

**IN THE MATTER OF AN INTEREST ARBITRATION UNDER THE POLICE SERVICES ACT**

**BETWEEN:**

**DURHAM REGIONAL POLICE SERVICES BOARD**

**(the “Employer” or the “Board”)**

**-AND-**

**DURHAM REGIONAL POLICE ASSOCIATION**

**(the “Union” or the  
“Association”)**

**ARBITRATOR**

**ROBERT J. HERMAN**

**APPEARANCES**

**FOR THE ASSOCIATION**

**JOSHUA PHILLIPS  
MIKE GLENNIE  
GARY FOXWEL  
KEITH AUBREY  
ANDRE WYATT  
RANDY HENNING  
PAT BONATHAN**

**FOR THE BOARD**

**GLENN P. CHRISTIE  
CRAIG R. LAWRENCE  
ROGER ANDERSON  
ALLAN FURLONG  
JOHN HENRY  
BILL CLANCY  
LESLEY FORD  
KAREN BEESON**

**A HEARING WAS HELD IN AJAX ON JULY 31, 2012**

## A W A R D

1. This is an interest arbitration of collective agreements covering the uniformed members and civilian members, respectively, of the Durham Regional Police Service (the “DRPS”). The expired collective agreements ran from January 1, 2010 to December 31, 2011. As the parties have not agreed otherwise, the term of the renewal collective agreements shall run for one year, from January 1, 2012 to December 31, 2012. For ease of reference, I will generally refer below to the two collective agreements in the singular but the awarded items apply to both unless otherwise specified or otherwise inappropriate because the expired collective agreement did not contain an article that is amended below.

2. As noted in a previous interest arbitration award I issued between the parties (the “Herman Award”, dated May 9, 2009, for the collective agreements covering January 1, 2008 to December 31, 2009), the “appropriate approach is to try as best one can to replicate the resolution the parties would have reached had they been able to successfully negotiate new collective agreements. Of course, there is some artificiality in this endeavour since the parties were not able to negotiate the changes themselves and since there do not appear to be many items they have agreed to through bargaining.

And in applying this approach, regard must be had both to the criteria set out in Section 122(5) of the Act and to the overall impact of any changes.” This approach remains appropriate.

3. The Board argues that the economy in the Durham region continues to be quite poor, and that public sector compensation must be severely constrained over the next few years to address the difficult fiscal reality. It asserts that police wages and benefits cannot continue to rise at their current pace given the local economy, and it maintains that it does not have the ability to pay increases comparable to its historical comparators.

4. While the economy in the Durham region is fragile, the data the Board relies upon in support of this claim does not establish an inability to pay. The Board points to data that shows weak population growth and a notable reduction in housing starts between 2006 and 2010. Although these factors support an inference of a deteriorating economy, neither directly speaks to an inability to pay, which will in large part depend upon actual and projected revenues, savings or resources, and expenses. One measure that does in part address financial capability or capacity is the level of property assessments over that same period. In this respect, the Board points to the fact that property assessments in the Region over the five years between 2006 and 2010 only rose 12.63%, compared to larger increases in Toronto, Peel Region, York Region and Halton Region, four of the primary comparators for the Durham Regional Police Service. Accepting as accurate the assertion that the Region’s tax base has accordingly grown at

a materially slower rate than that of other regions in the same general geographical area of the province and acknowledging that funding for police wages and benefits is related to property tax income, the fact remains that property assessment income rose substantially over the period in question. It is not apparent that an increase in property assessment values, albeit at a rate of increase slower than in nearby regions, necessarily places the Region in a worse position than it was previously or supports a conclusion that the Region is therefore unable to afford compensation increases. What the data does suggest is that the Region is less healthy economically in comparison to the adjacent comparator regions; that is, Durham appears to have been harder hit by a deteriorating economy than have other nearby regions and it may not have recovered to the extent other nearby municipalities may have. Even so, the data demonstrates that the Region overall has been recovering economically over the last few years.

5. Data that would speak directly to an inability to pay, however, such as total revenue, net revenue, savings, current and future committed expenses, is not provided to any extent sufficient to establish any inability to pay, although it provides some support for the proposition that Durham ought not to be expected to pay the same increases affordable elsewhere.

