement when age and years of service equal 90.

II. THE EVIDENCE

The parties did not call witnesses. Instead they jointly outlined their bargaining over the past several years, various bargaining proposals, and the relevant provisions of the collective agreement and pension plan. They also agreed on several facts.

The pension plan is incorporated by reference into the collective agreement and the parties regularly negotiate changes to the pension plan. The history of two provisions relating to early retirement is relevant to this dispute - the actuarial penalty and the bridge payment.

The normal retirement age under this agreement at all relevant times was 65. Under the collective agreement which ended in 1997, for each month an employee retired before age 65 the monthly pension payment was reduced by 0.6% - the actuarial penalty. The bridge provision provided that effective February 7, 1996 (the beginning of the last year of that agreement) a monthly payment of \$200 would be made to persons who had 30 years of credited service and were 62 years old at the time of retirement, with the payment to cease at either age 65 or death, whichever came first.

In the 1996 negotiations for a new 3 year agreement (1997-2000) the parties made changes

in both provisions. The actuarial penalty for early retirement was reduced to 0.5% as of February 7, 1999. As of that same date the monthly bridge benefit was increased from \$200 to \$400 and the eligibility for receipt of the bridge benefit was changed to age 60 with 30 years of service. However, the pension plan document was not revised so as to incorporate these changes.

In their 1999-2000 bargaining the parties again addressed the pension plan and the early retirement provisions. The Union initially sought the removal of the actuarial reduction for all employees who retired with 30 years of service. In addition, the Union sought an increase in the amount of the bridge benefit. In response to the Union's early retirement proposal, the Employer proposed a pension at age 60 and 30 years of service with no actuarial reduction, with that change to begin in the fourth year of a four year agreement. As negotiations proceeded the Employer moved its proposal to year three and then to year one of the proposed new 2000-2003 agreement. The Employer proposed no specific changes to the bridge benefit. There was no discussion about the bridge benefit other than with respect to the Union's proposal to increase the value of that benefit.

December 1999 the Employer sought a government supervised vote on its final offer. A question arose from one of the employees in the bargaining unit about what would happen to the bridge benefit under the Employer's new early retirement offer. The Employer clarified, in a letter to employees and in a notice posted in the plant, that the Employer's proposed "60/30 years of service unreduced" meant no change in the \$400 per month bridge benefit. The employees rejected the Employer's offer in the supervised vote.

Negotiations concluded with a session lasting from January 10 to January 14, 2000. At the start of that session the Employer clarified its proposal on early retirement as "60/30 years of service unreduced (\$400 bridge remains)". The parties agreed that the addition of "(\$400 bridge remains)" was a confirmation of the statement the Employer had made to employees

at the time of the vote and was not a result of discussions with the Union. The phrase "\$400 bridge remains)" was continued throughout the rest of the bargaining.

In an effort to find a basis for resolution the parties exchanged proposals and engaged in off the record discussions. From those discussions came the idea of early retirement with a combination of age and years of service equal to 90. January 14 the Union included the following in its proposal:

On the last day of the term of this agreement, employee's who's combined years of service and age is ninety (90) points or more shall have the right to retire with an unreduced pension.

A settlement came shortly thereafter. The parties signed an "Agreement Sheet" with a provision based on the above language. It is the meaning of that provision which is in dispute; do all who retire under the 90 point provision receive the bridge benefit or is the entitlement still governed by the terms of the parties' 1996 agreement? The parties agreed that they did not discuss in their bargaining the meaning of the new provision regarding early retirement with 90 points. The parties also agreed to the age 60 with 30 years of service provision effective the beginning of the agreement.

III. THE COLLECTIVE AGREEMENT

Prior to the 1996 bargaining, the relevant provisions of the pension plan were as follows:

6.02 Early Retirement Pension

Each Member who retires on an Early Retirement Date on or after February 21, 1988, pursuant to Section 5.03 (Early Retirement), shall be entitled to receive a monthly retirement pension. The pension shall be equal to the normal retirement pension accrued to the Member's credit up to the Member's Early Retirement Date, computed pursuant to Section 6.01 above, but reduced by 0.6% for each month by which the Member's Pension Commencement Date precedes the first day of the month following the Member's Normal Retirement Date. . . .

6.03 Temporary Bridge Benefit

. . .

