

IN THE MATTER OF AN INTEREST AWARD *under section 122 of the Police Services Act*

BETWEEN:

THE COBOURG POLICE SERVICES BOARD

(The “Board”)

- and -

THE COBOURG POLICE ASSOCIATION

(The “Association”)

ARBITRATOR: William A. Marcotte

APPEARANCES:

FOR THE BOARD:

G.P. Christie, counsel
M. Godawa, Board chair
D. Pepper, Board vice-chair
K. Liu, Chief of Police
P. Vandegraff, Deputy Chief

FOR THE UNION:

C. V. Jones, counsel
L. Pearce, counsel
R. Ferguson, Assn. president
R. Parker, Assn. vice-pres.

Hearing held in Cobourg on September 6, 2018. Submissions received by September 28, 2018.

AWARD

I was appointed arbitrator on June 29, 2018 under section 122(2)4 of the *Police Services Act* to determine matters unresolved by the parties in regard to the renewal of the Uniform collective agreement and the Civilian collective agreement both of which expired on December 31, 2016.

Under the Act, the parties are prohibited from invoking sanctions (i.e., strikes and lock-outs) in attempting to renew their collective agreements. Thus, interest arbitration is an alternative dispute-resolution mechanism that intends to replicate the bargaining outcomes the parties would have reached had they the ability to invoke sanctions in fashioning their collective agreements, commonly known as the “replication principle.” Since it is unknown with any precision what the outcome may have been had the parties engaged in unrestricted collective bargaining, replication requires objective consideration of the circumstance and context in which the parties attempted renewal of their collective agreements, which matters, among others, are addressed under s. 122(5) of the Act:

1. The employer’s ability to pay in light of its fiscal situation.
2. The extent to which services may have to be reduced in light of the decision or award if current funding and taxation levels are not increased.
3. A comparison, as between employees and other comparable employees in the private and public sectors, of the terms and conditions of employment and the nature of the work performed.
4. The employer’s ability to attract and retain qualified employees.
5. The interests and welfare of the community served by the police force.
6. Any local factors affecting the community.

The above criteria - - which are to be included among all factors considered relevant for purposes of this award - - are general, provincial and local in nature, with

emphasis on local community circumstances. This emphasis is reflected in the legislated collective bargaining structure that provides for local-level (as opposed to, for example, provincial-level) negotiations between police services boards and police associations.

In their submissions, the parties emphasize the above “comparison” factor, in particular as between the Cobourg police services and police services in other communities considered by them to be appropriate comparators. Such comparisons, however, require consideration of the local community setting. In a September 17, 1982 award (cited by the Board in its submissions at p. 19), arbitrator Teplitzky states:

... although public sector employees are not required to subsidize the community by accepting substandard wages and benefits, the community is not required to pay greater wages or benefits to public sector employees than the community itself is able to derive from its employment.

That is, while comparison to other similar police services is appropriate, such consideration must bear in mind the economic circumstances as reflected in collective bargaining trends in the Cobourg community. Further, given the significance of comparability, interest arbitration is fundamentally a conservative process and is not a substitute for unrestricted collective bargaining.

The Community

The population of Cobourg is roughly 20,000 and there are 34 sworn members of the police service, including the Chief and Deputy Chief of Police. On the civilian side, there are 19 part-time Special Constables, 5 full-time employees and 34 part-time employees. Neither party points to local economic circumstances as a critical factor for this round of negotiations. In terms of other bargaining units in the City, the only reference made is to a Canadian Union of Public Employees bargaining unit where the parties agreed to wage increases of 1.75% in 2016, 1.9% in 2017, 1.9% in 2018, and 1.9% in 2019.

Negotiations History

The parties engaged in negotiations from Spring to November, 2017 and were able to resolve a number of issues. On November 17th, the Association tabled, for the first time, its salary proposals for the agreed-upon 4-year term of the collective agreement, January 1, 2017 to December 31, 2020. On November 27th, the Board withdrew its agreement on matters that it had previously agreed to and indicated its strong opposition to the Association's salary proposals of 3.5%, 2.5%, 2.5% and 2.0% over the four-year term. No further negotiations occurred. At the hearing on September 6, 2018, the Association contended the Board must be held to its agreements on issues resolved prior to November 27, 2017. The Board position is that because none of those issues had been signed off by the parties, it was not bound to its agreements.

