

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

B E T W E E N :

**ONTARIO PROFESSIONAL FIRE FIGHTERS ASSOCIATION and
FREDERICK LeBLANC**

Applicants

- and -

ONTARIO MUNICIPAL EMPLOYEES RETIREMENT BOARD

Respondent

MINUTES OF SETTLEMENT

1. The Ontario Professional Fire Fighters Association (“OPFFA”) and Fred LeBlanc agree to abandon their motion seeking leave to appeal from the Divisional Court’s Judgment dated June 26, 2006.
2. Neither Ontario Municipal Employees Retirement Board (now continued as OMERS Administration Corporation) (“OMERS”), the OPFFA nor Mr. LeBlanc will seek costs (or seek to enforce any cost award made) with respect to the judicial review application.
3. Unless otherwise directed by the courts and / or regulatory authorities, for any OPFFA member (“Member”) whose participating employer (“Participating Employer”) in the

OMERS Primary Pension Plan (the "Plan") has treated pay received in lieu of statutory holidays as contributory earnings, OMERS agrees that such pay shall be included in the Member's contributory earnings for purposes of calculating his / her pension entitlement under the Plan provided that:

- i) the Member retired and is in receipt of a pension in accordance with the terms of the Plan prior to the date of this agreement;
- ii) the spouse, former spouse or dependant of the Member is in receipt of a pension that commenced prior to the date of this agreement;
- iii) the Member retires in accordance with the terms of the Plan and the Member's effective retirement date is on or before December 31, 2006; or
- iv) the Member or former Member died or terminated employment with a Participating Employer on or before December 31, 2006 and is no longer an active member of the Plan.

For greater certainty, and subject to any change in OMERS policy in terms of calculating contributory earnings for such Members who do not meet the criteria in 3(i), (ii), (iii) or (iv) above, OMERS shall exclude pay received in lieu of statutory holidays from the computation of contributory earnings under and for the purposes of the Plan.

4. a) Unless otherwise directed by the courts and / or regulatory authorities, Members who do not meet the criteria in 3(i), (ii), (iii) or (iv) above and who have made pension contributions to the Plan based upon pay received in lieu of statutory holidays having been included in the computation of their contributory earnings, shall be entitled to receive a refund of the amount of their erroneous pension contributions, (on the basis that pay received in lieu of statutory holidays should have been excluded in the computation of contributory earnings), plus interest calculated in accordance with 6 below, less any applicable withholding tax, for all prior years for which an accurate calculation of the amount of the Member's erroneous contributions can be made.

- b) While OMERS will ask Participating Employers to make reasonable efforts to determine the correct amount of the Members' contributory earnings pursuant to 4(a) above (so that OMERS can calculate the amount of any applicable refund), the parties to this agreement recognize that some Participating Employers may not have records of Members' contributory earnings extending back more than seven years. In any case where a Participating Employer's records do not disclose a complete history of Members' contributory earnings, Participating Employers may consider any evidence provided by a Member, either individually or through their local fire fighter association, that may assist the Participating Employer to determine the correct amount of the Member's contributory earnings.
- c) At a minimum, it is expected that any Member entitled to a refund pursuant to this agreement will receive a refund in respect of all erroneous contributions made in the seven years prior to the date of this agreement.
- d) As soon as practicable after receiving notification from a Participating Employer pursuant to 4(b) above as to the correct amount of Members' contributory earnings, OMERS will advise Participating Employers of the refunds referenced in 4(a) above, together with the amount of interest calculated in accordance with 6 below. The Participating Employers will pay such amounts, less applicable withholding tax, to the Members entitled to receive refunds under the terms of this agreement.

5. The OPFFA and Mr. LeBlanc acknowledge and agree that Participating Employers will similarly be entitled to refunds with interest for erroneous pension contributions made by such Participating Employers in connection with those Members referred to in 4(a) above who are receiving refunds as a result of pay in lieu of statutory holidays having been included as contributory earnings.

6. Members and Participating Employers shall be entitled to simple interest on the amount of any refund owing under 4(a) and / or 5 of this agreement starting February 1st of the year following the year for which the erroneous pension contribution was made to the end of the

month preceding the month in which the Participating Employer is advised of the amount of the refunds. The interest rate applicable to an erroneous pension contribution shall be the Royal Bank of Canada prime rate in effect on January 1st of the year for which interest is being calculated.

Dated this the 28 day of September, 2006.

Ontario Professional Fire Fighters Association

“Original signed by Fred LeBlanc”
Per: Authorized Signing Officer

Dated this the 28 day of September, 2006.

“Original signed by Fred LeBlanc”
Fred LeBlanc

Dated this the _____ day of September, 2006.

OMERS Administration Corporation

Per: Authorized Signing Officer

Per: Authorized Signing Officer