- (b) Effective February 7, 1996 and instead of any benefit that may be provided pursuant to Section (a) above, a bridge benefit equal to \$200 per month shall be payable to the Member if the Member has:

Completed 30 years of Credited Service as of the retirement date; and
Attained age 62 as of the Early Retirement Date.

The benefit shall cease with the payment due for the month in which the earlier of the Member's death and the Member's attainment of age 65 occurs.

...

In the settlement of the negotiations for the 1997-2000 collective agreement the parties agreed to several relevant changes in the pension plan as follows:

...

7. Bridge Benefit - On February 7, 1999, Employees will qualify for the bridge benefit at 60 years of age, and 30 years of service, a reduction of 2 years from the present 62 years of age. This bridge benefit is only in effect until you reach age 65.
8. On February 7, 1999 the bridge benefit shall increase to \$400.00 from the present \$200.00. This bridge benefit is only in effect until you reach age 65.
9. On February 7, 1999 the actuarial reduction factor for each month that you retire (before age 65) has been improved to .5% from .6%.

...

In their bargaining for the 2000-2003 agreement the parties signed an "Agreement Sheet" as follows:

Effective February 6, 2003 employee's who's combined years of service and age are equal to ninety (90) points or more shall be entitled to retire with an unreduced pension.

In addition, the parties signed a summary sheet which included, after the heading "Pension early retirement", for year 1 the following "60/30 years of service unreduced (\$400 bridge remains in effect)" and for year 3 "90 points becomes effective February 6, 2003".

IV. THE POSITION OF THE UNION

The Union submitted that the \$400 bridge benefit applies to all employees who retire with 90 points on or after February 6, 2003. Employees who retire early under that new provision should receive the bridge benefit from retirement until age 65.

The Union noted that if the Employer was correct in its position there would be a big difference in the pension benefits received by someone who was 60 years of age and had 30 years of service as compared with a 61 year old with 29 years of service. Using the Employer interpretation, the Union said the second employee would not receive the bridge payment and, in effect, would receive a reduced pension. However, the parties' agreement was for "an unreduced pension".

In reviewing the negotiations, the Union noted that the Employer had offered 60/30 with an unreduced pension which it had later clarified as meaning that the bridge payment remained. The Union submitted that when the parties agreed to retirement with 90 points on an unreduced pension, the Employer had to specifically negotiate new language if it did not intend the bridge benefit to be paid to those who retired early under the new provision. The Union said that the 90 points was intended to replace the 60/30 provision effective February 6, 2003.

In reply to the Employer submission that I should not now resolve this grievance but rather adjourn to a day in 2003, the Union objected. It said the Employer had not previously raised this issue and, in any event, those employees considering early retirement were entitled to know the benefits they would receive.

V. THE POSITION OF THE EMPLOYER

The Employer first submitted that I should not resolve this dispute now. The Employer noted that the text of the pension plan agreement had not been updated since before the 1996 negotiations and the Employer said that an adjudication based on what is presumed to be the language of that agreement would be premature. In addition, the Employer noted that no employee could retire under this provision until February 6, 2003 by which time the parties will probably have a new collective agreement and perhaps also new provisions regulating

early retirement. The Employer thus asked that I adjourn this matter to a date in 2003.

The Employer submitted that to receive the bridge benefit an employee still needs 30 years of service and can only collect from age 60. The Employer said the 90 points was an additional provision, did not replace the 60/30 provision, and did not amend the bridge benefit. The Employer submitted that if an employee retired under the new provision at age 55 with 35 years of service, and thus with 90 points, that employee would have an actuarially unreduced pension until age 60 and that only at age 60 would the bridge payments begin. The Employer said such a retired employee would not lose the bridge benefits for all the retirement but simply would not collect them until age 60, the age agreed upon in paragraph 7 of the settlement from the 1996 negotiations. The Employer submitted that the 90 points provision was simply a provision for no reduction in the pension for actuarial reasons - that was the meaning of the phrase "an unreduced pension". On the other hand, an employee who retired at, for example, age 62 with 28 years of service was not entitled to the bridge benefit before this 90 point provision and would not be entitled to the bridge benefits after the 90 points was effective (Feb 6, 2003) although the employee could then retire with an actuarially unreduced pension.

