IN THE MATTER OF A GRIEVANCE under the *Labour Relations Act, 1995* and pursuant to a collective agreement

BETWEEN:

REVERA PINE VILLA RETIREMENT HOME
(the "Employer")

-AND-

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1 CANADA
(the "Union")

Grievance # 100-224-036, Estate of L. Dixon re Life Insurance

Appearing for the Employer:
Jackie VanDerMeulen, Counsel
Erin Porter, Vice President, Legal Services & Assistant Secretary, Revera Inc.
Mimoza Xheha, Interim Assistant Executive Director, Revera Pine Villa Retirement Residence

Appearing for the Union:
Maeve Biggar, Counsel
Stacy-Ann Rousseau, Union Representative

Hearing held on November 8, 2017 in Toronto, Ontario

Decision issued: November 17, 2017

DECISION

1. I have been appointed pursuant to the collective agreement between the parties to hear an individual grievance, #100-224-036, filed on behalf of the estate of Lloydette Dixon, claiming breaches of Articles 6 and 35 of the collective agreement by Revera Pine Villa Retirement Home ("Pine Villa" or the "Employer"). The grievance relates to the allegation that the Employer failed to provide life insurance benefits for Ms. Dixon, and as such, the Union is seeking an order that Pine Villa be required to pay to Ms. Dixon's estate the sum of $25,000, which is the amount of the benefit under the life insurance policy.

2. Pine Villa's position in response to the Dixon grievance is that since Ms. Dixon did not enroll in the life insurance plan, nor pay her portion of the premiums, her estate is not entitled to life insurance benefits.

3. The parties relied upon an Agreed Statement of Facts in making their respective arguments. It states as follows:

AGREED STATEMENT OF FACTS

Grievance 100-224-036 (The Estate of Lloydette Dixon)

1. The Service Employees International Union, Local 1 Canada (the "Union") represents employees at Revera Retirement LP operating Pine Villa Retirement Home ("Pine Villa"), save and except for specified positions.

2. The current collective agreement, attached at Tab 1 of the Union's Appearance Book, has a term of January 1, 2013 to December 31, 2016 (the "Collective Agreement").

3. Lloydette Dixon is a former employee of Pine Villa.

4. Ms. Dixon accepted a part-time position with Pine Villa as a Health Care Aide on September 6, 2011.

5. Ms. Dixon's employment terminated as a result of her death on or about November 29, 2015.

6. During her employment with Pine Villa between September 6, 2011 and approximately November 29, 2015, Ms. Dixon was regularly scheduled less than 37.5 hours per week. At the time of her death, Ms. Dixon was an unscheduled part-time employee.

7. Upon being hired by Pine Villa, a representative of Pine Villa, in accordance with its standard practice, provided Ms. Dixon with its Benefit Highlights document, attached at Tab 1, the Employee Life Insurance benefits overview document, attached at Tab 2, and the Benefit Enrolment Form, attached as Tab 3.

8. Ms. Dixon did not submit a completed Benefit Enrolment Form to Pine Villa.

9. It is Pine Villa's practice that where an employee who is regularly scheduled less than 37.5 hours per week enrolls in life insurance benefits, it pays only a pro-rata portion of the premiums towards those benefits.

10. Pine Villa calculates the pro-rata portion of the life insurance premiums that it pays for employees who are regularly scheduled less than 37.5 hours per week, if any, in accordance with the formulas set out in Article 38.02 of the Collective Agreement. It is Pine Villa's practice to deduct the balance of the life insurance premiums from the employee's pay, provided the employee has enrolled for such life insurance and authorized the deductions.

11. It is Pine Villa's practice that it does not pay life insurance premiums for employees who are regularly scheduled less than 37.5 hours per week who have not enrolled in life insurance benefits.

12. During Ms. Dixon's employment, Pine Villa did not pay any premiums towards employee benefits for Ms. Dixon nor were any employee benefit premiums deducted from Ms. Dixon's pay or otherwise remitted by Ms. Dixon.

13. Following the death of Ms. Dixon, her estate did not receive any life insurance benefits in relation to Pine Villa's employee life insurance plan(s).

