

IN THE MATTER OF THE ONTARIO *POLICE SERVICES ACT*

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

KINGSTON POLICE SERVICES BOARD

- The Employer

-and-

KINGSTON CITY POLICE ASSOCIATION INC.

- The Union

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

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

David Migicovsky	- Counsel
George Stoparzek	- Board Vice Chair
Karen Matthews	- Human Resources Coordinator

On behalf of the Union:

Steven Welchner	- Counsel
Sean Bambrick	- President
David Wein	- Director

Hearing held June 13 and October 20, 2006, in Kingston, Ontario.

AWARD

I. INTRODUCTION

The parties' two collective agreements compel the Employer to pay the cost of the monthly premium of the Ontario Health Insurance Plan or its successor. The issue in the grievance is this: Is the Employer now required to pay the Ontario Health Premium?

II. THE FACTS

The parties have two collective agreements. One collective agreement covers the sworn police officers, while the other agreement covers the civilian employees. The relevant language in the two agreements is the same. This grievance raised the same issue under both collective agreements.

The facts were not in dispute. Numerous documents were admitted by agreement and the parties made their submissions based on those documents.

In 1969 the province of Ontario introduced public health insurance, now called the Ontario Health Insurance Plan, or OHIP. Under the legislation, if an employer employed more than 15 employees, the employer was required to deduct premiums from the employees' wages and remit those premiums on behalf of the employees for public health insurance. The Employer has always deducted and remitted premiums for the employees covered by these collective agreements.

The original OHIP premiums specified a monthly amount and the premiums varied depending upon whether the employee was single, had one dependant, or had two or more dependants. That structure was maintained for several years through various changes in

legislation.

On the collective bargaining front, these parties negotiated who would actually pay the monthly OHIP premium. In 1970 the Employer agreed to pay two thirds of the cost of the monthly premium for the sworn officers, in 1974 to pay 80% of the cost of the monthly premium, and in 1975 to pay 100% of the cost of the monthly premium. Under the civilian collective agreement the Employer has long paid 100% of the monthly premium.

Many other unions negotiated with their employers and likewise secured language which required those employers to pay the OHIP premiums.

There was nothing in the legislation which required that the OHIP premiums be used for health services and there was no way to track the actual use of the OHIP premiums. However, the cost of health care has always exceeded the premium revenue.

In 1989 the province abolished the OHIP premium and instituted an employer payroll tax called the Employer Health Tax, or EHT, which continues to the present.

Notwithstanding the fact that the OHIP premiums were abolished, many parties to collective bargaining maintained some form of language in their collective agreements requiring the employers to pay the OHIP premiums.

Here the 1992-93 and the 1994 sworn officers agreements remained simply “monthly premium of the Ontario Health Insurance Plan,” the same as in the 1991 and earlier agreements. However, the relevant section of the 1992-93 and the 1994 civilian agreements, which had previously been the same as the sworn officers agreements, was amended to read “monthly premium of the Ontario Health Services Payroll Tax.” The Social Contract

followed and the next agreements covering 1998-2002 were signed in 1999. The language of both collective agreements was changed to that found today. However, the 1999 Memorandum of Agreement signed by the parties at the conclusion of bargaining for both collective agreements includes nothing to indicate that the parties agreed to change the language. The changes to “monthly premium of the Ontario Health Insurance Plan, or its successor” were made in an administrative “tidying up” of the language after the conclusion of formal bargaining.

In 2004 both collective agreements were amended by the inclusion of a general statement regarding benefits - see Article 11.1 and 12.1 below. Those Articles state, in part, that the Employer’s obligation is “restricted to the payment of its portion of the premiums necessary to enrol members in the benefit plans.”

In 2004 the province introduced a new tax called the Ontario Health Premium. The Government expressly stated that every dollar of the new Ontario Health Premium would be used for health care. While there is no clear way to track the use of the revenue from the Ontario Health Premium, there is a provision in the new legislation which requires the Province’s Public Accounts to include information about the use of the Ontario Health Premium. The cost of health care seems certain to exceed the amount of the Ontario Health Premium revenue for the foreseeable future.

The new Ontario Health Premium is a tax based on income. The Ontario Health Premium is collected by way of employers withholding money from employees’ income and remitting it to the government. This is the same method which the government uses to collect other income taxes from employees. The Ontario Health Premium is a percentage of an individual’s total taxable income for the year, rather than the person’s gross income from a particular employer. When an individual files his or her income tax, the person does a final

calculation of the Ontario Health Premium.

After the introduction of the new Ontario Health Premium many unions grieved that, under the language in their collective agreements requiring the employers to pay the OHIP premiums, the employers were required to pay the new Ontario Health Premium.