The Employer also submitted that it was necessary for a party claiming an extraordinary gain in bargaining to clearly articulate that gain. If the Union had gained a bridge benefit for those retiring with 90 points, in addition to an unreduced pension, the Union should have articulated it clearly. This change came at the end of the negotiations and such an extraordinary gain was not articulated.

VI. CONCLUSIONS

The request to adjourn until 2003

I begin by addressing the Employer's submission that I should not interpret this provision until 2003.

Firstly, the Employer said the pension agreement had not been redrafted to incorporate changes agreed upon in 1996 or the further changes agreed upon in 2000 and I should wait until it was redrafted and reprinted. However, the parties have a full collective agreement including a full pension plan now. Their current collective agreement, including the pension plan, was concluded when their signed memorandum of settlement was ratified. Although it is customary for parties to subsequently edit and reprint their collective agreement incorporating all the changes agreed upon in their bargaining including, in this case, the changes to the pension plan, there is no requirement that they do so. Moreover, it appears unlikely that the parties would agree upon the text of the pension plan agreement as long as this grievance is outstanding. Thus I see no reason to await an up-to-date version of the pension plan.

Secondly, the Employer noted that no employee could retire under this new provision until February 6, 2003, at which time the parties might have negotiated new provisions on early retirement. There is no certainty about new provisions - the parties may not conclude their bargaining by February 6, 2003 and, even if they do, they might not agree on new provisions on early retirement. Although no employee can retire under this provision until 2003, I agree with the Union that employees should be able to plan for their retirement. In my view an employee contemplating retirement should have a reasonable measure of certainty as to the value of payments to be received from the pension plan.

I reject the Employer's submission that I delay resolving this issue until 2003. This grievance was carried through the grievance procedure; it raises a real issue of disagreement between the parties as to the interpretation of their agreement; it is a disagreement which can be resolved as effectively now as in 2 years; and there are valid reasons why it should be

resolved now.

The meaning of the parties' agreement

At its most basic level, a pension plan is simply a group savings plan. Employers and/or employees put money into the pension plan with the expectation that the employees will receive an income after retirement. The usual age of retirement under most pension plans is 65 and employees who retire at age 65 receive what is called a normal retirement pension.

In recent years larger numbers of employees have been interested in retiring before age 65. Under many pension plans two factors have discouraged employees from taking early retirement. First, because a person who retires before age 65 will ordinarily be retired for a longer time than if he or she had waited to retire at age 65 and a pension will therefore be paid for more months, many pension plans pay a reduced pension to those who retire early. This reduction in the value of the monthly pension payment is commonly termed an actuarial reduction or an actuarial penalty. Secondly, retired employees in Canada ordinarily receive income in addition to their pension benefits. One such common source of other income is the Federal Old Age Security Benefits which are only payable at age 65. A person who retires before age 65 will initially not collect, for example, the Old Age Security Benefits and his or her total income in the years before age 65 will be less than his or her income after age 65.

To respond to employees' desires to retire early, unions have sought changes to address these two concerns. As in this case, unions have sought reductions in, or the elimination of, the actuarial penalty. Unions have also sought extra payments to mirror the government benefits which do not begin until age 65. In this case, the extra payments have been called bridge benefits, that is benefits which help to bridge the time from early retirement to age 65. In general terms the union goal with both changes is to provide an income at early retirement

which is similar to that income which the employee would receive if he or she had been age 65 at retirement.

For a number of years this pension plan has included a provision for an actuarial reduction for early retirement. The reduction was originally 0.6% times the number of months that the person retired before age 65. The parties have agreed upon changes to the actuarial reduction in each of the last two rounds of bargaining. Similarly this pension plan has included a provision calling for an extra monthly payment, the bridge benefit, for some of the persons who have taken early retirement. Although the parties disagree on the extent of the changes, there is no question that the various changes to this pension plan have made it more attractive for some employees to retire before age 65 by increasing the monthly retirement income.

The effect of the disputed provision regarding retirement with 90 points must be interpreted in context. This requires a review of both the history of these pension plan provisions as they have changed over the last several years and a review of the related changes agreed upon in the 1999-2000 negotiations.

In 1996 there were two separate provisions in the pension plan addressing, on the one hand, the actuarial penalty that an employee would suffer if he or she retired early (Section 6.02) and, on the other hand, the extra bridge benefit which certain employees who took early retirement would receive (Section 6.03).

