FTR Now

OMERS Supplemental Benefits: Bargaining Issues & Strategies for the Emergency Services Sector

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With the passage of the *Ontario Municipal Employees Retirement System Act, 2006 ("OMERS Act 2006")*, police [1], firefighters [2] and paramedics [3] are now able to bargain additional OMERS pension benefits, called "supplemental benefits". This ability to bargain supplemental benefits will have a dramatic impact on local labour relations and related costs.

The *OMERS Act 2006* requires that police, firefighters, and paramedics, be able to negotiate local access to certain supplemental benefits effective July 1, 2008. Table 1 below shows the benefits currently provided under the OMERS Primary Plan, as well as the supplemental benefits that are accessible as of July 1, 2008.

Table 1 – Available Benefits [4]

	Benefit Provisions	
	Primary Plan	Supplemental Plan*
Accrual Rate	2.0%	2.33%
Pensionable Earnings	"Best-five" (Avg. of best-five consecutive years of contributory earnings)	"Best-three" or "Best-four" (Avg. of best-three or best-four consecutive years of contributory earnings)
Early retirement factors**		
For NRA 60	85 Factor	80 Factor
For NRA 65	90 Factor	85 Factor

* Supplemental Plan pays top-up portion only
** Early retirement is within 10 years of NRA

Table 2 below identifies which employee groups are eligible for the above supplemental benefits.

Table 2 – Eligibility [5]

	Police Officers and Firefighters (NRA 60)	Paramedics (NRA 65)	Police Civilians (NRA 65)
2.33 Accrual rate	yes	yes	no
80 factor [6]	yes	no	no
85 Factor [7]	no	yes	yes
"Best four" or "Best three" earnings [8]	yes	yes	yes

RULES GOVERNING PARTICIPATION

Before members of a police force, firefighters, and paramedics can enjoy access to any available supplemental benefit, their employer must "consent" to their participation.

In the context of a collective bargaining environment, "consent" will clearly include any negotiated agreement. However, an adjudicator will have to decide whether the word “consent” also includes an interest arbitration award. Until this issue has been settled, employers should consider challenging the authority of arbitrators to impose employer consent through interest arbitration.

Consent applies to employees within a covered “class”, and all employees in that class will be required to participate. The class concept allows for differentiation amongst individuals based on the nature and the terms of employment, and so employer consent can be limited to separately identifiable groups of employees, who share similar terms and conditions of employment.

From the range of available supplemental benefits listed earlier, only one such benefit can be provided to the covered class of employees within any thirty-six (36) month period. This limits the speed with which the full scope of supplemental benefits can be accessed by any one local employee group, but employers with more than one employee class could be required to respond to multiple proposals for supplemental benefits within any thirty-six (36) month period.

Should a local employee group gain access to a supplemental benefit (i.e., through negotiation or, if applicable, an interest arbitration award), service in that benefit will begin to accrue on a prospective basis commencing from the coverage date negotiated by the parties or, if applicable, set out in an arbitration award (the “Coverage Date”). The Coverage Date cannot be earlier than July 1, 2008.

If the Coverage Date occurs in a previous year, the employer will be obligated to make retroactive contributions for each member. Active members will have applicable retroactive member contributions deducted from subsequent pay, and former employees will be required to make lump sum payments. Indications are that OMERS will require payment immediately after the obligation arises (i.e., the date of the agreement or, if applicable, arbitration award). For active members, this could cause hardship if little or no pay is left for day-to-day living needs following deductions that are made in the weeks immediately following that date. Similarly, former members might not have ready access to cash to pay for the retroactive contributions. No remedy has been proposed to relieve these potential hardship situations.

Service prior to the Coverage Date can be purchased, but it will be each individual’s responsibility to pay for the entire cost of that service buy-back. Withdrawal from a supplemental benefit requires that all of the following conditions be satisfied:

1. there must be mutual agreement of the employer and the bargaining agent to withdraw or, if applicable, an award of an interest arbitrator endorsing the withdrawal;
2. 100% of all members who are accruing service in the benefit must first approve, by a secret ballot vote, such cessation of coverage; and
3. the OMERS Sponsors Corporation must provide its consent.

These rules curb the ability of employers and unions/associations to freely bargain out of supplemental benefits, and over time will ensure increased rates of participation.

THE COSTS OF PARTICIPATION

OMERS has disclosed the *initial* costs of supplemental benefits. These costs, which are reproduced in Table 3 below, are expressed as a percentage of “contributory earnings” (as defined by the OMERS primary plan).

