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-

THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 107
- 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
Karen Connor	
Karen Hilker	

On behalf of the Union:

Michael Klug	- Counsel
Al Bruff	- 2nd Vice President
Dennis Reed	- 1st Vice President

Hearing held October 5, November 25 and December 6, 2005, in London, Ontario.

AWARD

I. INTRODUCTION

The issue in dispute in this grievance is whether the collective agreement which requires the Employer to "pay 100% of the premiums for the . . . Ontario Health Insurance Plan" obliges the Employer to pay the new Ontario Health Premium.

II. THE FACTS

The parties agreed to the following:

AGREED STATEMENT OF FACTS

1. The London Civic Employees Union Local 107 CUPE ("the Union") is the exclusive bargaining agent for the employees of the Corporation of the City of London ("the Corporation") commonly referred to as the "outside workers" and has held bargaining rights for the said employees since in or about 1941.

2. On or about July 16, 2004, the Union filed Policy Grievance 212-04 alleging that the Corporation had violated "our rights under the 2001-2003 Collective Agreement" in that the Corporation "is not paying 100% of the cost of OHIP." A copy of Policy Grievance 212-04 is marked as Exhibit "1."

3. The Corporation denied Policy Grievance 212-04.

Applicable Collective Agreement Language

4. The parties proceed on the mutual understanding that their agreement is that since December 1, 2001 all permanent Local 107 members, including former PUC employees, former Town of Westminster and former County of Middlesex employees have been covered by the same collective agreement language now found at Article 14.14 of the 2004-2005 collective agreement, including: "The Corporation will pay 100% of the premiums for the said health plans as set out below:–The Ontario Health Insurance Plan."

Ontario Health Insurance Plan ("OHIP")

5. In 1969, the provincial government introduced a health insurance plan known as the Health Services Insurance Plan through the *Health Services Insurance Act,* S.O. 1968-1969, c. 43. A copy of that Act is marked as Exhibit "8".

6. Pursuant to section 3(1) of the *Health Insurance Services Act,* [sic] the purpose of the Health Services Insurance Plan was stated to be: "providing for insurance of the costs of insured health services and such other services on a non-profit basis on uniform terms and conditions available to all residents of Ontario."

7. A regulation to the *Health Insurance Services Act,* [sic] R.R.O. 1970 c. 388, was initially enacted in 1969 and is Exhibit 20.

8. The *Ontario Health Insurance Organization Act, 1971,* S.O. 1971 c. 5 is Exhibit 23.

9. The *Health Insurance Act, 1972,* S.O. 1972 c. 91 is Exhibit 22, the *Health Insurance Act,* R.S.O. 1980 c. 197 is Exhibit 21 and Regulation 452 to the *Health Insurance Act,* R.R.O. 1980 c. 452 is Exhibit 9.

Employer Health Tax ("EHT")

10. On January 1, 1990, the Employer Health Tax came into effect pursuant to the *Employer Health Tax Act,* 1989, S.O. 1989 c. 76 (Exhibit 19).

11. The *Employer Health Tax Act* continues in effect today.

Ontario Health Premium ("OHP")

12. In December, 2004, the *Budget Measures Act, 2004 (No. 2),* S.O. 2004, c. 29 ("Bill 106") received Royal Assent. A copy of Bill 106 is Exhibit "7." That Act amended certain Ontario statutes, including the *Income Tax Act* which it amended, in part, by adding the following section:

    2.2(1) Every individual shall pay a tax, called the Ontario Health Premium, for a taxation year ending after December 31, 2003 if the individual is resident in Ontario on the last day of the taxation year.

13. Bill 106 did not amend the *Health Insurance Act* or the *Employer Health Tax Act* in

any way.

14. Extracts from the 2004 Ontario Budget papers are Exhibit 10.

15. The Ministry of Finance's June 21, 2004 news release announcing the new Ontario Health Premium is Exhibit 11.

16. Information from the Ministry of Health and Long Term Care posted on the Ontario government's web site is Exhibit 12.

17. A "fact sheet" regarding the Ontario Health Premium is Exhibit 13.

18. Exhibits 14, 15, and 24 through 27 are excerpts from Hansard which relate in part to the Ontario Health Premium.

19. Exhibits 17, 18, 45, 46 are in evidence.

Collective Agreement History

20. Collective agreement language on this issue from expired collective agreements for the years 1961 through 2000 is found at Exhibit 28 to Exhibit 45 and at Exhibit 2.