In the 1996 negotiations the parties agreed to three changes of relevance here. The parties agreed in paragraph #9 to decrease the amount of the actuarial penalty. The bridge benefit was addressed separately. In paragraph #7 the parties altered the age and service qualifications for the bridge benefit and in paragraph #8 they increased the amount of the bridge benefit. Thus in 1996 the parties' change to the actuarial penalty was distinct from

their changes to the bridge benefit.

When the Employer proposed the "60/30 years of service unreduced" during the early part of the 1999-2000 bargaining, the Employer made no related proposal to change the bridge benefit. In my view there was no need to propose any change regarding the bridge benefit if the Employer simply wished to remove the actuarial penalty and intended that the bridge benefit would continue precisely as it was. When this very issue of the effect upon the bridge benefit was raised by an employee at the time of the supervised vote, the Employer stated that the bridge benefit continued.

I can see no reason to think that a change in the actuarial penalty contained in Section 6.02 such as, in this instance, the Employer's 60/30 proposal removing the actuarial penalty, would have any impact on the bridge benefit. The actuarial penalty provision says nothing about the bridge benefit and the bridge benefit section says nothing about the actuarial penalty; they are separate provisions in the pension plan. Although in the January, 2000 negotiations the parties noted that the bridge benefit continued and agreed to the following wording:

60/30 years of service unreduced (\$400 bridge remains in effect)

the continuation of the bridge benefit appears to be the only sensible conclusion one can reach had the agreement read simply "60/30 years of service unreduced". The addition of the words "\$400 bridge remains in effect" does not change the impact; those words simply make clear what the impact of this provision would have been without those words. Surely if either party had wished to alter the bridge benefit at the same time that they were discussing the removal of the actuarial penalty under this 60/30 provision, it would have been incumbent upon that party to so indicate.

I now turn to the disputed provision which was agreed upon without any discussion late in the bargaining. It reads as follows:

Effective February 6, 2003 employee's who's combined years of service and age are equal to ninety (90) points or more shall be entitled to retire with an unreduced pension.

Does that provision extend the bridge benefit to those employees who would not qualify under the language of "60 years of age, and 30 years of service" but who can nevertheless retire with 90 points?

At a minimum, the parties intended that there be no actuarial penalty for those who retire with 90 points. At least that much is intended by the "with an unreduced pension" part of the above agreement. But does that phrase also mean the extension of the bridge benefit to additional employees than would otherwise be entitled as a result of the 1996 negotiations? The parties agreed that they did not discuss such an extension; they agreed they had no discussion at all about the effect of retirement with 90 points on the bridge benefit.

To interpret this language as meaning that the parties intended thereby to also make consequential changes in the separate provision about bridge benefits would be giving the words far too broad a meaning. Clearly the parties intended to alter Section 6.02 such that for those who retire early with 90 points the actuarial penalty is removed (that is, they receive an unreduced pension). But I cannot find within this language an intention to also change the bridge benefit provision in Section 6.03. When similar language was used in this same round of bargaining to move to 60/30 with an unreduced pension, it meant a change in the actuarial penalty but it meant no change in the bridge benefit. I conclude that in using the similar language of an "unreduced" pension in this new provision, the parties intended the same approach - that is a change in what would otherwise be the actuarial penalty but no change in the bridge benefit. Had the parties discussed this issue it is possible that they would have agreed to extend the bridge benefit, but this language did not extend the benefit.

It follows that I conclude the Employer is correct on this issue of interpretation. The bridge benefit has not been changed. Employees who retire under the new 90 points provision are

not automatically entitled to the bridge benefit. They will have to meet the requirements of the bridge benefit provision. Eligibility for this benefit is still governed by the provision as it was following the 1996 bargaining. If employees have 30 years of service at the time they retire, they will be entitled to the bridge benefit from retirement or from age 60, whichever is later, until they die or turn 65, whichever is earlier. Similarly, an employee who retires at age 62 with 28 years of service, for example, was not entitled to the bridge benefit before the 90 point provision and will not be entitled to the benefit after February 6, 2003.

While I believe that the above disposes of the Union's grievance in its entirety, I will remain seised in case either party requires further clarification of the provision.

Dated at London, Ontario this 12th day of April, 2001.

Howard Snow, Arbitrator