6. The parties themselves in bargaining have for some time looked to police service collective agreements in Halton, Peel, Toronto and York and for the OPP to be the primary and most relevant comparator collective agreements (the “primary

comparators”). Because of the parties’ own reliance upon these comparators (and because they in fact represent good comparators), interest arbitrators have similarly relied predominantly upon these comparators. Thus they were of particular relevance for Arbitrator Paula Knopf (October 23, 2007, the “Knopf Award”) and for me when the previous Herman Award issued. Both parties take the position again that the primary comparators remain appropriate for comparison purposes, although as discussed below the Association submits that the terms with respect to wages for the recent OPP renewal collective agreement are structured in a sufficiently idiosyncratic manner that they ought not to be considered as valid comparator wage increases.

7. Generally speaking, because the primary comparator police services listed in the previous paragraph are relatively close to Durham and/or share similar characteristics in many respects, because the parties have historically looked to them for comparison and because for the most part continued reference to them should assist the parties in negotiating renewal agreements and avoiding resort to interest arbitration, I consider them the primary comparators. As the goal at interest arbitration is to attempt to replicate the agreement the parties would have reached had they been able to successfully negotiate, comparator negotiated settlements are of particular assistance in helping to replicate what a negotiated settlement would look like.

8. The previous two year collective agreement was negotiated by the parties themselves, and with respect to 2012, the year in issue here, all five of the primary

comparators reached negotiated settlements leaving only these parties utilizing interest arbitration.

9. All items unchanged or agreed to shall form part of the Collective Agreement. Changes awarded are effective from the date of the Award unless otherwise indicated.

#### Wages or Salaries

10. The Association seeks across-the-board increases of 1.5% as of January 1, 2012, 1.55% as of July 1, 2012, and .5% as of December 1, 2012. The Board proposes a single increase, 2.0% as of January 1, 2012.

11. The Association proposal reflects its assertion that until recently its members were paid wages at the same level as those paid at the primary comparators and they should be returned to those levels. It disputes that the Board or Region is unable to afford normative increases and justifies its request for slightly higher than normative increases on the need and justification for beginning the process of catch-up. It notes that the increases negotiated at the primary comparators were effective annual increases of 2.252% at Peel, 3.0% at York, 2.252% at Toronto, and 2.8% at Halton. With respect to the remaining primary comparator, the OPP, it points out that in an obvious effort to be able to claim that it was financially prudent within its own house, the OPP employer,

the provincial government, negotiated a four year collective agreement for the years 2011 to 2014 inclusive, with an annual increase well above norm in 2011 of 5.075%, then 0.0% in 2012 and 0.0% in 2013, and then a super-catch-up clause for 2014 that ensures that the OPP will then be the highest paid service in the province, which currently would mean its members receive a minimum increase of 8.55% in 2014. The Association suggests that this idiosyncratic and politically driven result is a dramatic departure from the customary approach to wage increases in Durham and the primary comparators, skewed to be able to demonstrate that the government successfully negotiated no increases for 2012 and 2013, even though it agreed to higher than normative increases for the other two years and to a higher than normative average annual increase across the four years of the agreement, as well as agreeing to a contract whereby the OPP will be the highest paid in the province by agreement end. Since only a one year collective agreement is in issue here, it submits that for wages comparisons, taking the OPP increase solely for 2012 in isolation from increases awarded across the four years of the contract would be misleading, unfair and inappropriate. The Association asserts that the 2012 OPP wage rates should either be ignored, or alternatively, considered with reference to actual salaries paid and not percentage increases for 2012. Excluding the OPP, the Association maintains that the average increase for the primary comparators for 2012 was 2.94 %, with an effective annual increase (taking into account increases staggered at different times of the year) of 2.57%. It notes that because of the timing of its proposed increases, the effective

annual increase it seeks is only 2.329%, and even then these increases will only return Durham employees by the end of the Collective Agreement to the “middle of the pack”, still below the average paid by other comparable municipal police services.