21. On January 1, 1993, the Corporation assumed certain employees from the former P.U.C., the Town of Westminster and the County of Middlesex due to the annexation that took place in accordance with the *London-Middlesex Act, 1992*. Those employees became members of the Union.

22. Subsequent to the annexation, the Union and the Corporation negotiated a single collective agreement that set out the rights and obligations of all of the Union employees, including the former P.U.C., Town of Westminster and County of Middlesex employees, the term of which commenced on January 1, 1994 and ended on December 31, 1997. With respect to OHIP, the Collective Agreement provided in Article 14.11 that for transferred PUC employees the Corporation "shall pay 100% of the cost of . . . the Ontario Health Insurance Plan", among other insurance plans. This wording continued in effect for the transferred PUC employees until November 30, 2001.

Additional Facts

23. Until January 1, 1990 when the *Employer Health Tax Act* became effective, the

Corporation paid the premiums for OHIP on behalf of its employees in accordance with the provisions of the Collective Agreements referred to above.

24. Commencing on January 1, 1990 and continuing to date, the Corporation has paid the Employer Health Tax in accordance with the *Employer Health Tax Act.*

25. Commencing on or about July 22, 2004 and continuing to date, the Employer has remitted the OHP in accordance with the *Income Tax Act* as amended by Bill 106, i.e. it has deducted the additional required funds from Local 107 members and remitted those funds to the government. It has not compensated any Local 107 member at all for any portion of any such employee's statutory obligation to pay the OHP.

III. PROVISIONS OF THE AGREEMENT

Under paragraph 4 of the Agreed Statement of Facts (ASF), the relevant provision is Article 14.14 of the parties' 2004-2005 collective agreement:

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. POSITION OF THE UNION

The Union submitted the issue was whether Article 14.14, above, obligated the Employer to pay the Ontario Health Premium (OHP). The collective agreement required the Employer to pay the premiums for the the Ontario Health Insurance Plan.

The Union reviewed the facts in the Agreed Statement of Facts (ASF) and the documents referred to in that statement. Universal publicly funded health care in Ontario began in 1969

(para. 5, ASF). That legislation established a public health care system available to all residents and every resident was entitled to be insured under the plan. There was a premium for this plan. For employees of larger employers, such as this Employer, every employee and all their dependents had to be insured under the plan. Moreover larger employers, such as this Employer, were required to deduct the premiums and remit the premiums to the Registrar. The employees in this bargaining unit were required to be in that public plan and the Employer deducted and remitted the premiums, payable to the Treasurer of Ontario, as required by the legislation. There were provisions in the legislation for waiving premiums for those who could not pay, or assisting in the payment of premiums. The legislation specified that if an employer had agreed to pay for health insurance now provided by the public plan, the employer was required to pay that amount of money toward the cost of the new public health plan.

The legislation was reorganized in 1971 (para. 8, ASF) and a commission was established to operate the health plan. Once again, if an employer had an agreement to pay for employee health care, the employer was required to contribute that amount to the cost of the new plan.

In 1972 there was additional legislation (para. 9, ASF) which replaced the 1969 and 1971 legislation. The 1972 legislation continues to the present. It established the Ontario Health Insurance Plan (OHIP) and the old public health care plans were continued under OHIP. Under OHIP all residents were entitled to be members, the premiums were sent to the general manager of the plan, and the premiums were payable to the Treasurer of Ontario. There were exceptions to the requirement for premiums and provisions to provide relief from, or assistance in the payment of, premiums. The provision requiring all the employees of larger employers, such as all the members of this bargaining unit, to be members was continued. Similarly, the requirement for the Employer to deduct and remit the premiums was continued.

The Union submitted that "OHIP premium" was a colloquial term. The legislation referred to the amount payable by a member of the plan to the Treasurer of Ontario for insured services. A reference to an OHIP premium is thus a reference to an amount deducted from an employee's pay for insured health services. The Union noted that nothing in the legislation required this money to be used for health services.