This Union filed such a grievance. This award is one of many arbitration awards examining this issue.

III. THE AGREEMENTS

The key provisions of the parties' 2004-2005 collective agreement covering the sworn officers are as follows:

11. BENEFITS

- 11.1. The amount of and eligibility for benefits referred to in this agreement are subject to the terms and conditions of the policy or policies of the insurer providing such benefits. Any dispute as to entitlement to benefits provided under the policy or policies of insurance is between the member and insurer. The Board agrees to use its best efforts on behalf of the member in the event of such dispute. It is understood that the Board's obligation under this article is restricted to the payment of its portion of the premiums necessary to enrol members in the benefit plans described in this agreement.
- 11.2. The Board will contribute one hundred percent (100%) of the cost of the monthly premium of the Ontario Health Insurance Plan, or its successor, and an extended health benefit plan, as detailed on Schedule B attached hereto, for all members who are subscribers, their spouses, and all eligible dependants. . . .
- 11.5. Provided that the retiree is in receipt of a pension under the Ontario Municipal Employees Retirement System (OMERS), the Board shall incur the cost of providing the following named benefits for all past and future retired police officers until they reach age sixty-five (65), their spouses and all dependants, as well as for surviving spouses and eligible dependants of police officers who die while in the execution of their duties until the surviving spouse reaches age sixty-five (65) or remarries, whichever is earlier: Ontario Hospital Insurance Plan or its successor; extended health benefit plan; and dental plan.

The key provisions of the parties' 2004-2005 civilian agreement are as follows:

12. EMPLOYEE BENEFITS

12.1. **General.** The amount of and eligibility for benefits referred to in this agreement are subject to the terms and conditions of the policy or policies of the insurer providing such benefits. Any dispute as to entitlement to benefits provided under the policy or policies of insurance is between the member and insurer. The Board agrees to use its best efforts on behalf of the member in the event of such dispute. It is understood that the Board's obligation under this article is restricted to the payment of its portion of the premiums necessary to enrol members in the benefit plans described in this agreement.

...

12.3. **Health/Dental Benefits.**

- (a) The Board will contribute one hundred percent (100%) of the cost of the monthly premium of the Ontario Health Insurance Plan, or its successor, and an extended health benefit plan, as detailed in Schedule B attached hereto, for all members who are subscribers, their spouses, and all eligible dependants. Effective January 1, 1993, this is also to include all future retirees and their spouses and eligible dependants until the retiree reaches the age of 65, with one hundred percent (100%) of the premium paid by the Board, provided that the retiree is in receipt of a pension under the Ontario Municipal Employees Retirement System (OMERS). . . .

...

IV. UNION POSITION

The Union made an extensive submission.

The Union submitted that the language of the two collective agreements required the Employer to pay the Ontario Health Premium on behalf of the employees in the same way that it had paid the OHIP premiums.

Universal publicly funded health care in Ontario began in 1969. The legislation established a public health care system available to all residents and every resident was entitled to be insured under the new health plan. There was a premium payable for this plan. For employees of this Employer, every employee and all their dependants had to be insured under the plan. Moreover this Employer was required to deduct and remit the premiums. Regarding the issue of who was responsible for the payment of the premium, the legislation specified that if an employer had earlier agreed to pay for health insurance which was

subsequently provided by the public plan, then 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.

In 1972 there was additional legislation which established a structure for public health care which largely continues to the present. That 1972 legislation established the Ontario Health Insurance Plan (OHIP) and the existing 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. The provision requiring all the employees of larger employers, such as the members of these bargaining units, to be members was continued, as was the requirement for the Employer to deduct and remit the premiums.

The Union submitted that the parties soon agreed that the Employer would pay the charges for health care. This was such a common response in collective bargaining throughout Ontario that in 1989 the Province made it official with the introduction of the Employer Health Tax. The old OHIP premiums stopped and instead the Employer paid a tax, the Employer Health Tax (EHT), to fund health care. As with the OHIP premiums, there was nothing in that legislation requiring that the EHT be used for health care.

The Union submitted that the reference in these collective agreements to “the cost of the monthly premium of the Ontario Health Insurance Plan” refers to the amount payable by a member of the plan to the Province for insured health services. In practice, then, the Union said that was a reference to an amount deducted from an employee’s pay for insured health services.

In 2004 the Province of Ontario introduced the Ontario Health Premium which was another charge for health care. Like the earlier OHIP premium, this new charge was to be deducted from employees' pay and remitted to the Treasurer of Ontario. Like the earlier OHIP premium and the EHT, this money was not to go into a separate account and it was not legislatively required to be spent on health care. This Ontario Health Premium was introduced as an amendment to the Income Tax Act. While the new Ontario Health Premium is a tax, that new tax is nevertheless also called a "premium." It is clear that the purpose of the Ontario Health Premium is to raise money for the public health care system. The amount raised by the Ontario Health Premium is inadequate to cover the cost of public health care but it is intended to cover part of the cost, in the same manner as the old OHIP premiums and the Employer Health Tax.

