

IN THE MATTER OF THE ONTARIO *POLICE SERVICES ACT*

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

ESPANOLA POLICE SERVICES BOARD

- The Employer

- and -

ESPANOLA POLICE ASSOCIATION

- The Union

AND IN THE MATTER OF an arbitration under Section 122 regarding a new collective agreement AND an arbitration under Section 40 regarding the disbandment of the Espanola Police Service and the determination of severance pay for the terminated employees

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer

Glenn P. Christie - Counsel
and others

On behalf of the Union

Caroline V. (Nini) Jones - Counsel
and others

Hearing held September 13, 2018, in Espanola, Ontario; conference call hearing held September 24, 2018; additional written material received September 24, 26 and 27, 2018. from the parties.

AWARD

June 22, 2018, the Town of Espanola applied to the Ontario Civilian Police Commission for permission to abolish the Espanola Police Service. August 30, 2018, the Ontario Civilian Police Commission gave its consent to the application. The Ontario Civilian Police Commission required that any disputes about severance pay as a result of the disbandment be referred to arbitration under Section 40 of the *Police Services Act*.

Also on August 30, 2018, the Acting Chief of Police advised the members of the Espanola Police Service that their employment would be terminated October 11. There were eleven (11) officers and eight (8) civilian employees in the bargaining unit.

October 11, 2018, the Ontario Provincial Police took over policing from the Espanola Police Service.

I was initially appointed as an interest arbitrator under Section 122 of the *Police Services Act* to settle the terms of a renewal collective agreement. The parties agreed that I would also act as arbitrator under Section 40 of the same *Act* to resolve any disputes about severance pay for the terminated employees. The issue of severance pay was the main issue in the negotiations.

In accordance with the *Police Services Act*, a mediation-arbitration between the Espanola Police Services Board, the Employer, and the Espanola Police Association, the Union, was held in Espanola September 13, 2018. Further communication from the parties followed, including submissions from counsel in a conference call September 24, 2018, and various written submissions from counsel by email September 24, 26 and 27, 2018.

I have considered all of the information provided to me by the parties, the factors set out in s.122 of the *Police Services Act*, and the authorities provided to me by the parties.

The parties agreed to a three year term for their renewal collective agreement; it is effective from January 1, 2017, to December 31, 2019.

In addition to any other matters already agreed upon between the parties, I order the parties to make the amendments to the collective agreement set out below.

A. Salary

The Employer proposed a 1.5 % increase in salaries each year. The Union proposed a 2.0% increase in salaries each year.

Each party provided data regarding salary increases for those police services it viewed as comparable police services. The parties relied upon slightly different police services. In any event, both parties' data supported a larger increase than the Employer proposed but a smaller increase than the Union proposed.

Based on the data provided, I order that salaries for members of the bargaining unit be increased as follows:

- 1.75 % effective January 1, 2017,
- 1.75 % effective January 1, 2018, and
- 1.75 % effective January 1, 2019.

B. Severance

The employment of all members of the bargaining unit was terminated effective October 11, 2018. These are the severance pay provisions in the last collective agreement:

ARTICLE 25:00 SEVERANCE PAY

25:01 Should the members of the Service be reduced in size OR disbanded as a consequence of an agreement with the Ministry of the Solicitor General or any other agency to assume the policing and/or dispatching responsibilities for the municipality, each member of the Service not offered employment with this agency, or whole [sic] employment is terminated as a consequence of an agreement with the Ministry of the Solicitor General or any other agency to assume policing responsibilities shall be entitled to the following:

- (a) Six (6) weeks for civilians four (4) weeks for officers salary for every year of service or part thereof, but in any event no less six (6) weeks for civilians four (4) weeks for officers salary
- (b) The full Hospital and Medical Benefit package under this Agreement at the date of termination, to continue eighteen (18) months from the date of termination, or until the member is re-employed and in receipt of such benefits from the member's new employment.
- (c) An amount of up to \$7,500.00 for education, upgrading or retraining. These funds are for tuition, books and equipment, travelling and living expenses, directly related to education upgrading or retraining. A member seeking education funding must initiate education upgrading or retraining within a period of eighteen (18) months after date of termination. Once a member has commenced upgrading or retraining the funds will continue to be available for an eighteen (18) months period.
- (d) The Board agrees that when a member is offered and accepts employment with the O.P.P., the Board will pay all costs to ensure that the member shall continue to have the same pensionable service under the Public Service Pension Plan as the member enjoyed under the OMERS Pension Plan. Accordingly, the Board agrees that if a member is offered and accepts employment with the O.P.P., the Board will obtain a calculation as to the difference between the Public Servants [sic] Pension Plan as provided by the O.P.P. and the OMERS Pension Plan as previously provided to the member; and will pay that amount on behalf of the member to an RRSP of the member's choice
- (e) The Board agrees that on the date of disbandment of the Service each member absent from duty by virtue of illness or injury, or an authorized absence, shall continue to be provided with all of the benefits of this Agreement, unless such benefits are otherwise provided by the Ontario Provincial Police from the date of disbandment. A member covered by this provision who has not been offered employment with the O.P.P. shall be entitled to all of the applicable severance benefits outlined within this Agreement in addition to any other benefits of this Agreement
- (f) That the Town of Espanola enter into negotiations for centralized dispatching on the basis that

there would be no reduction in the number of employees, in the rate of pay, in security or benefits of the existing dispatch employee of the municipality as covered in the Agreement between the Espanola Police Service Board and the Espanola Police Association

(g) In the event that there is a change made with respect to the services provided for herein by virtue of the contracting out or amalgamation with other authorities of the civilian duties herein performed, the Board shall recommend to the Council of the Town of Espanola that those employees whose positions have terminated, be provided employment within the Town, that would be closely comparable to the duties performed prior to such change or such other employment that the employee is qualified to perform and willing to accept.

(h) The Board agrees that all rights and privileges under the Collective Agreement provided to retired members of the Espanola Police Service shall continue to be provided in accordance with the Collective Agreement in effect between the Association and Board at the time of disbandment, amalgamation or restructuring of the Service.

(i) It is understood and agreed that none of the severance pay provisions in this article would apply to any member who is retired. Further, it does not apply to any member who is on disability pension or on long term disability (LTD) for a period greater than three (3) years.

25:02 Any member who is offered employment with the above noted agency, and said employment is not within the Town of Espanola, may decline this offer of employment and will remain eligible for the severance entitlement as stated in 25:01.

The Ontario Provincial Police (OPP) took over the policing previously done by the Espanola Police Service and some employees were offered employment with the OPP. The above collective agreement provided that only those employees not offered employment by the OPP receive severance payments. The one exception in Section 25:02 provided that, if the employment offered by the OPP was outside the Town of Espanola, an employee could decline the offer and take the severance.

The Employer submitted I should award the severance provisions in the last collective agreement with no change.

On the other hand, the Union asked for several changes and proposed the following:

25.01 As a result of the decision to disband the Espanola Police Service effective October 11, 2018, ("Date of Disbandment") the parties agree to the following severance for affected members:

(a) For members who are not offered a position with the OPP, civilian employees shall receive six (6) weeks salary for every year of service or part thereof, and officers/uniform employees shall receive five (5) weeks salary for every year of service or part thereof. The seniority dates for employees are set out in Appendix "A", attached.

(i) Part-time employees' weekly wages will be calculated based on their average earnings over the 12 week period immediately preceding the Date of Disbandment, which shall be scheduled in the usual manner. The average weekly wage will be applied to the weeks per year the part-time member has been employed by the Espanola Police Service.

(ii) Full-time employees' weekly wages will be calculated based on a 40 hour week (2080 hours annually).

(iii) All members will have 15 days from the Date of Disbandment to opt between lump sum payment, salary continuance, or a combination thereof. The member's decision shall be in writing, delivered to the Town of Espanola CAO, and irrevocable.

a. The lump sum payment may be split between 2018 and 2019, which shall be subject to applicable statutory deductions and withholdings, at the member's election, and shall be paid as the employee legally directs.

b. If the member elects to split the lump sum payment between 2018 and 2019, the 2018 payment shall occur within 30 days of the member's election and the 2019 payment shall occur in January 2019.

c. If the member does not elect to split the lump sum payment, any lump sum payment shall be made within 30 days of the member's election.

(iv) If the member opts for salary continuance, which shall be subject to applicable statutory deductions and withholdings, each of the Board and the employee shall continue to make their respective OMERS pension contributions, consistent with the statutory requirements. For clarity, the salary continuance will be 5.25 weeks for every year of service or part thereof for civilian employees and 4.25 weeks for every year of service or part thereof for uniform employees, and may be apportioned at the member's election between salary continuance and lump sum payment.

