

## LABOUR AND EMPLOYMENT NEWSLETTER



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### HEALTH PREMIUM UPDATE

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Two more arbitration decisions have recently been released that address whether or not employers are required to pay the new Health Premium for employees. Both decisions are good news for employers because in each case the arbitrator ruled that the employer was not required to pay the new Health Premium.

#### **Goodyear Canada and United Steelworkers of America**

In this instance, the Union brought a policy grievance alleging that the failure of the Company pay the Health Premium on behalf of bargaining unit members breached the collective agreement.

In support of its position, the Union relied on language in the collective agreement in which the Company agreed to “pay the whole of the monthly premium to the Ontario Health Insurance Commission so as to qualify the employer for entitlement to receive the insured benefits provided by the Ontario Health Insurance Plan.” The Company also agreed to pay any subsequent increase that might be implemented for the Ontario Health Insurance Plan.

Arbitrator Mary Lou Tims dismissed the Union's grievance. She found no relationship between the payment of the Health Premium and accessibility to insured benefits under OHIP. Absent this relationship, the grievance could not succeed because the language in the collective agreement requires the Company is to pay the premium that qualifies employees for entitlement to OHIP.

#### **College Compensation and Appointments Council and OPSEU**

In this case the Union's claim that the Company had breached the collective agreement by refusing to pay the new Health Premium was based on an agreement reached by the parties on March 31, 2004. The language in that agreement was as follows:

The parties recognize that the method of funding OHIP has been changed from an individually paid premium to a system funded by an employer paid payroll tax.

If the government, at any time in the future, reverts to an individually paid premium for health insurance, the parties agree that the Colleges will resume paying 100% of the billed premium for employees.

Arbitrator Owen Shime stated that, in his view, “the legislative intent is to enact what is in substance a tax, and that reference in the *Act* to Ontario Health Premium is merely a label used to describe the tax; that label is not intended to convert the substantive tax into something different, namely a premium.” He went on to state that “the mere labelling or calling the payment a Health Premium cannot derogate from the clear intention of the legislation to require individuals to pay a tax.”

In dismissing the grievance, Arbitrator Shime also concluded that the introduction of Health Premium was an extraordinary event that was not in contemplation of the parties when they negotiated the above reference language. In any event, he concluded that the language did not encompass the Health Premium introduced by the government as it was not a return or change back to an individually paid premium.

### **Conclusion**

Although the interpretation of each collective agreement will turn on its particular language, these decisions are of value to all employers who may be facing a similar claim from their union. Most notably, these decisions indicate:

- (a) that there is no relationship between the new Health Premium and OHIP, which will make it more difficult for unions to assert that old language referring to OHIP premiums should be interpreted as covering the new Health Premium as well; and
- (b) that the Health Premium is a tax and not a premium (as those terms are legally defined) despite its name.

### **ABOUT THE AUTHOR:**

Shane Smith is a member of our Labour and Employment Group. He provides legal services and advice to a wide range of clients in the private and public sectors.

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