IN THE MATTER OF AN ARBITRATION

BETWEEN:

Bakery, Confectionery, Tobacco Workers & Grain Millers International Union, Local 181
(The "Union")

-and-

Silverstein's Bakery Limited
(The "Employer")

POLICY GRIEVANCE DATED July 28, 2016

Ian Anderson, Sole Arbitrator

For the Union:

Jesse Kugler, Counsel

For the Employer:

Lorenzo Lisi, Counsel

Consent Award issued December 1, 2016.

1. On July 28, 2016, the Union filed a policy grievance with respect to an alleged failure by the Employer to pay termination and severance pay. By letter dated October 21, 2016, I was appointed pursuant to section 49(4) of the *Labour Relations Act, 1995*, S.O. 1995, c.1, Sched. A, as amended (the "OLRA"), as arbitrator to hear the grievance. There is no dispute with respect to my jurisdiction to hear the grievance.

2. This award is issued on consent of the parties.

3. There is no dispute that:

(a) The Union and the Employer were parties to a collective agreement effective from January 1 to December 31, 2016 (the "Collective Agreement");
(b) On or about July 29, 2016, Silverstein's Holdings Incorporated placed the Employer into receivership by means of a privately appointed receiver;
(c) The employees of the Employer within the bargaining unit represented by the Union (the "employees") were given notice of lay off on or about July 28, 2016 and were laid off on the same date; and
(d) The employees did not and have not received any termination or severance pay from the Employer.

3. The parties agree that but for the receivership the employees would be owed termination and severance pay under the *Employment Standards Act, 2000*, S.O. 2000, c. 41 as amended (the "ESA"). The ESA amounts as calculated by the Employer have yet to be provided and accordingly the Union has yet to confirm the accuracy of these amounts. The Union also takes the position that there are additional amounts owing under the Collective Agreement. The Employer disagrees.

4. The Union asserts that the non-payment of termination and severance pay to the employees by the Employer constitutes a contravention of the ESA and the Collective Agreement. The Union also asserts that the Employer and Silverstein's Holdings Incorporated should be treated as one employer for the purposes of the ESA pursuant to section 4 of the ESA. The Employer resists this assertion. (While there is no suggestion that it is before me, the Union has also filed an application with the Ontario Labour Relations Board asserting that the Employer and Silverstein's Holdings Incorporated are related and seeking a declaration under section 1(4) of the OLRA that they constitute one employer for the purposes of the OLRA.)

5. The Employer asserts that in any event, the receivership has the effect of eliminating the liability of either the Employer or Silverstein's Holdings Incorporated for unpaid termination or severance pay. The Union takes the position that the receivership does not affect the amounts owing, although it may affect the ability of the Union and the employees to recover what is owed.

6. The Union asserts that pursuant to the provisions of the *Business Corporations Act*, R.S.O. 1990, c. B.16 as amended, the directors of the Employer and the directors of Silverstein's Holdings Incorporated are personally liable for some or all of the unpaid termination and severance pay. Without conceding liability, the Employer asserts that as an arbitrator, I lack jurisdiction to determine any such liability.

7. The Employer asserts that employees were provided notice of any entitlements under the *Wage Earner Protection Program Act,* S.C. 2005, c. 47, s. 1, via the Wage Earner Protection Program (WEPP). The Union is, at this stage, unable to confirm the accuracy of that statement. However, there is no dispute that the employees filed proofs of claim with the receiver/trustee. The Employer asserts that any amount received by an employee from WEPP is deductible from amounts which might be determined to be owing in these proceedings.

8. The above summary of issues is without prejudice to the to the right of either party to raise other issues or the rights of the parties to present evidence and make full argument with respect to all issue raised.

9. The Union and the Employer agree that section 101(1) of the ESA is engaged by these proceedings. Having regard to the issues raised, and on the agreement of the parties, I find it necessary to make a finding concerning the application of section 4 of the ESA to these proceedings. Accordingly pursuant to section 101(3) and (4) of the ESA, notice is hereby given to the Ontario Labour Relations Board that:

(a) an issue has arisen in this arbitration proceeding with respect to whether the Employer and and Silverstein's Holding Limited are to be treated as one employer under section 4 of the ESA; and

(b) this is the only decision which I have made thus far in relation to the matters in dispute.

10. This arbitration proceeding is adjourned *sine die*.

Dated at Toronto this 1st day of December, 2016.

"Ian Anderson"
Ian Anderson
Arbitrator