(v) A member who elects salary continuance and retires during the salary continuance period shall receive retiree benefits under and in accordance with the collective agreement, including Article 11.02, subject to the eligibility requirements. Effective the date of retirement, the member shall forgo any further salary continuance.

(b) For members who accepted employment with the OPP:

(i) Uniform members who accepted OPP employment are not entitled to severance pay.

(c) For members who receive an offer of employment with the OPP but who do not accept the offer:

(i) Two weeks salary for every year of service or part thereof, payable as a lump sum, as set out above.

(d) The full Hospital and Medical Benefit package under this Agreement at the date of termination, to continue eighteen (18) months from the date of termination, or until the member is re-employed and in receipt of such benefits from the member's new employment.

(e) An amount of up to \$7,500.00 for education, upgrading or retraining. These funds are for tuition, books and equipment, travelling and living expenses, directly related to education upgrading or retraining. A member seeking education funding must initiate education upgrading or retraining within a period of eighteen (18) months after date of termination. Once a member has commenced upgrading or retraining the funds will continue to be available for an eighteen (18) months period.

(f) The Board agrees that when a member is offered and accepts employment with the O.P.P., the Board will pay all costs to ensure that the member shall continue to have the same pensionable service under the Public Service Pension Plan as the member enjoyed under the OMERS Pension Plan. Accordingly, the Board agrees that if a member is offered and accepts employment with the O.P.P., the Board will obtain a calculation as to the difference between the Public Servants [sic] Pension Plan as provided by the O.P.P. and the OMERS Pension Plan as previously provided to the member; and will pay that amount on behalf of the member to an RRSP of the member's choice.

(g) The Board agrees that on the date of disbandment of the Service each member absent from duty by virtue of illness or injury, or an authorized absence, shall continue to be provided with all of the benefits of this Agreement, unless such benefits are otherwise provided by the O.P.P. from the date of disbandment. A member covered by this provision who has not been offered employment with the O.P.P. shall be entitled to all of the applicable severance benefits outlined within this Agreement in addition to any other benefits of this Agreement.

(h) The Board agrees that all rights and privileges under the Collective Agreement provided to retired members of the Espanola Police Service shall continue to be provided in accordance with the Collective Agreement in effect between the Association and Board at the time of disbandment, amalgamation or restructuring of the Service.

(i) It is understood and agreed that none of the severance pay provisions in this article would apply to any member who is retired. Further, it does not apply to any member who is on disability pension or on long term disability (LTD) for a period greater than three (3) years.

25.02 Any member who is offered employment with the above noted agency, and said employment is not within the Town of Espanola, may decline this offer of employment and will remain eligible for the severance entitlement as stated in 25:01.

25.03 The Employer will provide each member who does not work for the O.P.P. following disbandment with a letter of employment confirming that the member's employment was terminated due to the transfer of policing responsibilities from the Municipality to the O.P.P.

I have not reproduced Appendix "A" to the Union proposal in which the seniority dates for members of the bargaining unit are set out.

The Employer had proposed that Sections 25:01 (f) - centralized dispatching - and (g) - contracting out civilian work - of the last collective agreement be maintained. The Union indicated that it would accept both provisions during the September 24 conference call. I order the inclusion of both in the new collective agreement.

Although the two proposals appear to be quite different, in my view there are only two major differences.

1. The Union sought five (5) weeks severance for officers for each year of service, rather than the four (4) weeks severance in the last collective agreement.
2. While the last collective agreement calls for a lump sum severance payment, the Union sought an employee option of salary continuance in which the Employer would continue the employee on salary and benefits for the period of the severance.

Amount of severance

The severance for uniform members has been four (4) weeks per year, but the Union sought five (5) weeks per year and noted that recent settlements and awards have provided for more than four weeks severance. For example, in *Midland Police Services Board and The Midland Police Service* (unreported), March 22, 2018 (Marcotte), Arbitrator Marcotte acting as both a Section 122 arbitrator and a Section 40 arbitrator awarded severance pay of five (5) weeks per year. In *Hanover Police Association and Hanover Police Services Board* (unreported), December 5, 2012 (Knopf), Arbitrator Knopf as a Section 40 arbitrator awarded members one month severance (that is, 4.33 weeks) plus one additional week for loss of collective bargaining rights, for a total of 5.33 weeks. These amounts were to be

multiplied by an “entitlement factor” which I understand from the Association’s brief reflected the years of service. In *Officer M and Leamington Police Services Board* (unreported), January 20, 2015 (Trachuk), Arbitrator Trachuk as a Section 40 arbitrator records that the association had negotiated a package for officers that “included 1.25 months of severance for each year of service” (that is, 5.41 weeks).