These parties had agreed that the Employer would pay the old OHIP premiums and these parties, like many other unions and employers, kept the language in the collective agreements requiring the Employer to pay for OHIP in order to deal with the possible introduction of another health care premium.

After the new Ontario Health Premium was introduced in Ontario, there were a number of collective agreements, using a variety of language, which required employers to pay the OHIP premium. A number of grievances and arbitration awards followed, each dealing with the issue of whether those employers were required by their collective agreements to pay the Ontario Health Premium. The Union reviewed at length the various arbitration awards on the issue of the employer paying the Ontario Health Premium, most of which were submitted jointly and are listed below. The Union urged me to adopt the reasoning I had followed in an earlier award on this issue involving the *City of London*, (#8, below), and made reference to other authorities.

In reviewing the various cases the Union highlighted the following points:

1. The language of the collective agreement is key;
2. OHIP still exists;
3. Coverage under OHIP has always been mandatory for these employees;
4. The Ontario Health Premium is intended for health care;
5. The old OHIP premium was not traceable to use for OHIP;
6. OHIP covers more than just insured health services;
7. The two premiums are similar - an amount to be deducted from an employee's income and remitted to the government for health care;
8. The language was continued in the collective agreements after the abolition of the old premiums;
9. The parties must have intended that the language would cover situations which were then unforeseen, situations such as this new Ontario Health Premium;
10. The intention of the government is not relevant to finding the intention of the parties to these agreements; and,
11. The fact that the Ontario Health Premium is based on an employee's taxable income for the year from all sources, so that the amount of the Ontario Health Premium cannot be easily estimated at the beginning of the year, is not an insurmountable problem and cannot override the parties' expressed intention.

The Union sought:

1. An order that the Employer repay with interest all amounts previously deducted from employees for the Ontario Health Premium; and,
2. An order that the Employer pay the future costs of the Ontario Health Premium.

Following the Employer's submission, the Union replied to many of the points raised by the Employer.

For example, in its reply the Union said the statement of intent (in Article 11.1 of the sworn officers agreement and Article 12.1 of the civilian agreement) was simply intended to make clear that the Employer was to arrange for the various plans but the Employer was not itself required to provide any of the actual benefits. That language did not have any impact upon the clear intent of the parties to have the Employer pay the new Ontario Health Premium.

Similarly, the Union said the reference to premium of OHIP “or its successor” supported its argument that the parties intended to deal with new types of payments for health care.

As for the use of “monthly” to describe premium, the Union said that if the old OHIP premium had simply been converted to an annual premium, that surely would not have nullified the Employer obligation and here the new Ontario Health Premium is the successor to the monthly premium.

Finally, the Union responded to the Employer argument that the Union interpretation of the collective agreements would require the Employer to pay the Ontario Health Premium not only for employees, but also for retirees and their dependants. The Union submitted that the amount of the Ontario Health Premium which the Employer is required to pay for an employee or for a retiree is calculated on that person’s income from the Employer and the fact that some retirees have no income from the Employer, and are thus entitled to nothing, does not mean that those employees who have income must also be held to be entitled to nothing. The fact that the benefit is of no value to some retirees should have no impact upon current employees.

The Union asked what would have happened if, in the 1980's, the government had simply abolished premiums for those over a certain age, such as age 50. In that hypothetical situation, the fact that some employees no longer needed the collective agreement benefit

would make no difference to the rights of those employees who did need the benefit.

V. EMPLOYER POSITION

The Employer also made a full submission.

The Employer began with a review of the particular language of the collective agreements and traced the changes from 1969 to the present.

In particular, the Employer noted the current reference in both agreements (Article 11.2 of the sworn agreement and Article 12.3 of the civilian agreement) to “premium of the Ontario Health Insurance Plan, **or its successor**” (my emphasis) and submitted that a review of the history of these provisions indicated that, when the legislation changed, these parties had a history of updating their agreements. After the OHIP premium was replaced by the Employer Health Tax in 1989 the language of “or its successor” was eventually introduced into the collective agreements in order to refer to that new tax, as is clear from the wording of the civilian agreements in the period from 1992 through 1999. The words “or its successor” means the Employer Health Tax. These words were not intended to deal generally with any future tax, as the history shows that these parties negotiated new language to deal with each new situation.

