NEW ENHANCEMENTS TO OMERS BENEFITS – WHAT MUNICIPAL EMPLOYERS NEED TO KNOW

Jordan Fremont, Natasha Monkman and Alyson Frankie, Hicks Morley Hamilton Stewart Storie LLP

As was reported in a Hicks Morley FTR Now, recently approved pension changes to the Ontario Municipal Employees Retirement System (OMERS) may increase employer pension costs and impact workforce management. The OMERS Sponsors Corporation (OMERS SC) completed a Comprehensive Plan Review which involved consideration of several proposed changes to the plan design and benefits. On November 15th, the OMERS SC Board of Directors voted to approve the following two proposed changes: (1) eliminate the 35-year limit for credited service and (2) allow paramedics to negotiate Normal Retirement Age (NRA) 60 participation.

Although a timeline for implementation has not yet been established, OMERS SC has indicated that the changes are unlikely to be adopted before January 1, 2021. Municipalities should be aware of these changes and be prepared to address the effect that they may have on pension costs and workforce management.

Elimination of 35-year Service Limit

Currently, OMERS limits credited service to 35 years. Credited service is one of the factors that determines the amount of pension benefit that a member will receive once they retire and begin receiving a pension from OMERS. As a result, employees participating in OMERS currently cease accruing credited service upon reaching 35 years of service. The OMERS employee and employer contributions also cease at this time.

In general, once the 35-year limit is eliminated, members who continue in employment after reaching 35 years of service will continue to accrue credited service in OMERS and will be required to continue making pension contributions. Employers will similarly need to continue making contributions to OMERS in respect of these employees. However, details are still being finalized. For example, a decision has not yet been made regarding whether pension accrual will resume for members who reached the 35-year limit and had their credited service accruals and corresponding contributions suspended prior to the effective date for this change.

Contribution costs for older and long-service workers are generally greater than those for younger and shorter service workers (as senior employees are also usually earning higher wages and salary). As a result, once the 35-year limit is removed employers may find that there is an overall increase in labour costs if a greater number of workers choose to continue in employment after accumulating 35 years of service, and as pension contributions will continue to be required in respect of these workers. Delayed retirements based on the opportunity to accrue further credited service could also impact employers' succession planning efforts. At least in the short term, this change could have a negative impact on the ability of employers to hire or promote younger workers.

NRA 60 for Paramedics

Most members of OMERS accrue pension benefits based on a NRA of 65. Exceptionally, the option to accrue an OMERS pension on the basis of NRA 60 is presently available to firefighters and certain

police positions. Paramedics have historically only had the option to earn a pension on the basis of NRA 65, but there has been a long time effort on the part of employee groups to seek the NRA 60 option for paramedics as well.

With the approval of the NRA 60 option for paramedics, it is expected that the unions representing paramedics will seek this benefit through collective bargaining.

Before agreeing to such a proposal, OMERS participating employers should consider the following issues:

- Adopting NRA 60 for paramedics will likely require that both employees and employers pay a higher contribution rate. Whereas the current contribution rates for NRA 65 members are 9.0%*/14.6%**, current contribution rates for NRA 60 members are 9.2%*/15.8%**.[1] Employers should therefore prepare projections based on the impact that a move to NRA 60 is likely to have on costs.

- An adjustment will also be made to the credited service that a member has already accrued at the time of conversion, which could result in up to a 25% reduction in the value of accrued benefits. Members whose NRA changes from 65 to 60 will have the option to buy none, some or all of the service adjustment applied to their credited service. Employers will likely receive requests to assist with these buy-back costs during the course of collective agreement negotiations regarding the NRA 60 benefit. Employers should not agree to such a request without first understanding the potential buy-back costs.

- It is possible that employers who reach an agreement with their paramedic employees on conversions to NRA 60 will see an increase in retirements at or around age 60 as employees take advantage of their adjusted pension benefits. Employers should consider the potential impact on their workforce planning.

Considerations for Municipal Employers

Additional details from OMERS regarding the implementation of these changes are expected, but in the meantime participating employers will want to start considering how these changes could impact their workplace and be prepared to address these proposals during bargaining.

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Jordan Fremont, Natasha Monkman and Alyson Frankie specialize in pension and benefits matters facing municipalities. If you have any questions about this or any other pension and benefits matter, do not hesitate to contact Jordan at 416-864-7228, Natasha at 416-864-7302 or Alyson at 416-864-7019. They may also be reached by email at: jordan-fremont@hicksmorley.com, natasha-monkman@hicksmorley.com and alyson-frankie@hicksmorley.com.

[1] * on earnings up to the Year's Maximum Pensionable Earnings (YMPE); ** on earnings above the YMPE.