As noted, both the 1969 legislation and the 1971 legislation included provisions requiring an employer which had previously agreed to make a payment for health services now covered under the public plan to continue making such a contribution. The 1972 legislation included a similar provision.

Reviewing the collective agreements between these parties, the Union submitted that the bargain soon struck by the parties was that the Employer would pay the charges for health care (para. 23, ASF). That was a common response in collective bargaining throughout Ontario and so in 1989 the Province made it official with the introduction of the Employer Health Tax (para. 10, ASF). The old "premiums" stopped and instead the Employer paid a tax, the Employer Health Tax (EHT), to fund health care. Once again, there was nothing in that legislation saying that the tax would go into a special account or be used for health care.

This Union, and many other unions in Ontario, had negotiated the requirement for the Employer to pay the OHIP premiums and many unions and employers, including these parties, kept the language requiring the Employer to pay for OHIP in the collective agreement in the event there was another health care premium.

In 2004 the Province of Ontario introduced another charge for health care. Like the earlier OHIP premium, this charge was to be deducted from employees' pay and remitted to the

Treasurer of Ontario. Like the earlier OHIP premium, this charge was not to go into a separate account and it was not legislatively required to be spent on health care. This Ontario Health Premium (OHP) (para. 12, ASF) was introduced as an amendment to the *Income Tax Act*. While the new premium is a tax, that new tax is nevertheless also called a premium. It is clear from the legislation and from various documents regarding the OHP (paras. 12 through 18, ASF) that the purpose of the OHP is to raise money for the public health care system. It is inadequate to cover all the costs but it is intended to cover part of the costs, in the same manner as the old OHIP premiums and the current Employer Health Tax.

There are a number of collective agreements, using a variety of language, which require employers to pay for the Ontario Health Insurance Plan (OHIP). Following the introduction of the Ontario Health Premium there have been many grievances regarding the employer obligation to pay the OHP. Arbitrators had been divided initially about whether the language requiring payment of OHIP premiums also required payment of the OHP, but in the fall of 2005 the Divisional Court in *Lapointe-Fisher, infra,* issued a ruling which clarified the approach. The Court did so by upholding the arbitration award under review, an award which had interpreted that collective agreement as requiring that Employer to pay the OHP, and the Court also specifically endorsed another award (*Ontario Power Generation, infra*) which reached a similar conclusion.

The Union reviewed at length the various awards below. The Union stressed the *Lapointe-Fisher* award and the judicial review of that award in the Divisional Court as well as the *Ontario Power Generation* award which is cited with approval by the Divisional Court. This issue involves a question of interpretation and the Divisional Court has signalled that the approach should be that used by Arbitrator Swan in *Ontario Power Generation*.

In reply to the Employer submissions, the Union submitted that the question of eligibility for benefits was not a factor - these parties never negotiated over eligibility, they only ever negotiated about who would pay the premium, and since 1972 the Employer has paid 100%. The mere fact that some other persons used to pay the "premium" in order to be eligible for OHIP services should have no impact upon this dispute where eligibility has never been a factor. On that point, the Union asked what would have been the impact if, before the Employer Health Tax was introduced, the Province had simply cut any link between the old OHIP premium and eligibility for public health care - would that have had any impact on the Employer obligation to pay the former OHIP premium? The Union submitted that it would have had no impact on the Employer's obligation and that it would not have excused the Employer from paying the old OHIP premium. Similarly, the present attempt to link eligibility for OHIP with the payment of the new OHP was not persuasive.

The Union sought:

1 A declaration of a violation of the agreement;

2. An order for compensation regarding the Employer's failure to pay from June 2004;

3. An order that the Employer pay the OHP in the future; and

4. That I remain seised to deal with any difficulties in the implementation of the award.

The Union noted that it made no claim for interest and that it sought the payment based only on the amount the Employer paid each employee, not on an employee's total income from all sources.

