IN THE MATTER OF AN ARBITRATION
Pursuant to the *Labour Relations Act,* R.S. 1995

BETWEEN:

GAMBLES ONTARIO PRODUCE INC.

("Company")

- and –

TEAMSTERS, LOCAL UNION No. 419

("Union")

Policy Grievance 01924
(Respecting CPP Bonus)

AWARD OF ARBITRATOR JASBIR PARMAR

On Behalf of the Employer:

David J. Defrancesco, Counsel
Meagan Pilo, Manager, People Development
Vince DiMauro, Manager, Special Projects
Claudia Trabucco, Senior General Manager

On Behalf of the Union:

Mireille Giroux, Counsel
Ken Dean, Business Agent
Jason Witney, Steward
Jason Balkaran, Steward
Karma Tseten, Steward
Lobsang Khedup, Steward

This matter was heard on April 10, 2017, in Toronto, ON.

This Award concerns a Policy Grievance filed by the Union on September 6th, 2016.

The Grievance alleges that the Company violated Article 12.03(d) of the Collective Agreement by improperly calculating what the parties both describe as a “CPP Bonus”.

Article 12.03(d) of the Collective Agreement provides as follows:

> 12.03(d) The Company shall pay one hundred percent (100%) of the current premium costs of the employee’s share of Canada Pension, up to a maximum of Seven Hundred ($700.00) dollars a year. The Company shall pay thirty percent (30%) of any increase in the employee’s cost occurring during the term of this Collective Agreement.

The parties first appeared before me on September 30th, 2016. Attempts to resolve the Grievance were unsuccessful.

Further particulars and documents were directed to be produced in advance of the next scheduled day of hearing. Both the Company and the Union complied with the direction and a hearing was convened on April 10th, 2017.

Given the nature of the evidence that was expected to be led, the parties agreed that the hearing be conducted in accordance with section 50 of the Labour Relations Act.

I heard the representations of the parties.

There is no dispute that, prior to the implementation of the current Collective Agreement on December 15th, 2016, the Company administered Article 12.03(d) by paying employees the following, on an annual basis:

- $700, plus an additional 30% of the balance of the employee’s required contribution towards the CPP

Prior to the commencement of collective bargaining, the Company assessed that it was mis-applying the terms of Article 12.03(d). In particular, the Company determined that it should be (and should have been) paying “30% <u>of any increase</u> in the employee’s cost” and not 30% of the employee’s total cost.

There is no dispute that the Company provided notice to the Union during collective bargaining that it intended to apply Article 12.03(d) of the Collective Agreement in accordance with its terms.

There was conflicting evidence on what transpired next. The Union and the Company offered somewhat different interpretations as to whether there was an agreement in respect of the terms of the notice provided by the Company or whether the Union opposed the notice and the interpretation of the Collective Agreement which was advanced by the Company.

Notwithstanding the differing interpretations, I can conclude that the representatives of the Company and the Union bargained in good faith. Collective bargaining is often fast paced and multi-faceted (with parties dealing with many issues under, often, tight and significant deadlines) and, as a result, it is not unusual for parties to take away different interpretations of an exchange in collective bargaining.

In the circumstances, and after having heard the representations of the parties and their witnesses and the equities involved, I direct as follows:

1. For the 2016 and 2017 taxation years, the Company shall continue the practice respecting the payment of the CPP bonus, as it existed prior to the implementation of the current collective agreement.

    a. The payment of the CPP bonus for the 2016 taxation year shall be made within 30 days of the date of this Award;

        i. The Company shall deduct the payment previously made on account of the CPP bonus from the payment which has been directed

        ii. The witholdings which are required by statute shall also be made by the Company

    b. The payment of the CPP bonus for the 2017 taxation year shall be made in the normal course.

2. For subsequent taxation years (2018 and beyond), the Company shall pay the CPP bonus in the manner that it claimed was supported by the strict terms of the Collective Agreement.

    a. For greater clarity, and starting with the CPP bonus payable in 2018, the CPP bonus shall be calculated as follows:

        - $700, plus 30% of the increase in the employee's cost of the required contribution relative to the employee's cost in 2017

        - By way of example, if an employee's cost of contribution in 2017 was $2479.95 and in Year 1 was $2544.30, the CPP bonus shall be calculated as follows in Year 2:

            - $2544.30 (Year 1 Cost) less $2479.95 (2017 Cost) = $64.35 (Increase to Cost) x 0.30 = $19.31 (Representing Company's Obligation in Respect of the Increased Cost) +

$700 (Representing Company’s Fixed Cost in Accordance with the Collective Agreement)

- Total CPP bonus payable in Year 1 = $719.31

3. Article 12.03(d) of the Collective Agreement shall be interpreted and applied in accordance with paragraph 2 of this Award until such time as the Company and the Union agree to amend or delete the Article.

4. I shall remain seized in respect of the application, interpretation or administration of the terms of this Award.

Dated this 4th day of May, 2017.

JASBIR PARMAR