

**FINANCIAL SERVICES TRIBUNAL**

**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 “PBA”);

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order under sections 33 and 87 of the PBA in respect of the Retirement Plan for Full Time Retail Store Employees of the Great Atlantic & Pacific Company of Canada, Limited who are Members of Local 414 of Retail Wholesale Canada/CAW Division, Registration No. 900944;

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8) of the PBA;

**B E T W E E N:**

**A&P CANADA INC.**

**Applicant**

**- and -**

**SUPERINTENDENT OF FINANCIAL SERVICES AND  
CAW LOCAL 414 OF THE NATIONAL AUTOMOBILE, AEROSPACE,  
TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA**

**Respondents**

**BEFORE:**

John Solursh  
Chair of the Tribunal and Chair of the Panel

Martin Brown  
Member of the Tribunal and of the Panel

Heather Gavin  
Member of the Tribunal and of the Panel

**APPEARANCES:**

For the Applicant:

Mr. David Vincent and Mr. Alan Merskey

For the Superintendent of Financial Services:

Mr. Mark Bailey

For the Respondent CAW Local 414

Mr. Hugh O'Reilly

**HEARING DATES:**

December 21, 2007 and

April 28, 2008

**ORDER**

**WHEREAS** by Notice of Proposal dated May 12, 2006 the Superintendent of Financial Services (the "Superintendent") proposed to issue an order requiring the Applicant to permit certain part-time and former part-time employees to join the Retirement Plan for Retail Store Employees of the Great Atlantic & Pacific Company of Canada Limited who are Members of Local 414 of Retail Wholesale Canada/CAW Division, Registration No. 900944 (formerly called the Retirement Plan for Full Time Retail Store Employees of the Great Atlantic & Pacific Company of Canada, Limited who are Members of Local 414 of Retail Wholesale Canada/CAW Division, Registration No. 900944) (the "Plan");

**AND WHEREAS** the Applicant requested a hearing before this Tribunal pursuant to subsection 89(8) of the PBA with respect to the Superintendent's Notice of Proposal;

**AND WHEREAS** the respondent CAW Local 414 of The National Automobile, Aerospace, Transportation and General Workers Union of Canada ("Union") was granted party status by this Tribunal;

**AND WHEREAS** the parties have entered into Minutes of Settlement with respect to this proceeding;

**NOW THEREFORE** having read the Minutes of Settlement entered into between the parties and having heard the submissions of counsel for the parties this day, the Tribunal orders that:

1. The Tribunal hereby approves the Minutes of Settlement.
2. Superintendent is hereby directed to issue an Order containing the following terms:

- (a) Subject to subparagraphs (b) and (c) below, current active employees and persons currently receiving a pension from the Plan (“retirees”) who were or are part-time employees within the Union's bargaining unit during the period between January 1, 1988 and March 1, 2002 or July 1, 2002 for those part-time employees employed at Save-A-Centre Stores will be granted retroactive membership in the Plan effective on the first day of the calendar month immediately following the date the employee or retiree completed twenty-four months continuous employment with the Applicant and the employee or retiree satisfied at least one of the following conditions:
- (i) the employee or retiree worked a minimum of 700 hours with the Applicant; or
  - (ii) the employee or retiree had earnings from the Applicant of not less than 35 percent of the year’s maximum pensionable earnings,

in each of two consecutive calendar years.

- (b) All current employees or retirees as of December 1, 2006 will be deemed to meet the criteria described in subparagraph (a) and be automatically granted retroactive membership in the Plan effective on the first day of the calendar month immediately following the fourth anniversary of his or her hiring date.
- (c) Notwithstanding subparagraph (b), if a current employee or retiree presents evidence satisfactory to the Joint Trustees of the Plan that the employee or retiree satisfied the criteria described in subparagraph (a) less than four years after his or her hiring date, such employee will be granted retroactive membership in the Plan on the first day of the calendar month immediately following the date on which the criteria set out in subparagraph (a) were satisfied.
- (d) Former part-time employees of the Union's bargaining unit who are no longer employed by the Applicant and who wish to claim a retroactive pension benefit may apply to the Joint Trustees of the Pension Plan. Any such former part-time employee claiming such a benefit must present evidence satisfactory to the Joint Trustees of the Pension Plan that he or she satisfied the criteria described in subparagraph (a) and remained in employment with the Applicant for at least two calendar years following the date upon which such criteria were satisfied in order to satisfy the vesting requirements of the Plan. If satisfactory evidence is provided, such former employee will be granted retroactive membership in the Plan on the first day of the calendar month immediately following the date on which the criteria described in subparagraph (a) were satisfied.
- (e) Each person described in subparagraphs (b), (c) and (d) who is entitled to retroactive membership in the Plan will be granted a pension benefit equal to \$5.00 per month for each year of credited service during the period January 1, 1988 to March 1, 2002 or July 1, 2002 as applicable.
- (f) The cost of providing retroactive pension benefits to part-time employees in the Plan shall be borne by the pension fund of the Plan.

