

IN THE MATTER OF THE *POLICE SERVICES ACT*

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE GUELPH POLICE SERVICES BOARD

- The Employer

and

THE GUELPH POLICE ASSOCIATION INC.

- The Union

AND IN THE MATTER OF a grievance of Judith Drysdale

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer
David S. Thompson - Counsel
and others

On behalf of the Union
Caroline V. (Nini) Jones - Counsel
and others

Hearing held July 25, 2005, in Guelph, Ontario.

AWARD

I. INTRODUCTION

This grievance considers whether a police officer receiving compensation under the *Workplace Safety and Insurance Act* is entitled to the medical benefits provided to employees under the collective agreement.

II. THE EVIDENCE

Judith Drysdale, the grievor, is a constable with the Guelph Police Services Board, the Employer. She has been employed as a police officer for nearly 20 years.

In 1996 the grievor was injured at work. Following her injury she made a workers compensation claim and since then she has pursued all available options under the *Workplace Safety and Insurance Act*. Unfortunately the grievor did not recover from her injury and in 2002 the Workplace Safety and Insurance Board (WSIB) determined that she was totally impaired. February 2004 the WSIB advised the grievor that she would receive a 100% future economic loss (FEL) benefit - that is 90% of her pre-injury earnings - and that she would receive this benefit until she was 65, unless she recovered.

The collective agreement provides for a number of benefits such as hospital, drug, medical, dental, and vision care benefits. The Employer maintained the grievor's benefit coverage until November 30, 2004, at which time it terminated the benefits.

There was evidence attempting both to show the Employer's past practice with this issue and also to support an argument of estoppel. However, the evidence indicated that the grievor was the first employee to have been on a 100% WSIB future economic loss (FEL) benefit

as a result of impairment. It appeared that other employees had received long term disability (LTD) payments and the Employer had maintained their benefits, although this evidence was imprecise.

The grievor testified that her health has improved in the last two years and that she hopes to be able to return to work.

III. PROVISIONS OF THE COLLECTIVE AGREEMENT

The following are the key provisions of the parties' 2003-2005 collective agreement:

DEFINITIONS

...

MEMBER - shall mean all police members within the Guelph Police Association Incorporated but does not [sic] include any members of the Senior Officer's Association, Deputy Chief, Director of Corporate Services, Chief of Police nor any member who is not a police officer.

...

9 LIFE INSURANCE

9.1 The Board shall pay one hundred (100%) percent of the premiums payable for Group Life Insurance for all members equal to two (2) times their annual salary, double indemnity.

10 MEDICAL BENEFITS

10.1 The Board shall provide hospital, drug, medical insurance, dental and vision plan coverage. The Board shall pay one hundred percent (100%) of the premium costs for all members including the member's spouse and dependant children in accordance with the following policies:

- a) Maritime Life semi-private
- b) Maritime Life extended health care plan . . .
- c) Ontario Health Insurance Plan
- d) Maritime Life Dental Plan . . .
- e) Maritime Life Vision Care . . .

- f)* The Board will pay one hundred (100%) percent of the benefit premium costs for a), b), c), d) and e) for the spouse and dependent children of a member who has died prior to retirement, for a period of twenty-four (24) months from the date of the member's death. Such coverage will terminate if the spouse turns sixty-five (65) years of age, remarries or is eligible for coverage through another employer.
- g)* Widows/Widowers and dependents of Police Officers killed in action while in the discharge of their duties or from injuries received in the service of the Board as a Police Officer, and in either case for which the compensation award is made by the Workplace Safety and Insurance Board, the Board will have the above named included in the benefit plans above (a, b, c, d and e). This provision will be provided to widows/widowers outlined above only if they can demonstrate that they have no other means of access to the above benefit coverage. In the event the widow/widower remarries or when they reach the age of sixty-five (65), the benefits shall cease. This provision will be provided to dependent children as defined in the definition section of this agreement, only if they can demonstrate that they have no other means of access to the above benefit coverage.
- h)* The Board will pay 100% of the premium cost of a), b), c), d) and e) and 100% of the premium for Group Life Insurance of \$25,000.00 for a member voluntarily electing retirement or a member on disability pensions subject to the following conditions:

 - 1.* This program will be extended only to members voluntarily electing retirement or disability pension before the age of 60 and within ten years of their normal retirement date. This is interpreted to mean that the member is 50 years of age or older for an age 60 normal retirement date.
 - 2.* The retiring or disabled member must have a minimum of ten (10) years continuous service with the Board at the time of retirement or disability to be eligible for this program.
 - 3.* The above benefit coverage terminates in the event of the death of the retired or disabled member where death precedes the member's 65th birthday.
 - 4.* This provision will be provided to retiring or disabled members provided they are not receiving their benefits from another employer, or through the Government or Government Agencies. Benefits are not available if equivalent coverage is available through member's spouse. If the spouse's plan has a similar condition, the member's plan will continue.
 - 5.* The above benefit coverage terminates when the member reaches their 65th birthday.
 - 6.* . . .