The Union relied upon the following authorities: *Lapointe Fisher Nursing Home v. United Food and Commercial Workers Union, Local 175* [2004] O.L.A.A. No. 519 (Barrett); *Lapointe-Fisher Nursing Home v. United Food and Commercial Workers International Union, Local 175/633* [2005] O.J. No. 4411 (Divisional Court); *Ontario Power Generation Inc. v. Power Workers' Union (Health Premium Grievance)* [2005] O.L.A.A. No. 312

(Swan); *College Compensation and Appointments Council v. Ontario Public Service Employees' Union (Health Premiums Grievance)* [2004] O.L.A.A. No. 665 (Shime); *Goodyear Canada Inc. v. United Steelworkers of America, Local 834L (Ontario Health Premium Grievance)* [2004] O.L.A.A. No. 689 (Tims); *Re Walker Exhausts and United Steelworkers of America, Local 2894* (2004), 135 L.A.C. (4th) 285 (Samuels); *Ontario Public Service Employees Union v. Colleges and Applied Arts and Technology (College Compensation and Appointments Council) (Health Premium Grievance)* [2004] O.L.A.A. No. 880 (Whitaker); *Re Smurfit-MBI and U.S.W.A., I.W.A. Council Local 1-500* (2005), 136 L.A.C. (4th) 311 (Fisher); *H.J. Heinz Co. of Canada v. United Food and Commercial Workers, Local 459 (Health Premium Grievance)* [2005] O.L.A.A. No. 68 (Brent); *Woodbine Entertainment Group v. Service Employees International Union, Local 528 (Health Premium Grievance)* [2005] O.L.A.A. No. 131 (H.D. Brown); *Uniboard New Liskeard Inc. v. Industrial Wood and Allied Workers of Canada, Local 1-2995 (Health Premium Grievance)* [2005] O.L.A.A. No. 107 (Keller); *Toronto Transit Commission v. Amalgamated Transit Union, Local 113 (Health Premium Grievance)* [2005] O.L.A.A. No. 182 (Harris); *Selkirk Canada Corp. v. Sheet Metal Workers' International Assn. (Health Premiums Grievance)* [2005] O.L.A.A. No. 163 (Shime); *Kawneer Co. Canada v. International Assn. of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 835 (Shopmen's Union) (Health Premium Grievance)* [2005] O.L.A.A. No. 278 (Saltman); *Ontario Nurses' Assn. v. Participating Hospitals (Health Premium Grievance)* [2005] O.L.A.A. No. 280 (H.D. Brown); *London Hydro and Power Workers' Union* (June 14, 2005), unreported (Knopf); *Thermal Ceramics v. United Steelworkers of America, Local 16056 (Health Premium Grievance)* [2005] O.L.A.A. No. 346 (Samuels); *Canadian Union of Public Employees, Local 1 v. Toronto Hydro (Health Premium Grievance)* [2005] O.L.A.A. No. 436 (Howe); *National Car Steel Ltd. v. United Steelworkers of America, Local 7135 (Health Premium Grievance)* [2005] O.L.A.A. No. 435 (Herlich); *Amalgmated Transit Union, Local 1587 v. Ontario (Greater Toronto Transit Authority - GO Transit) (Benefits*

Grievance) [2005] O.G.S.B.A. No. 132 (Harris); and *Re Corporation of City of London and Canadian Union of Public Employees, Locals 107 & 101* (1994), 44 L.A.C. (4th) 125 (Samuels).

V. POSITION OF THE EMPLOYER

The Employer began by noting that the standard of review of an arbitration award used by the Divisional Court in *Lapointe-Fisher* was patent unreasonableness, not correctness. The most that can be said was the approach of the arbitrator in that case had been reasonable; because that award was at best viewed as being reasonable, as distinct from being correct, arbitrators need not follow that approach.

As arbitrator I am to give this collective agreement the correct interpretation. Article 14.14 is found among other provisions dealing with other insurance plans and I should thus interpret this provision in the context of other insurance plans. If one looks back at earlier agreements (e.g. 1961-62) this language was initially introduced in the context of private insurance plans. At that time the Employer paid 50% of the premium for private health insurance. In the 1967 collective agreement the Employer agreed to pay 66 and 2/3 % of the premiums but it remained private health insurance. In the 1971-72 agreement the Employer agreed to pay 100% of the premiums, effective January 1, 1972, for the public plan, OHIP, but also for a Blue Cross Supplementary plan and a Blue Cross Extended Health Plan. Similar language continues today, but the language grew out of and should be interpreted in the context of private insurance plans.

It is with that background that I need to interpret the word "premiums" in Article 14.14. The Employer submitted that premium was used in the insurance context to mean a payment to obtain a benefit; that is, a sum of money paid to be eligible to have insurance.