12. The Board notes that in 2010, the parties agreed to a two year renewal agreement that provided for wage increases of 3.125% for 2010 and 2.62% for 2011, with splits in each year, and that these negotiated increases resulted in Durham falling behind the primary comparators, in recognition of the particularly poor economic conditions in the region. Those difficult economic conditions continue, it submits, and again justify less than normative increases. The Board asserts that having agreed to slightly lower percentage increases for the last two years and a departure from the previous practice of rates similar to the primary comparators, it would be unreasonable for an arbitrator to award increases that lessen or erase the gap so recently agreed to, particularly since the current economy remains poor.

13. The Board notes that other Durham Region non-police settlements are less than 2.0%, such as 1.75% for Durham Region Transit and 1.75% for the Region’s Homes for the Aged, reflecting the economy. It refers to and relies upon recent interest arbitration awards for other police services (e.g. St. Thomas, 2.5% in each of 2011, 2012, and 2013, and Timmins, 2.5% in each of 2011, 2012 and 2013). The Board maintains that the OPP have been part of the group of primary comparators for many years, the Association still seeks to rely upon OPP improvements in areas other than wages, and



the fact that comparison with the OPP undercuts the argument for a higher than normative increase is not a valid reason for ignoring the OPP results. The Board notes that the increase as proposed by the Association is approximately 3.59% as a compounded rate, which would be the highest percentage increase of any of the primary comparators, an increase it asserts is roughly 53% greater than the primary comparator average increase, which it notes as 2.36% for 2012 (stated as 2.352% in the Association Brief). It states that the 2.0% increase it proposes is slightly lower than the normative average to reflect the poor local economy and the Board's inability to pay.

14. Although generally speaking, the primary comparators (police services at Peel, York, Toronto, Halton, and the OPP) continue to be the most relevant comparators, for purposes of comparators for wage increases for the 2012 Collective Agreement, I am satisfied that the most recent OPP wage settlement does not provide any particularly relevant comparison or assistance. The Association makes a number of assertions about the government's motivation in agreeing to such increases, but the reasons why the parties to the OPP renewal collective agreement might have agreed to a four year agreement with anniversary date increases of over 5.0%, 0.0%, 0.0% and at least 8.55% are not material. What is apparent from the terms of the agreement itself is that the parties there agreed to a structure or pattern of increases across a multi-year agreement that is not similar in structure or pattern to wage increases traditionally negotiated or awarded by arbitrators for the parties here or for any of the primary comparators,

including the OPP. The parties in the OPP agreement negotiated abnormally large wage increases in the first and last years of a four year agreement, increases well above the normative range for 2011 and 2014 (and for that matter well above normative increases for any year in recent memory), while at the same time well below normative increases for both 2011 and 2012. The pattern of wage increases in the OPP settlement across the four years is so asymmetrical and so at variance with normative ranges in all four years that it would be inappropriate and misleading to take a snapshot of a single year from that four year agreement as a valid comparator for the year in question, regardless of whether the snapshot taken is of 2011, 2012, 2013 or 2014. Accordingly, for wages purposes for 2012, I do not consider the OPP settlement to be a valid comparator and have not taken it into account.

15. Comparisons with the other primary comparators demonstrate that the salary rates currently paid by this Board are below those paid by the primary comparators. Nevertheless, for a number of reasons, I am not persuaded that any measure of “catch-up” is warranted at this time. First, the percentages to be awarded are still substantial and will provide real increases for members. Second, in the preceding round of bargaining the parties negotiated salaries that were below related salaries at primary comparators, presumably reflective of their shared understanding that somewhat lower salaries were justified by local conditions at the time. Having so recently agreed to slightly lower rates, and with an improving but still troublesome economy, there is no

justification at this time for larger than normative increases, even if normative increases would leave Durham slightly behind other comparators.

16. While the economy remains challenging, I am not persuaded that the economy in Durham is sufficiently less healthy than in the other primary comparator regions to justify increases below the normative range. This is particularly so in light of potential savings achieved through another item awarded below.

17. Excluding the OPP increase for 2012, the average wages increase in the primary comparators for 2012 was 2.94%, or an effective increase of 2.57%. A closer look at the primary comparators shows that the increases for both Peel and Toronto police service employees were 1.5% as of January 1, 2012, and a further 1.48% as of July 1, 2012, for York 3.0% as of January 1, 2012 and for Halton 2.8% as of January 1, 2012. To the extent any pattern can be said to be prevalent in such a small sample group, it is for staggered increases of 1.5% at the beginning of the year and a further 1.48% halfway through the year, yielding an effective annual increase of 2.252 percent. This pattern obviously falls within the normative range and is appropriate here.