14. On March 11, 2016, Stacy-Ann Rousseau, a business representative of the Union, contacted Pine Villa to inquire as to whether Ms. Dixon's life insurance was paid out to her estate. A representative of Pine Villa advised the Union that Ms. Dixon did not have any benefits coverage, including life insurance.

15. The Union filed the Individual Grievance #100-224-036 on April 4, 2016 regarding the denial of life insurance benefits to Ms. Dixon's estate, (attached at Tab 2 of the Union's Appearance Book).

16. It is the Union's position that Pine Villa is required under the Collective Agreement to pay one hundred percent of the premiums for

life insurance coverage, in the amount of $25,000, for each employee who has completed his or her probationary period, regardless of whether he or she is full-time, part-time, or unscheduled part-time as defined in the Collective Agreement, including for Ms. Dixon.

17. It is the Union's further position that employees in the bargaining unit, including Ms. Dixon, are not obligated to elect to enrol in the life insurance plan and pay a pro-rated portion of the premium, according to the formulas in Article 38.02, in order to be entitled to life insurance coverage in the amount of $25,000 and that Pine Villa's practice of requiring such as a prerequisite for life insurance coverage violated the Collective Agreement.

18. It is Pine Villa's position that it was not required to pay life insurance premiums on behalf of Ms. Dixon because Ms. Dixon did not elect to participate in the life insurance plan and did not pay her portion of the life insurance premiums, as required by the Collective Agreement.

19. It is agreed that the documents at Tabs 1, 2 and 3 and the practice referred to in paragraphs 9, 10 and 11, above, are not to be considered extrinsic evidence in aid of an interpretation of the Collective Agreement, unless and until there is a ruling from Arbitrator Misra determining that the Collective Agreement is ambiguous and that such evidence is admissible for such purpose.

DECISION

4. In reaching a decision I have considered the parties' submissions, the Agreed Statement of Facts and exhibits, and the case law the parties relied upon.

5. This is a case that requires interpretation of the language of the collective agreement binding these parties. The relevant provisions of the collective agreement are as follows:

> ARTICLE 3 - DEFINITIONS
> 3.02 The words "Employee" and "Employees" when used throughout this agreement shall mean persons included in the above described bargaining units.
> …
> 3.05 An unscheduled part-time employee is an employee without regularly scheduled hours or who is regularly scheduled twenty-five (25) hours bi-weekly or less. …
>
> ARTICLE 12 – SENIORITY
> 12.01 (a) A newly hired Employee must successfully complete a probationary period of sixty-five (65) days worked or four hundred and eighty-seven and one-half (487.5) hours worked, whichever is longer. …

ARTICLE 35 – HEALTH, INSURANCE BENEFITS AND PENSION PLAN

35.02 The Employer will pay one hundred percent (100%) of the premium cost of a Life Insurance Plan to provide twenty five thousand ($25,000) dollars coverage *for each Employee who has completed her probationary period*.

35.03 The Employer will pay one hundred percent (100%) of the billed single/family premium rate, whichever is applicable, for an Extended Health Care Plan. ($10 - $20 deductible, no co-insurance) including semi-private coverage, *for Employees covered by this agreement who have completed their probation period and who participate in the plan*. If an Employee is otherwise covered, the Employer shall not be obligated to contribute, except that if the Employee becomes the primary bread-winner, the Employer will commence single/family coverage as applicable. …

35.04 Effective as soon as possible after ratification the Employer will pay one hundred percent (100%) of the billed single/family premium, whichever is applicable, for a Vision Care Plan with a benefit limit of one hundred and twenty-five dollars ($125.00) every twenty-four (24) months. Effective January 1, 2007 for a Vision Care Plan with a benefit limit one hundred and forty dollars ($140.00) every twenty-four (24) months *for Employees who have completed their probationary period and who are participating in the Extended Health Care Plan*. If an Employee is otherwise covered, the Employer shall not be obligated to contribute.

35.05 The Employer will pay one hundred percent (100%) of the premium cost of the Weekly Indemnity Insurance Plan (subject to Article 38).

