

IN THE MATTER OF AN ARBITRATION

Between:

ONTARIO PIPE TRADES COUNCIL ("OPTC")

- and -

MECHANICAL CONTRACTORS ASSOCIATION ONTARIO (THE "MCAO")

FINAL AWARD

Arbitrator Bernard Fishbein

Appearances for the OPTC: Counsel - Jesse Kugler; Jim Hogarth, Ross Tius, Nick Warus.

Appearances for the MCAO: Counsel - Richard J. Charney and Andrew Nicholl; Serge Robert, David Holek, Charles Webb, Brandon Pageau.

1 The *Employment Standards Act, 2000* (the "**ESA**") was amended by Bill 148, the *Fair Workplaces, Better Jobs Act, 2017*, to provide for two paid emergency leave days in section 50 of the *ESA*. Regulation 526/17 under the *ESA* was subsequently promulgated to amend Regulation 285/01 ("**Regulation 285**") which added section 3.0.1 to Regulation 285 to provide an alternative method to comply with the requirement in section 50 of the *ESA* regarding paid personal emergency leave days.

2 The grievance before me, dated April 25, 2018, was filed by the OPTC. It claimed that the MCAO violated the Provincial Agreement between the parties, the *ESA*, and the *Labour Relations Act, 1995*, and arose out of a Direction issued by the MCAO dated March 16, 2018, concerning implementation of personal emergency pay in accordance with section 3.0.1 of Regulation 285.

3 Neither the *ESA* nor section 3.0.1 of Regulation 285 requires the selection of either of the alternatives to be negotiated with a union. The choice of the method of compliance with the

obligation to provide personal emergency leave pay under the *ESA* is therefore up to an individual employer in the absence of an agreed upon collective agreement provision. Insofar as the grievance relates to that, it is dismissed.



Arbitrator Bernard Fishbein

Dated July 27, 2018 at Toronto, Ontario