There is no one way by which parties negotiating a collective agreement finalize a tentative agreement reached at the bargaining table, "tentative" since the agreement is subject to ratification by their constituents. Typically, at the commencement of negotiations, the parties agree on a protocol for concluding negotiations on particular issues. In some cases, they sign off agreed-upon items, in others they simply move on to other issues and when all matters have been resolved, agree to recommend ratification of the entire document. Since agreement on any one item is contingent upon agreement on all other items, what must be established at some point is the bargaining range. The bargaining range is created when both parties have made proposals on all matters they put forth and have responded to all of each other's proposals. Within this range, they attempt to reach a tentative agreement. In the instant case, the Association did not put its salary proposal on the table until November 17, 2017. That is, the bargaining range had yet to be established until that time. Moreover, it would seem the parties, for whatever reason, did not establish a protocol for negotiations. Be that as it may, it would make no sense to not award matters that had been tentatively agreed-upon.

ITEMS AGREED UPON

All items agreed upon by the parties as of November 17, 2017, are to form part of their collective agreements, effective from January 1, 2017 to December 31, 2020.

*ITEMS IN DISPUTE – UNIFORM COLLECTIVE AGREEMENT*Articles 8.02 and 8.06 – Hours of Work

The Association proposes deletion of reference to 10-hour shifts in art. 8.02 and replaced by a 12-hour shift schedule, the latter in place under a Letter of Understanding first agreed to in 2001 and renewed in 2011, and which schedule can be terminated by either party on 60-day notice. In 2016, the Board notified the Association that it wanted to return to the 10-hour shift schedule but did not do so. The 12-hour schedule remained in place but with modification to some of the start and end shift times, with the possibility of only 2 police officers being on duty on Friday and Saturday from 0300 to 0500 hours, a reduction by one police officer. One year later, the start and end shift times were eliminated and the previous times were put back in place. Under art. 8.06, the Association proposes that 3 police officers be on duty at all times with certain exclusions, i.e., those assigned to “CIB, CMU or the Courts.” A significant effect of the Association proposal is the elimination of the 60-day notice of termination.

The Board rejects the Association art. 8.02 proposal asserting that it fails to reflect the status quo which provides for 8-hour and 10-hour shifts. Further, as concerns the suggested change to art. 8.06, the Board noted that this article does not form part of the Letter of Understanding.

The Association proposal calls for a substantive and significant change to the scheduling provisions in the collective agreement, albeit the matter of the 12-hour shift schedule has been in effect for some 16 years under the Letter of Understanding. Bargaining parties typically agree to letters of understanding in

order for their provisions not to form a permanent part of the collective agreement. Thus, to agree with the Association proposal would require a substantive change to the parties' agreement on hours-of-work provisions. This matter is best left to the parties to negotiate. I do not award the Association proposal.

Article 9.03 - Salaries

The parties' submissions are based on the salary for a 1st Class Constable, the standard point of reference for comparison purposes. The percentage increase for police officers also applies to civilians. They differ, however, as to the appropriate police services to be included in the comparator group. Six police services are common to the two comparator groups: Brockville, Kawartha Lakes, Orangeville, Owen Sound, Port Hope, and Strathroy-Caradoc. For its part, the Association includes Belleville and Peterborough. The Boards comparator group includes Amherstburg, Stratford, and, Timmins. The Association proposes salary increases (modified from those of November, 2017) of 1.9% in 2017, 1.8% in 2018, 2% in 2019, and 2.5% in 2020. The Board proposes increases of 1.7% in 2017, 1.6% on 2018, 1.7% in 2019, and, 1.6% in 2020.

The following table, based on the parties' submissions, indicates the annual salary for each proposed comparator for the years 2016, 2017, 2018, 2019 and 2020, along with the Cobourg salaries for 2017-2020 proposed by the Association and by the Board.