10.2 BENEFITS COVERAGE

The Board shall continue to pay the premiums for hospital, drugs, medical insurance, dental, vision plan coverage and life insurance benefits for a member who is on an approved unpaid leave of absence owing to illness or off-duty injury, for a period of two years (24 months) from the date of commencement of the leave

period.

...

12 INJURY ON DUTY

12.1 A member of the Service who is injured in the course of performing their duties within the meaning of the *Workplace Safety Insurance Act*, and is determined to be totally incapacitated, will be entitled to their basic salary while they are thereby incapacitated up to one (1) year and no deduction will be made from their sick leave credits in respect of their absence as a result thereof.

IV. UNION POSITION

The Union noted that the grievor is a “member” under the collective agreement, currently off work due to a workplace injury. Article 10.01 requires the Board to provide benefits to “all members.”

The particular benefits are listed in Article 10.1, clauses a) through e). Clauses f), g), and h) of Article 10.1 are intended to expand the classes of persons who are entitled to benefits, not to restrict the classes. In clause f) benefits are extended for up to 24 months to the spouse and dependent children of those officers who die before retirement. In clause g) greater benefits are extended to the spouse and children of those officers who die while working, or as a result of a workplace injury. Widows and widowers receive benefits until age 65, and their children receive benefits while dependent. Clause h) extends benefits to another group - the retirees. Those members who retire - whether they take an early retirement, or retire at the usual retirement age, or retire on a disability pension - are entitled to benefits if they meet the other requirements as to age, service, etc. This clause ought not to be read as excluding from benefits persons who are otherwise entitled to benefits under the introductory language of 10.1 - that is “members” such as the grievor. Clause h) is simply intended to extend benefits to retirees and persons on an Ontario Municipal Employees Retirement System (OMERS) or a Canada Pension Plan (CPP) disability pension. The Union submitted that the

grievor's WSIB benefit is not a pension, it is not a disability pension, and clause h) has no application to her.

There is a specific exception in Article 10.2 regarding benefit coverage for those officers injured off duty (24 months of benefits) but there is no exception for officers injured at work. The Union asked me to take notice of the importance placed by both police services and police unions on protecting and supporting police officers who put their lives on the line serving the public. It would be absurd to interpret a police agreement as providing better protection to those officers injured off duty than to those officers injured at work, unless that interpretation is very clear. It is not clear in this agreement. A reasonable interpretation of this language leads to this normal expectation and that reasonable interpretation should be preferred.

It would also be unreasonable to interpret the agreement to mean that the grievor's spouse and children would have better benefits if she were to have died rather than, as here, if she remains alive, remains a member, remains a police officer employed by the Employer, and remains hopeful of recovering her health and returning to work.

Finally, a FEL (future economic loss) benefit can be for any percentage of future loss and a person with a partial FEL benefit award (e.g. 10%) may well continue working. It would be absurd to treat this provision as entitling the Employer to cut off the benefits for an officer with a partial FEL award who was working.

The Union sought:

1. A declaration that the Employer violated the agreement when it terminated the grievor's benefits;
2. An order for compensation for that violation of the agreement;

3. An order that her benefits be reinstated; and,
4. That I remain seised to deal with any issue arising from the above, including the calculation of damages.

The Union referred to the following: *Re Grey County Board of Education and Ontario Secondary School Teachers' Federation, District 23* (1983), 12 L.A.C. (3d) 412 (Teplitsky); *Re Toronto Police Services Board and Toronto Police Association* (2001), 96 L.A.C. (4th) 431 (Marcotte); *Re Belleville Police Services Board and Belleville Police Association* (2000), 91 L.A.C. (4th) 99 (Goodfellow); *Ontario Municipal Employees Retirement System Act*, R.S.O. 1990, c. O.29, as amended; an extract from an OMERS web site on "Disability Benefits"; an extract from a Canada Pension Plan web site on "Disability Benefits"; Brown and Beatty, *Canadian Labour Arbitration*, 3rd Edition, Section 8:3300 Illness: Benefits and Other Rights; *Re Canadian Union of Public Employees, Local 43, and Municipality of Metropolitan Toronto* (1972), 24 L.A.C. 318 (Weiler); *The Board of Commissioners of Police for the City of Belleville and The Belleville Police Association* (October 5, 1989), unreported (Aggarwal); *Re Governing Council of the University of Toronto and Service Employees Union, Local 204* (1975), 10 L.A.C. (2d) 417 (Adell); *Canadian National Railway v. Beatty* (1981), 34 O.R. (2d) 385, 128 D.L.R. (3d) 236, 82 C.L.L.C. 14,163, 11 A.C.W.S. (2d) 505 (Divisional Court); *Montfort Hospital v. Ontario Nurses' Assn. (Begley Grievance)* [2000] O.L.A.A. No. 448 (Eberlee); and *Power Workers' Union v. Ontario Power Generation Inc. (Shaw Grievance)* [2000] O.L.A.A. No. 542 (Mitchnick).