The Employer also noted the language in Article 11.01 of the sworn officers’ agreement, and in Article 12.1 of the civilian agreement, as follows:

It is understood that the Board’s obligation under this article is restricted to the payment of its portion of the premiums necessary to enrol members in the benefit plans described in this agreement.

The Employer submitted that this was clear evidence of the parties’ intention to limit the Employer’s obligations and that the parties’ intention in using this language did not extend to include payment of the new Ontario Health Premium. The Employer reviewed the

relationship between the payment of the two premiums and coverage under OHIP, and asked that I conclude that the new Ontario Health Premium is a tax that has no impact on either the OHIP legislation or the Employer Health Tax legislation, and that the payment of the new Ontario Health Premium has no impact on health care coverage, whereas the payment of the old OHIP premium was linked to coverage. In addition, the Employer submitted that there was no reference to the provincial health plan in the legislation which provided for the new Ontario Health Premium.

Looking at Article 11.2 of the sworn agreement, the relevant portion of which is identical to the wording in Article 12.3 of the civilian agreement, the Employer said the word premium in reference to both OHIP and the extended health plan must have the same meaning. If the premium for the extended health plan was not paid, there would be no coverage. The reference to the cost of the premium of OHIP must also refer to something which needs to be paid to obtain coverage.

In addition, the parties used the word “monthly” to describe premium. The old OHIP premium was a monthly amount. Given that the new Ontario Health Premium is an annual amount which cannot be accurately calculated until the end of the year, it would be necessary to read the word “monthly” out of the two agreements entirely in order to reach the conclusion the Union requested.

Next the Employer noted that the parties used the word premium “of” the Ontario Health Insurance Plan. The Employer submitted that the word “of” would apply to the old OHIP premiums but does not describe the new Ontario Health Premium as it is not “of” OHIP, even if it may be “for” OHIP.

The Employer reiterated that under Article 11.1 of the sworn agreement and Article 12.1 of

the civilian agreement the parties made their intention clear - their intention was to have the Employer pay those premiums “necessary to enrol” employees in the plans and the new Ontario Health Premium does not fit that description.

The Employer then reviewed my *City of London* award (#8, below) and pointed out the various differences in the language of the collective agreements and submitted that the differences should lead to a different result here. The first of the principal differences noted flowed from the history of these provisions - i.e., the fact that premium here has to have a similar meaning for both OHIP and the extended health plan as they are in the same paragraph, the fact that here there is retiree coverage, and the fact that here the parties revised the language when they wished to incorporate new legislative changes. Secondly, the Employer emphasised that these agreements specify monthly premiums whereas the new Ontario Health Premium is an annual amount based on residency at the end of the year. In addition, the Employer stressed the use of the word “of” as it appears in the phrase “the monthly premium of” OHIP. These collective agreements, said the Employer, are materially different from the agreement interpreted in the *London* award.

The Employer then noted several points which it said should be considered in coming to a decision. First the Employer said it was impossible to calculate the Ontario Health Premium until the end of the year. The old OHIP premium was a fixed monthly amount but the new Ontario Health Premium is a percentage of yearly taxable income and yearly taxable income cannot be known until the end of the year. This suggested the parties did not intend by this language to include the Ontario Health Premium. Secondly the Employer said I should consider what the parties originally intended when they included this language in the agreement. The original purpose was surely to secure coverage under OHIP and share the costs. However, the new Ontario Health Premium has no relationship to securing OHIP coverage. In addition, the Employer asked me to find that I had been wrong in my earlier

award to conclude that the OHIP premium was not a premium in the insurance sense, and that I had been wrong to conclude that the Ontario Health Premium will be used for health care, both of which would lead to a different result here.

The Employer then highlighted that these collective agreements require that the Employer pay the “monthly premium of” OHIP, not simply for employees but also for retirees and their dependants. That fact suggests that the parties would not have intended that the Employer would have to pay the income taxes for retirees and for their families. To reach the conclusion urged by the Union would require a strained reading of the language of the agreement.

In summary, the Employer asked that the grievance be dismissed.

VI. AUTHORITIES

At the beginning of the hearing the parties jointly provided the first forty-eight (48) authorities. The Employer provided the remaining eight (8) arbitration awards on the second day of hearing, as well as the judicial review decision in *London Hydro*, (#5, below):

1. *Lapointe Fisher Nursing Home v. United Food and Commercial Workers Union, Local 175* [2004] O.L.A.A. No. 519 (Barrett); and *Lapointe-Fisher Nursing Home v. United Food and Commercial Workers Union, Local 175/633* (2005), 144 L.A.C. (4th) 115 (Divisional Court);
2. *The Corporation of the City of Hamilton and Hamilton Professional Firefighters’ Association* (December 17, 2004), unreported (Goodfellow); and *Hamilton (City) v. Hamilton Professional Fire Fighters Assn. Local 288* [2006] O.J. No. 77 (Divisional Court);
3. *Toronto Transit Commission v. Amalgamated Transit Union, Local 113 (Health*