ALL COMPARATORS (rounded to nearest dollar)

	2016	2017	2018	2019	2020
Brockville	93,408	95,188	97,002	-	-
Kawartha Lakes	93,602	95,484	97,403	-	-
Orangeville	94,733	96,154	97,356	98,329	-
Owen Sound	94,156	96,039	97,864	-	-
Port Hope	92,522	94,195	95,803	97,439	99,102
Strathroy-Caradoc	92,917	94,682	96,481	-	-
Belleville	93,084	94,946	-	-	-
Peterborough	94,451	96,340	98,363	100,527	-
Amherstburg	94,902	-	-	-	-
Stratford	94,939	96,837	98,774	-	-
Timmins	93,669	95,789	97,957	-	-
AVERAGE	93,853	95,565	97,444	98,765	99,102
Cobourg	93,827				
Assn. Proposal		95,610	97,331	99,277	101,759
Board Proposal		95,422	96,949	98,597	100,174

The Board's data also indicate that from 2010 to 2016, inclusive, the Cobourg salary has been in a range from \$402 above the average (2010) to \$429 below the average (2014). As to the Association comparator of Peterborough, that range is from \$414 less (2010) to \$1169 less (2012), or, 99.48% and 98.75%, respectively. For all comparators save Belleville, the Cobourg salary has been within 1% of ten of the comparators (except Peterborough in 2012 (98.75%), 2013 (98.77%), 2014 (98.77%) and 2015 (98.86%)) from 2010 to 2016, inclusive. The following increases, which I award, maintain that relationship:

January 1, 2017	1.70%
January 1, 2018	1.85%
January 1, 2019	1.70%

While only one comparator (Port Hope) has an agreed-upon salary for 2020 (\$99,101), the Cobourg salary has been trending higher following a close relationship from 2010 to 2014, inclusive. I award a salary increase of 1.60% effective January 1, 2020.

Article 14.02 – Responsibility Pay

Currently, art. 14.02 requires that in order to be eligible for responsibility pay, a police officer, under subsection b), must be “free of disciplinary conviction for which the confirmed penalty was forfeiture of 40 or more hours of pay or leave, or 40 or more hours suspension without pay or higher penalty, imposed in the previous 12 months.” Under subsection c), the police officer is required to “attain satisfactory ratings on all portions of the member’s performance evaluation.” Responsibility pay is at the rate of 3% of salary for 8 years of service, 5% for 15 years of service, and, 7% after 23 years of service. The Association proposes the deletion of subsections b) and c) because they are said to convert a retention bonus based on experience into a performance-based bonus said to be contrary to the intent of responsibility pay. Moreover, it contends that its proposal reflects the provisions in certain of its comparators.

The Board rejects the Association proposal, noting that the comparators do also provide conditions for eligibility and, also, that no police officer in Cobourg has yet to be denied their responsibility pay.

The Association proposes a substantive change to the provisions of art. 14.02. Such change is best left to the parties to negotiate. I do not award the Association proposal.

Article 18 – Medical Certificates

Currently, under art 18.01 b), “Where the Board is concerned that a member has a pattern of absences from work, the member may be instructed that for all future absences in the next twelve months, he or she must supply a medical report”, the costs of which to be borne by the police officer and additional reports, if necessary, will be paid by the Board (art. 18.02). The Association proposes that art. 18.01 b) read as follows: “Where the Board is, acting reasonably, concerned about the bona fides of a member’s sick leave usage, the member may be instructed that for all future absences in the next twelve months, or such lesser period as the Board may determine, he or she must supply a medical report.” It also proposes that all medical reports under art. 18.01 b) be paid by the Board.

Under art. 18.03 a), the language recognizes the parties’ obligations to accommodate disabled members. The Association proposals address access to medical information to that “which is reasonably necessary to identify or clarify a member’s restrictions and limitations”, which language change it views as restricting current access language which may allow for access to information other than as it specifies in its proposal. Also, in regard to art. 18.03 c) where it currently provides for an independent third physician to become involved, and should a dispute arise between the member’s physician and that of the Board, to be “agreed upon consulted and will decide the dispute”. The Association proposes that this independent physician “... will be agreed upon and consulted.” Further, any cost associated with the independent physician is to be borne by the Board. The Association views this proposal as eliminating disputes over the decision of the independent physician.