35.06 The employer will pay fifty percent (50%) of the billed single/family premium, whichever is applicable for Dental Plan #9 or equivalent *for Employees who have completed their probation period and who participate in the plan*. If an Employee is otherwise covered, the Employer shall not be obligated to contribute. … …

35.10 The Employer's contribution for premiums as described above for Employees who are normally employed on a regular basis for less than thirty-seven and one-half (37.5) hours per week will be pro-rated according to Article 38.02.

ARTICLE 38 – PRO-RATA EMPLOYEE BENEFITS

38.01 On the basis of the average hours paid, as determined by calculation under Article 13.02, the Employer will pay the percentage of premiums specified in 38.02 for health and welfare benefits for Employees who are regularly employed for less than thirty-seven and one-half (37.5) hours per week, *who participate in the plans*. Employees may elect at the time of hire to enroll in any or all of the group insurance plan(s) as described in Article 35, subject to any waiting periods or other conditions of the plan(s). …

38.02 (a) Employees working fifteen (15) hours or less bi-weekly will receive ten percent (10%) of the Employer paid share of the health and welfare premiums.

(b) Employees working more than fifteen (15) hours bi-weekly and up to and including thirty (30) hours bi-weekly will receive twenty percent (20%) of the Employer paid share of the health and welfare premiums.

(c) Employees working more than thirty (30) hours bi-weekly and up to and including forty-five (45) hours bi-weekly will receive forty percent (40%) of the Employer paid share of the health and welfare premiums.

(d) Employees working more than forty-five (45) hours bi-weekly and up to and including fifty-two (52) hours bi-weekly will receive fifty percent (50%) of the Employer paid share of the health and welfare premiums.

(e) Employees working more than fifty-two (52) hours bi-weekly and up to and including sixty-six (66) hours bi-weekly will receive seventy-five percent (75%) of the Employer paid share of the health and welfare premiums.

(f) Employees working more than sixty-six (66) hours bi-weekly will receive one hundred percent (100%) of the Employer paid share of the health and welfare premiums.
…

(Emphasis added)

6. In *Hamilton Niagara Haldimand Brant Community Care Access Centre v. Ontario Nurses' Assn. (Dicesare Grievance)*, [2010] O.L.A.A. No. 457 (J. Stout), the arbitrator discussed the principles of collective agreement interpretation as follows:

> [12] The goal of an arbitrator interpreting a collective agreement is to discover the intention of the parties based on the words they agreed upon in the collective agreement. Arbitrator Aggarwal stated this goal in *Re Service Employees International Union, Loc. 268 and United Steelworkers of America, Local 5481, supra,* at page 81 as follows*:*
>
> > The primary goal of the arbitrator in "rights" disputes is to determine and carry out the mutual intent of the parties. The "intent of the parties" rules has been elaborated in 12 Am. Jur. 746-8, as follows:
> >
> > > Whatever may be the inaccuracy of expression or the ineptness of words used in an instrument of a legal view, if the intention of the parties can be clearly discovered, the court will give effect to it and construe the words accordingly. It must not be supposed, however, that an attempt is made to ascertain the actual mental processes of the parties to a particular contract. The law presumes that the parties understood the import of their contract and that they had the intention which its terms manifest. It is not within the function of the judiciary to look outside of the instrument to get the intention of the parties and then carry out the intention regardless of whether the instrument contains language sufficient to express it; but their sole duty is to find out what was meant by the language of the

> instrument. This language must be sufficient when looked at in the light of such facts as the court is entitled to consider, to sustain whatever effect is given to the instrument.
>
> Arbitrators are constantly required and expected to give meaning to contract provisions which are unclear, in situations which were not specifically foreseen by the contract negotiators. So long as this is done by application of principles reasonably drawn from the provisions of an agreement, and not by treating a subject not covered at all by the agreement, arbitral authority is not being improperly assumed.

[13] The general principles of collective agreement interpretation are well established in arbitral jurisprudence. In determining the parties' intention, arbitrators are to give effect to the plain and ordinary labour relations meaning of the words in a collective agreement. Further, the language is to be read as a whole and within the context of the entire collective agreement, see *Rouge Valley Health Systems v. Canadian Union of Public Employees, Local 4365 (Badger Grievance, supra,* at paragraph 12-13.