The Employer reviewed the 1969 legislation and submitted that the Act called for "premiums" to be paid in order to receive the benefits. That view is reinforced by the regulations made under that Act (para. 7, ASF) which made it clear that a failure by an employer to remit premiums would not "disentitle" the employee from coverage, but only for a period of one month. Similar regulations continued over time (see Regulation 452, para. 9, ASF).

The legislation continued to tie the premium to coverage until 1989 when the Employer Health Tax (EHT) was introduced (para. 10, ASF). Whether the EHT was paid or not, these employees received health care coverage.

Over the years the various legislation has said that, if the Employer was paying for health care, the Employer payment for the benefit should continue. This Employer has continued to pay the EHT and the employees have not lost the benefit of their bargain.

In 2004 the Province introduced the Ontario Health Premium (para. 12, ASF). There is nothing in that legislation tying the money raised from the OHP to health services, nor payment of the OHP to eligibility for health services. On the face of the legislation the only links to health care are the title of the Section of the Act and the name of the tax itself. This was simply an increase in taxes and the Province labelled it as being for health care to make the new tax more palatable to tax payers.

The Employer then reviewed the awards cited below as well as several of the awards relied upon by the Union, above. The Employer asked me to find that the parties used premiums in the context of insurance plans and that premiums are amounts paid to receive benefits. The old OHIP premium was of that nature - a premium paid for the OHIP benefits. Although the wording of the collective agreement continued, there was nothing to suggest

the parties had another meaning in mind for premiums.

The earlier arbitration awards refer to this type of language having been retained in collective agreements "in case it comes back," which leads to "in case what comes back?" The answer must be in case an insurance type premium in which there is a need to pay in order to receive the benefit comes back, and it has not.

The Employer asked that the grievance be dismissed.

The Employer relied upon the following: Brown and Beatty, *Canadian Labour Arbitration, Third Edition*, (Canada Law Book) Section 1:3300 Tribunal Decisions and Judicial Decisions; *Re Royal Alexandra Hospital and United Nurses of Alberta, Local 33* (1995), 45 L.A.C. (4th) 401 (Jones); *Lapointe Fisher* (Barrett) *supra; Lapointe-Fisher* (Divisional Court) *supra; Ontario Power Generation* (Swan) *supra; Toronto Hydro* (Howe) *supra; Toronto (City) v. Canadian Union of Public Employees, Local 79 (Ontario Health Premium Grievance)* [2005] O.L.A.A. No. 609 (Herman); and *National Car Steel* (Herlich) *supra.*

VI. CONCLUSIONS

Since 1972 the parties have had language in all their collective agreements which has required the Employer to pay 100% of the premiums for the Ontario Health Insurance Plan. The Employer paid 100% of those premiums for some 18 years until the OHIP premiums were abolished effective January 1, 1990. However, the parties maintained this language in each of their collective agreements. After approximately 15 years without premiums, the new Ontario Health Premium was introduced in 2004 as an amendment to the Province's *Income Tax Act* and the issue now before me is whether this new Ontario Health Premium is a premium in the sense the parties intended in this language. Is the Employer now

required to pay the Ontario Health Premium on behalf of the employees?

The first task of an arbitrator is normally to determine what the language of the collective agreement means - that is, what did the parties intend. Secondly an arbitrator determines whether the Employer has done as intended. Because the parties agreed the Employer had not paid the new Ontario Health Premium, the only real issue before me in this case is whether the Employer is required by the collective agreement to pay the Ontario Health Premium.

There is considerable money at stake for the parties. The new Ontario Health Premium ranges from $300 annually for an employee making $25,000 per year, to $750 for an employee earning $72,600.

What does the disputed provision mean?

For ease of reference I repeat the disputed provision of this collective agreement:

> 14.14 GROUP HOSPITAL, HEALTH, DENTAL AND LIFE INSURANCE PLANS
>
> 1. . . .
>
> (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

The provision is brief - the Employer is to pay 100% of the “premiums for” two health care plans, one of which is the Ontario Health Insurance Plan (OHIP). The issue before me is whether this new Ontario Health Premium (OHP) is the type of premium which the parties intended to cover with this language. There are two parts to that:

1. Is the Ontario Health Premium a “premium;”and, if so,

2. Is the Ontario Health Premium "for" OHIP.

1. Is the Ontario Health Premium a premium?

The evidence which assists in resolving the dispute about these parties' intention falls into three categories - (1) the words they used, (2) the evidence regarding payment for health care plans under the parties' earlier collective agreements, and (3) the evidence of the legislative history of the public health care system in Ontario, including both the old OHIP premiums and the new Ontario Health Premium.