- Premium Grievance*) [2005] O.L.A.A. No. 182 (Harris); and *Toronto Transit Commission v. Amalgamated Transit Union, Local 113* [2006] O.J. No. 583 (Divisional Court).
4. *Ontario Power Generation Inc. v. Power Workers' Union (Health Premium Grievance)* [2005] O.L.A.A. No. 312 (Swan);
 5. *London Hydro v. Power Workers' Union (Health Premium Grievance)* [2005] O.L.A.A. No. 344 (Knopf); and *London Hydro v. Power Workers' Union (Health Premium Grievance)* [2006] O.J. No. 2761 (Divisional Court).
 6. *Re National Steel Car Ltd. and United Steelworkers of America, Local 7135* (2005), 142 L.A.C. (4th) 32 (Herlich); and *National Steel Car Limited and United Steel Workers of America, Local 7135* (January 27, 2006), Court File No. DC-05-282, unreported (Divisional Court);
 7. *St. Gobain Abrasives Canada Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 12 (Ontario Health Premium Grievance)* [2005] O.L.A.A. No. 673 (Trachuk);
 8. *London (City) v. Canadian Union of Public Employees, Local 107 (Health Premium Grievance)* [2006] O.L.A.A. No. 116 (Snow);
 9. *Jazz Air Inc. v. Air Line Pilots Assn., International* [2004] C.L.A.D. No. 442 (Teplitsky);
 10. *College Compensation and Appointments Council v. Ontario Public Service Employees' Union (Health Premiums Grievance)* [2004] O.L.A.A. No. 665 (Shime); and *Ontario Public Service Employees Union v. College Compensation and Appointments Council (For Colleges of Applied Arts & Technology)* [2006] O.J. No. 784 (Divisional Court);
 11. *Goodyear Canada Inc. v. United Steelworkers of America, Local 834L (Ontario Health Premium Grievance)* [2004] O.L.A.A. No. 689 (Tims);
 12. *Re Walker Exhausts and United Steelworkers of America, Local 2894* (2004), 135

- L.A.C. (4th) 285 (Samuels);
13. *Re College Compensation and Appointments Council and Ontario Public Service Employees Union* (2004), 135 L.A.C. (4th) 29 (Whitaker); and *Ontario Public Service Employees Union v. College Compensation and Appointments Council (For Colleges of Applied Arts & Technology)* [2006] O.J. No. 784 (Divisional Court);
 14. *Re Smurfit-MBI and U.S.W.A., I.W.A. Council Local 1-500* (2005), 136 L.A.C. (4th) 331 (Fisher);
 15. *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);
 16. *Woodbine Entertainment Group v. Service Employees International Union, Local 528 (Health Premium Grievance)* [2005] O.L.A.A. No. 131 (H.D. Brown);
 17. *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);
 18. *Placer Dome (CLA) Limited Porcupine Joint Venture and United Steel Workers of America, Local 7580* (March 21, 2005), unreported (Kennedy);
 19. *Regional Municipality of Waterloo and Canadian Union of Public Employees, Locals 1656 and 1883* (March 22, 2005), unreported (Nairn);
 20. *Selkirk Canada Corp. v. Sheet Metal Workers' International Assn. (Health Premiums Grievance)* [2005] O.L.A.A. No. 163 (Shime);
 21. *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);
 22. *Ontario Nurses' Assn. v. Participating Hospitals (Health Premium Grievance)* [2005] O.L.A.A. No. 280 (H.D. Brown);
 23. *Thermal Ceramics v. United Steelworkers of America, Local 16056 (Health Premium Grievance)* [2005] O.L.A.A. No. 346 (Samuels);
 24. *Canadian Union of Public Employees, Local 1 v. Toronto Hydro (Health Premium*