Table 3a – Contribution Rates – NRA 60 [9] (employees and employers are each responsible for ½ of the cost)

		NRA 60 [10]	
	Supplemental Plan	Primary Plan	Total
2.33%	5.5%	0.4%	

80 factor [11]	1.9%	negligible	1.9%
85 factor [12]	–	–	–
Best 3 years	2.2%	none	2.2%
Best 4 years	1.7%	none	1.7%

Table 3b – Contribution Rates – NRA 65 [13] (employees and employers are each responsible for ½ of the cost)			
	NRA 65 [14]		
	Supplemental Plan	Primary Plan	Total
2.33%	4.7%	0.6%	5.3%
80 factor [15]	–	–	–
85 factor [16]	1.5%	negligible	1.5%
Best 3 years	1.8%	none	1.8%
Best 4 years	1.5%	none	1.5%

The contribution rates for supplemental benefits are in addition to contributions that are required to fund benefits under the primary plan, and as indicated in the chart above, the primary plan contribution rates will themselves increase with participation in the 2.33% accrual rate supplemental benefit. This is because participation in the 2.33% benefit is expected to result in earlier retirements and increased costs under the primary plan (referred to as the “rebound cost”). The primary plan rebound cost associated with the 2.33% benefit is also set above in table 3.

The contribution rates will not be static. They are based on a variety of assumptions, and will require adjustment over time to reflect actual plan experience. Consequently, employers and members should expect volatility in the cost of supplemental benefits. Employer costs will further be impacted by fluctuations in their local payroll.

On top of the above contribution rates, certain OMERS expenses relating to the implementation and operation of supplemental benefits are likely to be passed on to employers and members through levies or other charges. At the time of publication, there were no specific details concerning the potential scope of these additional costs. However, past service buy-back administration costs, litigation expenses, and other special or unusual fees, charges or expenses (which have not been factored into the above contribution rates) could be passed along as additional levies or charges. Since members are responsible for the cost of any past service buy-backs, employers will want to ensure that they are not required to pay for the associated administration costs.

SAMPLE FACT SITUATION

1st class firefighter earning $75,000

Age 50

20 years of service

Intends to retire at age 60

Participates in 2.33% benefit from age 50 to 60

Annual pension if best average earnings at retirement (age 60) are $80,000

Basic benefit = $48,000 [17]

2.33% benefit = $2,640

Annual cost for 2.33% benefit [18]

Supplemental Plan = $2,063
Primary Plan (rebound cost) = $150
Total = $2,213

BARGAINING CHECKLIST

1. **Evaluate costs**
    - Contribution rate impact (retroactive, as well as near and long-term)
    - Early retirement impact (payroll, service levels, recruitment and training costs, injury and absenteeism)
2. **Consider demographic issues**
    - What impact do demographics have on employee concerns/interests
    - How are these best leveraged
3. **Educate employees**
    - Pension impact
    - Individual costs
    - Possible alternatives for use of money
4. **Challenge proposals involving past service**
    - Past service is solely a member cost
5. **Consider challenging jurisdiction of arbitrator to award "consent"**

NEED HELP?

Hicks Morley lawyers have been working with employers and employer associations, including the Association of Municipalities of Ontario and the Ontario Association of Police Service Boards, since the changes to OMERS were first proposed in 2005. With that background, Hicks Morley is uniquely positioned to advise employers and employer associations on the implications and strategic issues flowing from the changes to OMERS.

If you have questions concerning OMERS supplemental benefits, please contact your regular Hicks Morley lawyer, or any of:

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[1] As defined in section 2 of the *Police Services Act*.

[2] As defined in subsection 1(1) of the *Fire Protection and Prevention Act*, 1997.7

[3] As defined in subsection 1(1) of the *Ambulance Act*.

[4] Source: OMERS

[5] Source: OMERS

[6] Unreduced pension at 80 points, if age 50 or older.

[7] Unreduced pension at 85 points, if age 55 or older.

[8] Compared to “best five” under the primary plan.

[9] Source: OMERS. Note, contribution rates are calculated as a percentage of “contributory earnings”.

[10] police officers and firefighters.

[11] applicable to NRA 60 members.

[12] applicable to NRA 65 members.

[13] Source: OMERS. Note, contribution rates are calculated as a percentage of “contributory earnings”.

[14] paramedics and civilian members of a police force.

[15] Applicable to NRA 60 members.

[16] Applicable to NRA 65 members.

[17] Amount includes bridge, payable until age 65.

[18] Based on current contribution rates. Contribution rates may change over the benefit accrual period.