[14] There is also an assumption that the parties do not intend their language to be redundant or superfluous. Accordingly, meaning must be attributed to all words that the parties have used, see *Re City of St. John's and Canadian Union of Public Employees, Local 569, supra*, at page 318.

[15] A proper analysis should also include interpreting the language harmoniously and in a reconcilable fashion to ensure compatibility and avoiding conflict, see *United Food and Commercial Workers' Union, Local 401 v. Real Canadian Superstore, supra*, at paragraph 20.

7. In *Thunder Bay (City) v. C.U.P.E. Local 87*, 2000 CarswellOnt 6144 (J. Sarra), in considering how an arbitrator should interpret the language of a collective agreement, Arbitrator Sarra stated:

> 35. … Where the language supports two possible reasonable interpretations, arbitrators should consider which interpretation best harmonizes with the collective agreement as a whole. Similar terms used in different parts of the collective agreement should be given similar meanings. Headings or titles in a collective agreement may be referred to in order to explain the sections that fall under them (*Canadian Labour Arbitration*, supra).

8. In *Re De Havilland Aircraft of Canada Ltd. and U.A.W., Local 112* (1961), 11 L.A.C. 350 (Laskin), the arbitrator wrote, at p. 352:

> Ordinary principles of interpretation require that effect be given to all words agreed upon by the parties in the context in which they are used, at least to the point where absurdity would result.

9. Writing about the requirement that labour arbitrators interpret what may be general language, or where there may be an apparent gap in the terms of a collective agreement, Arbitrator Weiler, in *Andres Wines (B.C.) Ltd. v. B.F.C.S.D, Local 300*, 1977 CarswellBC 776 stated as follows:

> 5. But the fact of the matter is that such events do occur during the term of the agreement. The parties may not then reach an accommodation during the grievance procedure. When they take the issue to arbitration, their arbitrator does not have the luxury of deciding not to decide. He must make up his mind about the implications of their general contract language for this peripheral problem. In the absence of any clear indication of the mutual intent of the parties – gathered from either their language or their behaviour – the arbitrator must, in effect, reconstruct some kind of hypothetical intent. What is it reasonable to assume that typical labour negotiators, having analyzed the nature and purpose of the contract benefit in question, would agree to as a sensible judgment about who should enjoy the benefit in this unusual situation?

10. The relevant collective agreement language, read as a whole in this case, is not as clear as it could be, and there is no evidence before me about when some of the provisions were negotiated. What seems apparent is that there have been piecemeal additions to Article 35, and that the parties did not use consistent language when they made new additions.

11. There is no dispute that Ms. Dixon was an unscheduled part time employee of Pine Villa, who had passed her probationary period, and who worked less than 37.5 hours per week. At the time of her hiring, she was given a Benefits Highlights document, an Employee Life Insurance benefits overview document, and a Benefit Enrolment Form. Ms. Dixon did not provide Pine Villa with a completed Benefit Enrolment Form. As such, and since Ms. Dixon was a part time employee, the Employer did not pay any premiums for employee benefits for Ms. Dixon, nor were any employee benefit premiums deducted from her pay, or otherwise paid by this employee.

12. The question before me is whether the Employer was obligated by the terms of the collective agreement to have paid life insurance premiums on Ms. Dixon's behalf despite the fact that she had not completed the Benefit Enrolment Form.

13. Article 35.02 states that the Employer will pay 100% of the premium cost for a $25,000 life insurance policy for each employee who has completed her probationary period. It is this language that the Union relies upon for its position that a failure by the Employer to pay this premium cost for Ms. Dixon has led to her estate being disentitled from receiving any life insurance benefits.

14. Unlike the collective agreement provisions regarding the Extended Health Care Plan (Article 35.03), the Vision Care Plan (Article 35.04), and the Dental Plan (Article 35.06), each of which stipulate that an employee is only covered if she has completed her probationary period AND indicated a wish to participate in such a

plan, the parties did not draft the Life Insurance Plan provision to include the requirement that an employee indicate a wish to participate in that plan.