- (g) The representative of the estate of a deceased person entitled to benefits under this Order or the Amendment (as defined below) or the spouse, beneficiary or any other person entitled to a payment from the Plan as a consequence of the entitlement of a deceased person to benefits under this Order or the Amendment shall be entitled to claim, and the estate shall be granted, benefits on the same terms and conditions as set out herein. The spouse, beneficiary or any other person entitled to a payment from the Plan as a consequence of the entitlement of a deceased person to benefits under this Order or the Amendment shall be paid such payments in accordance with the terms of the Plan and the PBA once the entitlement of the deceased person has been established. Any such person who is entitled to a benefit upon and as a result of the death of the deceased shall also be paid such payments in accordance with the terms of the Plan and the PBA once the entitlement of the deceased person has been established.
  - (h) Upon the request of a person seeking entitlement to benefits under the terms of this Order (the "Claimant"), the Applicant shall, upon the request of and with the assistance of the Claimant, take reasonable steps to seek T4 information from the Canada Revenue Agency to support the claim of the Claimant and the Applicant will make the information available to the Trustees with the approval of the Claimant.
3. The Superintendent shall accept for registration under the PBA an amendment to the Pension Plan in the form of the draft amendment attached as Appendix A to this Order (the "Amendment") provided that an application for registration of the Amendment containing the prescribed information is filed with the Superintendent. Any conflict between the provisions of this Order and the terms of the Plan, as amended pursuant to the Amendment, will be resolved on the basis that the terms of the Plan shall govern.
  4. The Applicant shall publish notice of this Order in a form acceptable to the Superintendent and the Union in one edition of each of the following newspapers:
    - (a) the Globe and Mail;
    - (b) the Ottawa Citizen;
    - (c) the Hamilton Spectator;
    - (d) the St. Catharines Standard; and
    - (e) the London Free Press.
  5. The Applicant shall post the notice referred to in Paragraph 4 at each of the store locations set out at Appendix B hereto, for a period of one week.

There shall be no costs to any party with respect to this proceeding.

**DATED** at Toronto, Ontario, this 4th day of June, 2008

“John Solursh”

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John Solursh  
Chair of the Tribunal and Chair of the Panel

“Martin Brown”

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Martin Brown  
Member of the Tribunal and of the Panel

“Heather Gavin”

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Heather Gavin  
Member of the Tribunal and of the Panel

## Appendix A

### **Schedule 2 – Additional Service for Eligible Part-Time Employees**

In addition to the pension benefits provided under Schedule 1, the Part-Time Employees may be entitled to other pension benefits as described in this Schedule 2. Unless otherwise noted in this Schedule 2, the other provisions of the Plan (including but not limited to Schedule 1) shall apply to any additional benefits provided under this Schedule 2. Notwithstanding any other provision of the Plan, the provisions of Schedule 1 and 2 shall apply to a Part-Time Employee or a Member who is a Part-Time Employee, as applicable.

#### **Article 1 – Definitions**

- 1.01 “Additional Service” means the service of an Eligible Part-Time Employee as defined in Article 3 of this Schedule 2.
- 1.02 “Adjusted Date of Entry” means the date the Eligible Part-Time Employee joined the plan in accordance with Article 2 of this Schedule 2.
- 1.03 “Collective Agreement Date” means March 1, 2002 except for Eligible Part-Time Employee employed at a Sav-A-Centre store in which case the Collective Agreement Date means July 1, 2002.
- 1.04 “Eligible Part-Time Employee” means a person who was a member of the Union and who was employed on a regular part-time basis with a Participating Company at a retail store operated by a Participating Company at any time between January 1, 1988 and the Collective Agreement Date.

#### **Article 2 – Adjusted Date of Entry**

- 2.01 Each Eligible Part-Time Employee who provides evidence satisfactory to the Joint Trustees shall be eligible to join the plan on the later of:
- (a) January 1, 1988; and
  - (b) The first day of the month coincident with or following the completion of 24 months of Continuous Service provided the Former Part-Time Employee:

- (i) has worked 700 hours with a Participating Company; or
- (ii) has received remuneration from a Participating Company at least equal to 35% of the YMPE

in each of the two immediately preceding consecutive calendar years.

