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

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE CORPORATION OF THE CITY OF LONDON
- The Employer

-and-

LONDON CIVIC EMPLOYEES' LOCAL UNION NO. 107
(CANADIAN UNION OF PUBLIC EMPLOYEES)
- The Union

AND IN THE MATTER OF a grievance regarding the Ontario Health Premium

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

Kelly M. Dawtrey - Counsel
and others

On behalf of the Union:

Michael Klug - Counsel
and others

Hearing held June 29, 2006, in London, Ontario.

SUPPLEMENTARY AWARD

I. INTRODUCTION

This is supplementary to an award in which I ruled that this Employer was required to pay the Ontario Health Premium. A further hearing was held to deal with the Union's request for specific payment orders. The Employer requested an adjournment pending the judicial review of the earlier award.

II. THE EVIDENCE

March 10, 2006, I issued an award between the Corporation of the City of London, the Employer, and the Canadian Union of Public Employees, Local 107, the Union, regarding payment of the Ontario Health Premium (OHP). At page 21 of that award I wrote:

> The grievance is allowed as follows:
> 1. I declare that the Employer has violated the collective agreement in failing to pay the employees' Ontario Health Premium on the employees' income earned from the Employer;
> 2. I direct the Employer to compensate the employees for this failure to pay the Ontario Health Premium; and,
> 3. I direct the Employer to pay the Ontario Health Premium calculated on each employee's income earned from this Employer.
>
> I will remain seised to deal with any issues which may arise in the implementation of the award.

The Employer has made no payments of any Ontario Health Premium amounts. A further hearing was held June 29, 2006, to consider the Union request for an order that the Employer pay specific amounts to named employees.

June 14 the Employer made a request for judicial review of my March 10 award. The Employer raised a preliminary matter at the hearing, asking that this arbitration be adjourned pending the judicial review decision. Although no date had been set for the judicial review, the Employer said it might occur in November 2006.

As of the June 29 hearing, the Employer had not sought a court order to stop these proceedings (a stay).

Regarding the money that would be payable under the earlier award, the Employer prepared two documents setting out its calculations of the amounts owed for 2004, Exhibit 49, and the amounts owed for 2005, Exhibit 50. At the hearing the Union asked for a few days to examine the accuracy of the Exhibit 49 and Exhibit 50 figures.

July 5 Union counsel advised ". . . I am satisfied that the City's calculations of the amounts due and owing for 2004 and 2005 are accurate. Please proceed as if those calculations are correct."

III. THE AGREEMENT

The relevant provision of the parties' 2004-2005 collective agreement is Article 14.14 as follows:

> 14.14 GROUP HOSPITAL, HEALTH, DENTAL AND LIFE INSURANCE PLANS
>
> (a) . . .
>
> (b) The Corporation will pay 100% of the premiums for the said health plans as set out below:
> - The Ontario Health Insurance Plan
> - Supplementary to the Ontario Health Insurance Plan with no deductible
>
> (c) . . .

IV. UNION POSITION

The Union asked that I direct the Employer to pay the employees the amounts calculated by the Employer and listed in Exhibits 49 and 50.

The Union also sought an order that the Employer make Ontario Health Premium payments on both the short and long term disability insurance benefits received by employees. The Union submitted that, since those benefits were related to the employment relationship, the Employer should make Ontario Health Premium payments on the benefits.

In addition, the Union asked for interest on the unpaid amount of Ontario Health Premium owed to employees. The Union sought simple interest prior to the date of the earlier decision and compound interest after that date.

As for the Employer's adjournment request, the Union agreed that I had authority to adjourn the hearing. However, the Union noted that the authority was rarely exercised and asked that I not adjourn. The Union said that the Employer had not acted in an expeditious manner in making its application for judicial review and noted that the Employer had not sought a stay as part of its judicial review application. The Union also noted that the court had already heard four similar judicial review applications from other parties regarding arbitration awards on the issue of employers paying the Ontario Health Premium, and that all four applications had been unsuccessful. In this situation where the money had been found to be owing, it was preferable that the Employer pay the amounts to the employees so that the employees could have the use of their money.