The Employer submitted that the parties intended to cover only a premium in the traditional insurance sense so that premium means a payment which must be made to obtain coverage under a particular plan. In part because the new Ontario Health Premium is a tax under the *Income Tax Act,* the Employer said the OHP is not a premium in the sense intended by the parties.

While I acknowledge that premium often has the meaning urged upon me by the Employer, I do not find the words of this provision so clear that I can accept the Employer submission without examining the other evidence.

I turn to the evidence regarding the use of premium in similar provisions in earlier agreements and the way in which the parties interpreted those provisions. The Employer paid the old OHIP premium under similar language in the parties' earlier collective agreements for some 18 years (for example, the parties' 1971-72 collective agreement used "premiums for" OHIP, exhibit 33, referred to in Para 20, ASF). If the old OHIP premium was a premium in the insurance sense of a payment made to obtain coverage, then I would find the Employer's submission persuasive. However, if the old OHIP premium was not an

insurance premium in that sense, then the Employer submission that the parties now intend premium in the insurance sense would be contrary to the parties' own interpretation of the earlier collective agreements.

It is not possible to determine the nature of the old OHIP premium by simply examining the language of the parties' collective agreements. For this issue it is necessary to consider the evidence of the statutory and regulatory provisions in Ontario for public health care.

Under the legislation all employees of this bargaining unit have always been required to pay for the public health care plan, now the Ontario Health Insurance Plan. Apart altogether from the provisions of the parties' various collective agreements, until 1990 this Employer was required by legislation to deduct the Ontario Health Insurance Plan "premium" from all employees' income and remit those premiums to the Province.

As for coverage under the Ontario Health Insurance Plan, once again, apart altogether from the provisions of the parties' various collective agreements, coverage under OHIP for all employees has always been mandatory.

It seems then that until 1990 the purpose of the provision in the old collective agreements was not to allow for deducting premiums nor was it to obtain OHIP coverage for employees; instead the articles dealt with who paid the mandatory premiums for that mandatory coverage. For most of the time during which there were OHIP premiums (beginning January 1, 1972) this Employer paid 100% of the premiums. Because of this I have trouble viewing the parties' use of the word premiums as being an amount paid to secure insurance coverage. Instead, the word "premiums" in the collective agreements during the 1970's and 1980's meant the amount which the Employer was required by legislation to deduct from the employees and remit to the Province to help pay for the Ontario Health Insurance Plan, and

which, in practice, meant the amount this Employer paid on behalf of the employees.

Because the parties used "premiums" in their earlier collective agreements to include the old OHIP premium, and because the old OHIP premium was not a payment in the insurance sense of a payment which needed to be made to secure coverage, I do not accept that these parties intended "premiums" in this article of this collective agreement in that stricter insurance sense. Instead I conclude that they used the word in a more general sense.

What is the nature of the new Ontario Health Premium? Again, this requires an examination of the legislation. In 2004 the *Income Tax Act* was amended to require tax payers to pay an additional amount referred to as the "Ontario Health Premium." The new premium is collected with other income tax. As with other income tax on employees' earnings, the Employer is required to deduct the new premium from the employees' income and remit it. In that sense it is similar to the old OHIP premium. From an employee perspective, whether a "premium" is part of the *Income Tax Act* or some other piece of legislation has no practical impact, and from an Employer perspective the new premium is simply money to be deducted from the employees and remitted for the benefit of the Province.

Accepting that the parties used premiums to include the old OHIP premium, in my view the new Ontario Health Premium is sufficiently similar in nature to the old OHIP premium to also be a premium as the word is used by the parties in this Article.

