

**ONTARIO COURT OF APPEAL AFFIRMS "CORRECTNESS" STANDARD FOR
ARBITRATORS INTERPRETING STATUTES OF GENERAL APPLICATION**

INTERPRETATION OF WAGE INCREASES UNDER THE SOCIAL CONTRACT ACT

International Union of Operating Engineers, Local 772 v. Philip Utilities Management Corp.,
(2001) 54 O.R. (3d) 448 (Ont. C.A.).

Facts

Philip Utilities Management Corp. ("PUMC") is the successor employer to a collective agreement ("Agreement") between the Regional Municipality of Hamilton-Wentworth ("Region") and the International Union of Operating Engineers Local 772 ("Union"). The three year Agreement commenced on October 1, 1991. The Agreement provided for a series of wage increases for various job classifications. The final wage increase was to come into effect on October 1, 1993 and provided for a 5 per cent increase in each job classification.

The *Social Contract Act*, 1993, S.O. 1993, c.5 ("Act") came into force on June 14, 1993 and applied to the Region. The Act stipulated that future increases in compensation provided for in existing collective agreements were void. However, a union could preserve and defer these increases as long as they were not merit increases, cost of living increases or increases resulting from any movements on a pay scale or other grid system. On July 5, 1994, the Union gave the Region written notice that in accordance with the Act, it elected to preserve the October 1, 1993, 5 per cent increase.

In October 1996, the Union filed a grievance that its members failed to receive on October 1, 1996, the wage increases that had been preserved under the Act.

Arbitrator Louisa Davie

The Arbitrator held that the Union's election in July 1994 did not preserve and defer the 5 per cent wage increase because it fell within the exceptions to the Act (merit increases, cost of living increases and increases resulting from movements on a pay scale or other grid system). Specifically, the Arbitrator found that the wage increase was a compensation increase that could not be preserved by an election. Because of this interpretation of the Act, the Arbitrator declined to rule on the employer's alternative grounds for denying the wage increase. The grievance was dismissed.

Divisional Court

The Divisional Court reversed the arbitrator's decision on a standard of correctness. The Court held that because the sole issue before it was the interpretation of the Act, which was a statute of general application, the arbitrator was required to be correct. In the Court's view the wage increase was a simple increase in pay and did not fall within one of the exceptions. Accordingly,

it could be preserved and deferred. The Court ordered the 5 per cent wage increase to take effect and be paid from October 1, 1996.

Appeal allowed.

Ontario Court of Appeal

The Court affirmed the standard of correctness as the correct standard of review. The Court affirmed the Divisional Court's ruling that the wage increase did not fall within one of the exceptions and could therefore, be preserved. However, the Court referred the matter back to arbitration for argument on the employer's alternative grounds for denying the wage increase that was argued but not ruled upon at the initial arbitration.

Appeal allowed in part.