The Board does not agree with the suggested changes, in that the parties had agreed on the current provision, that it is in accord with accommodation requirements, no comparator collective agreements have provisions similar to the proposed changes, and, there have been no problems regarding accommodation.

The Association submits that it is “in the best interests of both parties to revisit this language in the manner” it suggests. I agree. It is better for the parties to resolve any differences they may have on this matter. I do not award the Association proposal.

Art. 19.02 – Leave of Absence – Association Activities

The Association proposes that Association activities be expanded to include, “Special General Meetings of the Police Association of Ontario”; that the current 17 working days for such leave be amended to read “480 hours”; that the restriction on such leave to two members during the same period of time be deleted, and, the addition of the sentence, “Association Leave hours may be distributed by the President to any Association Executive member(s).” The Association contends its proposals are reasonable and clarify the language of the current provision. The change to hours from days reflects that such leave rarely requires a full-day absence, yet the Board deducts a full day in the case of a one-hour meeting of the Association executive and, moreover, requires those members to remain on active duty. Their proposal is also said to address the problem that when the Uniform 17-day leave has been used, the Board does not allow the Association President to re-allocate Civilian leave time to the Uniform unit. Further, in 2017, when Uniform leave had been exhausted, the Board asserted the Uniform bargaining team would be required to use personal banked time for negotiation purposes. As well, the distinction between Uniform and Civilian Association leave time fails to recognize that the Association executives’ work focuses on both Uniform and Civilian bargaining units. The limitation on 2 members on such leave at any one time ignores the possibility of concurrent but separate Association activities, including grievance procedure meetings and Police Association of Ontario (“PAO”) activities. Moreover, some activities such as negotiations, require more than two members’ participation. The expansion of PAO activities to include special meetings clarifies the intent for Association members to participate in other than Annual conventions

and Executive Zone Meetings. The Association is of the view its proposals would not “significantly impact the Board.”

The Board cannot agree to no restriction on the number of Association members off on Association leave at any one time. The Board acknowledged that the amount of days allotted under this provision may not compare favourably with the comparator group, and which collective agreements seem to suggest that, for the most part, the time is calculated by day and not by hour.

I agree with the Board that a limitation on the number of members off on Association leave ought not be unlimited. The majority of comparator agreements indicate a preference for 2 members off on Association leave for purposes provided for in the current provisions. I do not accept the Association proposal of an unspecified number of members on such leave. I award no change to the number of members off at any one time.

Four of the comparator agreements express annual Association leave in terms of hours (Port Hope, 300 hours and excludes time for bargaining; Stratford, 250 hours; Strathroy-Caradoc, 100 hours excluding meetings scheduled by the Board; Timmins, 120 hours plus up to 72 hours for attendance at OPA bargaining seminars, and, apparent exclusion of time off for negotiations and contract administration). Under the Amherstburg collective agreement, one member has leave to attend the OPA annual convention, and, two members can attend other PAO meetings, but there is no stated time limit, either days or hours. The Brockville and Kawartha Lakes agreements provide for a maximum of 50 days off, with the Kawartha agreement also providing for unspecified time off for two members of the bargaining committee for negotiations with the board. The Orangeville agreement indicates 20 days for two members for all PAO business. Further, additional time off for other Association business including negotiations and contract administration, is granted at the discretion of the Chief of Police. The Owen Sound agreement provides for 40 days leave for PAO purposes plus additional days for negotiations and contract administration “at the discretion of the Chief of Police”.

Art. 19.02 provides for 17 days for any and all Association leave purposes including negotiations and contract administration. It would seem, however, from the parties' submissions that each of the two bargaining units is allotted 17 days of leave. When hours are translated to days on an 8-hour basis for all comparators, the range is from 12.5 (Strathroy-Caradoc) to 50 (Brockville and Kawartha Lakes) and where Port Hope (37.5 days), Timmins (19.5 days), and Owen Sound (40 days) exclude collective bargaining time, i.e., negotiations or contract administration or both. (Amherstburg agreement does not specify either hours or days.) When translated into days, the Association proposal is for 60 days ($480 \div 8$), which is above the high end of the range. While the lack of a time limit in the Amherstburg agreement, and the unspecified time for Association leaves other than for PAO purposes in Timmins, Owen Sound, Port Hope and Strathroy-Caradoc cannot be ascertained, the average time for Association leave in the comparator group, where amenable to calculation, indicates an average of 31.6 days, but I suspect this figure would be higher given the non-specific but additional days in Owen Sound, Timmins and Port Hope. I award 34 days of Association Leave of Absence (which may reflect the parties' practice) but without the distinction now used by the Board between Uniform and Civilian Association leave time.