The Union relied upon the following authorities: *Re Canada Post Corp. and Canadian Union of Postal Workers (National Policy Grievance N-00-88-00001)* (1991), 22 L.A.C. (4th) 214 (Burkett); *Re Board of Education for City of London and Federation of Women Teachers' Associations of Ontario et al.* (1984), 16 L.A.C. (3d) 366 (Burkett); *Re Enwin Utilities Ltd. and International Brotherhood of Electrical Workers, Local 636* (2003), 114 L.A.C. (4th) 421 (Brandt); *Re Abitibi-Consolidated Inc. and Communications, Energy, and Paperworkers Union of Canada, Local 132* (1998), 78 L.A.C. (4th) 94 (Craven); *Re*

Cedarvale Tree Services Ltd. and Labourers' International Union of North America, Local 183 [1971]3 O.R. 832 (C.A.); *Tandy Electronics Ltd. (c.o.b. Radio Shack) v. United Steelworkers of America* [1980] O.J. No. 16; (1980), 80 CLLC para 14,016 (Divisional Court); and *Re International Woodworkers of America and Patchogue Plymouth, Hawkesbury Mills* (1976), 14 O.R. (2d) 118 (Robins, J.).

V. EMPLOYER POSITION

The Employer asked that I order an adjournment of the hearing until its judicial review application was heard. The Employer noted that it had sought judicial review of the award June 14 and submitted that the judicial review hearing was likely to occur in the fall. The Employer submitted that its judicial review application was neither frivolous nor vexatious. The Employer noted that several arbitration awards on the Ontario Health Premium with issues similar to this matter were also being reviewed by the courts and one such case was to be heard by the Court of Appeal in September.

The Employer submitted that it would suffer substantial prejudice if it were required to implement my earlier award but was later successful on its application for judicial review. Since the direction in my earlier award was to compensate the individual employees, the recovery of such monies would be problematic. In addition, there would be an amount payable for pension contributions to the Ontario Municipal Employees' Retirement System (OMERS) and the recovery of any over-payment to OMERS would be difficult.

On the other hand, the Employer submitted that the impact upon employees of any delay in making payment to them as a result of an adjournment could easily be remedied by an order for interest.

As for the request for Ontario Health Premium payments on the short and long term disability benefits, the Employer said those benefits were not income earned from the Employer and that the Employer did not report that income to the government. The insurer, not the Employer, remits income tax deductions for that income. The Employer should not be required to pay the Ontario Health Premium on those benefits.

The Employer opposed any order for interest prior to the date of the March 10 award, noting that the Union had not sought interest then.

The Employer relied upon the following: *Re Patchogue Plymouth, Hawkesbury Mills (supra)*; and *Re Shaughnessy Hospital Society and Hospital Employees' Union, Local 180* (1984), 16 L.A.C. (3d) 341 (Hope).

VI. CONCLUSIONS

The Adjournment

The parties agreed that I have the authority to grant an adjournment as part of my jurisdiction to control the hearing process.

As is common in arbitrations, the parties did not address the calculation of the money owing during the three days of hearing prior to the March award. Generally parties are able to resolve monetary issues after a ruling is made on the interpretation of the agreement. Nevertheless, I retained jurisdiction to deal with issues such as the payment amounts should the parties have difficulty in agreeing on the figures. In other words, I retained the authority to make further orders that would provide a full and complete remedy for the Employer's breach of the collective agreement.

Arbitration is intended to provide a prompt resolution of grievances. A grievance is resolved in arbitration when a clear and enforceable order is issued. That had not yet happened in this grievance.

The Employer's application for judicial review does not operate to suspend the earlier award, nor does it prevent me from exercising my jurisdiction to issue further orders.