PROPOSED LEGISLATIVE AMENDMENTS IN THE FIRE SECTOR

Amanda Cohen and Jessica Toldo, Hicks Morley Hamilton Stewart Storie LLP

Municipalities should be aware of significant changes in the legislative landscape that will impact the fire sector. Bill 57, the *Restoring Trust, Transparency and Accountability Act, 2018* (Bill 57) proposes amendments to the *Fire Protection and Prevention Act, 1997* (the "FPPA").

Bill 57 - *Restoring Trust, Transparency and Accountability Act, 2018*

On November 15, 2018, the Ontario government introduced Bill 57. It was referred to the Standing Committee on Finance and Economic Affairs on November 28, 2018. If passed, Schedule 18 of Bill 57 will amend provisions in the *Fire Protection and Prevention Act, 1997* ("FPPA"). The amendments address issues of collective bargaining and interest arbitration and providing increased protection for firefighters engaged in "two hatting".

Changes to the Interest Arbitration Process and Other Procedural Changes

As part of its proposed changes, Bill 57 will remove the use of nominees from fire interest arbitrations. Any interest arbitration that was referred to arbitration after November 15, 2018 and has not commenced upon Bill 57 receiving Royal Assent, will be conducted by a single arbitrator, mutually agreed upon by the parties or appointed by the Minister.

Under Schedule 18 of Bill 57, there will also be changes to the statutory criteria that must be considered by an interest arbitrator in fashioning an award. Most notably, the legislation will no longer require an interest arbitrator to consider a municipality's "ability to pay". Instead more concrete criteria, including labour market, property tax and socio-economic characteristics will be considered, along with local factors such as the interest and well-being of the community.

Furthermore, prior reference to the "nature of the work performed" by the employees and comparable employees in the public and private sectors has been omitted from the criteria. Instead, arbitrators will be required to consider other collective bargaining settlements reached within the same municipality, along with those in comparable municipalities while having regard to the differing economic circumstances.

In addition to the above changes, Schedule 18 will require an arbitrator to keep the Minister advised of the progress of the arbitration. If a decision is not rendered within the timelines under the legislation, the Minister can issue any order that they consider necessary to ensure that the award is rendered within a reasonable period of time. Schedule 18 will also require the arbitrator, upon the request by either party, to provide written reasons, showing their consideration of the statutory criteria under the legislation.

Enhanced Protections for *"Two-Hatters"*

Schedule 18 is also expected to strengthen protections for "two-hatters". It will prohibit fire associations from penalizing or disciplining firefighters because they have worked, are working or intend to work as

a volunteer, even if the work is within the jurisdiction of the association or otherwise adversely affects its interest. Prohibited activities include denying a person membership within the association, suspending or expelling a member, or fining or attempting to collect fines from firefighters. The new legislation will also prohibit bringing civil actions against firefighters for similar reasons.

Municipalities will also be captured under this prohibition. Specifically, there is a mirror restriction which will prohibit municipalities from refusing to employ a firefighter, discharge a firefighter or refuse to assign a firefighter because they have worked, are working or intend to work as a volunteer firefighter.

Schedule 18 will introduce a number of amendments for parties who have negotiated "closed shop" language into their collective agreements. Associations will be prohibited from requiring the employer to refuse employment to a person as a firefighter, discharging a firefighter or refusing to assign a firefighter because they have been expelled, suspended or refused membership in the association for a number of reasons associated with their involvement as a volunteer firefighter. Municipalities should review the language of Schedule 18 to ensure compliance with these prohibitions.

Associations with "closed shop" language in their collective agreements will still be permitted to require employers to discharge firefighters who have engaged in "unlawful activity" against the association. If passed in its current form, however, Schedule 18 clarifies that working as a volunteer firefighter will *not* constitute "unlawful activity". As such, associations will not be permitted to require employers to discharge firefighters because they have, are or intend to work as a volunteer firefighter.

Key Considerations for Municipal Employers

While it remains to be seen how these proposed changes will impact municipalities, the amendments give employers a new set of tools to use in collective bargaining and interest arbitration. The change in statutory criteria will also shift the focus to local circumstances and settlements, rather than focusing on external comparators. Further, the legislation's enhanced protections for two-hatters are expected to provide all workplace parties – both associations and employers alike – with much needed clarity on their rights and responsibilities towards their volunteer firefighters.

Municipalities are encouraged to carefully review these proposed amendments in advance of the commencement or continuation of fire collective bargaining.

Hicks Morley

Amanda Cohen and Jessica Toldo specialize in labour and employment matters facing municipalities. If you have any questions about this or any other employment matter, do not hesitate to contact Amanda at 416-864-7316 or Jessica at 416-864-7529. They may also be reached by email at: amanda-cohen@hicksmorley.com and jessica-toldo@hicksmorley.com.