15. The Life Insurance Plan provision, Article 35.02, is also differently written than the provision regarding the Weekly Indemnity Insurance Plan (Article 35.05). The latter provision states that while the Employer will pay 100% of the premium cost of the Weekly Indemnity Insurance Plan, that is subject to Article 38. The Life Insurance Plan provision makes no reference to Article 38.

16. Article 38 addresses "Pro-Rata Employee Benefits". Pursuant to Article 38.01, the parties have agreed that the Employer will pay a percentage of premiums for "health and welfare benefits" for employees who are regularly employed for less than 37.5 hours per week, and who participate in the plans. At the time of hire, an employee may elect to enroll in any or all of the group insurance plans outlined in Article 35, subject to any waiting periods or other conditions of the plans.

17. Article 38.02 simply outlines various percentages that the Employer will pay as its' pro-rata share of the premiums for the "health and welfare" plans, based on the average number of hours an employee works in a two-week period. The range of the Employer share of payment is from 10% of the premium for an employee who works 15 hours or less bi-weekly; to 20% for 15 to 30 hours biweekly; to 40% for 30 to 45 hours bi-weekly; and so on up to 100% for employees working more than 66 hours bi-weekly.

18. The parties have not defined what is included in "health and welfare" plans. The Union asserts that does not include the life insurance plan, while the Employer argues that it does include that plan.

19. The Union posits that the title of Article 35 should be of assistance to me in discerning what the parties meant to include in "health and welfare": it argues that since the title is "Health, Insurance Benefits and Pension Plan" that the part of the title referring to insurance benefits is with respect to the life insurance plan, while the other plans referred to in that section relate to either health-related plans or the pension plan.

20. I am not convinced that the title of Article 35 is that instructive to me in this instance. I note that Article 35.01 refers to the Employer paying 100% of the Ontario Health Tax. That being the first provision in the article, it is just as plausible that the title refers first to that "Health"- related Employer obligation, followed by the references to all the other insurance plans for which the Employer has premium obligations, and lastly, the article contains a detailed provision for the pension plan. This would be a more consistent reading of the title "Health, Insurance Benefits and Pension Plan", as it tracks the content of the article in an orderly manner.

21. The Union relied on the decision in *Toronto District School Board and CUPE, Local 4400 (Sider)*, 2005 CarswellOnt 11359 (M.E. Cummings), which has facts that

are somewhat similar to the case before me in that a union was seeking the payment of life insurance benefits for the estate of an employee who had died, and for whom the employer had not paid any life insurance premiums. Unlike the situation before me however, in that instance there was no dispute between the parties to that arbitration that the life insurance benefit was to be provided to eligible full time employees at no cost. That employer maintained that there was no record that the employee had enrolled in the insurance plan. The relevant provision of the collective agreement in that case read as follows:

> s. 18 For eligible Employees, the Employer shall contribute one hundred percent (100%) of the premium for the first $30,000 of Group Life Insurance coverage amount, plus seventy-five percent (75%) of the cost of coverage amount elected by the plan member over the first $30,000 up to the plan maximum indicated below for full-time employees.
> …
> s. 20 For eligible part-time Employees who elect upon completion of the necessary enrolment forms to participate in the plan, the portion of the premium paid by the Employer will be determined as follows: …
>
> s. 21 The Employer shall provide the appropriate payroll deductions for the Employee's share of the Group Life Premium.

22. In that case, there was no explanation for why the employee had not been enrolled in the life insurance plan, and the question for the arbitrator to answer was who bore the burden of the failure to enroll the employee in the life insurance plan. Arbitrator Cummings found that there was nothing in the collective agreement language that required a full-time employee to initiate an application in order to receive coverage or as a pre-condition to receiving life insurance coverage (paras. 12 and 13). Furthermore, failure to designate a beneficiary would not be fatal as the insurance benefit would by default be paid to the employee's estate (para. 12). The arbitrator noted that it was only with respect to optional and enhanced coverage that enrollment was contemplated for full-time employees.