- Grievance*) [2005] O.L.A.A. No. 436 (Howe);
25. *Associated Spring Operations v. United Steeworkers of America, Local 871 (Health Premium Grievance)* [2005] O.L.A.A. No. 477 (Knopf);
 26. *Amalgamated Transit Union, Local 1587 v. Ontario (Greater Toronto Transit Authority - GO Transit) (Benefits Grievance)* [2005] O.G.S.B.A. No. 132 (Harris);
 27. *Toronto (City) v. Canadian Union of Public Employees, Local 79 (Ontario Health Premium Grievance)* [2005] O.L.A.A. No. 609 (Herman);
 28. *Peel Housing Corp. v. Ontario Public Service Employees Union, Local 280 (Ontario Health Tax Grievance)* [2005] O.L.A.A. No. 659 (Kaplan);
 29. *SKF Canada Ltd. v. International Assn. of Machinists and Aerospace Workers, Local 901 (Ontario Health Premium Grievance)* [2005] O.L.A.A. No. 671 (Burkett);
 30. *Re Flex'N Gate Canada Co. and C.A.W., Local 195* (2005), 145 L.A.C. (4th) 19 (Watters);
 31. *United Food and Commercial Workers Union, Local 416P v. Smucker Foods of Canada Co.* [2005] C.L.A.D. No. 652 (Etherington);
 32. *Communications, Energy and Paperworkers Union of Canada v. PPG Canada Inc. (Health Care Benefits Grievance)* [2005] O.L.A.A. No. 684 (MacDowell);
 33. *Aventis Pasteur Ltd. v. Communications, Energy and Paperworkers Union of Canada, Local 1701 (Health Premium Grievance)* [2005] O.L.A.A. No. 759 (Burkett);
 34. *AOC Canada Inc. v. Union of Needletrades, Industrial and Textile Employees (Health Premium Grievance)* [2005] O.L.A.A. No. 758 (Burkett);
 35. *United Steelworkers of America, Local 6571 v. Gerdau Ameristeel (Health Benefits Grievance)* [2006] O.L.A.A. No. 16 (Cummings);
 36. *Peterborough Regional Health Care v. Ontario Public Service Employees Union (Health Premium Grievance)*[2006] O.L.A.A. No. 26 (Kaplan);
 37. *Quaker Oats Co. of Canada v. Quaker Oats Employees Independent Union (Health Premium Grievance)* [2006] O.L.A.A. No. 135 (Rayner);

38. *Toronto Zoo v. Canadian Union of Public Employees, Local 1600 (Health Premium Grievance)* [2006] O.L.A.A. No. 71 (Starkman);
39. *Owens-Corning (Canada) Inc. v. Union of Needletrades, Industrial and Textile Employees, Local 1305, (Health Premium Grievance)* [2006] O.L.A.A. No. 62 (Raymond);
40. *Vaughan (City) v. Canadian Union of Public Employees, Local 905 (Health Premium Grievance)* [2006] O.L.A.A. No. 133 (Kaplan);
41. *Communications, Energy and Paperworkers Union of Canada, Local 2003 v. University of Guelph (Health Premium Grievance)* [2006] O.L.A.A. No. 164 (Devlin);
42. *Ottawa Police Assn. v. Ottawa Police Services Board (Health Premium Grievance)* [2006] O.L.A.A. No. 215 (McLaren);
43. *BASF Inc. v. Communications, Energy and Paper Workers Union of Canada, Local 775 (Health Premium Grievance)* [2006] O.L.A.A. No. 174 (P.C. Picher);
44. *Stepan Canada Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 17 (Health Premium Grievance)* [2006] O.L.A.A. No. 162 (Simmons);
45. *Windsor (City) v. Canadian Union of Public Employees (Windsor Municipal Employees), Local 543 (Health Premium Grievance)* [2006] O.L.A.A. No. 200 (McLaren);
46. *Re Canada Post Corporation and Canadian Union of Postal Workers* (2005), 146 L.A.C. (4th) 195 (Burkett);
47. *Cassellholme Home For the Aged v. Canadian Union of Public Employees (Health Premium Grievance)* [2006] O.L.A.A. No. 259 (Tims);
48. *TRW Canada Ltd. v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 1411 (Health Care Grievance)* [2006] O.L.A.A. No. 228 (H. Brown);
49. *Cascades Boxboard Group Toronto, a Division of Cascade Canada Inc. v.*

- Communications, Energy and Paperworkers Union of Canada, Local 1112 (Health Premium Grievance)* [2006] O.L.A.A. No. 321 (Crljenica);
50. *Cassellholme Home for the Aged v. Canadian Union of Public Employees (Health Premium Grievance)* [2006] O.L.A.A. No. 259 (Tims);
 51. *Loblaws Supermarkets Ltd. v. United Food and Commercial Workers International Union, Local 1000A (Health Premium Grievance)* [2006] O.L.A.A. No. 436 (Herman);
 52. *Nestle Canada Inc. v. Canadian National Federation of Independent Unions (Health Premium Grievance)* [2006] O.L.A.A. No. 561 (Burkett);
 53. *Norfolk Power Distribution Inc. v. Canadian Union of Public Employees, Local 1000 (Health Premium Grievance)* [2006] O.L.A.A. No. 546 (H.D. Brown);
 54. *Ontario Public Service Employees Union, Local 116 v. Children's Aid Society of London and Middlesex (Health Premium Grievance)* [2006] O.L.A.A. No. 513 (Whitaker);
 55. *TRW Canada Ltd. v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 1411 (Health Care Grievance)* [2006] O.L.A.A. No. 228 (H. Brown); and
 56. *Zehrs Markets, a Division of Zehrmarket Ltd. v. United Food & Commercial Workers International Union, Local 1977 (Health Premium Grievance)* [2006] O.L.A.A. No. 439 (Herman).