18. I award across-the-board wage increases of 1.5% effective as of January 1, 2012, and a further 1.48% effective as of July 1, 2012, both increases retroactive from the effective dates.

## Association Proposals

### Retiree Health Spending Account (HSA)

19. The HSA (also referred to as the Health Care Spending Account) is an amount used to reimburse retired members for certain medical or dental expenses. Currently the HSA is \$2,500 for retirees between the ages of 65 and 70. The OPP collective agreement is not of particular assistance as a comparator for this item as its retired members receive benefits for life at 90% coverage, reflecting a different approach to retiree benefits. At all the other primary comparators, entitlement to the benefit runs from age 65 to age 75, not only to age 70 as in Durham. The amounts of the HSA's at these comparators are \$2,500 (Halton), \$3,000 (Toronto), \$3,250 (Peel) and \$3,250 (York). The Association seeks extension of the entitlement to age 75 and an increase in the amount to \$3,000. I recognize that although the immediate increased costs of both changes are not large, it is not unlikely that future increased costs will prove significantly greater. Nevertheless, as the HSA for Association members is materially out of step with the most relevant comparators, it is appropriate that the HSA for Association members be changed to bring it into line with the primary comparators. The HSA is changed to an amount of \$3,000 and to entitlement from ages 65 to 75.

### Dispensing Fee Cap

20. The current dispensing fee cap has not changed since 2001 and remains at \$7.50,

while the average among primary comparators is \$8.60. To reflect increased costs over the years and the average cap in the primary comparators, the cap is increased to \$8.60.

#### Dental and Orthodontic

21. Although not currently guaranteed in the Collective Agreement, the insurance contract provides for 100% of the current ODA fee guide for basic, endodontic and orthodontic services payable and 50% on restorative services. The Association proposes that the dental and orthodontic provisions be included in the Collective Agreement hereafter and asks for improvements in a number of specific areas of coverage.

22. It is appropriate that the obligation to pay for specified services be set out in the Collective Agreement, and I accordingly direct that there shall be a new clause that states:

The plan will reimburse in accordance with the current ODA fee guide for general practitioners.

23. Having regard to the levels of similar benefits provided at the primary comparators, the annual maximum for dental shall be increased from \$2,000 to \$2,500, and the lifetime caps for orthodontics for members and spouses (currently \$1,800) and dependent children (currently \$2,500) shall both be increased to \$3,000.

### Life Insurance

24. The Association proposes increasing the maximum life insurance benefits from the current \$150,000 to \$300,000 and from \$500,000 to \$750,000 in the event of accidental death and dismemberment (“ADD”). Comparison with the primary comparators indicates improvements are warranted. The life insurance cap shall be increased to \$250,000 and the ADD cap to \$750,000.

### Vacation

25. In some categories of length of service and related vacation entitlement members of the Association are somewhat behind the primary comparators while in others they are ahead. When one considers the vacation entitlements of members on the whole across all categories of length of service, the current vacation entitlements fall within normative ranges. No changes are warranted at this time.

### Shift Premium

26. Patterns of shift premiums for primary comparators vary. The current shift premium for 3-shift or more or for 12 hour shifts falls within the normative range of shift premiums and there shall be no change. In contrast, the current 2-shift premium of \$236.25 is materially lower than at primary comparators with such premiums. Increasing the level of this shift premium does not appear from the material to be unduly

costly. At the same time, the size of the shift premium increase sought by the Association for this group is quite large and I am reluctant to change too drastically the ratios of the shift premiums to each other without a better understanding of the history of the shift premiums. The 2-shift premium will be increased to \$260.