Article 24 – Disability Income Benefits

The Association proposes the addition of the following:

24.04 – Enforcement

The Long Term Disability plan provided by the Board is incorporated into and enforceable within the terms of the collective agreement.

The Association submits that its proposal clarifies that the Board is responsible for disability income benefits for the members and, thus, disputes over eligibility are properly subject to arbitration rather than the responsibility of the insurer so that the member would be required to deal with the insurer directly. It submits that the

language in need of clarification is at art. 24.02: “the Board shall provide a Long Term Disability Benefit...”, and at art. 24.03, “the Board agrees to obtain and maintain in force a Long Term Disability plan ...”, and notes that current Article 24 sets out specific benefits and eligibility requirements for such benefits. Moreover, the Article does not include language which suggests that a member’s participation in the plan is subject to any terms or conditions.

The Board does not accept this proposal. If the Association is correct in its interpretation of current Article 24 language, the provision is un-necessary. If the Association is not correct, the Board is unwilling to change the current language.

If the provision now effectively incorporates the Disability Income Benefit into the collective agreement, an award of the Association proposal is un-necessary. On the other hand, if the disability plan is not incorporated into the agreement, the Association proposal represents a substantive change. I do not award the Association proposal.

Art. 29.07 – Travel Time

The Association proposes a new provision:

Any member required by the Chief or the Board to attend the Ontario Police College or the Canadian Police College, and to travel outside of their regularly scheduled working hours, shall be paid four (4) hours at a rate of time and one-half for each round trip in addition to any other course or travel allowance applicable under the Collective Agreement.

The Association submits that it is some 300 kilometres from Cobourg to the above locations and to not be paid hours of work for that travel time is tantamount to working for free. A cap of 4 hours, moreover, is less time than it would take for a round trip and has the benefit of setting a maximum on travel time reimbursement. Should the Board not accept this proposal, the Association will insist that the

overtime provisions of the collective agreement will apply to such travel commencing with the collective agreement at hand.

The Board rejects the proposal in noting that none of the comparators provide for this sort of travel time payment.

The Association proposal is not supported by any of the provisions in the comparator collective agreements. I do not award the Association proposal.

Article 32 – Indemnification

The Association proposes extensive changes to this article: the deletion of the current language of art. 32.01 after the introductory statement, and replacement language thereof; re-numbering art. 32.02 to 32.03 and current art. 32.03 to 32.04.

The Association changes:

1. Remove the Board’s discretion to refuse to indemnify a member charged with a criminal or statutory offence where the member is found ultimately to be not guilty.
2. Remove the Board’s discretion to not indemnify a member charged arising from circumstances involving a “gross dereliction of duty or deliberate abuse of ... power.” (In this regard, the Association submits that the proper avenue to address these concerns is under the PSA provisions and, in any event, it is a punitive measure when the member is found not guilty).
3. The Association proposal broadens the ability to be indemnified as long as “(1) the charges arose as a result of acts done in the attempted performance in good faith of their duties as police officers on a tour of duty, and (2) the member is found not guilty”.
4. The Association removes the restriction on indemnification in civil matters to only the occasion where the member is found not guilty.
5. The Association proposes language which contemplates the member and the Board being jointly named in a civil action which would allow both to use the same legal counsel and effectively reduce legal costs to the Board.

The Board rejects the Association proposal, noting but scant support for it in the comparator group. The Board, however, suggests that the phrase “on a tour of duty at the time” be deleted wherever it occurs in Article 32 such that the article reflects “in the attempted performance in good faith of their duties as police officers.” Also, it suggests that a clause dealing with the matter of civil action in the Owen Sound agreement is acceptable.