23. In particular, the arbitrator noted that she would "be reluctant to imply the obligation on an employee to take an additional step to receive the value of the negotiated benefit because such a conclusion suggests that an employee can choose to waive that negotiated benefit" (para. 15). She agreed with the union that the employer could not engage in individual bargaining with employees about what benefits they would choose to accept, just as the employer could not make an agreement with an employee to accept less than the negotiated wage rates in a collective agreement (para. 15). Based on her findings, Arbitrator Cummings found that the employer had breached its obligation to pay life insurance premiums for the worker in question, and ordered it to pay the $30,000 value of the basic life insurance to the grievor's estate.

24. On its face, nothing in Article 35.02 suggests that an employee has to do more than pass the probationary period in order to be eligible for $25,000 of life

insurance coverage, and the parties had agreed that the Employer would pay 100% of the premium cost of the life insurance plan. The Union posits that Ms. Dixon was an employee, and she had passed the probationary period, so she should have been entitled to life insurance even if she had not completed the Benefit Enrollment Form.

25. However, one cannot read Article 35.02 in isolation. Article 35.10, which comes at the end of all of the insurance provisions, must also be given meaning. It states that "the Employer's contribution for premiums as described above for Employees who are normally employed on a regular basis for less than thirty-seven and one-half (37.5) hours per week *will be pro-rated according to Article 38.02*" (emphasis added). Ms. Dixon was an employee who was regularly scheduled less than 37.5 hours per week, and as such, was an employee affected by the pro-ration provision.

26. The Union argued that Article 35.10 must refer only to those insurance plans which require participation, because to read it otherwise would be to ignore the reference in Article 35.05 that it is subject to Article 38. According to the Union, there would otherwise be a redundancy in Article 35.05.

27. I do not see the redundancy: one provision refers to all of Article 38, and the other refers only to Article 38.02. Thus, by reading Article 35.10 as inclusive of all the insurance plans that come before that provision, that would include Article 35.05, but with the proviso that for that particular provision, all of Article 38 applies, while for the others, only Article 38.02 applies.

28. Reading Articles 35.10 and 38.02 together, it becomes apparent that the parties are referring to the various insurance benefits referred to between Articles 35.02 to 35.09. I therefore infer from the language that when Article 35.10 refers to pro-rating in accordance with Article 38.02, the parties are addressing the "health and welfare premiums" in relation to the insurance benefits that include the Life Insurance Plan (35.02); Extended Health Care Plan (35.03); the Vision Care Plan (35.04); the Weekly Indemnity Insurance Plan (35.05); and the Dental Plan #9 or equivalent (35.06). Article 35.06 refers to "Hearing Aid" but it is unclear if that falls within one of the other plans or is a plan of its own, and I make no findings in that regard.

29. Article 38.01, which as I have noted is not referenced in Article 35.10, indicates that an employee who is regularly employed for less than 37.5 hours per week may elect at the time of hire to enroll in any and all of the group insurance plans in Article 35, subject to waiting periods or any other conditions of the plans. However, nothing in Article 35.02 required enrollment in the life insurance plan, and I have not been advised that there were any other applicable conditions in the life insurance plan.

30. Looking only at Article 38.02, it is clear that it addresses what percentage of the health and welfare premiums the Employer will pay based on how many hours

an employee works in a bi-weekly period. There is no evidence before me regarding how many hours Ms. Dixon worked on average in a bi-weekly period prior to her death.

31. In the context of considering how Article 38.02 was applied, it becomes necessary to consider what the Employer's practice was. This is not a question of whether there was some ambiguity in the language of the collective agreement but rather is a simple question of fact regarding how the Employer was implementing Articles 35.02 and 35.10.

32. According to the Agreed Statement of Facts, Pine Villa only paid a pro-rata portion of the life insurance premiums for those employees regularly scheduled less than 37.5 hours a week who had enrolled in the life insurance plan and had authorized deductions (para. 9). For such an employee enrolled in the life insurance plan, the Employer would pay the pro-rata portion of the premiums in accordance with Article 38.02, and would deduct the balance of the life insurance premium from the employee's pay (para. 10).

