

IN THE MATTER of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 ("the Act");

AND IN THE MATTER of a proposal of the Superintendent of Financial Services to make an order requiring the wind up in part of the Retirement Plan for Salaried Employees of Cooper Canada - Plan A, Registration Number 240622 (the "Pension Plan");

AND IN THE MATTER of a request for a hearing by the Financial Services Tribunal (the "Tribunal") in accordance with subsection 89(6) of the Act (the "Hearing Request");

AND IN THE MATTER of an application for an award of costs, in connection with the Hearing Request, made by certain members and former members of the Pension Plan;

BETWEEN:

COOPER INDUSTRIES (CANADA) INC.
("Cooper")

Applicant

-and-

SUPERINTENDENT OF FINANCIAL SERVICES
(the "Superintendent")

-and-

THIRTY-SIX MEMBERS AND FORMER MEMBERS OF
THE RETIREMENT PLAN FOR SALARIED EMPLOYEES OF COOPER - PLAN A,
REPRESENTED IN THE PROCEEDING BY COUNSEL
(the "Represented Employees")

Respondents

BEFORE:

Mr. C.S. (Kit) Moore, Member of the Tribunal and Chair of
the Panel

Mr. Colin H.H. McNairn, Vice Chair of the Tribunal

Ms. Judith Robinson, Member of the Tribunal

REPRESENTATIONS BY:

For Cooper:
Mr. Randy V. Bauslaugh

For the Superintendent:
Mr. L. Glenn Frelick

For the Represented Employees:
Ms. Dona L. Campbell

**DATE OF
REPRESENTATIONS:**

On or before March 26, 1999

DECISION RELEASED:

April 6, 1999
Toronto, Ontario

REASONS FOR DECISION

This decision is in response of an application to the Tribunal by the Represented Employees for an award of their costs in this proceeding, in the amount of \$3500, against Cooper.

The proceeding to which the application relates arose out of a notice of proposal by the Superintendent dated July 2, 1998 (the "Notice of Proposal") to make an order for the partial wind up of the Pension Plan, in relation to those members and former members of the Pension Plan who were employed by the Company at its Port Hope, Ontario location and who ceased to be employed during the wind up period specified in the Notice of Proposal (the "Affected Persons"). Those Affected Persons include the Represented Employees.

Cooper filed a Hearing Request with the Tribunal in respect of the Notice of Proposal on August 14, 1998. A pre-hearing conference was held on October 26, 1998 at which Cooper, the Superintendent and the Represented Employees appeared through their respective counsel. As a result of the pre-hearing, the Affected Persons were given full party status in the proceeding, certain matters at issue were identified and various elements of the hearing procedure were agreed upon. A pre-hearing conference memorandum was settled among the parties and distributed to them by the Registrar of the Tribunal on February 16, 1999. Dates for the hearing of March 30 - 31, 1999 were set and confirmed to the parties by the Registrar on January 6, 1999.

Cooper advised the Registrar, by letter of March 3, 1999, that it was withdrawing its Hearing Request. Immediately thereafter the Represented Employees made written application to the Tribunal for an award of costs against Cooper, with supporting reasons. Cooper then made written representations against the making of such an award. The Superintendent advised that she took no position with respect to the application for costs.

We have concluded that an award of costs against Cooper, in favour of the Represented Employees, is not justified in the circumstances of this proceeding. Cooper has offered a reasonable explanation for the withdrawal of its Hearing Request within the month before the scheduled hearing, namely the anticipated time and costs involved in finally resolving the issues raised and expected to be raised in the proceeding. Those issues that were raised by Cooper, at the pre-hearing conference, were real and substantial, although we do not express any opinion as to whether Cooper's position on those issues would ultimately be sustained following a hearing. Finally, there have been no unreasonable delays in any of the steps in the proceeding. In the Tribunal's view, Cooper was not responsible for any delays that could be said to have unfairly prejudiced the Represented Employees.

Consequently, we deny the application of the Represented Employees for an award of costs against Cooper.

Dated this 6th day of April, 1999 at the City of Toronto, Province of Ontario.

"C.S. (Kit) Moore"

C.S. (Kit) Moore, Member and Chair of the Panel

"Colin H.H. McNairn"

Colin H.H. McNairn, Vice Chair

"Judith Robinson"

Judith Robinson, Member