I award that the phrase “on a tour of duty at the time” be deleted from Article 32. I award the deletion of art. 32.01 to be replaced with the following:

- 32.01 b) Where a member is a defendant in a civil action for damages because of acts done in the attempted performance in good faith of their duties as a police officer, they shall be indemnified for the necessary and reasonable legal costs incurred in the defence of such an action in the following circumstances only:
- i. Where the Chief of Police and/or the Cobourg Police Services Board is not joined in the action as a party pursuant to the Police Services Act, and the Chief of Police and/or the Cobourg Police Services Board does not defend the action on behalf of himself/herself and/or themselves and of the member as joint tortfeasors at the Board’s sole expense; or
 - ii. Where the Chief of Police is joined as a party or elects to defend the action, but the solicitor retained on behalf of the Chief of Police and the member is of the view that it would be improper for them to act for both the Chief of Police and the member in that action.

The remainder of the Association proposal provides for substantive changes to the current provision. I do not award the remainder of the Association proposal.

ITEMS IN DISPUTE – CIVILIAN

Art. 7.01 – Part-Time Members

Under current art 7.01 d), regular part-time members receive 4% vacation pay per week of vacation “in lieu of the accumulated vacation pay provided to regular full-time members.” The Association proposal deletes this clause and replaces it by stating that regular part-time members receive an in-lieu percentage that increases with years of experience with the Board: 4% from hiring date; 6% at 5 years; 8% at 10 years; 12% at 21 years; 14% at 25 years, and, 14% at 30 years.

Under current art 7.01 e,) eligible part-time members receive 10% of their salary rate in lieu of benefits “by working an average of sixteen (16) hours per week for at least four (4) pay periods in any seven (7) consecutive pay periods.” The Association proposes increasing the payment to 12% from 10%, and, the deletion of the qualification requirements.

The Association submits that under the *Employment Standards Act*, employees are entitled to 6% vacation pay with 5 or more years of service. Increasing the percentage payments based on years of service is reflective of societal changing norms regarding part-time employees. As concerns payments in lieu of benefits, the Association submits the amount of 10% payment has fallen behind those of the comparators. Moreover, none of the comparators require part-time members to work a minimum number of hours in order to be eligible for this payment.

The Board rejects the vacation proposal, the increased percentage in lieu payment, and, the deletion of the worked-hours requirement, noting no similar provisions regarding these matters in the comparator collective agreements.

The Association proposal for 6% with 5 years of more service is in line with the ESA. I so award. The percentage changes based on experience and the changes to art. 7.01 e) are best left to the parties to negotiate. I do not award the Association proposal.

Art. 11.02 – Overtime

Art. 11.02 provides for call-in pay for a full-time member of 1 ½ times salary rate per hour of call-in and a minimum of six hours straight time salary for any call-in or recall to work. The Association proposes the addition of the following: “Part-time members shall receive a minimum of four (4) hours of straight time for such recall.”

While art. 11.02 is entitled “Overtime”, it addresses the matter of call-in which may or may not attract overtime rates. In any event, it seems improbable to me that a part-time employee who is called in to work is not paid compensation for the call-in. I award the Association proposal.

Article 12 – Standby Pay

Currently, Court Security Officers are paid a premium of 2 hours of salary while on standby and, if called to duty an additional 2 hours of premium pay. The Association proposes an increase to 4 from 2 hours in both circumstances in addition to time worked. The Association submits that its proposal is in line with the Employment Standards Act which, as at January 1, 2019, will provide for 3 hours of regular wages when on-call. While the Act will also provide for 3 hours of such pay if an employee is required to work less than 3 hours, or, if an employee’s shift is cancelled within 48 hours, it does not propose these requirements. However, on the notion that ESA requirements cannot be waived except where there exists a greater right or benefit, the proposal for 4 hours of pay would offset the absence of the above two requirements.

The Board rejects this Association proposal and notes there is no support of it among the comparators.

The Association data indicate that only the Brockville civilian agreement provides for Standby pay (at art. 9.09 b)), at the rate of 4 hours regular pay for each standby period of “up to eight (8) hours.”

According to the Association, the changes to the ESA it refers to are scheduled to take effect January 1, 2019, but some three months from the present. Once in effect, the Board is required to follow whatever changes are made at that time. I do not award the Association proposal.