After the hearing, the Union forwarded five unreported Ontario Court of Appeal decisions on this issue - *Lapointe-Fisher* (#1, above), *Hamilton* (#2, above), *Toronto Transit* (#3 above), *National Steel Car* (#6, above), and *College Compensation* (# 10 and #13, above) - all of which were issued December 8, 2006.

VII. CONCLUSIONS

The old Ontario Health Insurance Plan premiums were abolished effective January 1, 1990. However, the parties have maintained, and occasionally revised, the language in each of their collective agreements since 1990. Since 1999 the language has stated that the Employer is to “contribute one hundred percent (100%) of the cost of the monthly premium of the Ontario Health Insurance Plan, or its successor.” In 2004 the parties added language to both agreements stating that the Employer’s obligation was “restricted” to paying the premiums “necessary to enrol members” in the plans.

By continuing to include language requiring the Employer to pay “monthly premiums of” OHIP in the two collective agreements, and occasionally revising that language, during a time when there were no such premiums, it seems obvious the parties intended to cover some future premiums, should such future premiums be introduced. The parties’ 2004 language clarified their intention as to the type of premiums the Employer was required to pay. At about the same time, the new Ontario Health Premium was introduced as an amendment to the Province of Ontario’s *Income Tax Act*. The question is this: Did the parties intend that the Employer would be required to pay the Ontario Health Premium?

In most grievances the primary task of an arbitrator is to determine what the collective agreement means - that is, what did these parties intend? In my view the fundamental direction to arbitrators in the Divisional Court and the Court of Appeal decisions dealing with the judicial review of arbitration awards on this Ontario Health Premium issue has been that an arbitrator must determine what the parties to the particular collective agreement intended.

The place to begin when determining the parties’ intention is, as usual, with the specific language of the collective agreement.

The principal provisions in dispute are brief and the wording is the same in both collective

agreements. I repeat the articles from the sworn officers collective agreement here for ease of reference.

- 11.1 The amount of and eligibility for benefits referred to in this agreement are subject to the terms and conditions of the policy or policies of the insurer providing such benefits. Any dispute as to entitlement to benefits provided under the policy or policies of insurance is between the member and insurer. The Board agrees to use its best efforts on behalf of the member in the event of such dispute. **It is understood that the Board's obligation under this article is restricted to the payment of its portion of the premiums necessary to enrol members in the benefit plans described in this agreement. (my emphasis)**
- 11.2 The Board will contribute one hundred percent (100%) of the cost of the monthly premium of the Ontario Health Insurance Plan, or its successor, and an extended health benefit plan as detailed on Schedule B attached hereto, for all members who are subscribers, their spouses, and all eligible dependants. . . .

In order to find that the Employer is required by these collective agreements to pay the Ontario Health Premium, I would have to find that the Ontario Health Premium is a “monthly premium of” OHIP (Article 11.2) and that its payment is “necessary to enrol members in” OHIP (Article 11.1).

I begin by considering Article 11.1 - is the payment “necessary to enrol members in” OHIP? Unlike many parties to other collective agreements, these parties have provided guidance as to their intention regarding which of the possible OHIP “premiums” this Employer has agreed to pay.

Assuming for the moment that the Ontario Health Premium is a premium included in Article 11.2 of the sworn officers collective agreement, Article 11.1 expresses these parties' agreement as to a restriction on the premiums this Employer must pay. There was no suggestion by the Union that the payment of the new Ontario Health Premium was “necessary to enrol members in” OHIP. In fact, OHIP is available to all residents of Ontario. A resident with no income is still entitled to OHIP coverage. OHIP coverage does not depend upon the payment by a resident of his or her taxes. In my view, then, the payment of the Ontario Health Premium is not necessary in order to enrol in OHIP.

The Union submitted that Article 11.1 had another purpose, a purpose different than the limitation on payment of premiums. The Union said Article 11.1 was instead intended to deal with the issue of whether the Employer had an obligation to provide actual benefits under any of the plans, as distinct from an obligation to ensure that there was such a benefit plan. In recent years there have been a number of arbitration and court cases on the question of whether the language in those collective agreements required the employer to ensure that benefits, such as long term disability benefits, were actually provided and whether, if benefits were not provided, a union could pursue those benefits from the Employer through the grievance and arbitration procedure, as opposed to suing the insurer in court. The Union said it was this issue which the parties intended to address in Article 11.1.