Because many other collective agreements between other parties also maintained old language from the 1980's requiring the Employer to pay for OHIP premiums, it is not surprising that, with the introduction of the new Ontario Health Premium, there have been many other arbitrations conducted over the issue of whether the Employer was required to pay the new premium. It is not surprising that this issue of the nature of the new premium

has received considerable attention from arbitrators who have dealt with those grievances. On this issue, I agree with Arbitrator Swan who wrote as follows regarding a similar submission in the *Ontario Power Generation* case, *supra:*

> [45] It is a significant part of the Corporation's argument before me that the OHIP premium constituted a true premium, while the Ontario Health Premium is a tax. With respect, the statutory underpinnings do not support anything like so sharp a distinction. . . . for mandatory groups, such as the employees of the predecessor of this Corporation, section 15 (3) provided that every member of a mandatory group "shall be an insured person" and subsection (4) required deduction from remuneration of the premiums required. In short, this is not a case of a premium in the sense of a payment for services which may be accepted or not. While the case may have been different for other individuals, for employees of even fairly small employers, there was a mandatory imposition of a payment called a premium and mandatory membership in the health services plan. Membership was not dependent on payment of the premium; both were mandatory. The premium was deducted from remuneration, held in trust by statute, and remitted to the Treasurer of Ontario, for deposit to the consolidated revenues of the province.
>
> [46] With the greatest of respect, this nature of the OHIP premium, which at least informed the language used by the parties in their renegotiation of the current provision of the collective agreement, fits as readily as the Ontario Health Premium into the definition of a "tax" . . . The distinction is not between a premium and a tax, but between two taxes.
>
> . . .
>
> [55] . . . I think the distinction between premiums and taxes has little bearing on the interpretation of the collective agreement, since both the OHIP premium and the Ontario Health Premium are hybrids of those pure legal concepts, and both are far closer in nature to taxes than premiums. . . .

Arbitrator Swan concluded the Ontario Health Premium was a premium which that employer was required to pay.

I note that the Divisional Court in its decision on the judicial review of an early arbitration award in *Lapointe-Fisher*, *supra*, quoted paragraph 55, above, from Arbitrator Swan's award along with other portions of the award and that the Court described "the reasoning . . . to be logical, reasonable and compelling" (see para. 23 of the Divisional Court decision).

In summary, I conclude that the new Ontario Health Premium is a premium as used in

Article 14.14.

2. Is the Ontario Health Premium "for" OHIP?

Having concluded that the new Ontario Health Premium is a premium under Article 14.14, I now move to whether the Ontario Health Premium is for the Ontario Health Insurance Plan.

There is little in this collective agreement which helps to resolve the question of what the Ontario Health Premium is intended for, and in particular whether it is for the Ontario Health Insurance Plan.

In terms of the parties' previous collective agreements, prior to the abolition of the old OHIP premium the parties had used similar language of premiums "for" OHIP (e.g. 1978 collective agreement Article 14.1, ex. 38, referred to in para 20, ASF). Accepting that the parties intended the old OHIP premium as being "for" OHIP in the sense that "for" was used in those earlier collective agreements, I consider whether the new Ontario Health Premium is directed toward OHIP to an extent similar to the old OHIP premium. If the new Ontario Health Premium is as closely directed to OHIP as the old premium was, then I think it likely the parties would have intended that it would also be "for" OHIP under the terms of this article.

This question must be resolved in large part by reference to the evidence regarding the establishment of the new Ontario Health Premium.

The legislation enacting the Ontario Health Premium is before me (para. 12, ASF). The relevant section of the legislation is headed "Ontario Health Premium" and the amount to

be paid is called the "Ontario Health Premium." Both suggest a tie to the health care system, but do not make the point clearly. However, other documents before me (see those referred to in paras. 13-18, ASF) make the intent of this legislation clear. For example, the Ministry of Finance Press Release June 21, 2004, (para. 15, ASF) quotes the Minister of Finance describing the then proposed legislation as follows:

> Every penny of the Ontario Health Premium would be invested in health care.

Similarly Hansard (exhibit 14, para. 14, ASF) reports that the Minister of Finance in his budget speech described the use of the OHP as follows:

> In short, every single cent from this premium will be invested in health care. Every cent of this premium will be used to provide better results in our health care system.

There are various other documents in evidence before me detailing the government's commitment to use all of the proceeds from the Ontario Health Premium for the public health care system. I note that public health care is very expensive and requires an ever increasing portion of Ontario's revenue. I conclude that the Ontario Health Premium is to be used for health care.