V. EMPLOYER POSITION

The Employer submitted that under Article 10 clause h) only some persons who receive disability pensions are entitled to benefits. Those persons had to be within 10 years of normal retirement age and the grievor is not. The grievor is therefore not entitled to benefits.

Disability pension should be given its ordinary meaning. The benefits paid under the *Workplace Safety and Insurance Act* for future economic loss (FEL) are made on a periodic basis. The word pension adequately covers this periodic FEL payment. The payments are made for a disability, such that a FEL is a “disability pension.” The term “disability pensions” is not limited by the language of the clause to OMERS and CPP disability pensions.

In particular, this grievor received a FEL award because of her injury and her disability. She is impaired. She receives a periodic payment such as any other person on a pension.

Moreover Article 12 specifically addresses the entitlement of persons on WSIB benefits and that Article does not require the Employer to maintain these benefits. The requirement to maintain benefits should not be read into other, more general, articles.

As for the Union submission that a person with a partial FEL benefit award would also be covered by clause h) and denied benefits, the cure for that anomaly is to read into the agreement a requirement that the person no longer be working.

The Employer referred to the following: the definition of “pension” in the Shorter Oxford English Dictionary, 1959; the definition of “pension” in the New Lexicon Webster’s Dictionary of the English Language, Encyclopedic Edition, 1987; *Green v. Canadian Auto Workers Union Local #222* (2000), CanLII 13370 (OLRB); *Boothe v. United Steelworkers of America, Local 13751* (2001), CanLII 11987 (OLRB); *Roos v. United Food and Commercial Workers International Union, Locals 175 and 633* (2001), CanLII 9240 (OLRB).

VI. CONCLUSIONS

This is an issue of the interpretation of the parties' agreement. I am to determine what the parties intended as the result if an officer became disabled due to a workplace injury - would that employee remain entitled to the insured benefits in Article 10? This was the first time the parties have confronted this situation.

I begin with an examination of the language of the collective agreement.

The grievor is a "member" and when member is used in the agreement she is included unless the opposite result is clearly intended.

Article 9 provides life insurance for all members.

Article 10.1, in the introductory words, requires the Employer to provide and pay for benefits for all members. Those actual benefits are listed in clauses a) through e). Clause f) clearly extends those benefits to a group of persons who are not members. Clause g) also clearly extends benefits to another group of persons who are similarly not members. Clause h), regardless of what else it may have been intended to do, extends benefits to another group of persons who are not members - retirees who are no longer employed by the Employer as police officers.

I note that clause h) uses the word member throughout. However, in the references to "retired member" it seems clear that the parties intended to mean those retired or former police officers who are no longer employed by the Employer and are no longer covered as employees by the collective agreement, precisely because they have retired. Consistency would suggest the parties used "disabled member" in a similar manner to mean former police

officers who are, like retired members, no longer employed by the Employer and no longer covered by the agreement, but are in receipt of a disability pension. The grievor is not such a person as she remains employed and a member.

More importantly, it is unusual that a provision which is clearly intended to provide benefits to a group of persons who would not otherwise be entitled to those benefits should also have been intended to exclude from benefit coverage some persons already covered elsewhere in the agreement. That is, it would be unusual for this provision which adds benefits for some retirees and some of those receiving disability pensions (i.e. those former employees who are over 50 with 10 years of service) to also have been intended by the parties to exclude benefit coverage for some members who are still employed and would otherwise be entitled to benefits under the general language providing benefits for all members.

In interpreting this provision I agree with the Union that police agreements and the parties to police agreements are generally more protective of those officers injured or killed while on duty than those injured or killed while off duty. I agree that it would be surprising to think that these parties intended that those injured off duty were entitled to 24 months benefit coverage and those injured at work were entitled to nothing.

Similarly, I agree with the Union that if the grievor's FEL (future economic loss) award is a disability pension it would lead to a most unusual result in that it would suggest the parties intended that an officer with a partial FEL award would also be in receipt of a "disability pension" and could also be cut off benefits although still working.

The Employer suggested that the solution to the last problem was to read into clause h) a requirement that the person in receipt of the FEL or other disability pension not be working. However, I do not think the parties intended that a person on a FEL award who remained an

employee and remained a member would be covered by clause h). Instead, I conclude that the parties did not intend clause h) to apply to a person such as the grievor and that there is no need to read in a provision to the effect that FEL recipients are to lose benefits only if they are no longer working.

I conclude that a disability pension in clause h) does not include a FEL benefit award made under the *Workplace Safety and Insurance Act* to a police officer who remains an employee and a member under this agreement, and that clause h) has no application to the grievor.

The grievance is therefore allowed. I find that the Employer violated the agreement when it terminated the grievor's benefits and I direct the Employer to reinstate the grievor's benefits. The grievor is also entitled to damages from the Employer for any loss she suffered as a result of this violation of the agreement. The issue of damages is referred back to the parties, as the Union had suggested.

I remain seised to deal with any issue which may arise in the implementation of this award

Dated in London, Ontario, this 14th day of October, 2005.

Howard Snow, Arbitrator