33. The Employer paid no life insurance premiums for Ms. Dixon because she had not completed the Benefit Enrolment Form at the time she was hired. Since there is no requirement in Art. 35.02 that an employee agree to participate in the life insurance plan, that was not a pre-requisite in respect of this employee. My view in this regard is bolstered by the fact that the parties did not agree in Article 35.10 that pro-rating would occur in accordance with Article 38: they specified that pro-ration would occur in accordance with Article 38.02, which makes no mention of participation in a plan or of electing at the time of hire to enroll in a plan.

34. For most of the insurance plans, other than life insurance and weekly indemnity, this proviso makes no difference as the Articles referring to those plans already specified that an employee had to indicate a wish to participate in the plan (Articles 35.03, 35.04, and 35.06). However, for the life insurance provision, it is significant that it is only Article 38.02 that is applicable as that provision makes no reference to an employee having to elect at the time of hire to enroll in a plan: it only refers to what the Employer's pro-rated portion of a premium will be based on the bi-weekly hours worked by an employee. Hence, it would appear that the Employer obligation under the collective agreement would have been to pay a pro-rated portion of the life insurance premium for Ms. Dixon based on the average of her hours worked.

35. However, this interpretation of the language, mechanical as it is, leads to an absurdity, and would be unworkable. The life insurance policy in this case is for $25,000, not for random lesser amounts based on how much of a premium an employer may remit to the insurer for part time employees who may work various numbers of hours. I can take judicial notice of the fact that is not how life insurance policies work. Rather, a policy holder is told what the premium will be for a specified amount of coverage, and either pays that, or does not get coverage for that

amount of insurance. If some lesser premium were paid, the insurer would surely indicate that there was no coverage, not lesser coverage than the $25,000 benefit that had been agreed upon in this instance.

36. It may have been simpler to try to reconcile the parties' collective agreement language by finding that the implication of reading Article 35.02 and 35.10 together would be that as a part time employee, Ms. Dixon would have had to indicate that she wanted to participate in any or all of the various insurance plans; that she was authorizing the Employer to make deductions for her share of the pro-rated benefit costs; and that the Employer would then be expected to pay its' share of the pro-rated benefits costs: However, I do not believe that the application of the principles of collective agreement interpretation, as argued before me, allow for such a reading in this case. That would require me to turn a blind eye to the significant difference between Article 35.02 (which only requires as a condition that an employee has completed her probationary period), and the other benefit plan provisions of Article 35 that specify that both completion of probation and participation in the plan are necessary.

37. While this would have been a case in which to undertake a contextual analysis of the collective agreement provisions, rather than a strict language interpretation analysis, the parties did not argue the case in that manner, and have specifically agreed at para. 19 of the Agreed Statement of Facts (reproduced above), that I am not to consider extrinsic evidence as an aid to interpreting this collective agreement unless I determine that the language on its face is ambiguous. The language is not on its face ambiguous, but it is somewhat irreconcilable in that a strict reading leads to an absurd result.

38. In the application of the ordinary principles of interpretation, the requirement is to give effect to all words agreed upon by the parties in the context in which they are used, at least to the point where absurdity would result. Had the Employer paid its' pro-rated share of the life insurance premium, and no one paid the rest of it as the employee was not required pursuant to Article 35.02 to "participate" in the plan, the employee's estate would still have received no life insurance benefit upon her death. Paying some portion of the premium does not purchase the $25,000 coverage.

39. In order to avoid such an absurd result, in my view the linguistically more permissible interpretation is that the Employer had an obligation to pay 100% of the life insurance premium for Ms. Dixon as Article 35.02 contained no requirement that an employee agree to participate in that insurance plan. Thus, the issue of proration would not arise, and Article 38.02 would have no application to this particular insurance plan.

40. To conclude, and for the reasons outlined above, the grievance is upheld as I have found that Pine Villa should have paid the full life insurance premium cost on Ms. Dixon's behalf while she was an employee of that facility. As such, Ms. Dixon's

estate is entitled to be paid $25,000, which is the value of the life insurance benefit, and I order the Employer to do so. I will remain seized in the event that there are any issues that arise out of the implementation of this award.

Dated at Toronto this 17th day of November, 2017.

"Gail Misra"
Gail Misra, Arbitrator