Art. 14.01 – Service Pay

Currently, service pay is paid on a pro rata basis for that portion of the year following the completion of the member’s “... 5th, 10th, 15th, 20th, 25th, 30th, 35th, and 40th years of service credits.” The Association proposes this sentence be amended as follows: “Paid at a rate of \$100 on a pro rata basis ...” Further, its proposal adds an additional sentence: “this will include full-time and part-time members at a rate of \$100 per each 5-year period.” This proposed sentence is said to address a lack of clarity as to part-time employees’ entitlement to service pay.

The Board submits that under the current language, the prorated amount is \$90.00. The Association proposal, therefore, amounts to a \$10.00 increase. I award the Association proposal, including part-time employees’ entitlement.

Article 38 – Job Postings

The Association proposes a new provision:

38.04 a) Consideration for candidates for all positions shall be as follows:

- i) Civilian Bargaining Unit Members;
- ii) Uniform Bargaining Unit Members; and

If a qualified candidate in the first category applies for a job he or she is entitled to be considered for the vacancy in priority to any candidate in the second category.

- b) In the event that two (2) or more members with relatively equal knowledge, skills, and ability applies [sic] for the posted position, members shall be given first priority in order of seniority.

- c) Where there is no qualified candidate amongst the categories set out in Article 38.04, the Service is entitled to consider outside applicants.

The Association submits that the current collective agreement contains no language governing the posting of job vacancies. Its proposal is said to enhance transparency and predictability for the Board and Association in filling vacancies, and, ensuring that duly qualified internal candidates are given due consideration. Its proposed language is similar to the provisions in comparator group collective agreements.

The Board does not accept this proposal and disagrees there exists sufficient support for it in the comparator group. It notes, moreover, that the proposal is driven by but one instance where a uniform member was given a vacant position in the civilian bargaining unit.

While there is one Cobourg Police Association, there are two separate bargaining units. The Civilian collective agreement, under art. 1.01 excludes sworn police officers. (Similarly, the Uniform collective agreement applies to police officers and not civilians.) Under art. 38.02 of the Civilian agreement, “Where a vacancy occurs or a new position is created and such appointment may provide promotion for *any member* ... [Emphasis added.] Art. 38.03 states, “All vacancies ... shall be based on a fair and equal process to select the candidate.” Vacancies and new positions (as referred to in art. 38.03) are those within the bargaining unit and, thus, covered by the provisions of the Civilian collective agreement. A sworn police officer is not a member of the Civilian bargaining unit. The Association proposal is in line with the distinction made between the sworn police officer bargaining unit and the civilian bargaining unit. I award the Association proposal.

Letter of Understanding – New

The Association proposes a Letter of Understanding which states:

The Association and the Employer will create a Joint Job Evaluation Committee. The Association and the Employer will each appoint an equal number of representatives to the Committee, which will be tasked with setting its own terms, which will include ensuring that the Employer is in compliance with its obligations under the *Pay Equity Act*, and the creation of up to date job descriptions for each civilian classification.

Any dispute arising with respect to the setting of the terms of the Committee shall be referred to third party adjudication under the collective agreement.

The Association submits the Letter is appropriate in order for the Board to be in compliance with the *Pay Equity Act*. While it contends the parties' agreed on this provision in negotiations prior to November, 2017, due to circumstances it is unable to confirm that an agreement occurred.

The Board does not dispute the need for this Committee and that the Letter include "ensuring that the Employer is in compliance with its obligations under the *Pay Equity Act* and the creation of up to date job descriptions for each civilian classification." I award this undisputed part of the Association proposal. It disagrees, however, with referring disputes "arising with respect to the setting of the terms of the Committee" to adjudication under the provisions of the collective agreement, in that this inclusion would likely further delay the actual work the Committee needs to undertake.

Part V of the *Pay Equity Act* provides for a Hearings Tribunal to deal with the administration of the Act. I do not award the disputed provision of the Association proposal.

Any Association or Board issue not addressed in this award does not form part of the collective agreement.

Dated at Toronto this 16th day of October, 2018.



William A. Marcotte
Arbitrator