Accepting that the Ontario Health Premium is to be used for health care, I note that the language in the collective agreement is not health care, but instead the Ontario Health Insurance Plan. Health care and OHIP are not the same. The public health care system in Ontario includes some things not covered by OHIP. OHIP is, nevertheless, a large part of the public health care system.

As the Ontario Health Premium is to be used for health care but health care involves a broader range of care than that which is provided by the Ontario Health Insurance Plan, what is the impact in terms of the interpretation of this collective agreement?

Looking first at the old Ontario Health Insurance Plan premiums, there was no legislative control over how those old OHIP premiums were spent and no legislative provision requiring that those premiums be spent on OHIP, or even spent on health care. On the other hand, the new Ontario Health Premium legislation specifically requires the Ontario Public Accounts to include information about the use of the revenue from the Ontario Health Premium, and the legislation also calls for a review of the Ontario Health Premium by a committee of the Assembly in 2008. Because there was no legislation linking the old Ontario Health Insurance Plan premiums and OHIP, but there is legislation linking the new Ontario Health Premium and OHIP (the Public Accounts and the 2008 review), I find that the connection between the Ontario Health Premium and OHIP is stronger than that between the old OHIP premium and OHIP.

Since the old OHIP premium was for OHIP, and since the OHP is more closely tied to OHIP than was the old OHIP premium, I conclude that the new Ontario Health Premium is "for" the Ontario Health Insurance Plan in the sense used in this collective agreement.

As the Ontario Health Premium is a premium and as it is for OHIP, it follows that the Employer is required by Article 14.14 of this agreement to pay 100% of that premium.

More generally, what did the parties intend in this provision? Because the parties have used premiums to include the old OHIP premium which was money to be deducted from employees and sent to the Province, and because the parties regarded the old OHIP premium as being for OHIP notwithstanding that there was no control at all over the use of the OHIP premium, I think that the parties' intention in this language was to cover any deductions from the employees' income to be remitted on the employees' behalf to the Province for public health care. In my view, under Article 14.14 the parties intended that, if the Employer is required to deduct from employees' income and remit to the Province a sum of money to

be used to pay for health care under the Ontario Health Insurance Plan, then the Employer will pay 100% of that amount. As this new Ontario Health Premium is money deducted from employees' income and remitted to the Province for health care, I conclude that the parties intended that the Employer would pay the Ontario Health Premium on behalf of the employees.

It follows from my conclusions that the OHP is a "premium" and is "for" OHIP and from my more general interpretation of the parties' intention to include any deduction from employees' income to be remitted on the employees' behalf to the Province for health care, that the parties intended the Employer pay 100% of the Ontario Health Premium.

Did the Employer do as was intended by the collective agreement?

I have concluded that the Employer was required to pay the Ontario Health Premium on behalf of the employees covered by this collective agreement. Under paragraph 25 of the Agreed Statement of Facts, the parties agreed that the Employer has not done so. The Employer has violated the collective agreement and the Union is entitled to a remedy for that violation.

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.

Before concluding, I again note that similar grievances have been dealt with by many other arbitrators under other collective agreements in Ontario. The parties relied upon a large number of those awards and I have read them with care and interest. Arbitrators are not bound by other arbitration awards under other collective agreements. However, arbitrators are expected to follow court decisions and, in my view, the fundamental conclusion of the one Divisional Court decision in a judicial review of an arbitration award on this Ontario Health Premium issue (see, *Lapointe-Fisher, supra*) is that an arbitrator is to determine what the parties to the particular collective agreement intended.

I would also note that some of the arbitration awards on this issue reach a result similar to that which I have reached. Other awards reach a different result but on language which differs to such an extent from the language before me that it seems clear those parties had a different intention. Still other awards reach a different result but on language which seems similar to this language. All that I can offer by way of explanation for those differences in result is to note that I have sought these parties' intention in this collective agreement. In doing so I have interpreted the words which these parties have used in the context of this collective agreement, the evidence of the history of this provision in these parties' earlier collective agreements, and the evidence of the statutory framework.

Dated at London, Ontario this 10th day of March, 2006.

Howard Snow, Arbitrator