### Board Proposals

#### Sick Leave Retirement Gratuity

27. Currently, members at retirement are entitled to a cash payment equal to accumulated sick leave credits in hours multiplied by one-half of the member's regular hourly wage rate at time of retirement, together with a cash payment equal to accumulated sick leave credits in hours accumulated in the last 36 calendar months prior to retirement multiplied by one-half of the regular hourly wage rate at time of retirement. The Board proposes a new cap to a maximum of six months' regular salary on the pay out of accumulated sick leave credits at the time of retirement for all new members hired after a specific date. At the hearing the Board proposed that the operative date for these new hires be the date of the hearing, but acknowledged that an alternate date not too far in the future would also be appropriate. In support, the Board argues that the current payout requirement is out of line with the primary comparators, noting that Halton has no payout at all at retirement, Toronto payout is capped at 6

months for new hires, York is capped at 6 months, and Peel and the OPP have different schemes entirely (e.g. Peel has an income protection plan in lieu). The Board also relies on other police service comparators that similarly have much lower maximum limits on retirement payouts. The Board submits that the comparators therefore justify the change as do the potentially enormous future costs of the current payout provisions.

28. The Association submits that the parties themselves would never have bargained such a change themselves, as evidenced by the fact that the parties did not cap the payout in the predecessor collective agreement, which they negotiated. Such a change would constitute a “breakthrough” item for an interest arbitrator to award, it asserts, as both the Knopf and Herman Awards recognized in earlier awards between the parties. For the same reasons the Association maintains the proposal ought again to be rejected. The Association notes that the Board itself proposed the introduction of the payout in 2001, submitting that it then believed that the cost savings associated with the non-use of sick days pay outweighed the costs of sick leave retirement gratuities, and this remains true today. Further, the Association submits that the Board has not established any demonstrated need for such a change.

29. Reference to the primary comparators indicates that the Durham police service enjoys a far larger payout of a sick leave retirement gratuity than do other services. While any change in this respect can be considered significant, it would not appear to qualify as a “breakthrough” item when the proposal is to provide for new Association



members either a similar or better benefit than is enjoyed by most of the primary comparators, when the most recent primary comparator collective agreements were negotiated, and when the benefit will remain unchanged for all current members.

Whether or not the Association would have agreed to any such change in bargaining, the fact remains that the proposed change would bring the treatment of sick leave credits retirement gratuity for new members into the normative range.

30. There shall be a cap on the payout for new members in line with the primary comparators. Accordingly, for new hires as of October 1, 2012, the sick leave retirement gratuity payout at retirement shall be capped at a maximum of 6 months' regular salary based upon the member's regular salary as of the time of retirement. As the wording for the directed change is not reflected by the wording proposed by the Board in its Brief (as was acknowledged at the hearing), the wording of the change is remitted to the parties and I remain seized.

#### Retiree Benefits

31. The Board proposes a new provision for members who retire after January 1, 2017, so that they receive a pro-rated portion of their annual vacation leave calculated to the date of retirement rather than, as currently, the entire year's annual vacation entitlement regardless of date of retirement. The Board proposal defers the effective date of the change until 2017 in order to allow members near retirement to plan

accordingly. Three of the primary comparators (Toronto, York, and OPP) have restrictions upon the taking of annual leave or vacation in the retirement year, stipulating that it be prorated. One of the other primary comparators provides full entitlement in the year of retirement (Halton) and the other provides for full entitlement but it must be taken in time off and not paid out. The entitlement at the primary comparators is sufficiently mixed at this time that it cannot be said that the current benefit falls outside the normative range. For this reason and because the parties will have further opportunity to bargain over the proposed change, it is denied.

#### Association Leave

32. The Board's request that the Association bear the costs of retraining and reintegrating a member who has been absent from duty on Association leave for more than 6 years is denied. Such a change is not warranted by reference to the primary comparators, it would potentially penalize the Association when its members take long leaves for Association business, and there is no demonstrated need for the change.

#### Benefits

33. The Board proposes a change, from the current requirement for the Board to pay 100% of the premium cost of benefit plans as set out in Article 10.1 for members under age 65, to a cost sharing with the member paying 10% and the Board 90%. Of the primary comparators, only the OPP have a co-pay arrangement for such benefits but its

members also enjoy much greater post-retirement benefits. The normative payment arrangement for such benefits is the current provision and the requested change is denied.

34. I remain seized for any matter arising from the referral to arbitration and the instant Award, including any matters inadvertently overlooked.

Dated at Toronto this 21<sup>st</sup> day of September, 2012

A handwritten signature in cursive script, appearing to read "R. Herman", written in black ink.

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Robert J. Herman - Arbitrator