- 2.02 Notwithstanding the foregoing, each Eligible Part-Time Employee who is an Employee as of December 1, 2006, or has retired from the Participating Company as an Employee and is in receipt of a pension under the Plan as of December 1, 2006, shall be eligible to join the plan no later than the first day of the month coincident with or following the completion of 48 months of Continuous Service, provided this date is prior to the Collective Agreement Date but not earlier than January 1, 1988.

### **Article 3 – Additional Service**

- 3.01 With respect to an Eligible Part-Time Employee, Additional Service means the number of years (including partial months) of Continuous Service from the Adjusted Date of Entry up to the Collective Agreement Date as an Eligible Part-Time Employee, rounded to four decimal places, during which an Eligible Part-Time Employee worked at least 700 hours in a given calendar year, provided that the Eligible Part-Time Employee provides evidence satisfactory to the Joint Trustees. Additional Service shall not be granted for a calendar year in which an Eligible Part-Time Employee works less than 700 hours.
- 3.02 Notwithstanding the foregoing, with respect to an Eligible Part-Time Employee who is an Employee as of December 1, 2006, or has retired from the Participating Company as an Employee and is in receipt of a pension under the Plan as of December 1, 2006, Additional Service shall not be less than the number of years (including partial months) of Continuous Service from the Adjusted Date of Entry up to the Collective Agreement Date as an Eligible Part-Time Employee, rounded to four decimal places.
- 3.03 In the event that the Adjusted Date of Entry of an Eligible Part-Time Employee is on or after the Collective Agreement Date, no Additional Service shall be credited under the Plan.

- 3.04 Notwithstanding Sections 3.01 and 3.02 above, the period of Additional Service of an Eligible Part-Time Employee shall be limited so that the combined total of Additional Service and Credited Service does not exceed 35 years. The period of Additional Service shall also exclude any period of service already recognized as Credited Service under the Plan.
- 3.05 For the purpose of the Plan, Additional Service shall be counted for determining vesting and eligibility for termination, death and retirement pension benefits under the Plan as applicable.

#### **Article 4 – Retirement Income**

- 4.01 For an Eligible Part-Time Employee, the monthly amount of retirement income in respect of any Additional Service, determined as of the Eligible Part-Time Employee's Date of Determination, shall be equal to \$5.00 multiplied by his years of Additional Service (and fraction thereof) and payable from his Normal Retirement Date.
- 4.02 An Eligible Part-Time Employee who elects to receive his pension before Normal Retirement Date shall receive the pension benefits described in this Schedule 2 as an amount of retirement income commencing from the Eligible Part-Time Employee's Pension Commencement Date and equal to the Actuarial Equivalent of the retirement income otherwise payable at Normal Retirement Date.

#### **Article 5 – Payment of Retirement Benefits**

- 5.01 Payment forms and payment options applicable to the pension benefits described in this Schedule 2 in the event of retirement, termination of employment or death shall be the same as those described in the other provisions of the Plan (including but not limited to Schedule 1).

## Appendix B

16 William Kitchen Rd.	Scarborough
3003 Danforth Ave.	Toronto
3090 Bathurst St.	North York
371 St. Paul Ave.	Brantford
150 First St.	Orangeville
1050 Kennedy Circle	Milton
180 Sandalwood Pkwy.	Brampton
785 Wonderland Road	London
149 Midtown Drive	Oshawa
201 Lloyd Manor	Etobicoke
5383 Yonge St.	North York
2225 Erin Mills Pkwy.	Mississauga
2155 St. Clair Ave. W.	Toronto
100 Lynn Williams St.	Toronto
6677 Meadowvale Town	Mississauga
425 Bloor St. W.	Toronto
15 Royal York Rd.	Etobicoke
1411 Lawrence Ave. W.	North York
2300 Yonge St.	Toronto
656 Eglinton Ave. E.	Toronto
89 Gould St.	Toronto
Unit 1-16640 Yonge St.	Newmarket
1070-A Major MacKenzie	Richmond Hill
291 York Mills Rd.	North York
939 Lawrence Ave. E.	North York

1111 Davis Dr.	Newmarket
40 Eglinton Sq.	Scarborough
3221 Eglinton Ave. E.	Scarborough
1521 Rebecca Street	Oakville
2900 Warden Ave.	Scarborough
250 The East Mall	Etobicoke
1822 Whites Rd.	Pickering
3221 Derry Rd. W.	Mississauga
1111 Elgin St. W.	Cobourg