On the general issue of adjournments, I believe it is unwise for an arbitrator to adjourn a hearing on the basis that the arbitrator's award may be overturned by the court. Similarly, I do not believe an arbitrator should impose a delay in an arbitration hearing in the absence of compelling grounds.

In this instance the earlier award is being reviewed. That alone provides no basis to adjourn the hearing.

Apart from the fact of the judicial review, the Employer said that if it had to pay the money and the award was then overturned, it might be difficult to recover the money. The Employer said it would be prejudiced if it had to pay the money. The prejudice arising from the possible difficulty in recovering payments does not cause me to favour an adjournment.

The Employer has another option available to it to address the concerns which prompted it to seek an adjournment. Normally an employer seeking to delay the implementation of an arbitration award does so by means of a court ordered stay. That option remains open to the Employer.

Given my views on the prompt resolution of grievances and on the issue of prejudice, and considering the other avenue of a stay open to the Employer, I have decided not to adjourn

the hearing.

Further orders

The Union has requested an order that the Employer pay the amounts calculated by the Employer as the amounts owed on the income earned from the Employer in 2004, Exhibit 49, and in 2005, Exhibit 50. The Union has agreed with the Employer's calculations. I direct the Employer to pay those amounts to the employees. In the circumstances, I will impose a deadline for the payment of those amounts - the Employer is directed to make the payments within 30 days of the date of this award.

The Union also sought an order that the Employer pay the employees the Ontario Health Premium on the short and long term disability benefits. Since my earlier award directed the Employer to pay the Ontario Health Premium only on the income earned from the Employer, and the amounts received from the short and long term disability insurers are not income earned from the Employer, they are not covered by that ruling. Apart from not falling within the language of the March 10 award, these types of benefits, along with Employment Insurance benefits, Workers Compensation benefits, OMERS retirement benefits, etc., although received in relation to employment with the Employer, are not the income on which, on my interpretation of the agreement, the parties intended the Employer to pay the Ontario Health Premium. Therefore the Employer need not pay the Ontario Health Premium on the short term and long term disability benefits.

Finally, the Union sought interest both before and after the March 10 award. On this issue I wrote in the award at page 8 "The Union noted that it made no claim for interest ..." At that time I understood that the Union was making no claim for interest for the period prior to my ruling on the interpretation of the collective agreement. This Union position reflected the

reality that the interpretation issue was not clear and that one could not fault the Employer for the position it took on the interpretation of the agreement. I did not understand the Union position to go beyond that. In particular, I did not understand it to be an indication that the Employer could delay the payment of the Ontario Health Premium indefinitely after the award without a request by the Union for interest on the amounts owing.

After the ruling was made, the normal expectation would be that the Employer would make any required payments promptly and I would have expected the Ontario Health Premium amounts for 2004 and 2005 to have been paid within one month. Not only did the Employer not oppose a ruling requiring the payment of interest on unpaid amounts for the period after my award but, as part of its request for an adjournment, the Employer submitted that interest was the appropriate remedy for any delay in making the payments. I conclude that interest should be paid to compensate the employees for the delay beyond one month.

I direct the Employer to pay interest on the 2004 and 2005 Ontario Health Premium amounts from April 10, 2006, to the date the amounts are paid. The interest is to be calculated at the same percentage and in the same manner as the courts would calculate interest in a similar situation.

Summary

In summary,

1. I decline to adjourn the hearing pending the Employer's judicial review application;
2. I direct the Employer to pay within 30 days the amounts listed in Exhibits 49 and 50 as the Ontario Health Premium amounts owed to employees for 2004 and 2005 respectively; and,
3. I direct the Employer to pay interest on those amounts from April 10, 2006, until such

time as the amounts are paid, the interest calculated as described above.

I will continue to remain seised to deal with any issues which may arise in the implementation of either this award or my earlier award.

Dated at London, Ontario this 20th day of July, 2006.

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Howard Snow, Arbitrator