While I agree that this is one of the apparent intentions of the parties in this section, in my view the Article goes beyond that. Had the parties only intended to do as the Union has suggested, they could have agreed to language such as:

It is understood that the Board's obligation under this article is restricted to the payment of its portion of the premiums for the benefit plans described in this agreement.

But these parties went beyond what was needed to address the issue of whether the Employer was obliged to ensure that benefits were provided. By specifying premiums "necessary to enrol members" it seems clear these parties also intended to limit the type of premiums which the Employer was required to pay to those premiums needed to ensure enrollment in the plans.

I find that the payment of the Ontario Health Premium is not necessary in order to enrol members in OHIP. The Ontario Health Premium is therefore not a premium of the type which these parties intended the Employer pay under Article 11.1 of the sworn officers agreement.

The language of the civilian agreement is the same and I reach the same conclusion as to the

parties' intention there.

The above conclusion is sufficient on its own to dispose of the grievance. I will, however, also consider whether the Ontario Health Premium is included under Article 11.2 of the sworn agreement or Article 12.3 of the civilian agreement. Both agreements use the words "monthly premium of" OHIP or its successor.

The old OHIP premium was expressed as a monthly premium. Both collective agreements now speak of the Employer paying a "monthly" premium.

It is difficult to describe the new Ontario Health Premium as "monthly." An employer may make regular deductions from each pay and remit those deductions to the province but even in a situation of a monthly pay system, it is difficult to describe the Ontario Health Premium as a "monthly" premium. The Ontario Health Premium is an annual premium. The amount of the Ontario Health Premium can be estimated early in the year and monthly, or other periodic, deductions made from an employee's income, but the actual amount of the Ontario Health Premium can only be calculated when the person's annual income and any deductions are known so that annual taxable income may be calculated. I am of the view that when specifically using "monthly" to describe premium, these parties did not intend to include an annual premium such as this Ontario Health Premium.

In addition, in order that this Employer be required to pay the Ontario Health Premium, the Ontario Health Premium would have to be "of" OHIP. But can the Ontario Health Premium be said to be a premium "of" OHIP? The Ontario Health Premium is a form of income tax. The tax may be spent to provide health care but it is not included in the legislation for OHIP and is not "of" that Plan. While I accept that the Ontario Health Premium may be "for" OHIP, I cannot find that it is "of" OHIP.

But is the Ontario Health Premium covered by the language “or its successor”?

I note that the parties disagreed as to the meaning of the phrase “or its successor.” On this issue, several documents from the 1990's were in evidence. Those documents trace the changes in the language from 1990 through 1999. There was no oral evidence and the conclusions must be derived from those documents.

Before 1992 both agreements had been “monthly premium of the Ontario Health Insurance Plan.” The 1992-93 and the 1994 sworn officers agreements remained unchanged. However, the relevant section of the 1992-93 and the 1994 civilian agreements, which had been the same as the sworn officers agreements, was amended to read “monthly premium of the Ontario Health Services Payroll Tax.” There was no such tax and it appears the parties meant the Employer Health Tax.

In the 1998-2002 agreements, which were the next collective agreements, the language of both agreements was changed to that found today. However, the 1999 Memorandum of Agreement signed by the parties at the conclusion of bargaining for both collective agreements does not indicate that the parties agreed to change the language. The changes appear to have been made in an administrative “tidying up” of the language and to have been intended simply to make the two agreements the same, without making any substantive change. I conclude from those documents that the parties intended by this language of “or its successor” to include the Employer Health Tax, which had been called the Ontario Health Services Payroll Tax in the civilian agreement, that tax being in some sense a “successor” to the old OHIP premiums. I find that the parties included this language so that the Employer would be required by the collective agreement to also pay the Employer Health Tax. As a result I find that the Ontario Health Premium is not covered by the words “or its successor.”

It follows that the Ontario Health Premium is not included in Article 11.2 of the sworn officers agreement nor in Article 12.3 of the civilian agreement.

I have considered the many other arguments (e.g., the impact of retiree coverage, payment problems, etc.) but, given my view of the parties' intention derived from the particular language of these collective agreements, it is unnecessary to address those issues here.

Disposition

I have concluded that the payment of the Ontario Health Premium is not "necessary to enrol members in" OHIP. In addition, I have concluded that the Ontario Health Premium is neither "monthly" nor "of" OHIP, nor is it "its successor." It follows that the Employer has violated neither collective agreement in failing to pay the Ontario Health Premium. The grievance is therefore dismissed.

Dated at London, Ontario this 9th day of February, 2007.

Howard Snow, Arbitrator