The Employer submitted that the last collective agreement reflected compromises between the two parties and urged me not to revisit those compromises. While I acknowledge that any collective agreement reflects compromises, every proposed change to a collective agreement involves revisiting those earlier compromises and I find this submission to be of little assistance in assessing this particular proposed change.

I understand that many, but not all, officers have been offered employment with the OPP. This severance provision will be applicable to only a small number of officers who were not offered employment by the OPP. I can only assume that the officers not now hired by the OPP are the officers who would have the greatest difficulty in obtaining a new position, whether in policing or otherwise. I note that one of the factors commonly reflected in the calculation of the amount of severance is the length of time it will likely take a terminated employee to obtain a new position.

In this instance I find that the more recent awards and agreements noted above are persuasive. I order that the collective agreement be amended to increase the severance for officers from four (4) weeks to five (5) weeks.

Salary continuance

The Union proposed that, as part of the severance package, employees be able to elect salary continuance rather than a lump sum payment. The two options are commonly intended to provide a similar overall benefit. In those collective agreements which provide this option there is usually a reduction in the amount to reflect the fact the Employer will also be making on-going contributions to pensions and other benefits. In its proposal the Union has provided a 0.75 week reduction for those opting for salary continuance to 5.25 weeks for civilians and 4.25 weeks for officers. Implicit in this is the suggestion that the pension and benefits are worth 12.5% of the civilians' severance pay and 15% of the officers' severance pay. In the last collective agreement I note that some benefits (i.e., "the full Hospital and Medical Benefit package") are included (see Section 25:01 (b) and also Section 25.01 (d) of the Union proposal) as part of the severance package for up to 18 months. It is unclear what deduction for benefits would be appropriate were I to order the inclusion of this option of salary continuance for employees.

The Employer is disbanding the Police Service and an option of salary continuance would likely increase the time it takes to complete that disbandment process since some employees might well remain on the payroll for many months.

I decline to order this change.

Severance for employees who reject OPP offers for other reasons

As for the Union's other proposals, I am not prepared to order the Union's proposal (see its Section 25.01 c) for severance pay for an employee who is offered employment by the OPP but rejects it for any reason other than for the reason already set out in Section 25:02. I conclude that an employee's duty to mitigate his or her loss requires that employee to accept an OPP offer of employment except as specified in Section 25:02.

Letter of employment

I find the Union's proposal in Section 25.03 that each employee who does not go to work for the OPP receive a letter indicating that the termination of his/her employment was due to the transfer of policing responsibilities to be a sensible addition. It was not clear on what basis the Employer opposed this addition. However, given that the Employer is disbanding the Police Service and this was the reason for terminating all employees, this proposal is a reasonable and very low cost provision intended to help employees in seeking new employment. I order the parties to add the following provision to their collective agreement:

25:03 The Employer will provide each member who does not work for the O.P.P. following disbandment with a letter of employment confirming that the member's employment was terminated due to the transfer of policing responsibilities from the Municipality to the O.P.P.

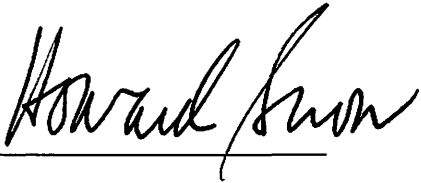
Suggested clarifications

I decline to order the several other proposed changes to the language which the Union suggested were simply clarifications.

Retention of jurisdiction

I retain jurisdiction to resolve any issues which may arise. In particular, as a Section 122 arbitrator I retain jurisdiction until the parties sign a new collective agreement. As a Section 40 arbitrator I retain jurisdiction over the individual severance agreements for all the employees in the bargaining unit.

Dated in London, Ontario, this 16th day of October, 2018.

A handwritten signature in black ink, reading "Howard Snow", written over a horizontal line.

Howard Snow, Arbitrator